**STATE WATER CONTROL BOARD**

**9 VAC 25-31-10 et seq. - VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT REGULATION**

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## PART I
## DEFINITIONS AND GENERAL PROGRAM REQUIREMENTS

**9 VAC 25-31-10. Definitions.**

"Act" means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC §1251 et seq.

"Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) animals (other than aquatic 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 (ii) crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the Clean Water Act (CWA) (33 USC §1251 et seq.) and the law, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal under §§301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval authority" means the Director of the Department of Environmental Quality.

"Approved POTW Pretreatment Program" or "Program" or "POTW Pretreatment Program" means a program administered by a POTW that meets the criteria established in Part VII (9 VAC 25-31-730 et seq.) of this chapter and which has been approved by the director or by the administrator in accordance with 9 VAC 25-31-830.

"Approved program" or "approved state" means a state or interstate program which has been approved or authorized by EPA under 40 CFR Part 123 (2005).

"Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 9 VAC 25-31-770 and to prevent or reduce the pollution of surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

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

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

"Class I sludge management facility" means any POTW identified under Part VII (9 VAC 25-31-730 et seq.) of this chapter as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator, in conjunction with the director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

"Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as a Large CAFO or as a Medium CAFO, or that is designated as a Medium CAFO or a Small CAFO. Any AFO may be designated as a CAFO by the director in accordance with the provisions of 9 VAC 25-31-130 B.

1. "Large CAFO." An AFO is defined as a Large CAFO if it stables or confines as many or more than the numbers of animals specified in any of the following categories:

   a. 700 mature dairy cows, whether milked or dry;

   b. 1,000 veal calves;

   c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;

   d. 2,500 swine each weighing 55 pounds or more;

   e. 10,000 swine each weighing less than 55 pounds;

   f. 500 horses;

g. 10,000 sheep or lambs;

h. 55,000 turkeys;

i. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

j. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

k. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

l. 30,000 ducks, if the AFO uses other than a liquid manure handling system; or

m. 5,000 ducks if the AFO uses a liquid manure handling system.

2. "Medium CAFO." The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges below that has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

a. The type and number of animals that it stables or confines falls within any of the following ranges:

(1) 200 to 699 mature dairy cattle, whether milked or dry;

(2) 300 to 999 veal calves;

(3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;

(4) 750 to 2,499 swine each weighing 55 pounds or more;

(5) 3,000 to 9,999 swine each weighing less than 55 pounds;

(6) 150 to 499 horses;

(7) 3,000 to 9,999 sheep or lambs;

(8) 16,500 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(11) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system;

(12) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and

b. Either one of the following conditions are met:

(1) Pollutants are discharged into surface waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

(2) Pollutants are discharged directly into surface waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. "Small CAFO." An AFO that is designated as a CAFO and is not a Medium CAFO.

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria of this definition, or which the board designates under 9 VAC 25-31-140. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility if it contains, grows, or holds aquatic animals in either of the following categories:

1. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

a. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

b. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding; or

2. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

a. Closed ponds which discharge only during periods of excess run-off; or

b. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

Cold water aquatic animals include, but are not limited to, the Salmonidae family of fish (e.g., trout and salmon).

Warm water aquatic animals include, but are not limited to, the Ictaluridae, Centrarchidae and Cyprinidae families of fish (e.g., respectively, catfish, sunfish and minnows).

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Control authority" refers to the POTW if the POTW's pretreatment program submission has been approved in accordance with the requirements of 9 VAC 25-31-830 or the approval authority if the submission has not been approved.

"Co-permittee" means a permittee to a VPDES permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"CWA" means the Clean Water Act (33 USC §1251 et seq.) (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Virginia Department of Environmental Quality.

"Designated project area" means the portions of surface within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

"Direct discharge" means the discharge of a pollutant.

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

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

"Discharge," when used in Part VII (9 VAC 25-31-730 et seq.) of this chapter, means "indirect discharge" as defined in this section.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface run-off which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report (DMR)" means the form supplied by the department or an equivalent form developed by the permittee and approved by the board, for the reporting of self-monitoring results by permittees.

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

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under §304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

"Existing source" means any source which is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of a new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VPDES point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VPDES program.

"General permit" means a VPDES permit authorizing a category of discharges under the CWA and the law within a geographical area.

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 (2005) pursuant to §311 of the CWA.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharge" means the introduction of pollutants into a POTW from any nondomestic source regulated under §307(b), (c) or (d) of the CWA and the law.

"Indirect discharger" means a nondomestic discharger introducing pollutants to a POTW.

"Individual control strategy" means a final VPDES permit with supporting documentation showing that effluent limits are consistent with an approved wasteload allocation or other documentation that shows that applicable water quality standards will be met not later than three years after the individual control strategy is established.

"Industrial user" or "user" means a source of indirect discharge.

"Interference" means an indirect discharge which, alone or in conjunction with an indirect discharge or discharges from other sources, both: (i) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and therefore (ii) is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA) (42 USC §6901 et seq.), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA) the Clean Air Act (42 USC §701 et seq.), the Toxic Substances Control Act (15 USC §2601 et seq.), and the Marine Protection, Research and Sanctuaries Act (33 USC §1401 et seq.).

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Land application area" means land under the control of an AFO owner or operator, that is owned, rented, or leased to which manure, litter or process wastewater from the production area may be applied.

"Log sorting" and "log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking).

"Major facility" means any VPDES facility or activity classified as such by the regional administrator in conjunction with the board.

"Manmade" means constructed by man and used for the purpose of transporting wastes.

"Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under §208 of the CWA.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under §§307, 402, 318, and 405 of the CWA. The term includes an approved program.

"National pretreatment standard," "pretreatment standard," or "standard," when used in Part VII (9 VAC 25-31-730 et seq.) of this chapter, means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with §307(b) and (c) of the CWA, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 9 VAC 25-31-770.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which is not a new source; and
4. Which has never received a finally effective VPDES permit for discharges at that site.

This definition includes an indirect discharger which commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New source," except when used in Part VII of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(a) After promulgation of standards of performance under §306 of the CWA which are applicable to such source; or

(b) After proposal of standards of performance in accordance with §306 of the CWA which are applicable to such source, but only if the standards are promulgated in accordance with §306 of the CWA within 120 days of their proposal.

"New source," when used in Part VII of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under §307(c) of the CWA which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

1. a. The building, structure, facility or installation is constructed at a site at which no other source is located;

   b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

   c. The production of wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivision 1 b or c of this definition but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source as defined under this subdivision has commenced if the owner or operator has:

   a. Begun, or caused to begin, as part of a continuous on-site construction program:

      (1) Any placement, assembly, or installation of facilities or equipment; or

      (2) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

   b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subdivision.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"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 any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of §62.1-44.5 of the Code of Virginia.

"Owner" or "operator" means the owner or operator of any facility or activity subject to regulation under the VPDES program.

"Pass through" means a discharge which exits the POTW into state waters in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation).

"Permit" means an authorization, certificate, license, or equivalent control document issued by the board to implement the requirements of this chapter. Permit includes a VPDES general permit. Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

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

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water run-off.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC §2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or

2. 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 and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board, and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"Publicly owned treatment works" or "POTW" means a treatment works as defined by §212 of the Act, which is owned by a state or municipality (as defined by §502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in §502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"POTW treatment plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

"Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited in Part VII of this chapter. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with Part VII of this chapter.

"Pretreatment requirements" means any requirements arising under Part VII of this chapter including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the board. Pretreatment requirements do not include the requirements of a national pretreatment standard.

"Primary industry category" means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in 40 CFR Part 122 Appendix A (2005).

"Privately owned treatment works (PVOTW)" means any device or system which is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. Process wastewater from an AFO means water directly or indirectly used in the operation of the AFO for any of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of the animals; or dust control. Process wastewater from an AFO also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

"Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage areas includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

"Proposed permit" means a VPDES permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

"Publicly owned treatment works (POTW)" means a treatment works as defined by §212 of the CWA, which is owned by a state or municipality (as defined by §502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in §502(4) of the CWA, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Recommencing discharger" means a source which recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the law, the CWA and regulations.

"Secondary industry category" means any industry category which is not a primary industry category.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under §312 of CWA.

"Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, domestic septage, portable toilet pumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

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

"Significant industrial user" or "SIU" means:

1. Except as provided in subdivisions 2 and 3 of this definition:

   a. All industrial users subject to categorical pretreatment standards under 9 VAC 25-31-780 and incorporated by reference in 9 VAC 25-31-30; and

   b. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5.0% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority, on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

2. The control authority may determine that an industrial user subject to categorical pretreatment standards under 9 VAC 25-31-780 and 40 CFR chapter I, subchapter N is a nonsignificant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than 100 gallons per day (gpd) of total categorical wastewater

(excluding sanitary, noncontact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:

a. The industrial user, prior to control authority's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;

b. The industrial user annually submits the certification statement required in 9 VAC 25-31-840 together with any additional information necessary to support the certification statement; and

c. The industrial user never discharges any untreated concentrated wastewater.

3. Upon a finding that an industrial user meeting the criteria in subdivision 1 b of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with Part VII (9 VAC 25-31-730 et seq.) of this chapter, determine that such industrial user is not a significant industrial user.

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under §101(14) of CERCLA (42 USC §9601(14)); any chemical the facility is required to report pursuant to §313 of Title III of SARA (42 USC §11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into surface waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run-off. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA §404 permit.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Sludge-only facility" means any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to the law and §405(d) of the CWA, and is required to obtain a VPDES permit.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"Standards for sewage sludge use or disposal" means the regulations promulgated pursuant to the law and §405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

"State" means the Commonwealth of Virginia.

"State/EPA agreement" means an agreement between the regional administrator and the state which coordinates EPA and state activities, responsibilities and programs including those under the CWA and the law.

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

"Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program. For the categories of industries identified in this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in subdivisions 1 through 10 of this definition) include those facilities designated under the provisions of 9 VAC 25-31-120 A 1 c. The following categories of facilities are considered to be engaging in industrial activity for purposes of this subsection:

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards (except facilities with toxic pollutant effluent standards which are exempted under category 10);

2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) (2005) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC §6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA (42 USC §6901 et seq.);

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under subdivisions 1 through 7 or 9 and 10 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with §405 of the CWA; and

10. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25.

"Submission" means: (i) a request by a POTW for approval of a pretreatment program to the regional administrator or the director; (ii) a request by POTW to the regional administrator or the director for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals; or (iii) a request to the EPA by the director for approval of the Virginia pretreatment program.

"Surface waters" 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 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 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.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2005).

"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.

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

"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 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; and 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.

"Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

"TWTDS" means treatment works treating domestic sewage.

"Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act (42 USC §6901 et seq.).

"Upset," except when used in Part VII of this chapter, means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under §301 or §316 of the CWA or under 40 CFR Part 125 (2005), or in the applicable effluent limitations guidelines which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on §§301(c), 301(g), 301(h), 301(i), or 316(a) of the CWA.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" means a document issued by the board pursuant to this chapter 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.

"VPDES application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the board for applying for a VPDES permit.

"Wastewater," when used in Part VII of this chapter, means liquid and water carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions, whether treated or untreated, which are contributed to the POTW.

"Wastewater works 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 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 wastewater works.

"Water Management Division Director" means the director of the Region III Water Management Division of the Environmental Protection Agency or this person's delegated representative.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

**9 VAC 25-31-20. Purpose.**

This chapter 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.

**9 VAC 25-31-30. Federal effluent guidelines.**

A. The following federal regulations are hereby incorporated by reference:

Aluminum Forming 40 CFR Part 467 (2005)
Asbestos Manufacturing 40 CFR Part 427 (2005)
Battery Manufacturing 40 CFR Part 461 (2005)
Canned and Preserved Fruits and Vegetables 40 CFR Part 407 (2005)
Canned and Preserved Seafood 40 CFR Part 408 (2005)
Carbon Black Manufacturing 40 CFR Part 458 (2005)
Cement Manufacturing 40 CFR Part 411 (2005)
Centralized Waste Treatment 40 CFR Part 437 (2005)
Coal Mining 40 CFR Part 434 (2005)
Coil Coating 40 CFR Part 465 (2005)
Copper Forming 40 CFR Part 468 (2005)
Dairy Products 40 CFR Part 405 (2005)
Electrical and Electronic Components 40 CFR Part 469 (2005)
Electroplating 40 CFR Part 413 (2005)
Explosives Manufacturing 40 CFR Part 457 (2005)
Feedlots 40 CFR Part 412 (2005)
Ferroalloy Manufacturing 40 CFR Part 424 (2005)
Fertilizer Manufacturing 40 CFR Part 418 (2005)
Glass Manufacturing 40 CFR Part 426 (2005)
Grain Mills 40 CFR Part 406 (2005)
Gum and Wood Chemicals Manufacturing 40 CFR Part 454 (2005)
Hospitals 40 CFR Part 460 (2005)
Ink Formulating 40 CFR Part 447 (2005)
Inorganic Chemicals Manufacturing 40 CFR Part 415 (2005)
Iron and Steel Manufacturing 40 CFR Part 420 (2005)
Landfills 40 CFR Part 445 (2005)
Leather Tanning and Finishing 40 CFR Part 425 (2005)
Meat Products 40 CFR Part 432 (2005)
Metal Finishing 40 CFR Part 433 (2005)
Metal Molding and Casting 40 CFR Part 464 (2005)
Metal Products and Machinery 40 CFR Part 438 (2005)
Mineral Mining and Processing 40 CFR Part 436 (2005)
Nonferrous Metals 40 CFR Part 421 (2005)
Nonferrous Metal Forming 40 CFR Part 471 (2005)
Oil and Gas Extraction 40 CFR Part 435 (2005)
Ore Mining and Dressing 40 CFR Part 440 (2005)
Organic Chemicals, Plastics and Synthetic Fibers 40 CFR Part 414 (2005)
Paint Formulating 40 CFR Part 446 (2005)
Paving and Roofing Materials 40 CFR Part 443 (2005)
Pesticide Chemicals 40 CFR Part 455 (2005)
Petroleum Refining 40 CFR Part 419 (2005)
Pharmaceutical Manufacturing 40 CFR Part 439 (2005)
Phosphate Manufacturing 40 CFR Part 422 (2005)
Photographic Processing 40 CFR Part 459 (2005)
Plastics Molding and Forming 40 CFR Part 463 (2005)
Porcelain Enameling 40 CFR Part 466 (2005)
Pulp, Paper and Paperboard 40 CFR Part 430 (2005)
Rubber Processing 40 CFR Part 428 (2005)
Secondary Treatment 40 CFR Part 133 (2005)
Soaps and Detergents 40 CFR Part 417 (2005)
Steam Electric Power Generation 40 CFR Part 423 (2005)

Sugar Processing 40 CFR Part 409 (2005)
Textile Mills 40 CFR Part 410 (2005)
Timber Products 40 CFR Part 429 (2005)
Toxic Pollutant Effluent Standards 40 CFR Part 129 (2005)
Transportation Equipment Cleaning 40 CFR Part 442 (2005)
Waste Combustors 40 CFR Part 444 (2005)

B. The director shall be responsible for identifying any subsequent changes in the regulations incorporated in the previous subsection or the adoption or the modification of any new national standard. Upon identifying any such federal change or adoption, the director shall initiate a regulation adopting proceedings by preparing and filing with the Registrar of Regulations the notice required by §2.2-4006 A 4 c of the Code of Virginia or a notice of a public hearing pursuant to §2.2-4007 C of the Code of Virginia.

**9 VAC 25-31-40. Exclusions.**

The following discharges do not require VPDES permits:

1. Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or development.

2. Discharges of dredged or fill material into surface waters which are regulated under §404 of the CWA.

3. The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to surface waters are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.

4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 (2000) (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (2000) (Pollution by Oil and Hazardous Substances).

5. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including storm water run-off from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.

6. Return flows from irrigated agriculture.

7. Discharges into a privately owned treatment works, except as the board may otherwise require.

**9 VAC 25-31-50. Prohibitions.**

A. Except in compliance with a VPDES permit, or another permit, issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

B. Any person in violation of 9 VAC 25-31-50 A, who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section shall notify the department of the discharge, immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by the permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

C. No permit may be issued:

1. When the conditions of the permit do not provide for compliance with the applicable requirements of the CWA or the law, or regulations promulgated under the CWA or the law;

2. When the applicant is required to obtain a state or other appropriate certification under §401 of the CWA and that certification has not been obtained or waived;

3. When the regional administrator has objected to issuance of the permit;

4. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;

5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

6. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

7. For any discharge inconsistent with a plan or plan amendment approved under §208(b) of the CWA;

8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

a. Before the promulgation of guidelines under §403(c) of the CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the board determines permit issuance to be in the public interest; or

b. After promulgation of guidelines under §403(c) of the CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.

9. To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the law and §§301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the department has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

a. There are sufficient remaining pollutant load allocations to allow for the discharge; and

b. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The board may waive the submission of information by the new source or new discharger required by this subdivision if the board determines that it already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph is to be included in the fact sheet to the permit under 9 VAC 25-31-280.

**9 VAC 25-31-60. Effect of a permit.**

A. 1. Except for any toxic effluent standards and prohibitions imposed under §307 of the CWA and standards for sewage sludge use or disposal under §405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the law and with §§301, 302, 306, 307, 318, 403, and 405 (a) through (b) of the CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in this chapter.

2. Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage sludge use or disposal pursuant to the law and §§309 and 405(e) of the CWA.

B. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

**9 VAC 25-31-70. Continuation of expiring permits.**

A. The permit shall expire at the end of its term, except that the conditions of an expired permit continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely application as required by this chapter, which is a complete application for a new permit; and

2. The board, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

B. Permits continued under this section remain fully effective and enforceable.

C. When the permittee is not in compliance with the conditions of the expiring or expired permit the board may choose to do any or all of the following:

1. Initiate enforcement action based upon the permit which has been continued;

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

3. Issue a new permit with appropriate conditions; or

4. Take other actions authorized by this chapter.

**9 VAC 25-31-80. Confidentiality of information.**

A. Any secret formula, secret processes, or secret methods other than effluent data submitted to the department pursuant to this chapter may be claimed as confidential by the submitter pursuant to §62.1-44.21 of the Code of Virginia. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae," "secret processes" "secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§2.2-3700 and §62.1-44.21 of the Code of Virginia).

B. Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee;

2. Permit applications, permits, and effluent data.

C. Information required by VPDES application forms provided by the department may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

**9 VAC 25-31-90. Guidance documents.**

The board may develop and use guidance, as appropriate, to implement technical and regulatory details of the VPDES permit program. Such guidance is distinguished from regulation by the fact that it is not binding on either the board or permittees. If a more appropriate methodology than that called for in guidance is available in a given situation, the more appropriate methodology shall be used to the extent it is consistent with applicable regulations and the State Water Control Law.

## PART II
## PERMIT APPLICATIONS AND SPECIAL VPDES PERMIT PROGRAMS

**9 VAC 25-31-100. Application for a permit.**

A. Duty to apply. Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 9 VAC 25-31-420 through 9 VAC 25-31-720 and who does not have an effective permit, except persons covered by general permits, excluded from the requirement for a permit by this chapter, or a user of a privately owned treatment works unless the board requires otherwise, shall submit a complete application to the department in accordance with this section. All concentrated animal feeding operations have a duty to seek coverage under a VPDES permit.

B. Who applies. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

C. Time to apply.

1. Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the board. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are

encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. New discharges composed entirely of storm water, other than those dischargers identified in 9 VAC 25-31-120 A 1, shall apply for and obtain a permit according to the application requirements in 9 VAC 25-31-120 B.

2. All TWTDS whose sewage sludge use or disposal practices are regulated by 9 VAC 25-31-420 through 9 VAC 25-31-720 must submit permit applications according to the applicable schedule in subdivision 2 a or b of this subsection.

a. A TWTDS with a currently effective VPDES permit must submit a permit application at the time of its next VPDES permit renewal application. Such information must be submitted in accordance with subsection D of this section.

b. Any other TWTDS not addressed under subdivision 2 a of this subsection must submit the information listed in subdivisions 2 b (1) through (5) of this subsection to the department within one year after publication of a standard applicable to its sewage sludge use or disposal practice(s), using a form provided by the department. The board will determine when such TWTDS must submit a full permit application.

(1) The TWTDS's name, mailing address, location, and status as federal, state, private, public or other entity;

(2) The applicant's name, address, telephone number, and ownership status;

(3) A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of subdivision P 8 d of this section, the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal and the location of any land application sites;

(4) Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and

(5) The most recent data the TWTDS may have on the quality of the sewage sludge.

c. Notwithstanding subdivision 2 a or b of this subsection, the board may require permit applications from any TWTDS at any time if the board determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

d. Any TWTDS that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the department at least 180 days prior to the date proposed for commencing operations.

D. Duty to reapply. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

E. Completeness.

1. The board shall not issue a permit before receiving a complete application for a permit except for VPDES general permits. An application for a permit is complete when the board receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

2. No application for a VPDES permit to discharge sewage into or adjacent to state waters from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the department with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

3. No application for a new individual VPDES permit authorizing a new discharge of sewage, industrial wastes, or other wastes shall be considered complete unless it contains notification from the county, city, or town in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances adopted pursuant to Chapter 22 (§15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. The county, city or town shall inform in writing the applicant and the board of the discharging facility's compliance or noncompliance not more than 30 days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the county, city or town fail to provide such written notification within 30 days, the requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid VPDES permit had been issued prior to March 10, 2000.

4. A permit application shall not be considered complete if the board has waived application requirements under subsection J or P of this section and the EPA has disapproved the waiver application. If a waiver request has been submitted to the EPA more than 210 days prior to permit expiration and the EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

F. Information requirements. All applicants for VPDES permits, other than POTWs and other TWTDS, shall provide the following information to the department, using the application form provided by the department (additional information required of applicants is set forth in subsections G through K of this section).

1. The activities conducted by the applicant which require it to obtain a VPDES permit;

2. Name, mailing address, and location of the facility for which the application is submitted;

3. Up to four SIC codes which best reflect the principal products or services provided by the facility;

4. The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;

5. Whether the facility is located on Indian lands;

6. A listing of all permits or construction approvals received or applied for under any of the following programs:

a. Hazardous Waste Management program under RCRA (42 USC §6921);

b. UIC program under SDWA (42 USC §300h);

c. VPDES program under the CWA and the law;

d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC §4701 et seq.);

e. Nonattainment program under the Clean Air Act (42 USC §4701 et seq.);

f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC §4701 et seq.);

g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC §14 et seq.);

h. Dredge or fill permits under §404 of the CWA; and

i. Other relevant environmental permits, including state permits.

7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area; and

8. A brief description of the nature of the business.

G. Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers. Existing manufacturing, commercial mining, and silvicultural dischargers applying for VPDES permits, except for those facilities subject to the requirements of 9 VAC 25-31-100 H, shall provide the following information to the department, using application forms provided by the department.

1. The latitude and longitude of each outfall to the nearest 15 seconds and the name of the receiving water.

2. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subdivision 3 of this subsection. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

3. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water run-off; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

4. If any of the discharges described in subdivision 3 of this subsection are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for storm water run-off, spillage or leaks).

5. If an effluent guideline promulgated under §304 of the CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility.

6. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

7. a. Information on the discharge of pollutants specified in this subdivision (except information on storm water discharges which is to be provided as specified in 9 VAC 25-31-120). When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40

CFR Part 136 (2005). When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the board may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in e and f of this subdivision that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the board may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged.

b. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50% from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes (applicants submitting permit applications for storm water discharges under 9 VAC 25-31-120 C may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the board). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9 VAC 25-31-120 B 1. For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9 VAC 25-31-120 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The board may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136 (2005), and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water run-off from the facility.)

c. Every applicant must report quantitative data for every outfall for the following pollutants:

Biochemical oxygen demand ($BOD_5$)
Chemical oxygen demand
Total organic carbon
Total suspended solids
Ammonia (as N)
Temperature (both winter and summer)
pH

d. The board may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in subdivision 7 c of this subsection if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

e. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A (2005)) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(1) The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D (2005) for the applicant's industrial category or categories unless the applicant qualifies as a small business under subdivision 8 of this subsection. Table II of 40 CFR Part 122 Appendix D (2005) lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes; and

(2) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2005) (the toxic metals, cyanide, and total phenols).

f. (1) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40

CFR Part 122 Appendix D (2005) (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(2) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (2005) (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subdivision 7 e of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subdivision 8 of this subsection is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (2005) (the organic toxic pollutants).

g. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (2005) (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

h. Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(1) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(2) Knows or has reason to believe that TCDD is or may be present in an effluent.

8. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in subdivision 7 e (1) or 7 f (1) of this subsection to submit quantitative data for the pollutants listed in Table II of 40 CFR Part 122 Appendix D (2005) (the organic toxic pollutants):

a. For coal mines, a probable total annual production of less than 100,000 tons per year; or

b. For all other applicants, gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars).

9. A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or by-product. The board may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the board has adequate information to issue the permit.

10. Reserved.

11. An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water in relation to a discharge.

12. If a contract laboratory or consulting firm performed any of the analyses required by subdivision 7 of this subsection, the identity of each laboratory or firm and the analyses performed.

13. In addition to the information reported on the application form, applicants shall provide to the board, at its request, such other information, including pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board, as the board may reasonably require to assess the discharges of the facility and to determine whether to issue a VPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

H. Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only nonprocess wastewater. Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the department using application forms provided by the department:

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

2. Date of expected commencement of discharge;

3. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water

additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;

4. a. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the board. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136 (2005). Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(1) Biochemical oxygen demand ($BOD_5$).

(2) Total suspended solids (TSS).

(3) Fecal coliform (if believed present or if sanitary waste is or will be discharged).

(4) Total residual chlorine (if chlorine is used).

(5) Oil and grease.

(6) Chemical oxygen demand (COD) (if noncontact cooling water is or will be discharged).

(7) Total organic carbon (TOC) (if noncontact cooling water is or will be discharged).

(8) Ammonia (as N).

(9) Discharge flow.

(10) pH.

(11) Temperature (winter and summer).

b. The board may waive the testing and reporting requirements for any of the pollutants or flow listed in subdivision 4 a of this subsection if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

c. If the applicant is a new discharger, he must submit the information required in subdivision 4 a of this subsection by providing quantitative data in accordance with that section no later than two years after commencement of discharge. However, the applicant need not submit testing results which he has already performed and reported under the discharge monitoring requirements of his VPDES permit.

d. The requirements of subdivisions 4 a and 4 c of this subsection that an applicant must provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 9 VAC 25-31-230 G are met;

5. A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for storm water run-off, leaks, or spills);

6. A brief description of any treatment system used or to be used;

7. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 9 VAC 25-31-230 G;

8. Signature of certifying official under 9 VAC 25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

I. Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities. New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the department, using the application form provided by the department:

1. For concentrated animal feeding operations:

a. The name of the owner or operator;

b. The facility location and mailing address;

c. Latitude and longitude of the production area (entrance to the production area);

d. A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of subdivision F 7 of this section;

e. Specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

f. The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);

g. The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

h. Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); and

i. For CAFOs that must seek coverage under a permit after December 31, 2006, certification that a nutrient management plan has been completed and will be implemented upon the date of coverage.

2. For concentrated aquatic animal production facilities:

a. The maximum daily and average monthly flow from each outfall;

b. The number of ponds, raceways, and similar structures;

c. The name of the receiving water and the source of intake water;

d. For each species of aquatic animals, the total yearly and maximum harvestable weight;

e. The calendar month of maximum feeding and the total mass of food fed during that month; and

f. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

J. Application requirements for new and existing POTWs and treatment works treating domestic sewage. Unless otherwise indicated, all POTWs and other dischargers designated by the board must provide to the department, at a minimum, the information in this subsection using an application form provided by the department. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action but does provide notice to the board and permit applicant(s) that the EPA may object to any board-issued permit issued in the absence of the required information.

1. All applicants must provide the following information:

a. Name, mailing address, and location of the facility for which the application is submitted;

b. Name, mailing address, and telephone number of the applicant and indication as to whether the applicant is the facility's owner, operator, or both;

c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

(1) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;

(2) Underground Injection Control program under the Safe Drinking Water Act (SDWA);

(3) NPDES program under the Clean Water Act (CWA);

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(5) Nonattainment program under the Clean Air Act;

(6) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(8) Dredge or fill permits under §404 of the CWA; and

(9) Other relevant environmental permits, including state permits;

d. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;

e. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

f. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three years;

g. Identification of type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and

h. The following information for outfalls to surface waters and other discharge or disposal methods:

(1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(2) For wastewater discharged to surface impoundments:

(a) The location of each surface impoundment;

(b) The average daily volume discharged to each surface impoundment; and

(c) Whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land:

(a) The location of each land application site;

(b) The size of each land application site, in acres;

(c) The average daily volume applied to each land application site, in gallons per day; and

(d) Whether land application is continuous or intermittent;

(4) For effluent sent to another facility for treatment prior to discharge:

(a) The means by which the effluent is transported;

(b) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(c) The name, mailing address, contact person, phone number, and VPDES permit number (if any) of the receiving facility; and

(d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(5) For wastewater disposed of in a manner not included in subdivisions 1 h (1) through (4) of this subsection (e.g., underground percolation, underground injection):

(a) A description of the disposal method, including the location and size of each disposal site, if applicable;

(b) The annual average daily volume disposed of by this method, in gallons per day; and

(c) Whether disposal through this method is continuous or intermittent;

2. All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:

a. The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;

b. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

(1) Treatment plant area and unit processes;

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

(3) Each well where fluids from the treatment plant are injected underground;

(4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;

(5) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and

(6) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

c. Process flow diagram or schematic.

(1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and

(2) A narrative description of the diagram; and

d. The following information regarding scheduled improvements:

(1) The outfall number of each outfall affected;

(2) A narrative description of each required improvement;

(3) Scheduled or actual dates of completion for the following:

(a) Commencement of construction;

(b) Completion of construction;

(c) Commencement of discharge; and

(d) Attainment of operational level; and

(4) A description of permits and clearances concerning other federal or state requirements;

3. Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

a. The following information about each outfall:

(1) Outfall number;

(2) State, county, and city or town in which outfall is located;

(3) Latitude and longitude, to the nearest second;

(4) Distance from shore and depth below surface;

(5) Average daily flow rate, in million gallons per day;

(6) The following information for each outfall with a seasonal or periodic discharge:

(a) Number of times per year the discharge occurs;

(b) Duration of each discharge;

(c) Flow of each discharge; and

(d) Months in which discharge occurs; and

(7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used.

b. The following information, if known, for each outfall through which effluent is discharged to surface waters:

(1) Name of receiving water;

(2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;

(3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and

(4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable).

c. The following information describing the treatment provided for discharges from each outfall to surface waters:

(1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

(a) Design biochemical oxygen demand ($BOD_5$ or $CBOD_5$) removal (percent);

(b) Design suspended solids (SS) removal (percent); and, where applicable,

(c) Design phosphorus (P) removal (percent);

(d) Design nitrogen (N) removal (percent); and

(e) Any other removals that an advanced treatment system is designed to achieve.

(2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination).

4. Effluent monitoring for specific parameters.

a. As provided in subdivisions 4 b through j of this subsection, all applicants must submit to the department effluent monitoring information for samples taken from each outfall through which effluent is discharged to surface waters, except for CSOs. The board may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

b. All applicants must sample and analyze for the following pollutants:

(1) Biochemical oxygen demand ($BOD_5$ or $CBOD_5$);

(2) Fecal coliform;

(3) Design flow rate;

(4) pH;

(5) Temperature; and

(6) Total suspended solids.

c. All applicants with a design flow greater than or equal to 0.1 mgd must sample and analyze for the following pollutants:

(1) Ammonia (as N);

(2) Chlorine (total residual, TRC);

(3) Dissolved oxygen;

(4) Nitrate/Nitrite;

(5) Kjeldahl nitrogen;

(6) Oil and grease;

(7) Phosphorus; and

(8) Total dissolved solids.

Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine.

d. All POTWs with a design flow rate equal to or greater than one million gallons per day, all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program, and other POTWs, as required by the board must sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix J (2005), and for any other pollutants for which the board or EPA have established water quality standards applicable to the receiving waters.

e. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

f. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The board may require additional samples, as appropriate, on a case-by-case basis.

g. All existing data for pollutants specified in subdivisions 4 b through e of this subsection that is collected within 4-1/2 years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

h. Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 (2005) unless an alternative is specified in the existing VPDES permit. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

i. The effluent monitoring data provided must include at least the following information for each parameter:

(1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

(2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;

(3) The analytical method used; and

(4) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

j. Unless otherwise required by the board, metals must be reported as total recoverable.

5. Effluent monitoring for whole effluent toxicity.

a. All applicants must provide an identification of any whole effluent toxicity tests conducted during the 4-1/2 years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge.

b. As provided in subdivisions 5 c through i of this subsection, the following applicants must submit to the department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(1) All POTWs with design flow rates greater than or equal to one million gallons per day;

(2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(3) Other POTWs, as required by the board, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(b) The ratio of effluent flow to receiving stream flow;

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, or a water designated as an outstanding natural resource water; or

(e) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the board determines could cause or contribute to adverse water quality impacts.

c. Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the board may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

d. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide:

(1) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(2) Results from four tests performed at least annually in the 4-1/2 year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the board.

e. Applicants must conduct tests with multiple species (no less than two species, e.g., fish, invertebrate, plant) and test for acute or chronic toxicity, depending on the range of receiving water dilution. The board recommends that applicants conduct acute or chronic testing based on the following dilutions: (i) acute toxicity testing if the dilution of the effluent is greater than 100:1 at the edge of the mixing zone or (ii) chronic toxicity testing if the dilution of the effluent is less than or equal to 100:1 at the edge of the mixing zone.

f. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

g. Applicants must provide the results using the form provided by the department, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to subdivision 5 b of this subsection for which such information has not been reported previously to the department.

h. Whole effluent toxicity testing conducted pursuant to subdivision 5 b of this subsection must be conducted using methods approved under 40 CFR Part 136 (2005), as directed by the board.

i. For whole effluent toxicity data submitted to the department within 4-1/2 years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

j. Each POTW required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past 4-1/2 years revealed toxicity.

6. Applicants must submit the following information about industrial discharges to the POTW:

a. Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW; and

b. POTWs with one or more SIUs shall provide the following information for each SIU, as defined in 9 VAC 25-31-10, that discharges to the POTW:

(1) Name and mailing address;

(2) Description of all industrial processes that affect or contribute to the SIU's discharge;

(3) Principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;

(4) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and nonprocess flow;

(5) Whether the SIU is subject to local limits;

(6) Whether the SIU is subject to categorical standards and, if so, under which category and subcategory; and

(7) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past 4-1/2 years.

c. The information required in subdivisions 6 a and b of this subsection may be waived by the board for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in subdivisions 6 a and b of this subsection:

(1) An annual report submitted within one year of the application; or

(2) A pretreatment program.

7. Discharges from hazardous waste generators and from waste cleanup or remediation sites. POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

a. If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261 (2005), the applicant must report the following:

(1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and

(2) The hazardous waste number and amount received annually of each hazardous waste.

b. If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and §3004(u) or 3008(h) of RCRA, the applicant must report the following:

(1) The identity and description of the site or facility at which the wastewater originates;

(2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261 (2005), if known; and

(3) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

c. Applicants are exempt from the requirements of subdivision 7 b of this subsection if they receive no more than 15 kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) (2005).

8. Each applicant with combined sewer systems must provide the following information:

a. The following information regarding the combined sewer system:

(1) A map indicating the location of the following:

(a) All CSO discharge points;

(b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and

(c) Waters supporting threatened and endangered species potentially affected by CSOs; and

(2) A diagram of the combined sewer collection system that includes the following information:

(a) The location of major sewer trunk lines, both combined and separate sanitary;

(b) The locations of points where separate sanitary sewers feed into the combined sewer system;

(c) In-line and off-line storage structures;

(d) The locations of flow-regulating devices; and

(e) The locations of pump stations.

b. The following information for each CSO discharge point covered by the permit application:

(1) The following information on each outfall:

(a) Outfall number;

(b) State, county, and city or town in which outfall is located;

(c) Latitude and longitude, to the nearest second;

(d) Distance from shore and depth below surface;

(e) Whether the applicant monitored any of the following in the past year for this CSO: (i) rainfall, (ii) CSO flow volume, (iii) CSO pollutant concentrations, (iv) receiving water quality, or (v) CSO frequency; and

(f) The number of storm events monitored in the past year;

(2) The following information about CSO overflows from each outfall:

(a) The number of events in the past year;

(b) The average duration per event, if available;

(c) The average volume per CSO event, if available; and

(d) The minimum rainfall that caused a CSO event, if available, in the last year;

(3) The following information about receiving waters:

(a) Name of receiving water;

(b) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code, if known; and

(c) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code, if known; and

(4) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable state water quality standard).

9. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility.

10. All applications must be signed by a certifying official in compliance with 9 VAC 25-31-110.

11. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

K. Application requirements for new sources and new discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits (except for new discharges of facilities subject to the requirements of subsection H of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of 9 VAC 25-31-120 B 1 and this subsection) shall provide the following information to the department, using the application forms provided by the department:

1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;

2. The expected date of commencement of discharge;

3. a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;

b. A line drawing of the water flow through the facility with a water balance as described in subdivision G 2;

c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water run-off, spillage, or leaks); and

4. If a new source performance standard promulgated under §306 of the CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;

5. The requirements in subdivisions H 4 a, b, and c of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of 9 VAC 25-31-230 G are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.

a. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The board may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

(1) Biochemical oxygen demand (BOD).

(2) Chemical oxygen demand (COD).

(3) Total organic carbon (TOC).

(4) Total suspended solids (TSS).

(5) Flow.

(6) Ammonia (as N).

(7) Temperature (winter and summer).

(8) pH.

b. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of 40 CFR Part 122 Appendix D (2005) (certain conventional and nonconventional pollutants).

c. Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

(1) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2005) (the toxic metals, in the discharge from any outfall, Total cyanide, and total phenols);

(2) The organic toxic pollutants in Table II of 40 CFR Part 122 Appendix D (2005) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than $100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

(2) (2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

(3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);

(4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

(5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

(6) Hexachlorophene (HCP) (CAS #70-30-4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D (2005) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than two years after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection G of this section. However, the applicant need not complete those portions of subsection G of this section requiring tests which he has already performed and reported under the discharge monitoring requirements of his VPDES permit;

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

7. Any optional information the permittee wishes to have considered;

8. Signature of certifying official under 9 VAC 25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

L. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989, is not later than that provided under previously promulgated regulations; or

(b) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA §301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to §301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to §301(g) of the CWA (provided however that a §301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (when determined by the Administrator to be a pollutant covered by §301(b)(2)(F) of the CWA) and any other pollutant which the administrator lists under §301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a §§301(c) or 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 (2005) have been met. Notwithstanding this provision, the complete application for a request under §301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under §302(b)(2) of the CWA of requirements under §302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

M. Variance requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

1. A request for a modification under §301(h) of the CWA of requirements of §301(b)(1)(B) of the CWA for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G (2005).

2. A modification under §302(b)(2) of the CWA of the requirements under §302(a) of the CWA for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

N. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsections L and M of this section, the board may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variances. In the notice the board may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 (2005) applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions L 2 a (2) or L 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the board. Extensions shall be no more than six months in duration.

O. Recordkeeping. Except for information required by subdivision C 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI (9 VAC 25-31-420 et seq.) of this chapter), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

P. Sewage sludge management. All TWTDS subject to subdivision C 2 a of this section must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action, but does provide notice to the board and the permit applicant that the EPA may object to any board issued permit issued in the absence of the required information.

1. All applicants must submit the following information:

a. The name, mailing address, and location of the TWTDS for which the application is submitted;

b. Whether the facility is a Class I Sludge Management Facility;

c. The design flow rate (in million gallons per day);

d. The total population served;

e. The TWTDS's status as federal, state, private, public, or other entity;

f. The name, mailing address, and telephone number of the applicant; and

g. Indication whether the applicant is the owner, operator, or both.

2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs:

a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);

b. UIC program under the Safe Drinking Water Act (SDWA);

c. NPDES program under the Clean Water Act (CWA);

d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

e. Nonattainment program under the Clean Air Act;

f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

g. Dredge or fill permits under §404 of the CWA;

h. Other relevant environmental permits, including state or local permits.

3. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country.

4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:

a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and

b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.

5. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge; the destination(s) of all liquids and solids leaving each such unit; and all processes used for pathogen reduction and vector attraction reduction.

6. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in Part VI (9 VAC 25-31-420 et seq.) of this chapter for the applicant's use or disposal practices on the date of permit application with the following conditions:

a. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

b. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.

c. Applicants must collect and analyze samples in accordance with analytical methods specified in 9 VAC 25-31-490 unless an alternative has been specified in an existing sewage sludge permit.

d. The monitoring data provided must include at least the following information for each parameter:

(1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;

(2) The analytical method used; and

(3) The method detection level.

7. If the applicant is a person who prepares sewage sludge, as defined in 9 VAC 25-31-500, the applicant must provide the following information:

a. If the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility.

b. If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:

(1) The name, mailing address, and location of the other facility;

(2) The total dry metric tons per 365-day period received from the other facility; and

(3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics.

c. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:

(1) Whether the Class A pathogen reduction requirements in 9 VAC 25-31-710 A or the Class B pathogen reduction requirements in 9 VAC 25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(2) Whether any of the vector attraction reduction options of 9 VAC 25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge.

d. If sewage sludge from the applicant's facility meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through 8, and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

e. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information:

(1) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is sold or given away in a bag or other container for application to the land; and

(2) A copy of all labels or notices that accompany the sewage sludge being sold or given away.

f. If sewage sludge from the applicant's facility is provided to another person who prepares sewage sludge, as defined in 9 VAC 25-31-500, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information for each facility receiving the sewage sludge:

(1) The name and mailing address of the receiving facility;

(2) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that the applicant provides to the receiving facility;

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9 VAC 25-31-530 G; and

(5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge.

8. If sewage sludge from the applicant's facility is applied to the land in bulk form and is not subject to subdivision 7 d, e or f of this subsection, the applicant must provide the following information:

a. The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

b. If any land application sites are located in states other than the state where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located.

c. The following information for each land application site that has been identified at the time of permit application:

(1) The name (if any), and location for the land application site;

(2) The site's latitude and longitude to the nearest second, and method of determination;

(3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location;

(4) The name, mailing address, and telephone number of the site owner, if different from the applicant;

(5) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;

(6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9 VAC 25-31-500;

(7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

(8) Whether either of the vector attraction reduction options of 9 VAC 25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

(9) Other information that describes how the site will be managed, as specified by the board.

d. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 to the site:

(1) Whether the applicant has contacted the permitting authority in the state where the bulk sewage sludge subject to 9 VAC 25-31-540 B 2 will be applied, to ascertain whether bulk sewage sludge subject to 9 VAC 25-31-540 B 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 to the site since July 20, 1993, if, based on the inquiry in subdivision 8 d (1) of this subsection, bulk sewage sludge subject to cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 has been applied to the site since July 20, 1993.

e. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

(1) Describes the geographical area covered by the plan;

(2) Identifies the site selection criteria;

(3) Describes how the site(s) will be managed;

(4) Provides for advance notice to the board of specific land application sites and reasonable time for the board to object prior to land application of the sewage sludge; and

(5) Provides for advance public notice of land application sites in a newspaper of general circulation in the area of the land application site.

9. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period.

b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:

(1) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and

(2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site.

c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(1) The name or number and the location of the active sewage sludge unit;

(2) The unit's latitude and longitude to the nearest second, and method of determination;

(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;

(4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1 X 10-7 cm/sec;

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal;

(8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(a) The name, contact person, and mailing address of the facility; and

(b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(12) Whether any of the vector attraction reduction options of 9 VAC 25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(13) The following information, as applicable to any groundwater monitoring occurring at the active sewage sludge unit:

(a) A description of any groundwater monitoring occurring at the active sewage sludge unit;

(b) Any available groundwater monitoring data, with a description of the well locations and approximate depth to groundwater;

(c) A copy of any groundwater monitoring plan that has been prepared for the active sewage sludge unit;

(d) A copy of any certification that has been obtained from a qualified groundwater scientist that the aquifer has not been contaminated; and

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.

10. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period.

b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:

(1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and

(2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator.

11. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

a. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;

b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;

c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the Virginia Solid Waste Management Regulations, 9 VAC 20-80.

12. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal.

13. At the request of the board, the applicant must provide any other information necessary to determine the appropriate standards for permitting under Part VI (9 VAC 25-31-420 et seq.) of this chapter, and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

14. All applications must be signed by a certifying official in compliance with 9 VAC 25-31-110.

Q. Applications for facilities with cooling water intake structures.

1. Application requirements.

a. New facilities with new or modified cooling water intake structures. New facilities with cooling water intake structures as defined in 9 VAC 25-31-165 must report the information required under subdivisions 2, 3, and 4 of this subsection and under 9 VAC 25-31-165. Requests for alternative requirements under 9 VAC 25-31-165 must be submitted with the permit application.

b. Phase II existing facilities. Phase II existing facilities as defined in 9 VAC 25-31-165 must submit to the board for review the information required under subdivisions 2, 3, and 5 of this subsection and all applicable provisions of 9 VAC 25-31-165 as part of their application except for the proposal for information collection, which must be provided in accordance with 9 VAC 25-31-165 C 3 b (1).

2. Source water physical data. These include:

a. A narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including area dimensions, depths, salinity and temperature regimes, and other documentation that supports the determination of the water body type where each cooling water intake structure is located;

b. Identification and characterization of the source water body's hydrological and geomorphologic features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of such studies; and

c. Location maps.

3. Cooling water intake structure data. These include:

a. A narrative description of the configuration of each cooling water intake structure and where it is located in the water body and in the water column;

b. Latitude and longitude in degrees, minutes, and seconds for each cooling water intake structure;

c. A narrative description of the operation of each cooling water intake structure, including design intake flow, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable;

d. A flow distribution and water balance diagram that includes all sources of water to the facility, recirculation flows and discharges; and

e. Engineering drawings of the cooling water intake structure.

4. Source water baseline biological characterization data. This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. The department may also use this information in subsequent permit renewal proceedings to determine if the design and construction technology plan as required in 9 VAC 25-31-165 should be revised. This supporting information must include existing data if available. Existing data may be supplemented with data from newly conducted field studies. The information must include:

a. A list of the data in subdivisions 4 b through 4 f of this subsection that is not available and efforts made to identify sources of the data;

b. A list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure;

c. Identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;

d. Identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;

e. Data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure;

f. Identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at the cooling water intake structures;

g. Documentation of any public participation or consultation with federal or state agencies undertaken in development of the plan; and

h. If information requested in subdivision 4 of this subsection is supplemented with data collected using field studies, supporting documentation for the source water baseline biological characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling and/or data analysis methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

5. Cooling water system data. Phase II existing facilities as defined in 9 VAC 25-31-165 must provide the following information for each cooling water intake structure they use:

a. A narrative description of the operation of the cooling water system, its relationship to cooling water intake structures, the proportion of the design intake flow that is used in the system, the number of days of the year the cooling water system is in operation and seasonal changes in the operation of the system, if applicable; and

b. Design and engineering calculations prepared by a qualified professional and supporting data to support the description required by subdivision 5 a of this subsection.

Note 1: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of the VPDES application Form 2C are suspended as they apply to coal mines.

Note 2: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

a. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410 (2005)), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

b. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR Part 440 (2005)), and testing and reporting for all four fractions in all other subcategories of this industrial category.

c. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

Note 3: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

a. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454 (2005)), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

b. Testing and reporting for the pesticide fraction in the leather tanning and finishing, paint and ink formulation, and photographic supplies industrial categories.

c. Testing and reporting for the acid, base/neutral and pesticide fractions in the petroleum refining industrial category.

d. Testing and reporting for the pesticide fraction in the Papergrade Sulfite Subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430 (2005)); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

e. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

**9 VAC 25-31-110. Signatories to permit applications and reports.**

A. All permit applications shall be signed as follows:

1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

3. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

B. All reports required by permits, and other information requested by the board shall be signed by a person described in subsection A of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in subsection A of this section;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

3. The written authorization is submitted to the department.

C. If an authorization under subsection B of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection B of this section must be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

D. Any person signing a document under subsection A or B of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware

that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

**9 VAC 25-31-120. Storm water discharges.**

A. Permit requirements.

1. Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a VPDES permit except:

a. A discharge with respect to which a permit has been issued prior to February 4, 1987;

b. A discharge associated with industrial activity; or

c. A discharge which either the board or the regional administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to surface waters. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water run-off, except for those discharges from conveyances which do not require a permit under subdivision 2 of this subsection or agricultural storm water run-off which is exempted from the definition of point source.

2. The board may not require a permit for discharges of storm water run-off from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation run-off and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, by-product or waste products located on the site of such operations.

3. In addition to meeting the requirements of subsection B of this section, an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing VPDES permit number.

4. For storm water discharges associated with industrial activity from point sources which discharge through a nonmunicipal or nonpublicly owned separate storm sewer system, the board, in its discretion, may issue: a single VPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into surface waters; or, individual permits to each discharger of storm water associated with industrial activity through the nonmunicipal conveyance system.

a. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to surface waters, with each discharger to the nonmunicipal conveyance a co-permittee to that permit.

b. Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

c. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

5. Conveyances that discharge storm water run-off combined with municipal sewage are point sources that must obtain VPDES permits in accordance with the procedures of 9 VAC 25-31-100 and are not subject to the provisions of this section.

6. Whether a discharge from a municipal separate storm sewer is or is not subject to VPDES regulation shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III or Title VI of the CWA.

7. a. On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by subdivision 1 of this subsection to obtain a permit, operators shall be required to obtain a VPDES permit only if:

(1) The board or the EPA regional administrator determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

(2) The board or the EPA regional administrator determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

b. Operators of nonmunicipal sources designated pursuant to subdivisions 7 a (1) and (2) of this subsection shall seek coverage under a VPDES permit in accordance with subdivision B 1 of this section.

c. Operators of storm water discharges designated pursuant to subdivisions 7 a (1) and (2) of this subsection shall apply to the board for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the board.

B. Application requirements for storm water discharges associated with industrial activity.

1. Dischargers of storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the board is evaluating for designation under subdivision A 1 c of this section, shall submit a VPDES application in accordance with the requirements of 9 VAC 25-31-100 as modified and supplemented by the provisions of this subsection.

a. Except as provided in subdivisions 1 b and c of this subsection, the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

(1) A site map showing topography (or indicating the outline of drainage areas served by the outfall or outfalls covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water run-off, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34 (2000)); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

(2) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

(3) A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of nonstorm water discharges which are not covered by a VPDES permit; tests for such nonstorm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the onsite drainage points that were directly observed during a test;

(4) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

(5) Quantitative data based on samples collected during storm events and collected in accordance with 9 VAC 25-31-100 of this part from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(a) Any pollutant limited in an effluent guideline to which the facility is subject;

(b) Any pollutant listed in the facility's VPDES permit for its process wastewater (if the facility is operating under an existing VPDES permit);

(c) Oil and grease, pH, $BOD_5$, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(d) Any information on the discharge required under 9 VAC 25-31-100 G 7 f and g;

(e) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event or events sampled, and the method of flow measurement or estimation; and

(f) The date and duration (in hours) of the storm event or events sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled run-off and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

(6) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of 9 VAC 25-31-100 G 2, G 3, G 4, G 5, G 7 c, G 7 d, G 7 e, and G 7 h; and

(7) Operators of new sources or new discharges which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in subdivision 1 a (5) of this subsection instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in subdivision 1 a (5) of this subsection within two

years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the VPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of 9 VAC 25-31-100 K 3 b, K 3 c, and K 5.

b. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with subdivision 1 a of this subsection, unless the facility:

(1) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 (2000) or 40 CFR 302.6 (2000) at any time since November 16, 1987; or

(2) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 (2000) at any time since November 16, 1987; or

(3) Contributes to a violation of a water quality standard.

c. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

d. Applicants shall provide such other information the board may reasonably require to determine whether to issue a permit.

C. Application deadlines. Any operator of a point source required to obtain a permit under this section that does not have an effective VPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

1. Individual applications.

a. Except as provided in subdivision 1 b of this subsection, for any storm water discharge associated with industrial activity as defined in this chapter which is not authorized by a storm water general permit, a permit application made pursuant to subsection B of this section shall be submitted to the department by October 1, 1992;

b. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications must be submitted to the department by March 10, 2003;

2. A permit application shall be submitted to the department within 180 days of notice, unless permission for a later date is granted by the board, for:

a. A storm water discharge which either the board or the regional administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters; or

b. A storm water discharge subject to subdivision B 1 d of this section;

3. Facilities with existing VPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. Facilities with permits for storm water discharges associated with industrial activity which expire on or after May 18, 1992, shall submit a new application in accordance with the requirements of 9 VAC 25-31-100 and 9 VAC 25-31-120 B (Form 1, Form 2F, and other applicable forms) 180 days before the expiration of such permits.

D. Petitions.

1. Any person may petition the board to require a VPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

2. The board shall make a final determination on any petition received under this section within 90 days after receiving the petition.

E. Conditional exclusion for no exposure of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is no exposure of industrial materials and activities to rain, snow, snowmelt or run-off and the discharger satisfies the conditions in subdivisions 1 through 4 of this subsection. No exposure means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and run-off. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

1. To qualify for this exclusion, the operator of the discharge must:

a. Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and run-off;

b. Complete and sign (according to 9 VAC 25-31-110) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in subdivision 2 of this subsection;

c. Submit the signed certification to the department once every five years;

d. Allow the department to inspect the facility to determine compliance with the no exposure conditions;

e. Allow the department to make any no exposure inspection reports available to the public upon request; and

f. For facilities that discharge through an MS4, upon request, submit a copy of the certification of no exposure to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

2. Storm resistant shelter is not required for:

a. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("sealed" means banded or otherwise secured and without operational taps or valves);

b. Adequately maintained vehicles used in material handling; and

c. Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

3. a. This conditional exclusion from the requirement for a VPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be no exposure discharges, individual permit requirements should be adjusted accordingly.

b. If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, or run-off, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for unpermitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

c. Notwithstanding the provisions of this subsection, the board retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

4. The no exposure certification requires the submission of the following information, at a minimum, to aid the board in determining if the facility qualifies for the no exposure exclusion:

a. The legal name, address and phone number of the discharger.

b. The facility name and address, the county name and the latitude and longitude where the facility is located.

c. Certification that indicates that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

(1) Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

(2) Materials or residuals on the ground or in storm water inlets from spills/leaks;

(3) Materials or products from past industrial activity;

(4) Material handling equipment (except adequately maintained vehicles);

(5) Materials or products during loading/unloading or transporting activities;

(6) Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants);

(7) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

(8) Materials or products handled/stored on roads or railways owned or maintained by the discharger;

(9) Waste material (except waste in covered, nonleaking containers, e.g., dumpsters);

(10) Application or disposal of process wastewater (unless otherwise permitted); and

(11) Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow.

d. All no exposure certifications must include the following certification statement and be signed in accordance with the signatory requirements of 9 VAC 25-31-110: "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of no exposure and obtaining an exclusion from VPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial

facility identified in this document (except as allowed under 9 VAC 25-31-120 E 2). I understand that I am obligated to submit a no exposure certification form once every five years to the Department of Environmental Quality and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the department, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under a VPDES permit prior to any point source discharge of storm water associated with industrial activity from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

**9 VAC 25-31-121. [Repealed]**

**9 VAC 25-31-130. Concentrated animal feeding operations.**

A. Permit requirement for CAFOs.

1. Concentrated animal feeding operations are point sources that require VPDES permits for discharges or potential discharges. Once an operation is defined as a CAFO, the VPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

2. Two or more animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

B. Case-by-case designations. The board may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to surface waters.

1. In making this designation the board shall consider the following factors:

a. The size of the animal feeding operation and the amount of wastes reaching surface waters;

b. The location of the animal feeding operation relative to surface waters;

c. The means of conveyance of animal wastes and process wastewaters into surface waters;

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into surface waters; and

e. Other relevant factors.

2. No animal feeding operation with less than the numbers of animals set forth in the definition of Medium CAFO in this regulation shall be designated as a concentrated animal feeding operation unless:

a. Pollutants are discharged into surface waters through a manmade ditch, flushing system, or other similar manmade device; or

b. Pollutants are discharged directly into surface waters which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. A permit application shall not be required from a concentrated animal feeding operation designated under this subsection until the board has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the VPDES permit program.

C. Who must seek coverage under a VPDES permit?

1. All CAFO owners or operators must apply for a permit. All CAFO owners or operators must seek coverage under a VPDES permit, except as provided in subdivision 2 of this subsection. Specifically, the CAFO owner or operator must either apply for an individual VPDES permit or apply for coverage under a VPDES general permit. If there is no VPDES general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the board.

2. Exception. An owner or operator of a Large CAFO does not need to seek coverage under a VPDES permit if the owner or operator has received a notice from the board of a determination under 9 VAC 25-31-130 C 5 that the CAFO has "no potential to discharge" manure, litter or process wastewater.

3. Information to submit with permit application. A permit application for an individual permit must include the information specified in 9 VAC 25-31-100 I. A notice of intent for a general permit must include the information specified in 9 VAC 25-31-100 I and 9 VAC 25-31-170.

4. Land application discharges from a CAFO are subject to VPDES requirements. The discharge of manure, litter or process wastewater to surface waters from a CAFO as the result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to VPDES requirements, except where it is an agricultural storm water discharge as provided in 33 USC §1362(14). For purposes of this subdivision, where the manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the 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, as specified in 9 VAC 25-31-200 E, a discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge.

5. "No potential to discharge" determinations for Large CAFOs.

a. Determination by the board. The board, upon request, may make a case-specific determination that a Large CAFO has "no potential to discharge" pollutants to surface waters. In making this determination, the board must consider the potential for discharges from both the production area and any land application areas. The board must also consider any record of prior discharges by the CAFO. In no case may the CAFO be determined to have "no potential to discharge" if it has had a discharge within the five years prior to the date of the request submitted under subdivision C 5 b of this section. For purposes of this section, the term "no potential to discharge" means that there is no potential for any CAFO manure, litter or process wastewater to be added to surface waters under any circumstance or climatic condition. A determination that there is "no potential to discharge" for purposes of this section only relates to the discharges of manure, litter and process wastewater covered by this section.

b. Information to support a "no potential to discharge" request. In requesting a determination of "no potential to discharge," the CAFO owner or operator must submit any information that would support such a determination within the time frame provided by the board and in accordance with subdivisions 6 and 7 of this subsection. Such information must include all the information specified in 9 VAC 25-31-100 F and 9 VAC 25-31-100 I 1. The board has discretion to require additional information to supplement the request, and may also gather additional information through onsite inspection of the CAFO.

c. Process for making a "no potential to discharge" determination. Before making a final decision to grant a "no potential to discharge" determination, the board must issue a notice to the public stating that a "no potential to discharge" request has been received. This notice must be accompanied by a fact sheet that includes, when applicable: a brief description of the type of facility or activity that is the subject of the "no potential to discharge" determination; a brief summary of the factual basis, upon which the request is based, for granting the "no potential to discharge" determination; and a description of the procedures for reaching a final decision on the "no potential to discharge" determination.

The board must base the decision to grant a "no potential to discharge" determination on the administrative record, which includes all information submitted in support of a "no potential to discharge" determination and any other supporting data gathered by the board. The board must notify any CAFO seeking a "no potential to discharge" determination of its final determination within 90 days of receiving the request.

d. Deadline for requesting a "no potential to discharge" determination. The owner or operator must request a "no potential to discharge" determination by the applicable permit application date specified in subdivision C 6 of this subsection.

e. The "no potential to discharge" determination does not relieve the CAFO from the consequences of an actual discharge. Any unpermitted CAFO that discharges pollutants into surface waters is in violation of State Water Control Law even if it has received a "no potential to discharge" determination from the board. Any CAFO that has received a determination of "no potential to discharge", but that anticipates changes in circumstances that could create the potential for a discharge, should contact the Department of Environmental Quality, and apply for and obtain permit authorization prior to the change of circumstances.

6. When a CAFO must seek coverage under a VPDES permit.

a. Operations defined as CAFOs prior to April 14, 2003. For operations that are defined as CAFOs under regulations that are in effect prior to April 14, 2003, the owner or operator must have or seek to obtain coverage under a VPDES permit as of April 14, 2003, and comply with all applicable VPDES requirements, including the duty to maintain permit coverage in accordance with subdivision 7 of this subsection.

b. Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date. For all CAFOs, the owner or operator of the CAFO must seek to obtain coverage under a VPDES permit by January 1, 2006.

c. Operations that become defined as CAFOs after April 14, 2003, but that are not new sources. For newly constructed AFOs and CAFOs that make changes to their operations that result in becoming defined as CAFOs for the first time, after April 14, 2003, but are not new sources, the owner or operator must seek to obtain coverage under a VPDES permit, as follows:

(1) For newly constructed operations not subject to effluent limitation guidelines, 180 days prior to the time the CAFO commences operation; or

(2) For other operations (e.g., resulting from an increase in the number of animals), as soon as possible, but no later than 90 days after becoming defined as a CAFO; except that

(3) If an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has at least until April 14, 2006.

d. New sources. New sources must seek to obtain coverage under a permit at least 180 days prior to the time the CAFO commences operation.

e. Operations that are designated CAFOs. For operations designated as a CAFO in accordance with subsection B of this section, the owner or operator must seek to obtain coverage under a VPDES permit no later than 90 days after receiving notice of the designation.

f. "No potential to discharge." Notwithstanding any other provision of this section, a CAFO that has received a "no potential to discharge" determination in accordance with subdivision 5 of this subsection is not required to seek coverage under a VPDES permit. If circumstances materially change at a CAFO that has received a "no potential to discharge" determination, such that the CAFO has a potential for a discharge, the CAFO has a duty to immediately notify the board and seek coverage under a VPDES permit within 30 days after the change in circumstances.

7. Duty to maintain permit coverage. No later than 180 days before the expiration of the permit, the permittee must submit an application to renew its permit, in accordance with 9 VAC 25-31-100. However, the permittee need not continue to seek continued permit coverage or reapply for a permit if:

a. The facility has ceased operation or is no longer a CAFO; and

b. The permittee has demonstrated to the satisfaction of the board that there is no remaining potential for a discharge of manure, litter or associated process wastewater that was generated while the operation was a CAFO, other than agricultural storm water from application areas.

**9 VAC 25-31-140. Concentrated aquatic animal production facilities.**

A. Concentrated aquatic animal production facilities, as defined in this chapter, are point sources subject to the VPDES permit program.

B. Case-by-case designations. The board may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to surface waters.

1. In making this designation the board shall consider the following factors:

a. The location and quality of the receiving surface waters;

b. The holding, feeding, and production capacities of the facility;

c. The quantity and nature of the pollutants reaching surface waters; and

d. Other relevant factors.

2. A permit application shall not be required from a concentrated aquatic animal production facility designated under this subsection until the department has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the VPDES permit program.

**9 VAC 25-31-150. Aquaculture projects.**

Discharges into aquaculture projects, as defined in this chapter, are subject to the VPDES permit program. Permits for aquaculture projects shall be issued according to the criteria of 40 CFR Part 125, Subpart B (2000).

**9 VAC 25-31-160. Silvicultural activities.**

Silvicultural point sources, as defined in this chapter, are point sources subject to the VPDES permit program.

**9 VAC 25-31-165. Requirements applicable to cooling water intake structures.**

A. Definitions. The following definitions apply specifically to this section:

"Adaptive management method" is a type of project management method where a facility chooses an approach to meeting the project goal, monitors the effectiveness of that approach, and then based on monitoring and any other relevant information, makes any adjustments necessary to ensure continued progress toward the project's goal. This cycle of activity is repeated as necessary to reach the project's goal.

"All life stages" means eggs, larvae, juveniles, and adults.

"Annual mean flow" means the average of daily flows over a calendar year.

"Calculation baseline" means an estimate of impingement mortality and entrainment that would occur at a site assuming that: the cooling water system has been designed as a once-through system; the opening of the cooling water intake structure is located at, and the face of the standard 3/8-inch mesh traveling screen is oriented parallel to, the shoreline near the surface of the source water body; and the baseline practices, procedures, and structural configuration are those that a facility would maintain in the absence of any structural or operational controls, including flow or velocity reductions, implemented in whole or in part for the purposes of reducing impingement mortality and entrainment. The current level of impingement mortality and entrainment may be used as the calculation baseline. The calculation baseline may be estimated using: historical impingement mortality and entrainment data from a facility with comparable design, operational, and environmental conditions; current biological data collected in the water body in the vicinity of the cooling water intake structure; or current impingement mortality and entrainment data collected at the facility. The calculation baseline may be modified to be based on a location of the opening of the cooling water intake structure at a depth other than at or near the surface if it can be demonstrated to the department that the other depth would correspond to a higher baseline level of impingement mortality and/or entrainment.

"Capacity utilization rate" means the ratio between the average annual net generation of power by the facility (in MWh) and the total net capability of the facility to generate power (in MW) multiplied by the number of hours during a year. In cases where a facility has more than one intake structure, and each intake structure provides cooling water exclusively to one or more generating units, the capacity utilization rate may be calculated separately for each intake structure, based on the capacity utilization of the units it services. Applicable requirements under this section would then be determined separately for each intake structure. The average annual net generation should be measured over a five-year period (if available) of representative operating conditions, unless the facility makes a binding commitment to maintain capacity utilization below 15% for the life of the permit, in which case the rate may be based on this commitment. For purposes of this section, the capacity utilization rate applies to only that portion of the facility that generates electricity for transmission or sale using a thermal cycle employing the steam water system as the thermodynamic medium.

"Closed-cycle recirculating system" means a system designed, using minimized makeup and blowdown flows, to withdraw water from a natural or other water source to support contact and/or noncontact cooling uses within a facility. The water is usually sent to a cooling canal or channel, lake, pond, or tower to allow waste heat to be dissipated to the atmosphere and then is returned to the system. (Some facilities divert the waste heat to other process operations.) New source water (make-up water) is added to the system to replenish losses that have occurred due to blowdown, drift, and evaporation.

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a new facility's intake flow that is used for cooling purposes.

"Cooling water intake structure" means the total physical structure and any associated constructed waterways used to withdraw cooling water from state waters. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

"Design and construction technology" means any physical configuration of the cooling water intake structure, or a technology that is placed in the water body in front of the cooling water intake structure, to reduce impingement mortality and/or entrainment. Design and construction technologies include, but are not limited to, location of the intake structure, intake screen systems, passive intake systems, fish diversion and/or avoidance systems, and fish handling and return systems. Restoration measures are not design and construction technologies for purposes of this definition.

"Design intake flow" means the value assigned (during the facility's design) to the total volume of water withdrawn from a source water body over a specific time period.

"Design intake velocity" means the value assigned (during the design of a cooling water intake structure) to the average speed at which intake water passes through the open area of the intake screen (or other device) against which organisms might be impinged or through which they might be entrained.

"Diel" means daily and refers to variation in organism abundance and density over a 24-hour period due to the influence of water movement, physical or chemical changes, and changes in light intensity.

"Entrainment" means the incorporation of all life stages of fish and shellfish with intake water flow entering and passing through a cooling water intake structure and into a cooling water system.

"Estuary" means a semi-enclosed body of water that has a free connection with open seas and within which the seawater is measurably diluted with fresh water derived from land drainage. The salinity of an estuary exceeds 0.5 parts per thousand (by mass) but is typically less than 30 parts per thousand (by mass).

"Existing facility" means any facility that commenced construction as described on or before January 17, 2002; and any modification of, or any addition of a unit at such a facility that does not meet the definition of a new facility.

"Freshwater river or stream" means a lotic (free-flowing) system that does not receive significant inflows of water from oceans or bays due to tidal action. For the purposes of this section, a flow-through reservoir with a retention time of seven days or less will be considered a freshwater river or stream.

"Hydraulic zone of influence" means that portion of the source water body hydraulically affected by the cooling water intake structure withdrawal of water.

"Impingement" means the entrapment of all life stages of fish and shellfish on the outer part of an intake structure or against a screening device during periods of intake water withdrawal.

"Lake or reservoir" means any inland body of open water with some minimum surface area free of rooted vegetation and with an average hydraulic retention time of more than seven days. Lakes or reservoirs might be natural water bodies or impounded streams, usually fresh, surrounded by land or by land and a man-made retainer (e.g., a dam). Lakes or reservoirs might be fed by rivers, streams, springs, and/or local precipitation. Flow-through reservoirs with an average hydraulic retention time of seven days or less should be considered a freshwater river or stream.

"Maximize" means to increase to the greatest amount, extent, or degree reasonably possible.

"Minimize" means to reduce to the smallest amount, extent, or degree reasonably possible.

"Moribund" means dying; close to death.

"Natural thermal stratification" means the naturally-occurring division of a water body into horizontal layers of differing densities as a result of variations in temperature at different depths.

"New facility" means any building, structure, facility, or installation that meets the definition of a "new source" or "new discharger" and is a greenfield or stand-alone facility that commences construction after January 17, 2002, and uses either a newly constructed cooling water intake structure, or an existing cooling water intake structure whose design capacity is increased to accommodate the intake of additional cooling water. A greenfield facility is a facility that is constructed at a site at which no other source is located, or that totally replaces the process or production equipment at an existing facility. A stand-alone facility is a new, separate facility that is constructed on property where an existing facility is located and whose processes are substantially independent of the existing facility at the same site. New facility does not include new units that are added to a facility for purposes of the same general industrial operation (for example, a new peaking unit at an electrical generating station).

"Ocean" means marine open coastal waters with a salinity greater than or equal to 30 parts per thousand (by mass).

"Once-through cooling water system" means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact and/or noncontact cooling uses, and then discharge it to a water body without recirculation. Once-through cooling systems sometimes employ canals/channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

"Operational measure" means a modification to any operation at a facility that serves to minimize impact to fish and shellfish from the cooling water intake structure. Examples of operational measures include, but are not limited to reductions in cooling water intake flow through the use of variable speed pumps and seasonal flow reductions or shutdowns; and more frequent rotation of traveling screens.

"Phase II existing facility" means any existing facility that meets the criteria specified in subsection C of this section.

"Source water" means the water body from which the cooling water is withdrawn.

"Supplier" means an entity, other than the regulated facility, that owns and operates its own cooling water intake structure and directly withdraws water from state waters. The supplier sells the cooling water to other facilities for their use, but may also use a portion of the water itself. An entity that provides potable water to residential populations (e.g., public water system) is not a supplier for purposes of this subpart.

"Thermocline" means the middle layer of a thermally stratified lake or reservoir. In this layer, there is a rapid decrease in temperatures.

"Tidal excursion" means the horizontal distance along the estuary or tidal river that a particle moves during one tidal cycle of ebb and flow.

"Tidal river" means the most seaward reach of a river or stream where the salinity is typically less than or equal to 0.5 parts per thousand (by mass) at a time of annual low flow and whose surface elevation responds to the effects of coastal lunar tides.

B. Cooling water intake structures for new facilities.

1. Applicability.

a. This section applies to a new facility if it:

(1) Is a point source that uses or proposes to use a cooling water intake structure;

(2) Has at least one cooling water intake structure that uses at least 25% of the water it withdraws for cooling purposes as specified in subdivision 1 c of this subsection; and

(3) Has a design intake flow greater than two million gallons per day (MGD).

b. Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with an independent supplier (or multiple suppliers) of cooling water if the supplier or suppliers withdraw(s) water from waters of the United States. Use of cooling water does not include obtaining cooling water from a public water system or the use of treated effluent that otherwise would be discharged to state waters. This provision is intended to prevent circumvention of these requirements by creating arrangements to receive cooling water from an entity that is not itself a point source.

c. The threshold requirement that at least 25% of water withdrawn be used for cooling purposes must be measured on an average monthly basis. A new facility meets the 25% cooling water threshold if, based on the new facility's design, any monthly average over a year for the percentage of cooling water withdrawn is expected to equal or exceed 25% of the total water withdrawn.

d. This section does not apply to facilities that employ cooling water intake structures in the offshore and coastal subcategories of the oil and gas extraction point source category as defined under 40 CFR 435.10 and 40 CFR 435.40.

2. Compliance.

a. The owner or operator of a new facility must comply with either Track I in subdivision 2 b or c of this subsection or Track II in subdivision 2 d of this subsection. In addition to meeting the requirements in subdivision 2 b, c or d of this subsection, the owner or operator of a new facility may be required to comply with subdivision 2 e of this subsection.

b. Track I requirements for new facilities that withdraw equal to or greater than 10 MGD. Facilities must comply with all of the following requirements:

(1) Reduce intake flow, at a minimum, to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system;

(2) Design and construct each cooling water intake structure to a maximum through-screen design intake velocity of 0.5 ft/s;

(3) Design and construct the cooling water intake structure such that the total design intake flow from all cooling water intake structures meets the following requirements:

(a) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5.0% of the source water annual mean flow;

(b) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);

(c) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1.0% of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(4) Select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if:

(a) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(b) Based on information submitted by any fishery management agency(ies) or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the board that pass through the hydraulic zone of influence of the cooling water intake structure; or

(c) It is determined by the board, based on information submitted by any fishery management agency(ies) or other relevant information that the proposed facility, after meeting the technology-based performance requirements in subdivision 2 b (1), (2), and (3) of this subsection, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(5) Select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish if:

(a) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(b) Based on information submitted by any fishery management agency(ies) or other relevant information, there are or would be undesirable cumulative stressors affecting entrainable life stages of species of concern to the board, and the

board determines that the proposed facility, after meeting the technology-based performance requirements in subdivision 2 b (1), (2), and (3) of this subsection, would contribute unacceptable stress to these species of concern;

(6) Submit the application information required in 9 VAC 25-31-100 Q and subdivision 4 b of this subsection;

(7) Implement the monitoring requirements specified in subdivision 5 of this subsection;

(8) Implement the record-keeping requirements specified in subdivision 6 of this subsection.

c. Track I requirements for new facilities that withdraw equal to or greater than two MGD and less than 10 MGD and that choose not to comply with subdivision 2 b of this subsection. Facilities must comply with all of the following requirements:

(1) Design and construct each cooling water intake structure at the facility to a maximum through-screen design intake velocity of 0.5 ft/s;

(2) Design and construct the cooling water intake structure such that the total design intake flow from all cooling water intake structures at the facility meets the following requirements:

(a) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5.0% of the source water annual mean flow;

(b) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);

(c) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1.0% of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(3) Select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if:

(a) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(b) Based on information submitted by any fishery management agency(ies) or other relevant information there are migratory and/or sport or commercial species of impingement concern to the board that pass through the hydraulic zone of influence of the cooling water intake structure; or

(c) It is determined by the board, based on information submitted by any fishery management agency(ies) or other relevant information that the proposed facility, after meeting the technology-based performance requirements in subdivisions 2 c (1) and (2) of this subsection, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(4) Select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish;

(5) Submit the application information required in 9 VAC 25-31-100 Q and 9 VAC 25-31-165 B 4;

(6) Implement the monitoring requirements specified in 9 VAC 25-31-165 B 5;

(7) Implement the recordkeeping requirements specified in 9 VAC 25-31-165 B 6.

d. Track II. The owner or operator of a new facility that chooses to comply under Track II must comply with the following requirements:

(1) Demonstrate to the board that the technologies employed will reduce the level of adverse environmental impact from cooling water intake structures to a comparable level to that which would be achieved using the requirements of subdivision 3 b (1) and (2) of this subsection. This demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to those that would result implementing the requirements of subdivisions 3 b (1) and (2) of this subsection. This showing may include consideration of impacts other than impingement mortality and entrainment, including measures that will result in increases in fish and shellfish, but it must demonstrate comparable performance for species that the board identifies as species of concern. In identifying such species the board may consider information provided by fishery management agencies with responsibility for fisheries potentially affected by the cooling water intake structure along with data and information from other sources.

(2) Design and construct the cooling water intake structure such that the total design intake flow from all cooling water intake structures at the facility meet the following requirements:

(a) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5.0% of the source water annual mean flow;

(b) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);

(c) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1.0% of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level.

(3) Submit the application information required in 9 VAC 25-31-100 Q and 9 VAC 25-31-165 B 4 c.

(4) Implement the monitoring requirements specified in 9 VAC 25-31-165 B 5.

(5) Implement the record-keeping requirements specified in 9 VAC 25-31-165 B 6.

e. The owner or operator of a new facility must comply with any more stringent requirements relating to the location, design, construction, and capacity of a cooling water intake structure or monitoring requirements at a new facility that the board deems are reasonably necessary to comply with any provision of state law, including compliance with state water quality standards (including designated uses, criteria, and antidegradation requirements).

3. Alternative requirements.

a. Any interested person may request that alternative requirements less stringent than those specified in 9 VAC 25-31-165 B 2 a through e be imposed in the permit. The board may establish alternative requirements less stringent than the requirements of 9 VAC 25-31-165 B 2 a through e only if:

(1) There is an applicable requirement under 9 VAC 25-31-165 B 2 a through e;

(2) The board determines that data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to those EPA considered in establishing the requirement at issue or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets;

(3) The alternative requirement requested is no less stringent than justified by the wholly out of proportion cost or the significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets; and

(4) The alternative requirement will ensure compliance with other applicable provisions of the Clean Water Act and state law.

b. The burden is on the person requesting the alternative requirement to demonstrate that alternative requirements should be authorized.

4. Application information requirements.

a. The owner or operator of a new facility must submit to the department:

(1) A statement of intention to comply with either:

(a) The Track I requirements for new facilities that withdraw equal to or greater than 10 MGD in 9 VAC 25-31-165 B 2 b;

(b) The Track I requirements for new facilities that withdraw equal to or greater than 2 MGD and less than 10 MGD in 9 VAC 25-31-165 B 2 c or;

(c) The requirements for Track II in 9 VAC 25-31-165 B 2 d.

(2) The owner or operator must also submit the application information required by 9 VAC 25-31-100 Q and the information required in either subdivision 4 b of this subsection for Track I or subdivision 4 c of this section for Track II when application is made for a new or reissued VPDES permit.

b. Track I application requirements. To demonstrate compliance with Track I requirements in 9 VAC 25-31-165 B 2 b or c, collect and submit to the department the information in subdivision 4 b (1) through (4) of this subsection.

(1) Flow reduction information. To comply with the flow reduction requirements in 9 VAC 25-31-165 B 2 b (1), submit the following information to demonstrate reduction of flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system:

(a) A narrative description of the system that has been designed to reduce intake flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system and any engineering calculations, including documentation demonstrating that make-up and blowdown flows have been minimized; and

(b) If the flow reduction requirement is met entirely, or in part, by reusing or recycling water withdrawn for cooling purposes in subsequent industrial processes, provide documentation that the amount of cooling water that is not reused or recycled has been minimized.

(2) Velocity information. Submit the following information to demonstrate compliance with the requirement to meet a maximum through-screen design intake velocity of no more than 0.5 ft/s at each cooling water intake structure:

(a) A narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and

(b) Design calculations showing that the velocity requirement will be met at minimum ambient source water surface elevations (based on best professional judgment using available hydrological data) and maximum head loss across the screens or other device.

(3) Source water body flow information. Submit the following information to demonstrate that the cooling water intake structure meets the flow requirements in 9 VAC 25-31-165 B 2 b (3) and c (2):

(a) If the cooling water intake structure is located in a freshwater river or stream, provide the annual mean flow and any supporting documentation and engineering calculations to show that the cooling water intake structure meets the flow requirements;

(b) If the cooling water intake structure is located in an estuary or tidal river, provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that the cooling water intake structure facility meets the flow requirements; and

(c) If the cooling water intake structure is located in a lake or reservoir, provide a narrative description of the water body thermal stratification, and any supporting documentation and engineering calculations to show that the natural thermal stratification and turnover pattern will not be disrupted by the total design intake flow. In cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish provide supporting documentation and include a written concurrence from any fisheries management agency(ies) with responsibility for fisheries potentially affected by the cooling water intake structure(s).

(4) Design and Construction Technology Plan. To comply with 9 VAC 25-31-165 B 2 b (4) and (5), or 9 VAC 25-31-165 B 2 c (3) and (4), submit the following information in a Design and Construction Technology Plan:

(a) Information to demonstrate whether or not the criteria in 9 VAC 25-31-165 B 2 b (4) and b (5), or 9 VAC 25-31-165 B 2 c (3) and c (4) are met;

(b) Delineation of the hydraulic zone of influence for the cooling water intake structure;

(c) New facilities required to install design and construction technologies and/or operational measures must develop a plan explaining the technologies and measures selected based on information collected for the Source Water Biological Baseline Characterization required by 9 VAC 25-31-100 Q. (Examples of appropriate technologies include, but are not limited to, wedgewire screens, fine mesh screens, fish handling and return systems, barrier nets, aquatic filter barrier systems, etc. Examples of appropriate operational measures include, but are not limited to, seasonal shutdowns or reductions in flow, continuous operations of screens, etc.) The plan must contain the following information:

(i) A narrative description of the design and operation of the design and construction technologies, including fish-handling and return systems, that will be used to maximize the survival of those species expected to be most susceptible to impingement. Provide species-specific information that demonstrates the efficacy of the technology;

(ii) A narrative description of the design and operation of the design and construction technologies that will be used to minimize entrainment of those species expected to be the most susceptible to entrainment. Provide species-specific information that demonstrates the efficacy of the technology; and

(iii) Design calculations, drawings, and estimates to support the descriptions provided in 9 VAC 25-31-165 B 4 b (4) (c) (i) and (ii).

c. Application requirements for Track II. In order to with the requirements of Track II in 9 VAC 25-31-165 B 2 d collect and submit the following information:

(1) Source water body flow information. Submit to the department the following information to demonstrate that the cooling water intake structure meets the source water body requirements in 9 VAC 25-31-165 B 2 d (2):

(a) If the cooling water intake structure is located in a freshwater river or stream, provide the annual mean flow and any supporting documentation and engineering calculations to show that the cooling water intake structure meets the flow requirements;

(b) If the cooling water intake structure is located in an estuary or tidal river, provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that the cooling water intake structure facility meets the flow requirements; and

(c) If the cooling water intake structure is located in a lake or reservoir, provide a narrative description of the water body thermal stratification, and any supporting documentation and engineering calculations to show that the natural thermal stratification and thermal or turnover pattern will not be disrupted by the total design intake flow. In cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish provide supporting documentation and include a written concurrence from any fisheries management agency(ies) with responsibility for fisheries potentially affected by the cooling water intake structure(s).

(2) Track II Comprehensive Demonstration Study. Perform and submit the results of a Comprehensive Demonstration Study (study). This information is required to characterize the source water baseline in the vicinity of the cooling water intake structure(s), characterize operation of the cooling water intake(s), and to confirm that the technology(ies) proposed and/or implemented at the cooling water intake structure reduce the impacts to fish and shellfish to levels comparable to those achieved by implementation of the requirements in 9 VAC 25-31-165 B 2 b (1) and (2) of Track I. To demonstrate the "comparable level" requirement, include information showing that:

(a) Both impingement mortality and entrainment of all life stages of fish and shellfish are reduced by 90% or greater of the reduction that would be achieved through 9 VAC 25-31-165 B 2 b (1) and (2); or

(b) If the demonstration includes consideration of impacts other than impingement mortality and entrainment, that the measures taken will maintain the fish and shellfish in the water body at a substantially similar level to that which would be achieved through 9 VAC 25-31-165 B 2 b (1) and (2); and

(c) Develop and submit a plan to the department containing a proposal for how information will be collected to support the study. The plan must include:

(i) A description of the proposed and/or implemented technology(ies) to be evaluated in the study;

(ii) A list and description of any historical studies characterizing the physical and biological conditions in the vicinity of the proposed or actual intakes and their relevancy to the proposed study. If existing source water body data is used, it must be no more than five years old, demonstrated sufficient to develop a scientifically valid estimate of potential impingement and entrainment impacts, and include documentation that the data were collected using appropriate quality assurance/quality control procedures;

(iii) Any public participation or consultation with federal or state agencies undertaken in developing the plan; and

(iv) A sampling plan for data that will be collected using actual field studies in the source water body. The sampling plan must document all methods and quality assurance procedures for sampling, and data analysis. The sampling and data analysis methods proposed must be appropriate for a quantitative survey and based on consideration of methods used in other studies performed in the source water body. The sampling plan must include a description of the study area (including the area of influence of the cooling water intake structure and at least 100 meters beyond); taxonomic identification of the sampled or evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods; and

(d) Submit documentation of the results of the study to the director. Documentation of the results of the study must include:

(i) Source Water Biological Study. The Source Water Biological Study must include a taxonomic identification and characterization of aquatic biological resources including a summary of historical and contemporary aquatic biological resources; determination and description of the target populations of concern (those species of fish and shellfish and all life stages that are most susceptible to impingement and entrainment); and a description of the abundance and temporal/spatial characterization of the target populations based on the collection of multiple years of data to capture the seasonal and daily activities (e.g., spawning, feeding and water column migration) of all life stages of fish and shellfish found in the vicinity of the cooling water intake structure; an identification of all threatened or endangered species that might be susceptible to impingement and entrainment by the proposed cooling water intake structure(s); and a description of additional chemical, water quality, and other anthropogenic stresses on the source water body.

(ii) Evaluation of potential cooling water intake structure effects. This evaluation will include calculations of the reduction in impingement mortality and entrainment of all life stages of fish and shellfish that would need to be achieved by the technologies selected to implement requirements under Track II and an engineering estimate of efficacy for the proposed and/or implemented technologies used to minimize impingement mortality and entrainment of all life stages of fish and shellfish and maximize survival of impinged life stages of fish and shellfish, demonstrating that the technologies reduce impingement mortality and entrainment of all life stages of fish and shellfish to a comparable level to that which would be achieved implementing the requirements in 9 VAC 25-31-165 B 2 b (1) and (2) of Track I. The efficacy projection must include a site-specific evaluation of technology(ies) suitability for reducing

impingement mortality and entrainment based on the results of the Source Water Biological Study. Efficacy estimates may be determined based on case studies that have been conducted in the vicinity of the cooling water intake structure and/or site-specific technology prototype studies.

(iii) Evaluation of proposed restoration measures. If restoration measures are proposed to maintain the fish and shellfish provide information and data to show coordination with the appropriate fishery management agency(ies) and a plan that provides a list of the measures to implement to demonstrate and continue to ensure that restoration measures will maintain the fish and shellfish in the water body to a substantially similar level to that which would be achieved through 9 VAC 25-31-165 B 2 b (1) and (2).

(iv) Verification monitoring plan. Include in the study a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or implemented technologies or operational measures. The verification study must begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the facility is reducing the level of impingement and entrainment to the level documented in 9 VAC 25-31-165 B 4 c (2) (d) (ii). The plan must describe the frequency of monitoring and the parameters to be monitored. The department will use the verification monitoring to confirm that the level of impingement mortality and entrainment reduction required in is met and that the operation of the technology has been optimized. Include a plan to conduct monitoring to verify that restoration measures will maintain the fish and shellfish in the water body to a substantially similar level as that which would be achieved through 9 VAC 25-31-165 B 2 b (1) and (2).

5. Monitoring. The owner or operator of a new facility will be required to perform monitoring to demonstrate compliance with the requirements specified in 9 VAC 25-31-165 B 2.

a. Biological monitoring. Monitor both impingement and entrainment of the commercial, recreational, and forage base fish and shellfish species identified in either the Source Water Baseline Biological Characterization data or the Comprehensive Demonstration Study, depending on whether compliance with Track I or Track II was chosen. The monitoring methods used must be consistent with those used for the Source Water Baseline Biological Characterization or the Comprehensive Demonstration Study. Follow the monitoring frequencies identified below for at least two years after the initial permit issuance.

(1) Impingement sampling. Collect samples to monitor impingement rates (simple enumeration) for each species over a 24-hour period and no less than once per month when the cooling water intake structure is in operation.

(2) Entrainment sampling. Collect samples to monitor entrainment rates (simple enumeration) for each species over a 24-hour period and no less than biweekly during the primary period of reproduction, larval recruitment, and peak abundance identified during the Source Water Baseline Biological Characterization or the Comprehensive Demonstration Study. Collect samples only when the cooling water intake structure is in operation.

b. Velocity monitoring. If the facility uses surface intake screen systems, monitor head loss across the screens and correlate the measured value with the design intake velocity. The head loss across the intake screen must be measured at the minimum ambient source water surface elevation (best professional judgment based on available hydrological data). The maximum head loss across the screen for each cooling water intake structure must be used to determine compliance with the velocity requirement in 9 VAC 25-31-165 B 2 b (2) or c (1). If the facility uses devices other than surface intake screens, monitor velocity at the point of entry through the device. Monitor head loss or velocity during initial facility startup, and thereafter, at the frequency specified in the VPDES permit.

c. Visual or remote inspections. Conduct visual inspections or employ remote monitoring devices during the period the cooling water intake structure is in operation. Conduct visual inspections at least weekly to ensure that any design and construction technologies are maintained and operated to ensure that they will continue to function as designed. Alternatively, inspect via remote monitoring devices to ensure that the impingement and entrainment technologies are functioning as designed.

6. Records and reporting. The owner or operator of a new facility is required to keep records and report information and data to the department as follows:

a. Keep records of all the data used to complete the permit application and show compliance with the requirements, any supplemental information developed under 9 VAC 25-31-165 B 4, and any compliance monitoring data submitted under 9 VAC 25-31-165 B 5, for a period of at least three years from the date of permit issuance. The department may require that these records be kept for a longer period.

b. Provide the following to the department in a yearly status report:

(1) Biological monitoring records for each cooling water intake structure as required by 9 VAC 25-31-165 B 5 a;

(2) Velocity and head loss monitoring records for each cooling water intake structure as required by 9 VAC 25-31-165 B 5 b; and

(3) Records of visual or remote inspections as required in 9 VAC 25-31-165 B 5 c.

C. Cooling water intake structures for Phase II existing facilities.

1. Applicability.

a. An existing facility, as defined in 9 VAC 25-31-165 A, is a Phase II existing facility subject to this section if it meets each of the following criteria:

(1) It is a point source.

(2) It uses or proposes to use cooling water intake structures with a total design intake flow of 50 million gallons per day (MGD) or more to withdraw cooling water from state waters;

(3) As its primary activity, the facility both generates and transmits electric power, or generates electric power but sells it to another entity for transmission; and

(4) It uses at least 25% of water withdrawn exclusively for cooling purposes, measured on an average annual basis.

b. In the case of a Phase II existing facility that is co-located with a manufacturing facility, only that portion of the combined cooling water intake flow that is used by the Phase II facility to generate electricity for sale to another entity will be considered for purposes of determining whether the 50 MGD and 25% criteria in 9 VAC 25-31-165 C 1 a (2) and (4) have been exceeded.

c. Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with one or more independent suppliers of cooling water if the supplier withdraws water from state waters but is not itself a Phase II existing facility, except as provided in 9 VAC 25-31-165 C 1 d.

d. Notwithstanding subdivision 1 c of this subsection, obtaining cooling water from a public water system or using treated effluent as cooling water does not constitute use of a cooling water intake structure for purposes of this section.

2. Establishing best technology available requirements for Phase II Existing facilities.

a. Compliance alternatives. Phase II existing facilities must select and implement one of the following five alternatives for establishing best technology available for minimizing adverse environmental impact at the facility:

(1) Flow and velocity reduction.

(a) Demonstrate to the department a reduction, or planned reduction in flow commensurate with a closed-cycle recirculating system. In this case, the applicable performance standards are deemed to be met and the facility will not be required to demonstrate further that it meets the impingement mortality and entrainment performance standards specified in subdivision 2 b of this subsection. In addition, the facility is not subject to the requirements in 9 VAC 25-31-165 C 3, C 4, or C 5. However, the facility may still be subject to more stringent requirements established under subdivision 2 e of this subsection; or

(b) Demonstrate to the department that a reduction, or planned reduction in the maximum through-screen design intake velocity to 0.5 ft/s or less. In this case, the facility is deemed to have met the impingement mortality performance standards and will not be required to demonstrate further that it meets the performance standards for impingement mortality specified in subdivision 2 b of this subsection, and the facility is not subject to the requirements in 9 VAC 25-31-165 C 3, C 4, or C 5 as they apply to impingement mortality. However, the facility may still be subject to applicable requirements for entrainment reduction and may still be subject to more stringent requirements established under subdivision 2 e of this subsection.

(2) Demonstrate to the department that the existing design and construction technologies, operational measures, and/or restoration measures meet the performance standards specified in subdivision 2 b of this subsection and/or the restoration requirements in subdivision 2 c of this subsection.

(3) Demonstrate to the department that the facility has selected, and will install and properly operate and maintain, design and construction technologies, operational measures, and/or restoration measures that will, in combination with any existing design and construction technologies, operational measures, and/or restoration measures, meet the performance standards specified in subdivision 2 b of this subsection and/or the restoration requirements in subdivision 2 c of this subsection;

(4) Demonstrate to the department that the facility has installed, or will install, and properly operate and maintain an approved design and construction technology in accordance with 9 VAC 25-31-165 C 6; or

(5) Demonstrate to the department that the facility has selected, installed, and is properly operating and maintaining, or will install and properly operate and maintain design and construction technologies, operational measures, and/or restoration measures that the department has determined to be the best technology available to minimize adverse environmental impact for the facility in accordance with 9 VAC 25-31-165 C 2 a (5) (a) or (b).

(a) If the department determines that data specific to the facility demonstrate that the costs of compliance under alternatives in 9 VAC 25-31-165 C 2 a (2) through (4) would be significantly greater than the costs considered by the

EPA Administrator for similar facilities in establishing the applicable performance standards in subdivision 2 b of this subsection, the department must make a site-specific determination of the best technology available for minimizing adverse environmental impact. This determination must be based on reliable, scientifically valid cost and performance data submitted by the facility and any other information that the department deems appropriate. The department must establish site-specific alternative requirements based on new and/or existing design and construction technologies, operational measures, and/or restoration measures that achieve an efficacy that is, in the judgment of the department, as close as practicable to the applicable performance standards in 9 VAC 25-31-165 C 2 b of this section, without resulting in costs that are significantly greater than the costs considered by the EPA administrator for similar facilities in establishing the applicable performance standards. The site-specific determination may conclude that design and construction technologies, operational measures, and/or restoration measures in addition to those already in place are not justified because of the significantly greater costs. To calculate the costs considered by the EPA administrator for a similar facility in establishing the applicable performance standards:

(i) Determine which technology the EPA administrator modeled as the most appropriate compliance technology for the facility;

(ii) Using the EPA administrator's costing equations, calculate the annualized capital and net operation and maintenance (O&M) costs for a facility with the same design intake flow using this technology;

(iii) Determine the annualized net revenue loss associated with net construction downtime that the EPA administrator modeled for the facility to install this technology;

(iv) Determine the annualized pilot study costs that the EPA Administrator modeled for the facility to test and optimize this technology;

(v) Sum the cost items in 9 VAC 25-31-165 C 2 a (5) (a) (ii), (iii), and (iv); and

(vi) Determine if the performance standards that form the basis of these estimates (i.e., impingement mortality reduction only or impingement mortality and entrainment reduction) are applicable to the facility, and if necessary, adjust the estimates to correspond to the applicable performance standards.

(b) If the department determines that data specific to the facility demonstrate that the costs of compliance under alternatives in 9 VAC 25-31-165 C 2 a (2) through (4) of this section would be significantly greater than the benefits of complying with the applicable performance standards at the facility, the department must make a site-specific determination of best technology available for minimizing adverse environmental impact. This determination must be based on reliable, scientifically valid cost and performance data submitted by the facility and any other information the department deems appropriate. The department must establish site-specific alternative requirements based on new and/or existing design and construction technologies, operational measures, and/or restoration measures that achieve an efficacy that, in the judgment of the department, is as close as practicable to the applicable performance standards in 9 VAC 25-31-165 C 2 b without resulting in costs that are significantly greater than the benefits at the facility. The director's site-specific determination may conclude that design and construction technologies, operational measures, and/or restoration measures in addition to those already in place are not justified because the costs would be significantly greater than the benefits at the facility.

b. Performance standards.

(1) Impingement mortality performance standards. If compliance alternatives in 9 VAC 25-31-165 C 2 a (2), a (3), or a (4) of this section are chosen, the standard for impingement mortality is to reduce impingement mortality for all life stages of fish and shellfish by 80 to 95% from the calculation baseline.

(2) Entrainment performance standards. If compliance alternatives in 9 VAC 25-31-165 C 2 a (1) (b), a (2), a (3), or a (4) are chosen, the standard for entrainment is to reduce entrainment of all life stages of fish and shellfish by 60 to 90% from the calculation baseline if:

(a) The facility has a capacity utilization rate of 15% or greater, and

(b) The facility uses:

(i) Cooling water withdrawn from a tidal river, estuary or ocean; or

(ii) The facility uses cooling water withdrawn from a freshwater river or stream and the design intake flow of the cooling water intake structures is greater than 5.0% of the mean annual flow.

(3) Additional performance standards for facilities withdrawing from a lake or a reservoir. If the facility withdraws cooling water from a lake or a reservoir and the facility proposes to increase the design intake flow of cooling water intake structures it uses, the increased design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water, except in cases where the disruption does not adversely affect the management of fisheries. In determining whether any such disruption does not adversely affect the management of fisheries, the facility must consult with state fish and wildlife management agencies.

(4) Use of performance standards for site-specific determinations of best technology available. The performance standards in 9 VAC 25-31-165 C 2 b (1) through (3) must also be used for determining eligibility for site-specific determinations of best technology available for minimizing adverse environmental impact and establishing site specific requirements that achieve an efficacy as close as practicable to the applicable performance standards without resulting in costs that are significantly greater than those considered by the EPA administrator for a similar facility in establishing the performance standards or costs that are significantly greater than the benefits at the facility.

c. Requirements for restoration measures. With the approval of the department, the facility may implement and adaptively manage restoration measures that produce and result in increases of fish and shellfish in the facility's watershed in place of or as a supplement to installing design and control technologies and/or adopting operational measures that reduce impingement mortality and entrainment. Demonstration must be made to the department that:

(1) The facility has evaluated the use of design and construction technologies and operational measures and determined that the use of restoration measures is appropriate because meeting the applicable performance standards or site-specific requirements through the use of design and construction technologies and/or operational measures alone is less feasible, less cost effective, or less environmentally desirable than meeting the standards or requirements in whole or in part through the use of restoration measures; and

(2) The restoration measures to be implemented, alone or in combination with design and construction technologies and/or operational measures, will produce ecological benefits (fish and shellfish), including maintenance or protection of community structure and function in the facility's water body or watershed, at a level that is substantially similar to the level achieved by meeting the applicable performance standards under 9 VAC 25-31-165 C 2 b, or that satisfies alternative site-specific requirements established pursuant to 9 VAC 25-31-165 C 2 a (5).

d. Compliance using a technology installation and operation plan or restoration plan.

(1) If the facility chooses one of the compliance alternatives in 9 VAC 25-31-165 C 2 a (2), (3), (4), or (5), it may request that compliance with the requirements of 9 VAC 25-31-165 C 2 b during the first permit containing requirements consistent with this section be determined based on whether the facility has complied with the construction, operational, maintenance, monitoring, and adaptive management requirements of a Technology Installation and Operation Plan developed in accordance with 9 VAC 25-31-165 C 3 b (4) (b) (for any design and construction technologies and/or operational measures) and/or a Restoration Plan developed in accordance with 9 VAC 25-31-165 C 3 b (5) (for any restoration measures). The Technology Installation and Operation Plan must be designed to meet applicable performance standards in 9 VAC 25-31-165 C 2 b or alternative site-specific requirements developed pursuant to 9 VAC 25-31-165 C 2 a (5). The Restoration Plan must be designed to achieve compliance with the applicable requirements 9 VAC 25-31-165 C 2 c.

(2) During subsequent permit terms, if the facility selected and installed design and construction technologies and/or operational measures and has been in compliance with the construction, operational, maintenance, monitoring, and adaptive management requirements of the Technology Installation and Operation Plan during the preceding permit term, it may request that compliance with the requirements of 9 VAC 25-31-165 C 2 during the following permit term be determined based on whether the facility remains in compliance with the Technology Installation and Operation Plan, revised in accordance with the adaptive management plan in 9 VAC 25-31-165 C 3 b (4) (b) (iii) if applicable performance standards are not met. Each request and approval of a Technology Installation and Operation Plan shall be limited to one permit term.

(3) During subsequent permit terms, if the facility selected and installed restoration measures and has been in compliance with the construction, operational, maintenance, monitoring, and adaptive management requirements in the Restoration Plan during the preceding permit term, it may request that compliance with the requirements of this section during the following permit term be determined based on whether the facility remains in compliance with the Restoration Plan, revised in accordance with the adaptive management plan in 9 VAC 25-31-165 C 3 b (5) (e) if applicable performance standards are not met. Each request and approval of a Restoration Plan shall be limited to one permit term.

e. More stringent standards. The department may establish more stringent requirements as best technology available for minimizing adverse environmental impact if the department determines that compliance with the applicable requirements of this section would not meet the requirements of applicable state law.

f. Nuclear facilities. If it is demonstrated to the department based on consultation with the Nuclear Regulatory Commission that compliance with this subpart would result in a conflict with a safety requirement established by the commission, the department must make a site-specific determination of best technology available for minimizing adverse environmental impact that would not result in a conflict with the Nuclear Regulatory Commission's safety requirement.

3. Application information requirements.

a. Items to be submitted to the department are:

(1) The proposal for information collection required in 9 VAC 25-31-165 C 2 b (1) prior to the start of information collection activities;

(2) The information required in 9 VAC 25-31-100 Q and any applicable portions of the Comprehensive Demonstration Study, except for the proposal for information collection required by 9 VAC 25-31-165 C 2 b (1); and

(a) The VPDES permit application in accordance with the time frames specified in 9 VAC 25-31-100.

(b) If the existing permit expires before July 9, 2008, the facility may request that the department establish a schedule for submission of the information required by this section as expeditiously as practicable, but not later than January 7, 2008. Between the time the existing permit expires and the time a VPDES permit containing requirements consistent with this section is issued to the facility, the best technology available to minimize adverse environmental impact will continue to be determined based on the department's best professional judgment.

(3) In subsequent permit terms, the department may approve a request to reduce the information required to be submitted in the permit application on the cooling water intake structure(s) and the source water body, if conditions at the facility and in the water body remain substantially unchanged since the previous application. The request for reduced cooling water intake structure and water body application information must be submitted to the department at least one year prior to the expiration of the permit. The request must identify each required information item in 9 VAC 25-31-100 Q and this section that has not substantially changed since the previous permit application and the basis for the determination.

b. Comprehensive Demonstration Study. The purpose of the Comprehensive Demonstration Study is to characterize impingement mortality and entrainment, to describe the operation of the cooling water intake structures, and to confirm that the technologies, operational measures, and/or restoration measures selected and installed, or to be installed, at the facility meet the applicable requirements of 9 VAC 25-31-165 C 2. All facilities except those that have met the applicable requirements in accordance with 9 VAC 25-31-165 C 2 a (1) (a), 9 VAC 25-31-165 C 2 a (1) (b), and 9 VAC 25-31-165 C 2 a (4) must submit all applicable portions of the Comprehensive Demonstration Study to the department in accordance with 9 VAC 25-31-165 C 2 a. Facilities that meet the requirements in 9 VAC 25-31-165 C 2 a (1) (a) by reducing their flow commensurate with a closed-cycle, recirculating system are not required to submit a Comprehensive Demonstration Study. Facilities that meet the requirements in 9 VAC 25-31-165 C 2 a (1) (b) by reducing their design intake velocity to 0.5 ft/sec or less are required to submit a study only for the entrainment requirements, if applicable. Facilities that meet the requirements in 9 VAC 25-31-165 C 2 a (4) and have installed and properly operate and maintain an approved design and construction technology are required to submit only the Technology Installation and Operation Plan in 9 VAC 25-31-165 C 2 b (4) and the Verification Monitoring Plan in 9 VAC 25-31-165 C 2 b (7). Facilities that are required to meet only impingement mortality performance standards in 9 VAC 25-31-165 C 2 b (1) are required to submit only a study for the impingement mortality reduction requirements. The Comprehensive Demonstration Study must include:

(1) Proposal For Information Collection. Submit to the department for review and comment a description of the information to be used to support the study. The proposal for information must be submitted prior to the start of information collection activities, such activities may be initiated prior to receiving comment from the department. The proposal must include:

(a) A description of the proposed and/or implemented technologies, operational measures, and/or restoration measures to be evaluated in the study;

(b) A list and description of any historical studies characterizing impingement mortality and entrainment and/or the physical and biological conditions in the vicinity of the cooling water intake structures and their relevance to this proposed study. If existing data is to be used, demonstrate the extent to which the data are representative of current conditions and that the data were collected using appropriate quality assurance/quality control procedures;

(c) A summary of any past or ongoing consultations with appropriate fish and wildlife agencies that are relevant to this study and a copy of written comments received as a result of such consultations; and

(d) A sampling plan for any new field studies proposed in order to ensure sufficient data to develop a scientifically valid estimate of impingement mortality and entrainment at the site is provided. The sampling plan must document all methods and quality assurance/quality control procedures for sampling and data analysis. The sampling and data analysis methods must be appropriate for a quantitative survey and include consideration of the methods used in other studies performed in the source water body. The sampling plan must include a description of the study area (including the area of influence of the cooling water intake structure(s)), and provide a taxonomic identification of the sampled or evaluated biological assemblages (including all life stages of fish and shellfish).

(2) Source water body flow information. Submit to the department the following source water body flow information:

(a) If the cooling water intake structure is located in a freshwater river or stream, provide the annual mean flow of the water body and any supporting documentation and engineering calculations to support the analysis of whether the design intake flow is greater than 5.0% of the mean annual flow of the river or stream for purposes of determining applicable performance standards under 9 VAC 25-31-165 C 2 b. Representative historical data (from a period of time up to 10 years, if available) must be used; and

(b) If the cooling water intake structure is located in a lake or a reservoir and an increase in design intake flow is proposed, provide a description of the thermal stratification in the water body, and any supporting documentation and engineering calculations to show that the total design intake flow after the increase will not disrupt the natural thermal stratification and turnover pattern in a way that adversely impacts fisheries, including the results of any consultations with fish and wildlife management agencies.

(3) Impingement Mortality and/or Entrainment Characterization Study. Submit to the department an Impingement Mortality and/or Entrainment Characterization Study for the purpose of providing information to support the development of a calculation baseline for evaluating impingement mortality and entrainment and to characterize current impingement mortality and entrainment. The Impingement Mortality and/or Entrainment Characterization Study must include the following in sufficient detail to support development of the other elements of the Comprehensive Demonstration Study:

(a) Taxonomic identifications of all life stages of fish, shellfish, and any species protected under federal or state law (including threatened or endangered species) that are in the vicinity of the cooling water intake structure(s) and are susceptible to impingement and entrainment;

(b) A characterization of all life stages of fish, shellfish, and any species protected under federal or state law (including threatened or endangered species) identified pursuant to 9 VAC 25-31-165 C 2 b (3) (a), including a description of the abundance and temporal and spatial characteristics in the vicinity of the cooling water intake structure(s), based on sufficient data to characterize annual, seasonal, and diel variations in impingement mortality and entrainment (e.g., related to climate and weather differences, spawning, feeding and water column migration). These may include historical data that are representative of the current operation of the facility and of biological conditions at the site;

(c) Documentation of the current impingement mortality and entrainment of all life stages of fish, shellfish, and any species protected under federal or state law (including threatened or endangered species) identified pursuant to 9 VAC 25-31-165 C 2 b (3) (a) and an estimate of impingement mortality and entrainment to be used as the calculation baseline. The documentation may include historical data that are representative of the current operation of the facility and of biological conditions at the site. Impingement mortality and entrainment samples to support the calculations required in 9 VAC 25-31-165 C 2 b (4) (a) (iii) and b (5) (c) must be collected during periods of representative operational flows for the cooling water intake structure and the flows associated with the samples must be documented;

(4) Technology and compliance assessment information.

(a) Design and Construction Technology Plan. If design and construction technologies and/or operational measures are proposed, in whole or in part, to meet the requirements of 9 VAC 25-31-165 C 2 a (2) or (3), submit a Design and Construction Technology Plan to the department for review and approval. In the plan, provide the capacity utilization rate for the facility or for individual intake structures where applicable, and provide supporting data (including the average annual net generation of the facility in MWh measured over a five-year period if available) of representative operating conditions and the total net capacity of the facility in MW and underlying calculations. The plan must explain the technologies and/or operational measures in place and/or selected to meet the requirements in 9 VAC 25-31-165 C 2 (examples of potentially appropriate technologies may include, but are not limited to, wedgewire screens, fine mesh screens, fish handling and return systems, barrier nets, aquatic filter barrier systems, vertical and/or lateral relocation of the cooling water intake structure, and enlargement of the cooling water intake structure opening to reduce velocity. Examples of potentially appropriate operational measures may include, but are not limited to, seasonal shutdowns, reductions in flow, and continuous or more frequent rotation of traveling screens.) The plan must contain the following information:

(i) A narrative description of the design and operation of all design and construction technologies and/or operational measures (existing and proposed), including fish handling and return systems, that are in place or will be used to meet the requirements to reduce impingement mortality of those species expected to be most susceptible to impingement, and information that demonstrates the efficacy of the technologies and/or operational measures for those species;

(ii) A narrative description of the design and operation of all design and construction technologies and/or operational measures (existing and proposed) that are in place or will be used to meet the requirements to reduce entrainment of those species expected to be the most susceptible to entrainment, if applicable, and information that demonstrates the efficacy of the technologies and/or operational measures for those species;

(iii) Calculations of the reduction in impingement mortality and entrainment of all life stages of fish and shellfish that would be achieved by the technologies and/or operational measures selected based on the Impingement Mortality and/or Entrainment Characterization Study in 9 VAC 25-31-165 C 2 b (3). In determining compliance with any requirements to reduce impingement mortality or entrainment, assess the total reduction in impingement mortality and entrainment against the calculation baseline determined in accordance with 9 VAC 25-31-165 C 2 b (3). Reductions in impingement mortality and entrainment from this calculation baseline as a result of any design and construction technologies and/or operational measures already implemented at the facility should be added to the reductions expected to be achieved by any additional design and/or construction technologies and operational measures that will be implemented, and any increases in fish and shellfish within the water body attributable to the

restoration measures. Facilities that recirculate a portion of their flow, but do not reduce flow sufficiently to satisfy the compliance option in 9 VAC 25-31-165 C 2 a (1) (a) may take into account the reduction in impingement mortality and entrainment associated with the reduction in flow when determining the net reduction associated with existing design and construction technologies and/or operational measures. This estimate must include a site-specific evaluation of the suitability of the technologies and/or operational measures based on the species that are found at the site, and may be determined based on representative studies (i.e., studies that have been conducted at a similar facility's cooling water intake structures located in the same water body type with similar biological characteristics) and/or site-specific technology prototype or pilot studies; and

(iv) Design and engineering calculations, drawings, and estimates prepared by a qualified professional to support the descriptions required by 9 VAC 25-31-165 C 2 b (4) a) (i) and (ii).

(b) Technology Installation and Operation Plan. If the compliance alternative in 9 VAC 25-31-165 C 2 a (2), (3), (4), or (5) is chosen and design and construction technologies and/or operational measures are to be used in whole or in part to comply with the applicable requirements of 9 VAC 25-31-165 C 2, submit the following information with the application for review and approval by the department:

(i) A schedule for the installation and maintenance of any new design and construction technologies. Any downtime of generating units to accommodate installation and/or maintenance of these technologies should be scheduled to coincide with otherwise necessary downtime (e.g., for repair, overhaul, or routine maintenance of the generating units) to the extent practicable. Where additional downtime is required, coordinate scheduling of this downtime with the North American Electric Reliability Council and/or other generators in the area to ensure that impacts to reliability and supply are minimized;

(ii) A list of operational and other parameters to be monitored, and the location and frequency of monitoring;

(iii) A list of activities to be undertaken to ensure to the degree practicable the efficacy of installed design and construction technologies and operational measures, and the schedule for implementing them;

(iv) A schedule and methodology for assessing the efficacy of any installed design and construction technologies and operational measures in meeting applicable performance standards or site-specific requirements, including an adaptive management plan for revising design and construction technologies, operational measures, operation and maintenance requirements, and/or monitoring requirements if the assessment indicates that applicable performance standards or site-specific requirements are not being met; and

(v) If the compliance alternative in 9 VAC 25-31-165 C 2 a (4) is chosen, documentation that the appropriate site conditions exist at the facility.

(5) Restoration plan. If restoration measures are proposed, in whole or in part, to meet the applicable requirements in 9 VAC 25-31-165 C 2, submit the following information with the application for review and approval by the department. Address species of concern identified in consultation with federal and state fish and wildlife management agencies with responsibility for fisheries and wildlife potentially affected by the cooling water intake structure(s).

(a) A demonstration to the department that evaluation has been made of the use of design and construction technologies and/or operational measures for the facility and an explanation of how it was determined that restoration would be more feasible, cost effective, or environmentally desirable;

(b) A narrative description of the design and operation of all restoration measures (existing and proposed) that are in place or will be used to produce fish and shellfish;

(c) Quantification of the ecological benefits of the proposed restoration measures. Use information from the Impingement Mortality and/or Entrainment Characterization Study required in 9 VAC 25-31-165 C 2 b (3), and any other available and appropriate information, to estimate the reduction in fish and shellfish impingement mortality and/or entrainment that would be necessary for the facility to comply with 9 VAC 25-31-165 C 2 c (2). Then calculate the production of fish and shellfish that will be achieved with the restoration measures installed. Include a discussion of the nature and magnitude of uncertainty associated with the performance of these restoration measures. Also include a discussion of the time frame within which these ecological benefits are expected to accrue;

(d) Design calculations, drawings, and estimates to document that the proposed restoration measures in combination with design and construction technologies and/or operational measures, or alone, will meet the requirements of 9 VAC 25-31-165 C 2 c (2). If the restoration measures address the same fish and shellfish species identified in the Impingement Mortality and/or Entrainment Characterization Study (in-kind restoration), demonstrate that the restoration measures will produce a level of these fish and shellfish substantially similar to that which would result from meeting applicable performance standards in 9 VAC 25-31-165 C 2 b, or that they will satisfy site-specific requirements established pursuant to 9 VAC 25-31-165 C 2 a (5). If the restoration measures address fish and shellfish species different from those identified in the Impingement Mortality and/or Entrainment Characterization Study (out-of-kind restoration), demonstrate that the restoration measures produce ecological benefits substantially similar to or greater than those that would be realized through in-kind restoration. Such a demonstration should be based on a watershed

approach to restoration planning and consider applicable multiagency watershed restoration plans, site-specific peer-reviewed ecological studies, and/or consultation with appropriate federal and state fish and wildlife management agencies.

(e) A plan utilizing an adaptive management method for implementing, maintaining, and demonstrating the efficacy of the restoration measures selected and for determining the extent to which the restoration measures, or the restoration measures in combination with design and construction technologies and operational measures, have met the applicable requirements of 9 VAC 25-31-165 C 2 c (2). The plan must include:

(i) A monitoring plan that includes a list of the restoration parameters that will be monitored, the frequency of monitoring, and success criteria for each parameter;

(ii) A list of activities to be undertaken to ensure the efficacy of the restoration measures, a description of the linkages between these activities and the items in 9 VAC 25-31-165 C 2 b (5) (e) (i) of this section, and an implementation schedule; and

(iii) A process for revising the Restoration Plan as new information, including monitoring data, becomes available, if the applicable requirements under 9 VAC 25-31-165 C 2 c (2) are not being met.

(f) A summary of any past or ongoing consultation with appropriate federal or state fish and wildlife management agencies on the use of restoration measures including a copy of any written comments received as a result of such consultations;

(g) If requested by the department, a peer review of the items submitted for the Restoration Plan. Choose the peer reviewers in consultation with the department that may consult with EPA and federal and state fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure(s). Peer reviewers must have appropriate qualifications (e.g., in the fields of geology, engineering, and/or biology, etc.) depending upon the materials to be reviewed; and

(h) A description of the information to be included in a biannual status report to the department.

(6) Information to support site-specific determination of best technology available for minimizing adverse environmental impact. If a site-specific determination of best technology available for minimizing adverse environmental impact pursuant to 9 VAC 25-31-165 C 2 a (5) (a) is requested because of costs significantly greater than those considered by the EPA administrator for a similar facility in establishing the applicable performance standards of 9 VAC 25-31-165 C 2 b, the facility is required to provide to the department the information specified in 9 VAC 25-31-165 C 2 b (6) (a) and b (6) (c). If a site-specific determination of best technology available for minimizing adverse environmental impact pursuant to 9 VAC 25-31-165 C 2 a (5) (b) is requested because of costs significantly greater than the benefits of meeting the applicable performance standards of 9 VAC 25-31-165 C 2 b at the facility, provide the information specified in 9 VAC 25-31-165 C 2 b (6) (a), b (6) (b), and b (6) (c):

(a) Comprehensive Cost Evaluation Study. Perform and submit the results of a Comprehensive Cost Evaluation Study, that includes:

(i) Engineering cost estimates in sufficient detail to document the costs of implementing design and construction technologies, operational measures, and/or restoration measures at the facility that would be needed to meet the applicable performance standards of 9 VAC 25-31-165 C 2 b;

(ii) A demonstration that the costs documented in 9 VAC 25-31-165 C 2 b (6) (a) (i) significantly exceed either those considered by the EPA administrator for a similar facility in establishing the applicable performance standards or the benefits of meeting the applicable performance standards at the facility; and

(iii) Engineering cost estimates in sufficient detail to document the costs of implementing the design and construction technologies, operational measures, and/or restoration measures in the Site-Specific Technology Plan developed in accordance with 9 VAC 25-31-165 C 2 b (6) (c).

(b) Benefits Valuation Study. If the facility is seeking a site-specific determination of best technology available for minimizing adverse environmental impact because of costs significantly greater than the benefits of meeting the applicable performance standards of 9 VAC 25-31-165 C 2 b, use a comprehensive methodology to fully value the impacts of impingement mortality and entrainment at the site and the benefits achievable by meeting the applicable performance standards. In addition to the valuation estimates, the benefit study must include the following:

(i) A description of the methodology(ies) used to value commercial, recreational, and ecological benefits (including any nonuse benefits, if applicable);

(ii) Documentation of the basis for any assumptions and quantitative estimates. If use of an entrainment survival rate other than zero is planned, submit a determination of entrainment survival at the facility based on a study approved by the department;

(iii) An analysis of the effects of significant sources of uncertainty on the results of the study; and

(iv) If requested by the department, a peer review of the items submitted in the Benefits Valuation Study. Choose the peer reviewers in consultation with the department that may consult with EPA and federal and state fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure. Peer reviewers must have appropriate qualifications depending upon the materials to be reviewed.

(v) A narrative description of any nonmonetized benefits that would be realized at the site if the applicable performance standards were met and a qualitative assessment of their magnitude and significance.

(c) Site-Specific Technology Plan. Based on the results of the Comprehensive Cost Evaluation Study required by 9 VAC 25-31-165 C 2 b (6) (a), and the Benefits Valuation Study required by 9 VAC 25-31-165 C 2 b (6) (b), if applicable, submit a Site-Specific Technology Plan to the department for review and approval. The plan must contain the following information:

(i) A narrative description of the design and operation of all existing and proposed design and construction technologies, operational measures, and/or restoration measures selected in accordance with 9 VAC 25-31-165 C 2 a (5);

(ii) An engineering estimate of the efficacy of the proposed and/or implemented design and construction technologies or operational measures, and/or restoration measures. This estimate must include a site-specific evaluation of the suitability of the technologies or operational measures for reducing impingement mortality and/or entrainment (as applicable) of all life stages of fish and shellfish based on representative studies (e.g., studies that have been conducted at cooling water intake structures located in the same water body type with similar biological characteristics) and, if applicable, site-specific technology prototype or pilot studies. If restoration measures will be used, provide a Restoration Plan that includes the elements described in 9 VAC 25-31-165 C 2 b (5).

(iii) A demonstration that the proposed and/or implemented design and construction technologies, operational measures, and/or restoration measures achieve an efficacy that is as close as practicable to the applicable performance standards of 9 VAC 25-31-165 C 2 b without resulting in costs significantly greater than either the costs considered by the EPA Administrator for a similar facility in establishing the applicable performance standards, or as appropriate, the benefits of complying with the applicable performance standards at the facility;

(iv) Design and engineering calculations, drawings, and estimates prepared by a qualified professional to support the elements of the plan.

(7) Verification Monitoring Plan. If using compliance alternatives in 9 VAC 25-31-165 C 2 a (2), (3), (4), or (5) with design and construction technologies and/or operational measures, submit a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or already implemented technologies and/or operational measures. The verification study must begin once the design and construction technologies and/or operational measures are installed and continue for a period of time that is sufficient to demonstrate to the department whether the facility is meeting the applicable performance standards in 9 VAC 25-31-165 C 2 b or site-specific requirements developed pursuant to 9 VAC 25-31-165 C 2 a (5). The plan must provide the following:

(a) A description of the frequency and duration of monitoring, the parameters to be monitored, and the basis for determining the parameters and the frequency and duration for monitoring. The parameters selected and duration and frequency of monitoring must be consistent with any methodology for assessing success in meeting applicable performance standards in the Technology Installation and Operation Plan as required by 9 VAC 25-31-165 C 2 b (4) (b).

(b) A proposal on how naturally moribund fish and shellfish that enter the cooling water intake structure would be identified and taken into account in assessing success in meeting the performance standards in 9 VAC 25-31-165 C 2 b.

(c) A description of the information to be included in a biannual status report to the department.

4. Monitoring. The owner or operator of a Phase II existing facility must perform monitoring, as applicable, in accordance with the Technology Installation and Operation Plan required by 9 VAC 25-31-165 C 3 b (4) (b), the Restoration Plan required by 9 VAC 25-31-165 C 3 b (5), the Verification Monitoring Plan required by 9 VAC 25-31-165 C 3 b (7), and any additional monitoring specified by the department to demonstrate compliance with the applicable requirements of 9 VAC 25-31-165 C 2.

5. Records and reporting. The owner or operator of a Phase II existing facility is required to keep records and report information and data to the department as follows:

a. Keep records of all the data used to complete the permit application and show compliance with the requirements of 9 VAC 25-31-165 C 2, any supplemental information developed under 9 VAC 25-31-165 C 3, and any compliance monitoring data submitted under 9 VAC 25-31-165 C 4, for a period of at least three years from date of permit issuance. The department may require that these records be kept for a longer period.

b. Submit a status report to the department for review every two years that includes appropriate monitoring data and other information as specified by the department.

6. Approved design and construction technologies.

a. The following technologies constitute approved design and construction technologies for purposes of 9 VAC 25-31-165 C 2 a (4):

(1) Submerged cylindrical wedge-wire screen technology, if the following conditions are met:

(a) The cooling water intake structure is located in a freshwater river or stream;

(b) The cooling water intake structure is situated such that sufficient ambient counter currents exist to promote cleaning of the screen face;

(c) The maximum through-screen design intake velocity is 0.5 ft/s or less;

(d) The slot size is appropriate for the size of eggs, larvae, and juveniles of all fish and shellfish to be protected at the site; and

(e) The entire main condenser cooling water flow is directed through the technology. Small flows totaling less than 2 MGD for auxiliary plant cooling uses are excluded from this provision.

(2) A technology that has been approved in accordance with the process described in 9 VAC 25-31-165 C 2 b.

**9 VAC 25-31-170. General permits.**

A. The board may issue a general permit in accordance with the following:

1. The general permit shall be written to cover one or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under subdivision 2 b of this subsection, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries, such as:

a. Designated planning areas under §§208 and 303 of CWA;

b. Sewer districts or sewer authorities;

c. City, county, or state political boundaries;

d. State highway systems;

e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;

f. Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

g. Any other appropriate division or combination of boundaries.

2. The general permit may be written to regulate one or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in subdivision 1 of this subsection, where the sources within a covered subcategory of discharges are either:

a. Storm water point sources; or

b. One or more categories or subcategories of point sources other than storm water point sources, or one or more categories or subcategories of treatment works treating domestic sewage, if the sources or treatment works treating domestic sewage within each category or subcategory all:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

(3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

(4) Require the same or similar monitoring; and

(5) In the opinion of the board, are more appropriately controlled under a general permit than under individual permits.

3. Where sources within a specific category of dischargers are subject to water quality-based limits imposed pursuant to 9 VAC 25-31-220, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

5. The general permit may exclude specified sources or areas from coverage.

B. Administration.

1. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this chapter.

2. Authorization to discharge, or authorization to engage in sludge use and disposal practices.

a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the department a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with subdivision 2 e of this subsection, contains a provision that a notice of intent is not required or the board notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for the purposes of this chapter.

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream or streams. General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements. Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in 9 VAC 25-31-100 I 1, including a topographic map. All notices of intent shall be signed in accordance with 9 VAC 25-31-110.

c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date or dates when a discharger is authorized to discharge under the permit.

d. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), in accordance with the permit either upon receipt of the notice of intent by the department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the board. Coverage may be terminated or revoked in accordance with subdivision 3 of this subsection.

e. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the board, be authorized to discharge under a general permit without submitting a notice of intent where the board finds that a notice of intent requirement would be inappropriate. In making such a finding, the board shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The board shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

f. The board may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under subdivision 3 c of this subsection.

3. Requiring an individual permit.

a. The board may require any discharger authorized by a general permit to apply for and obtain an individual VPDES permit. Any interested person may request the board to take action under this subdivision. Cases where an individual VPDES permit may be required include the following:

(1) The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general VPDES permit;

(2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

(3) Effluent limitation guidelines are promulgated for point sources covered by the general VPDES permit;

(4) A water quality management plan containing requirements applicable to such point sources is approved;

(5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general VPDES permit; or

(7) The discharge(s) is a significant contributor of pollutants. In making this determination, the board may consider the following factors:

(a) The location of the discharge with respect to surface waters;

(b) The size of the discharge;

(c) The quantity and nature of the pollutants discharged to surface waters; and

(d) Other relevant factors;

b. Permits required on a case-by-case basis.

(1) The board may determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, storm water discharges, and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(2) Whenever the board decides that an individual permit is required under this subsection, except as provided in subdivision 3 b (3) of this subsection, the board shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the board. The question whether the designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

(3) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this subsection, the board may require the discharger to submit a permit application or other information regarding the discharge under the law and §308 of the CWA. In requiring such information, the board shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under 9 VAC 25-31-120 A 1 within 60 days of notice or under 9 VAC 25-31-120 A 7 within 180 days of notice, unless permission for a later date is granted by the board. The question whether the initial designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 9 VAC 25-31-100 with reasons supporting the request. The request shall be processed under the applicable parts of this chapter. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual VPDES permit is issued to an owner or operator otherwise subject to a general VPDES permit, the applicability of the general permit to the individual VPDES permittee is automatically terminated on the effective date of the individual permit.

e. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

**9 VAC 25-31-180. New sources and new dischargers.**

A. Criteria for new source determination.

1. Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of new source in this chapter, and

a. It is constructed at a site at which no other source is located; or

b. It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the board shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.

2. A source meeting the requirements of subdivisions 1 a, b, or c of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.

3. Construction on a site at which an existing source is located results in a permit modification subject to 9 VAC 25-31-390 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or

installation meeting the criteria of subdivisions 1 b or c of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.

4. Construction of a new source has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous on-site construction program:

(1) Any placement, assembly, or installation of facilities or equipment; or

(2) Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under the paragraph.

B. Effect of compliance with new source performance standards. The provisions of this subsection do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this subdivision.

1. Except as provided in subdivision 2 of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under §301(b)(2) of the CWA for the soonest ending of the following periods:

a. Ten years from the date that construction is completed;

b. Ten years from the date the source begins to discharge process or other nonconstruction related wastewater; or

c. The period of depreciation or amortization of the facility for the purposes of §§167 or 169 (or both) of the Internal Revenue Code of 1954 (26 USC 167 and 26 USC 169, respectively).

2. The protection from more stringent standards of performance afforded by subdivision 1 of this subsection does not apply to:

a. Additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under the law and §307(a) of the CWA; or

b. Additional permit conditions controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

3. When a VPDES permit issued to a source with a protection period under subdivision 1 of this subsection will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of §301 of the CWA and any other then applicable requirements of the CWA and the law immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than three years before the expiration of the protection period.

4. The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall start-up all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under 9 VAC 25-31-250 A 2.

5. After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

## PART III
## PERMIT CONDITIONS

### 9 VAC 25-31-190. Conditions applicable to all permits.

The following conditions apply to all VPDES permits. Additional conditions applicable to VPDES permits are in 9 VAC 25-31-200. All conditions applicable to VPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to this regulation must be given in the permit.

A. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the law and the CWA, except that noncompliance with certain provisions of the permit may constitute a violation of the law but not the CWA. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under §307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under §405(d) of the CWA within the time provided in the chapters that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

B. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit.

C. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

D. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

G. Permits do not convey any property rights of any sort, or any exclusive privilege.

H. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the law. The permittee shall also furnish to the department upon request, copies of records required to be kept by the permit.

I. The permittee shall allow the director, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA and the law, any substances or parameters at any location.

J. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. Except for records of monitoring information required by the permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by Part VI (9 VAC 25-31-420 et seq.) of this chapter), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

3. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual or individuals who performed the sampling or measurements;

c. The date or dates analyses were performed;

d. The individual or individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

4. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 (2000) or alternative EPA approved methods; or, in the case of sludge use or disposal, approved under 40 CFR Part 136 (2000) unless otherwise specified in Part VI of this chapter, unless other test procedures have been specified in the permit.

K. All applications, reports, or information submitted to the department shall be signed and certified as required by 9 VAC 25-31-110.

L. Reporting requirements.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 9 VAC 25-31-180 A; or

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 9 VAC 25-31-200 A 1.

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of permits to change the name of the permittee and incorporate such other requirements as may be necessary under the law or the CWA.

4. Monitoring results shall be reported at the intervals specified in the permit.

a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the department for reporting results of monitoring of sludge use or disposal practices.

b. If the permittee monitors any pollutant specifically addressed by the permit more frequently than required by the permit using test procedures approved under 40 CFR Part 136 (2000) or, in the case of sludge use or disposal, approved under 40 CFR Part 136 (2000) unless otherwise specified in Part VI of this chapter, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the department.

c. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

5. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

6. If any unusual or extraordinary discharge including a bypass or upset should occur from a facility and such discharge enters or could be expected to enter state waters, the owner shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of such discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with subdivision 7 a of this subsection. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

a. Unusual spillage of materials resulting directly or indirectly from processing operations;

b. Breakdown of processing or accessory equipment;

c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as sewer lines or wastewater pump stations); and

d. Flooding or other acts of nature.

7. Twenty-four hour reporting.

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact

dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

b. The following shall be included as information which must be reported within 24 hours under this subdivision:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit.

(2) Any upset which exceeds any effluent limitation in the permit.

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

c. The board may waive the written report on a case-by-case basis for reports under this subdivision if the oral report has been received within 24 hours.

8. The permittee shall report all instances of noncompliance not reported under subdivisions 4, 5, 6, and 7 of this subsection, in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in subdivision 7 of this subsection.

9. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, it shall promptly submit such facts or information.

M. Bypass.

1. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subdivisions 2 and 3 of this subsection.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subdivision L 7 of this section (24-hour notice).

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under subdivision 2 of this subsection.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in subdivision 3 a of this subsection.

N. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of subdivision 2 of this subsection are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause or causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in subdivision L 7 b (2) of this section (24-hour notice); and

d. The permittee complied with any remedial measures required under subsection D of this section.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

**9 VAC 25-31-200. Additional conditions applicable to specified categories of VPDES permits.**

The following conditions, in addition to those set forth in 9 VAC 25-31-190, apply to all VPDES permits within the categories specified below:

A. Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the department as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

a. One hundred micrograms per liter (100 µg/l);

b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the board in accordance with 9 VAC 25-31-220 F.

2. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

a. Five hundred micrograms per liter (500 µg/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the board in accordance with 9 VAC 25-31-220 F.

B. Publicly and privately owned treatment works. All POTWs and PVOTWs must provide adequate notice to the department of the following:

1. Any new introduction of pollutants into the POTW or PVOTW from an indirect discharger which would be subject to §301 or §306 of the CWA and the law if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW or PVOTW by a source introducing pollutants into the POTW or PVOTW at the time of issuance of the permit.

3. For purposes of this subsection, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW or PVOTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW or PVOTW.

4. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the design capacity authorized by the VPDES permit for each month of any three-month period, the owner shall within 30 days notify the department in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.

a. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem which could be reasonably anticipated, resulting from high influent flows.

b. Upon receipt of the owner's plan of action, 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.

c. Failure to timely submit an adequate plan shall be deemed a violation of the permit.

d. 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.

C. Wastewater works operator requirements.

1. The permittee shall employ or contract at least one wastewater works operator who holds a current wastewater license appropriate for the permitted facility. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board for Waterworks and Wastewater Works Operators (18 VAC 160-20). Not withstanding the foregoing requirement, unless the discharge is determined by the board on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:

a. That have a design hydraulic capacity equal to or less than 0.04 mgd;

b. That discharge industrial waste or other waste from coal mining operations; or

c. That do not utilize biological or physical/chemical treatment.

2. In making this case-by-case determination, the board shall consider the location of the discharge with respect to state waters, the size of the discharge, the quantity and nature of pollutants reaching state waters and the treatment methods used at the wastewater works.

3. The permittee shall notify the department in writing whenever he is not complying, or has grounds for anticipating he will not comply with the requirements of subdivision 1 of this subsection. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

D. Lake level contingency plans. Any VPDES permit issued for a surface water impoundment whose primary purpose is to provide cooling water to power generators shall include a lake level contingency plan to allow specific reductions in the flow required to be released when the water level above the dam drops below designated levels due to drought conditions, and such plan shall take into account and minimize any adverse effects of any release reduction requirements on downstream users. This subsection shall not apply to any such facility that addresses releases and flow requirements during drought conditions in a Virginia Water Protection Permit.

E. Concentrated Animal Feeding Operations (CAFOs). The activities of the CAFO shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of manure, litter or process wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm, except that for swine, poultry, and veal calf operations constructed after April 14, 2003, in the case of a storm event greater than the 100-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under the Virginia Pollutant Discharge Elimination System General Permit for CAFOs (9 VAC 25-191). Any permit issued to a CAFO must include:

1. Requirements to develop and implement a nutrient management plan. At a minimum, a nutrient management plan must include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented by December 31, 2006. CAFOs that seek to obtain coverage under a permit after December 31, 2006, must have a nutrient management plan developed and implemented upon the date of permit coverage. The nutrient management plan must, to the extent applicable:

a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

c. Ensure that clean water is diverted, as appropriate, from the production area;

d. Prevent direct contact of confined animals with surface waters of the state;

e. Ensure that chemicals and other contaminants handled onsite are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface waters of the state;

g. Identify protocols for appropriate testing of manure, litter, process wastewater and soil;

h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and

i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.

2. Recordkeeping requirements. The permittee must create, maintain for five years, and make available to the director upon request the following records:

a. All applicable records identified pursuant to subdivision 1 i of this subsection;

b. In addition, all CAFOs subject to EPA Effluent Guidelines for Feedlots (40 CFR Part 412) must comply with recordkeeping requirements as specified in 40 CFR 412.37(b) and (c) and 40 CFR 412.47(b) and (c);

A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the director upon request.

3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter or process wastewater to other persons, large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of EPA Effluent Guidelines for Feedlots (40 CFR Part 412). Large CAFOs must retain for five years records of the date, recipient name and address and approximate amount of manure, litter or process wastewater transferred to another person.

4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the director. The annual report must include:

a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

c. Estimated amount of total manure, litter and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);

d. Total number of acres for land application covered by the nutrient management plan developed in accordance with subdivision 1 of this subsection;

e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;

f. Summary of all manure, litter and process wastewater discharges from the production area that occurred in the previous 12 months including date, time and approximate volume; and

g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

**9 VAC 25-31-210. Establishing permit conditions.**

A. In addition to conditions required in all permits, the board shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the law, the CWA and regulations. These shall include conditions under 9 VAC 25-31-240 (duration of permits), 9 VAC 25-31-250 (schedules of compliance) and 9 VAC 25-31-220 (monitoring).

B. 1. An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in Part V of this chapter.

2. New or reissued permits, and to the extent allowed under Part V of this chapter modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in 9 VAC 25-31-220 and 9 VAC 25-31-230.

C. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

**9 VAC 25-31-220. Establishing limitations, standards, and other permit conditions.**

In addition to the conditions established under 9 VAC 25-31-210 A, each VPDES permit shall include conditions meeting the following requirements when applicable.

A. 1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under §301 of the CWA, on new source performance standards promulgated under §306 of CWA, on case-by-case effluent limitations determined under §402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 9 VAC 25-31-180 B (protection period).

2. The board may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a VPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N (2005) if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

B. Other effluent limitations and standards.

1. Other effluent limitations and standards under §§301, 302, 303, 307, 318 and 405 of the CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under §307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent than any

limitation on the pollutant in the permit, the board shall institute proceedings under this chapter to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

2. Standards for sewage sludge use or disposal under §405(d) of the CWA and Part VI (9 VAC 25-31-420 et seq.) of this chapter unless those standards have been included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act (42 USC §6901 et seq.), Part C of Safe Drinking Water Act (42 USC §300f et seq.), the Marine Protection, Research, and Sanctuaries Act of 1972 (33 USC §1401 et seq.), or the Clean Air Act (42 USC §4701 et seq.), or in another permit issued by the Department of Environmental Quality, the Virginia Department of Health or any other appropriate state agency under another permit program approved by the administrator. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under §405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the board may initiate proceedings under this chapter to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

3. Requirements applicable to cooling water intake structures at new facilities under §316 (b) of the CWA, in accordance with 9 VAC 25-31-165.

C. Reopener clause. For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the board shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under §405(d) of the CWA. The board may promptly modify or revoke and reissue any permit containing the reopener clause required by this subdivision if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

D. Water quality standards and state requirements. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under §§301, 304, 306, 307, 318 and 405 of the CWA necessary to:

1. Achieve water quality standards established under the law and §303 of the CWA, including state narrative criteria for water quality.

a. Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the board determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any Virginia water quality standard, including Virginia narrative criteria for water quality.

b. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a Virginia water quality standard, the board shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

c. When the board determines, using the procedures in subdivision 1 b of this subsection, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a Virginia numeric criteria within a Virginia water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

d. Except as provided in this subdivision, when the board determines, using the procedures in subdivision 1 b of this subsection, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable Virginia water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the board demonstrates in the fact sheet or statement of basis of the VPDES permit, using the procedures in subdivision 1 b of this subsection, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative Virginia water quality standards.

e. Where Virginia has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable Virginia water quality standard, the board must establish effluent limits using one or more of the following options:

(1) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the board demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed Virginia criterion, or an explicit policy or regulation interpreting Virginia's narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, August 1994, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents;

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under §307(a) of the CWA, supplemented where necessary by other relevant information; or

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The fact sheet required by 9 VAC 25-31-280 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The permit contains a reopener clause allowing the board to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

f. When developing water quality-based effluent limits under this subdivision the board shall ensure that:

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by Virginia and approved by EPA pursuant to 40 CFR 130.7 (2005);

2. Attain or maintain a specified water quality through water quality related effluent limits established under the law and §302 of the CWA;

3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under the law and §401 of the CWA.;

4. Conform to applicable water quality requirements under §401(a)(2) of the CWA when the discharge affects a state other than Virginia;

5. Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under the law or regulations in accordance with §301(b)(1)(C) of the CWA;

6. Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under §208(b) of the CWA;

7. Incorporate §403(c) criteria under 40 CFR Part 125, Subpart M (2005), for ocean discharges; or

8. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 the CFR Part 125, Subpart D (2005).

E. Technology-based controls for toxic pollutants. Limitations established under subsections A, B, or D of this section, to control pollutants meeting the criteria listed in subdivision 1 of this subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An explanation of the development of these limitations shall be included in the fact sheet.

1. Limitations must control all toxic pollutants which the board determines (based on information reported in a permit application or in a notification required by the permit or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee; or

2. The requirement that the limitations control the pollutants meeting the criteria of subdivision 1 of this subsection will be satisfied by:

a. Limitations on those pollutants; or

b. Limitations on other pollutants which, in the judgment of the board, will provide treatment of the pollutants under subdivision 1 of this subsection to the levels required by the law and 40 CFR Part 125, Subpart A (2005).

F. A notification level which exceeds the notification level of 9 VAC 25-31-200 A 1 a, b, or c, upon a petition from the permittee or on the board's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

G. Twenty-four-hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under 9 VAC 25-31-190 L 7 b (3) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

H. Durations for permits, as set forth in 9 VAC 25-31-240.

I. Monitoring requirements. The following monitoring requirements:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

2. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 9 VAC 25-31-190 and in subdivisions 5 through 8 of this subsection. Reporting shall be no less frequent than specified in the above regulation;

4. To assure compliance with permit limitations, requirements to monitor:

a. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

b. The volume of effluent discharged from each outfall;

c. Other measurements as appropriate including pollutants in internal waste streams; pollutants in intake water for net limitations; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; and pollutants in sewage sludge or other monitoring as specified in Part VI (9 VAC 25-31-420 et seq.) of this chapter; or as determined to be necessary on a case-by-case basis pursuant to the law and §405(d)(4) of the CWA; and

d. According to test procedures approved under 40 CFR Part 136 (2005) for the analyses of pollutants having approved methods under that part, or alternative EPA approved methods, and according to a test procedure specified in the permit for pollutants with no approved methods;

5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less that once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in Part VI of this chapter (where applicable), but in no case less than once a year;

6. Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;

7. Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in subdivision 6 of this subsection) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loading identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

b. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;

c. Such report and certification be signed in accordance with 9 VAC 25-31-110; and

d. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements; and

8. Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under 9 VAC 25-31-190 L 1, 4, 5, 6, and 7 at least annually.

J. Pretreatment program for POTWs. Requirements for POTWs to:

1. Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under §307(b) of the CWA and Part VII (9 VAC 25-31-730 et seq.) of this chapter;

2. Submit a local program when required by and in accordance with Part VII of this chapter to assure compliance with pretreatment standards to the extent applicable under §307(b) of the CWA. The local program shall be incorporated into the permit as described in Part VII of this chapter. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of Part VII of this chapter;

3. Provide a written technical evaluation of the need to revise local limits under Part VII of this chapter following permit issuance or reissuance; and

4. For POTWs which are sludge-only facilities, a requirement to develop a pretreatment program under Part VII of this chapter when the board determines that a pretreatment program is necessary to assure compliance with Part VI of this chapter.

K. Best management practices to control or abate the discharge of pollutants when:

1. Authorized under §304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

2. Authorized under §402(p) of the CWA for the control of storm water discharges;

3. Numeric effluent limitations are infeasible; or

4. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the law and the CWA.

L. Reissued permits.

1. In the case of effluent limitations established on the basis of §402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under §304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of §§301(b)(1)(C) or 303(d) or (e) of the CWA, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with §303(d)(4) of the CWA.

2. Exceptions. A permit with respect to which subdivision 1 of this subsection applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

b. (1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The board determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under §402(a)(1)(B) of the CWA;

c. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

d. The permittee has received a permit modification under the law and §§301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) of the CWA; or

e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subdivision 2 b of this subsection shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the law or the CWA or for reasons otherwise unrelated to water quality.

3. In no event may a permit with respect to which subdivision 2 of this subsection applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a Virginia water quality standard applicable to such waters.

M. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the board may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The board's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

N. Any conditions imposed in grants made by the board to POTWs under §§201 and 204 of the CWA which are reasonably necessary for the achievement of effluent limitations under §301 of the CWA and the law.

O. Requirements governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use regulated by Part VI of this chapter.

P. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

Q. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with 9 VAC 25-31-330.

**9 VAC 25-31-230. Calculating VPDES permit conditions.**

A. Permit effluent limitations, monitoring requirements, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under 9 VAC 25-31-220 and subsection H of this section (limitations on internal waste streams).

B. Production-based limitations.

1. In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.

2. a. Except in the case of POTWs or as provided in subdivision 2 b of this subsection, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

b. (1) (a) The board may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(b) For the automotive manufacturing industry only, the board may establish a condition under subdivision 2 b (1) (a) of this subsection if the applicant satisfactorily demonstrates to the board at the time the application is submitted that its actual production, as indicated in subdivision 2 a of this subsection, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(2) If the board establishes permit conditions under subdivision 2 b (1) of this subsection:

(a) The permit shall require the permittee to notify the department at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice;

(b) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the department under subdivision 2 b (2) (a) of this subsection, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice; and

(c) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

C. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of total recoverable metal as defined in 40 CFR Part 136 (2000) unless:

1. An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or

2. In establishing permit limitations on a case-by-case basis under 40 CFR 125.3 (2000), it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the CWA and the law; or

3. All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

D. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

1. Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

2. Average weekly and average monthly discharge limitations for POTWs.

E. Discharges which are not continuous, as defined in 9 VAC 25-31-10, shall be particularly described and limited, considering the following factors, as appropriate:

1. Frequency;

2. Total mass;

3. Maximum rate of discharge of pollutants during the discharge; and

4. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.

F. Mass Limitations.

1. All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

a. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

b. When applicable standards and limitations are expressed in terms of other units of measurement; or

c. If in establishing technology-based permit limitations on a case-by-case basis, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

2. Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

G. Pollutants in intake water.

1. Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water to the extent necessary to meet the applicable technology-based limitation or standard, up to a maximum value equal to the influent value. Credit shall be granted only if:

a. The applicable effluent limitations and standards contained in the regulations incorporated by reference in 9 VAC 25-31-30 specifically provide that they shall be applied on a net basis; or

b. The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meets the limitations and standards in the absence of pollutants in the intake waters.

2. Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

3. Credit for the level of pollutants in the intake water may be considered in setting water quality-based effluent limitations according to 9 VAC 25-31-220 D. Where a total maximum daily load has been established for the receiving waterbody and it is applicable to the discharge, it shall be considered when such effluent limitations are developed. The board may consider the presence of intake pollutants when determining either that water quality-based effluent limitations are not necessary under 9 VAC 25-31-220 D or that any water quality-based effluent limitations justified by 9 VAC 25-31-220 D will be established in a manner that does not hold the permittee responsible for removing pollutants originating in its intake water.

4. Additional monitoring may be necessary to determine eligibility for any credits and compliance with permit limits.

5. Credits shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The board may waive this requirement for technology-based effluent limitations, standards, and prohibitions if he finds that no environmental degradation will result.

a. An intake pollutant is considered to be from the same body of water as the discharge if the board finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding may be deemed established if:

(1) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water;

(2) There is direct hydrological connection between the intake and discharge points; and

(3) Water quality characteristics (e.g., temperature, pH, hardness) are similar in the intake and receiving waters.

Other site-specific factors relevant to the transport and fate of the pollutant may be considered in making this finding.

b. An intake pollutant from groundwater may be considered to be from the same body of water if the board determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee, except that such a pollutant is not from the same body of water if the groundwater contains the pollutant partially or entirely due to human activity, such as industrial, commercial, or municipal operations, disposal actions or treatment processes.

c. For pollutants in intake water provided by a water supply system, where the raw water supply is removed from the same body of water as the discharge, the concentration of the intake pollutant shall be determined at the point where the water enters the water supplier's distribution system.

d. Where a facility discharges intake pollutants that originate in part from the same body of water and in part from a different body of water, the effluent limitation may provide for intake credits for the portion of the pollutants derived from the same body of water, provided that adequate monitoring to determine compliance can be established and is included in the permit.

6. Credits shall not be granted if the discharger contributes to the level of the pollutant in the intake water prior to the intake.

7. Credits for intake pollutants do not apply to technology-based limitations on the discharge of raw water clarifier sludge generated from the treatment of intake water.

H. Internal waste streams.

1. When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by 9 VAC 25-31-220 I shall also be applied to the internal waste streams.

2. Limits on internal waste streams will be imposed only when the fact sheet sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

I. Disposal of pollutants into wells, POTWs or by land application.

1. When part of a discharger's process wastewater is not being discharged into surface waters or into the contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into surface waters, applicable effluent standards and limitations for the discharge in a VPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

a. If none of the waste from a particular process is discharged into surface waters, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

b. In all cases other than those described in subdivision 1 a of this subsection, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into surface waters, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

$$P = \frac{E \times N}{T}$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total wastestream, N is the wastewater flow to be treated and discharged to surface waters, and T is the total wastewater flow.

2. Subdivision 1 of this subsection does not apply to the extent that promulgated effluent limitations guidelines:

a. Control concentrations of pollutants discharged but not mass; or

b. Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

3. Subdivision 1 of this subsection does not alter a discharger's obligation to meet any more stringent requirements established in the permit.

**9 VAC 25-31-240. Duration of permits.**

A. VPDES permits shall be effective for a fixed term not to exceed five years.

B. Except as provided in 9 VAC 25-31-70, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

C. The board may issue any permit for a duration that is less than the full allowable term under this section.

D. A permit may be issued to expire on or after the statutory deadline set forth in §§301(b)(2) (A), (C), and (E) of the CWA, if the permit includes effluent limitations to meet the requirements of §§301(b)(2) (A), (C), (D), (E) and (F) of the CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved.

E. A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under subsection D of this section is not conclusive as to the discharger's inclusion in that industrial category for any other

purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

**9 VAC 25-31-250. Schedules of compliance.**

A. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the law, the CWA and regulations.

1. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

2. The first VPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

3. Schedules of compliance may be established in permits for existing sources which are reissued or modified to contain new or more restrictive water quality-based effluent limitations. The schedule may allow a reasonable period of time, not to exceed the term of the permit, for the discharger to attain compliance with the water quality-based limitations.

4. Except as provided in subdivision B 1 b of this section, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

a. The time between interim dates shall not exceed one year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.

b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

5. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if subdivision 4 b of this subsection is applicable.

B. A VPDES permit applicant or permittee may cease conducting regulated activities (by terminating of direct discharge for VPDES sources) rather than continuing to operate and meet permit requirements as follows:

1. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

a. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

b. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit;

2. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline;

3. If the permittee is undecided whether to cease conducting regulated activities, the board may issue or modify a permit to contain two schedules as follows:

a. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

b. One schedule shall lead to timely compliance with applicable requirements, no later than the statutory deadline;

c. The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements no later than the statutory deadline; and

d. Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under subdivision 3 a of this subsection it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities; and

4. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the board, such as a resolution of the board of directors of a corporation.

## PART IV
## PUBLIC INVOLVEMENT

**9 VAC 25-31-260. Draft permits.**

A. Once an application is complete, the board shall tentatively decide whether to prepare a draft permit or to deny the application.

B. If the board tentatively decides to deny the permit application, the owner shall be advised of that decision and of the changes necessary to obtain approval. The owner may withdraw the application prior to board action. If the application is not withdrawn or modified to obtain the tentative approval to issue, the board shall provide public notice and opportunity for a public hearing prior to board action on the application.

C. If the board tentatively decides to issue a VPDES general permit, a draft general permit shall be prepared under subsection D of this section.

D. If the board decides to prepare a draft permit, the draft permit shall contain the following information:

1. All conditions under 9 VAC 25-31-190 and 9 VAC 25-31-210;

2. All compliance schedules under 9 VAC 25-31-250;

3. All monitoring requirements under 9 VAC 25-31-220; and

4. Effluent limitations, standards, prohibitions, standards for sewage sludge use or disposal, and conditions under 9 VAC 25-31-190, 9 VAC 25-31-200, 9 VAC 25-31-220, and Part VI (9 VAC 25-31-370 et seq.), and all variances that are to be included.

**9 VAC 25-31-270. Statement of basis.**

A statement of basis shall be prepared for every draft permit for which a fact sheet under 9 VAC 25-31-280 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

**9 VAC 25-31-280. Fact sheet.**

A. A fact sheet shall be prepared for every draft permit for a major VPDES facility or activity, for every Class I sludge management facility, for every VPDES general permit, for every VPDES draft permit that incorporates a variance or requires an explanation under subsection B 8 of this section, for every draft permit that includes a sewage sludge land application plan under 9 VAC 25-31-100 C 2, and for every draft permit which the board finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The board shall send this fact sheet to the applicant and, on request, to any other person.

B. The fact sheet shall include, when applicable:

1. A brief description of the type of facility or activity which is the subject of the draft permit;

2. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

5. A description of the procedures for reaching a final decision on the draft permit including:

a. The beginning and ending dates of the comment period for the draft permit and the address where comments will be received;

b. Procedures for requesting a public hearing and the nature of that hearing; and

c. Any other procedures by which the public may participate in the final decision;

6. Name and telephone number of a person to contact for additional information;

7. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

8. When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

a. Limitations to control toxic pollutants;

b. Limitations on internal waste streams;

c. Limitations on indicator pollutants;

d. Technology-based or sewage sludge disposal limitations set on a case-by-case basis;

e. Limitations to meet the criteria for permit issuance under 9 VAC 25-31-50; or

f. Waivers from monitoring requirements granted under 9 VAC 25-31-220 A;

9. For every permit to be issued to a treatment works owned by a person other than a state or municipality, an explanation of the board "s decision on regulation of users;

10. When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application;

11. For permits that include a sewage sludge land application plan under 9 VAC 25-31-100 P 8 e, a brief description of how each of the required elements of the land application plan are addressed in the permit; and

12. Justification of waiver of any application requirements under 9 VAC 25-31-100 J or P.

**9 VAC 25-31-290. Public notice of permit actions and public comment period.**

A. Scope.

1. The board shall give public notice that the following actions have occurred:

a. A draft permit has been prepared under 9 VAC 25-31-260 D;

b. A public hearing has been scheduled under 9 VAC 25-31-310; or

c. A VPDES new source determination has been made under 9 VAC 25-31-180.

2. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under 9 VAC 25-31-370 B. Written notice of that denial shall be given to the requester and to the permittee. 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.

3. Public notices may describe more than one permit or permit actions.

B. Timing.

1. Public notice of the preparation of a draft permit required under subsection A of this section shall allow at least 30 days for public comment.

2. Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

C. Methods. Public notice of activities described in subdivision A 1 of this section shall be given by the following methods:

1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subdivision may waive his or her rights to receive notice for any classes and categories of permits):

a. The applicant (except for VPDES general permits when there is no applicant);

b. Any other agency which the board knows has issued or is required to issue a VPDES, sludge management permit;

c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes);

d. Any state agency responsible for plan development under §208(b)(2), 208(b)(4) or §303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

e. Any user identified in the permit application of a privately owned treatment works;

f. Persons on a mailing list developed by:

(1) Including those who request in writing to be on the list;

(2) Soliciting persons for area lists from participants in past permit proceedings in that area; and

(3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as EPA regional and state funded newsletters, environmental bulletins, or state law journals. (The

board may update the mailing list from time to time by requesting written indication of continued interest from those listed. The board may delete from the list the name of any person who fails to respond to such a request.);

g. (1) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(2) Each state agency having any authority under state law with respect to the construction or operation of such facility;

2. By publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the discharge. The cost of public notice shall be paid by the owner; and

3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

D. Contents.

1. All public notices issued under this part shall contain the following minimum information:

a. Name and address of the office processing the permit action for which notice is being given;

b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of VPDES draft general permits;

c. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for VPDES general permits when there is no application;

d. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application;

e. A brief description of the procedures for submitting comments and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

f. A general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice or practices and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area;

g. Requirements applicable to cooling water intake structures under §316 of the CWA, in accordance with 9 VAC 25-31-165; and

h. Any additional information considered necessary or proper.

2. In addition to the general public notice described in subdivision 1 of this subsection, the public notice of a public hearing under 9 VAC 25-31-310 shall contain the following information:

a. Reference to the date of previous public notices relating to the permit;

b. Date, time, and place of the public hearing;

c. A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and

d. A concise statement of the issues raised by the persons requesting the public hearing.

3. Public notice of a VPDES draft permit for a discharge where a request for alternate thermal effluent limitations has been filed shall include:

a. A statement that the thermal component of the discharge is subject to effluent limitations incorporated in 9 VAC 25-31-30 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under §301 or §306 of the CWA;

b. A statement that an alternate thermal effluent limitation request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under the law and §316(a) of the CWA and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and

c. If the applicant has filed an early screening request for a CWA §316(a) variance, a statement that the applicant has submitted such a plan.

E. In addition to the general public notice described in subdivision D 1 of this section, all persons identified in subdivisions C 1 a, b, c, and d of this section shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any).

F. Upon receipt of an application for the issuance of a new or modified permit other than those for agricultural production or aquacultural production activities, the board shall notify, in writing, the locality wherein the discharge does or is proposed to take place of, at a minimum:

1. The name of the applicant;

2. The nature of the application and proposed discharge;

3. The availability and timing of any comment period; and

4. Upon request, any other information known to, or in the possession of, the board or the department regarding the applicant not required to be held confidential by this chapter.

The board shall make a good faith effort to provide this same notice and information to (i) each locality and riparian property owner to a distance one-quarter mile downstream and one-quarter mile upstream or to the fall line whichever is closer on tidal waters and (ii) each locality and riparian property owner to a distance one-half mile downstream on nontidal waters. Distances shall be measured from the point, or proposed point, of discharge. If the receiving river at the point or proposed point of discharge is two miles wide or greater, the riparian property owners on the opposite shore need not be notified. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the commissioners of the revenue or the tax assessor's office of the affected jurisdictions upon request by the board.

G. 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 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.

**9 VAC 25-31-300. Public comments and requests for public hearings.**

During the public comment period provided under 9 VAC 25-31-290, any interested person may submit written comments on the draft permit and may request a public hearing, if no public hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the public hearing, pursuant to the board's Procedural Rule No. 1 (9 VAC 25-230-10 et seq.) or its successor. All comments shall be considered in making the final decision and shall be answered as provided in 9 VAC 25-31-320.

**9 VAC 25-31-310. Public hearings.**

A. 1. The board shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit or permits.

2. The board may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

3. Public notice of the public hearing shall be given as specified in 9 VAC 25-31-290 of this chapter.

4. Any public hearing convened pursuant to this section shall be held in the geographical area of the proposed discharge, or in another appropriate area. Related groups of permit applications may be considered at any such public hearing.

B. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period for the draft permit shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the public hearing.

C. A tape recording or written transcript of the hearing shall be made available to the public.

D. Proceedings at, and the decision from, the public hearing will be governed by the board's Procedural Rule No. 1 (9 VAC 25-230-10 et seq.) or its successor.

**9 VAC 25-31-320. Response to comments.**

A. At the time that a final permit is issued, the board shall issue a response to comments. This response shall:

1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any public hearing.

B. The response to comments shall be available to the public.

**9 VAC 25-31-330. Conditions requested by the Corps of Engineers and other government agencies.**

A. If during the comment period for an VPDES draft permit, the district engineer advises the department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advised the department that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the board shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the VPDES permit for the duration of that stay.

B. If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the board may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of this regulation, the law and of the CWA.

C. In appropriate cases the board may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

**9 VAC 25-31-340. Decision on variances.**

A. The board may grant or deny requests for variances requested pursuant to 9 VAC 25-31-100 L 4, subject to EPA objection. Decisions on these variances shall be made according to the criteria of 40 CFR Part 125, Subpart H (2000).

B. The board may deny, or forward to the regional administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

1. A variance based on the economic capability of the applicant submitted pursuant to 9 VAC 25-31-100 L 2; or

2. A variance based on water quality related effluent limitations submitted pursuant to 9 VAC 25-31-100 L 3 or 9 VAC 25-31-100 M 2.

C. If the EPA Office Director for Wastewater Management approves the variance, the board may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

D. The board may deny or forward to the administrator with a written concurrence a completed request for:

1. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline was based, made according to the criteria and standards of 40 CFR Part 125, Subpart D (2000); or

2. A variance based upon certain water quality factors submitted pursuant to 9 VAC 25-31-100 L 2 or 9 VAC 25-31-100 M 1.

E. If the administrator approves the variance, the board may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

**9 VAC 25-31-350. Appeals of variances.**

When the board issues a permit on which EPA has made a variance decision, separate appeals of the VPDES permit and of the EPA variance decision are possible.

**9 VAC 25-31-360. Computation of time.**

A. Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

B. Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

C. If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

D. Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, three days shall be added to the prescribed time.

## PART V
## TRANSFER, MODIFICATION, REVOCATION AND REISSUANCE, AND TERMINATION OF PERMITS

**9 VAC 25-31-370. Modification, revocation and reissuance, or termination of permits.**

A. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the board "s initiative. When the department receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance, or conducts a review of the permit file) it may determine whether or not one or more of the causes listed in this section for modification or revocation and reissuance, or both, exist. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 9 VAC 25-31-390 or 9 VAC 25-31-410. All requests shall be in writing and shall contain facts or reasons supporting the request. If cause does not exist under these sections, the board shall not modify, revoke and reissue or terminate the permit. If a permit modification satisfies the criteria for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in Part IV (9 VAC 25-31-260 et seq.) followed.

B. If the board decides the request is not justified, it shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or public hearings.

C. 1. If the board tentatively decides to modify or revoke and reissue a permit, it shall prepare a draft permit incorporating the proposed changes. The board may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the board shall require the submission of a new application.

2. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued and the permit is reissued for a new term. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

3. Minor modifications as defined in 9 VAC 25-31-400 are not subject to the requirements of this section.

D. If the board tentatively decides to terminate a permit under 9 VAC 25-31-410, where the permittee objects, it shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit.

**9 VAC 25-31-380. Transfer of permits.**

A. Except as provided in subsection B of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the law and the CWA.

B. Automatic transfers. As an alternative to transfers under subsection A of this section, any VPDES permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the department at least 30 days in advance of the proposed transfer date in subdivision 2 of this subsection;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. A modification under this subdivision may also be a minor modification. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subdivision 2 of this subsection.

**9 VAC 25-31-390. Modification or revocation and reissuance of permits.**

A. Causes for modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

1. There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

2. The department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For VPDES general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or

new discharger VPDES permits this cause shall include any significant information derived from effluent testing required on the permit application after issuance of the permit.

3. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

a. For promulgation of amended standards or regulations, when:

(1) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations incorporated by reference in 9 VAC 25-31-30; and

(2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and

(3) A permittee requests modification in accordance with this chapter within 90 days after Federal Register notice of the action on which the request is based;

b. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with this chapter within 90 days of judicial remand; or

c. For changes based upon modified state certifications of VPDES permits.

4. The board determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may a VPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline.

5. When the permittee has filed a request for a variance pursuant to 9 VAC 25-31-100 L or M within the time specified in this chapter.

6. When required to incorporate an applicable CWA §307(a) toxic effluent standard or prohibition.

7. When required by the reopener conditions in a permit which are established under 9 VAC 25-31-220 B or C or 9 VAC 25-31-800 E.

8. a. Upon request of a permittee who qualifies for effluent limitations on a net basis under 9 VAC 25-31-230 G.

b. When a discharger is no longer eligible for net limitations as provided in 9 VAC 25-31-230 G 1 b.

9. As necessary under 9 VAC 25-31-800 E for a pretreatment program.

10. Upon failure to notify another state whose waters may be affected by a discharge.

11. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

12. To establish a notification level as provided in 9 VAC 25-31-220 F.

13. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under §202(a)(3) of the CWA for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under §202(a)(2) of the CWA. In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

14. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

15. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under the law and §402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

16. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

B. Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under 9 VAC 25-31-410, and the board determines that modification or revocation and reissuance is appropriate; or

2. The department has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

**9 VAC 25-31-400. Minor modifications of permits.**

Upon the consent of the permittee, the board may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part IV of this chapter. Any permit modification not processed as a minor modification under this section must be made for cause and with draft permit and public notice. Minor modifications may only:

A. Correct typographical errors;

B. Require more frequent monitoring or reporting by the permittee;

C. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

D. Allow for a change in ownership or operational control of a facility where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the department;

E. 1. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge.

2. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; or

F. Incorporate conditions of an approved POTW pretreatment program (or a modification thereto that has been approved in accordance with the procedures in this chapter) as enforceable conditions of the POTW's permits.

**9 VAC 25-31-410. Termination of permits.**

A. The following are causes for terminating a permit during its term, or for denying a permit renewal application, after public notice and opportunity for a public hearing:

1. The permittee has violated any regulation or order of the board, any provision of the law, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which in the opinion of the board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations or requirements;

2. Noncompliance by the permittee with any condition of the permit;

3. The permittee's failure to disclose fully all relevant material facts, or the permittee's misrepresentation of any relevant material facts in applying for a permit, or in any other report or document required under the law or this chapter;

4. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit; or

6. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit necessary to protect human health or the environment.

B. The board shall follow the applicable procedures in this chapter in terminating any VPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW or a PVOTW (but not by land application or disposal into a well), the board may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the board shall follow the applicable procedures for termination under 9 VAC 25-31-370 D. Expedited permit termination procedures are not available to permittees that are subject to pending state or federal enforcement actions including citizen suits brought under state or federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law.

## PART VI
## STANDARDS FOR THE USE OR DISPOSAL OF SEWAGE SLUDGE

### Subpart A--General Provisions

**9 VAC 25-31-420. Purpose and applicability.**

A. This part establishes standards, which consist of general requirements, pollutant limits, management practices, and operational standards, for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works. Standards are included in this part for sewage sludge applied to the land or placed on a surface disposal site. Also included in this part are pathogen and alternative vector attraction reduction requirements for sewage sludge applied to the land or placed on a surface disposal site.

In addition, the standards in this part include the frequency of monitoring and recordkeeping requirements when sewage sludge is applied to the land or placed on a surface disposal site. Also included in this part are reporting requirements for Class I sludge management facilities, publicly owned treatment works (POTWs) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more.

B. Applicability.

1. This part applies to any person who prepares sewage sludge, or applies sewage sludge to the land and to the owner/operator of a surface disposal site.

2. This part applies to sewage sludge applied to the land or placed on a surface disposal site.

3. This part applies to land where sewage sludge is applied and to a surface disposal site.

**9 VAC 25-31-430. [Reserved]**

**9 VAC 25-31-440. Permits and direct enforceability.**

A. The requirements in this part may be implemented through a permit issued to a treatment works treating domestic sewage, in accordance with this chapter. Treatment works treating domestic sewage shall submit a permit application in accordance with this chapter.

B. No person shall use or dispose of sewage sludge through any practice for which requirements are established in this part except in accordance with such requirements.

**9 VAC 25-31-450. Relationship to other regulations.**

Disposal of sewage sludge in a municipal solid waste landfill unit that complies with the requirements in the Virginia Solid Waste Management Regulation (9 VAC 20-80-10 et seq.) constitutes compliance with §405(d) of the CWA. Any person who prepares sewage sludge that is disposed in a municipal solid waste landfill unit shall ensure that the sewage sludge meets the requirements in 9 VAC 20-80-10 et seq. concerning the quality of materials disposed in a municipal solid waste landfill unit.

**9 VAC 25-31-460. Additional or more stringent requirements.**

A. On a case-by-case basis, the board may impose requirements for the use or disposal of sewage sludge in addition to or more stringent than the requirements in this part when necessary to protect public health and the environment from any adverse effect of a pollutant in the sewage sludge.

B. Nothing in this part precludes another state agency with responsibility for regulating sewage sludge or any political subdivision of Virginia or an interstate agency from imposing requirements for the use or disposal of sewage sludge more stringent than the requirements in this part or from imposing additional requirements for the use or disposal of sewage sludge.

**9 VAC 25-31-470. Exclusions.**

A. Treatment processes. This part does not establish requirements for processes used to treat domestic sewage or for processes used to treat sewage sludge prior to final use or disposal, except as provided in 9 VAC 25-31-710 and 9 VAC 25-31-720.

B. Selection of a use or disposal practice. This part does not require the selection of a sewage sludge use or disposal practice. The determination of the manner in which sewage sludge is used or disposed is a local determination.

C. Incineration of sewage sludge. This part does not establish requirements for sewage sludge fired in a sewage sludge incinerator or co-fired in an incinerator with other wastes or for the incinerator in which sewage sludge and other wastes are co-fired.

D. Sludge generated at an industrial facility. This part does not establish requirements for the use or disposal of sludge generated at an industrial facility during the treatment of industrial wastewater, including sewage sludge generated during the treatment of industrial wastewater combined with domestic sewage.

E. Hazardous sewage sludge. This part does not establish requirements for the use or disposal of sewage sludge determined to be hazardous in accordance with 40 CFR Part 261 (2000) or the Code of Virginia.

F. Sewage sludge with high PCB concentration. This part does not establish requirements for the use or disposal of sewage sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis).

G. Incinerator ash. This part does not establish requirements for the use or disposal of ash generated during the firing of sewage sludge in a sewage sludge incinerator.

H. Grit and screenings. This part does not establish requirements for the use or disposal of grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity) or screenings (e.g., relatively large materials such as rags) generated during preliminary treatment of domestic sewage in a treatment works.

I. Drinking water treatment sludge. This part does not establish requirements for the use or disposal of sludge generated during the treatment of either surface water or ground water used for drinking water.

J. Commercial and industrial septage. This part does not establish requirements for the use or disposal of commercial septage, industrial septage, a mixture of domestic septage and commercial septage, or a mixture of domestic septage and industrial septage.

**9 VAC 25-31-480. Requirement for a person who prepares sewage sludge.**

Any person who prepares sewage sludge shall ensure that the applicable requirements in this part are met when the sewage sludge is applied to the land, or placed on a surface disposal site.

**9 VAC 25-31-490. Sampling and analysis.**

A. Representative samples of sewage sludge that is applied to the land, or placed on a surface disposal site shall be collected and analyzed.

B. Methods in the materials listed below shall be used to analyze samples of sewage sludge and calculation procedures in the materials shall be used to calculate the percent volatile solids reduction for sewage sludge.

1. Enteric viruses.

   ASTM Designation: D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludges," Annual Book of ASTM Standards: Section 11 - Water and Environmental Technology, ASTM, Philadelphia, PA., 1992.

2. Fecal coliform.

   Part 9221 E. or Part 9222 D., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

3. Helminth ova.

   Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987. PB 88-154273/AS, National Technical Information Service, Springfield, Virginia.

4. Inorganic pollutants.

   "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition (1986) with Revision I. PB88-239223, National Technical Information Service, Springfield, Virginia.

5. Salmonella sp. bacteria.

   Part 9260 D., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992; or

   Kenner, B.A. and H.P. Clark, "Detection and enumeration of Salmonella and Pseudomonas aeruginosa," J. Water Pollution Control Federation, 46(9):2163-2171, 1974.

6. Specific oxygen uptake rate.

   Part 2710 B., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

7. Total, fixed, and volatile solids.

   Part 2540 G., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

8. Percent volatile solids reduction calculation.

"Environmental Regulations and Technology - Control of Pathogens and Vector Attraction in Sewage Sludge," EPA-625/R-92/013, U.S. Environmental Protection Agency, Cincinnati, Ohio, 1992.

**9 VAC 25-31-500. Definitions.**

In addition to the definitions given in Part I (9 VAC 25-31-10 et seq.) of this chapter, the following definitions apply to Part VI (9 VAC 25-31-420 et seq.) of this chapter. Where the same term is defined in both parts, the definition of Part VI of this chapter applies to the use of the term in Part VI of this chapter.

"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.

"Agronomic rate" means 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 sewage sludge 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 into methane gas and carbon dioxide by microorganisms in the absence of air.

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

"Apply sewage sludge or sewage sludge applied to the land" means land application of sewage sludge.

"Aquifer" means a geologic formation, group of geologic formations, or a portion of a geologic formation capable of yielding groundwater to wells or springs.

"Base flood" means a flood that has a one percent chance of occurring in any given year (i.e., a flood with a magnitude equaled once in 100 years).

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

"Class I sludge management facility" means any publicly owned treatment works (POTW) required to have an approved pretreatment program under this chapter and any treatment works treating domestic sewage classified as a Class I sludge management facility by the board because of the potential for its sewage sludge use or disposal practice to affect public health and the environment adversely.

"Contaminate an aquifer" means to introduce a substance that causes the maximum contaminant level for nitrate in the Virginia Water Quality Standards or in 40 CFR 141.62(b) (2000) to be exceeded in groundwater or that causes the existing concentration of nitrate in groundwater to increase when the existing concentration of nitrate in the groundwater exceeds the maximum contaminant level for nitrate in the Virginia Water Quality Standards or 40 CFR 141.62(b) (2000).

"Cover" means soil or other material used to cover sewage sludge placed on an active sewage sludge unit.

"Cover crop" means a small grain crop, such as oats, wheat, or barley, not grown for harvest.

"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.

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"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.

"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).

"Fault" means a fracture or zone of fractures in any materials along which strata on one side are displaced with respect to strata on the other side.

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

"Fiber crops" means crops such as flax and cotton.

"Final cover" means the last layer of soil or other material placed on a sewage sludge unit at closure.

"Food crops" means crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

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

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

"Holocene time" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene epoch to the present.

"Industrial wastewater" means wastewater generated in a commercial or industrial process.

"Land application" means the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

"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).

"Leachate collection system" means a system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a sewage sludge unit.

"Liner" means soil or synthetic material that has a hydraulic conductivity of $1 \times 10^{\%687}$ centimeters per second or less.

"Lower explosive limit for methane gas" means the lowest percentage of methane gas in air, by volume, that propagates a flame at 25°C and atmospheric pressure.

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

"Municipality" means a city, town, county, 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 management; or a designated and approved management agency under §208 of the CWA, 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 CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge.

"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.

"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.

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

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

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

"Pollutant" means 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 sewage sludge (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).

"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, plant nurseries, turf farms, and golf courses.

"Qualified groundwater scientist" means an individual with a baccalaureate or post-graduate degree in the natural sciences or engineering who has sufficient training and experience in groundwater hydrology and related fields, as may be demonstrated by state registration, professional certification, or completion of accredited university programs, to make sound professional judgments regarding groundwater monitoring, pollutant fate and transport, and corrective action.

"Range land" means open land with indigenous vegetation.

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

"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.

"Seismic impact zone" means an area that has a 10% or greater probability that the horizontal ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.

"Sewage sludge" means solid, semi-solid, 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 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 unit boundary" means the outermost perimeter of an active sewage sludge unit.

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

"Store 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.

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

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

"Treat 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.

"Unstable area" means land subject to natural or human-induced forces that may damage the structural components of an active sewage sludge unit. This includes, but is not limited to, land on which the soils are subject to mass movement.

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

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

"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.

## Subpart B--Land Application

### 9 VAC 25-31-510. Applicability; bulk sewage sludge; sewage sludge sold or given away in a bag or other container for application to the land.

A. This subpart applies to any person who prepares sewage sludge that is applied to the land, to any person who applies sewage sludge to the land, to sewage sludge applied to the land, and to the land on which sewage sludge is applied.

B. 1. The general requirements in 9 VAC 25-31-530 and the management practices in 9 VAC 25-31-550 do not apply when bulk sewage sludge is applied to the land if the bulk sewage sludge meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8.

2. The board may apply any or all of the general requirements in 9 VAC 25-31-530 and the management practices in 9 VAC 25-31-550 to the bulk sewage sludge in subdivision 1 of this subsection on a case-by-case basis after determining that the

general requirements or management practices are needed to protect public health and the environment from any reasonably anticipated adverse effect that may occur from any pollutant in the bulk sewage sludge.

C. 1. The general requirements in 9 VAC 25-31-530 and the management practices in 9 VAC 25-31-550 do not apply when a bulk material derived from sewage sludge is applied to the land if the derived bulk material meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8.

2. The board may apply any or all of the general requirements in 9 VAC 25-31-530 or the management practices in 9 VAC 25-31-550 to the bulk material in subdivision 1 of this subsection on a case-by-case basis after determining that the general requirements or management practices are needed to protect public health and the environment from any reasonably anticipated adverse effect that may occur from any pollutant in the bulk sewage sludge.

D. The requirements in this article do not apply when a bulk material derived from sewage sludge is applied to the land if the sewage sludge from which the bulk material is derived meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8.

E. The general requirements in 9 VAC 25-31-530 and the management practices in 9 VAC 25-31-550 do not apply when sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge sold or given away in a bag or other container for application to the land meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8.

F. The general requirements in 9 VAC 25-31-530 and the management practices in 9 VAC 25-31-550 do not apply when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the derived material meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8.

G. The requirements in this subpart do not apply when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge from which the material is derived meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8.

**9 VAC 25-31-520. [Reserved]**

**9 VAC 25-31-530. General requirements.**

A. No person shall apply sewage sludge to the land except in accordance with the requirements in this article.

B. No person shall apply bulk sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 to agricultural land, forest, a public contact site, or a reclamation site if any of the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 has been reached.

C. No person shall apply domestic septage to agricultural land, forest, or a reclamation site during a 365-day period if the annual application rate in 9 VAC 25-31-540 C has been reached during that period.

D. The person who prepares bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall provide the person who applies the bulk sewage sludge written notification of the concentration of total nitrogen (as N on a dry weight basis) in the bulk sewage sludge.

E. 1. The person who applies sewage sludge to the land shall obtain information needed to comply with the requirements in this subpart.

2. a. Before bulk sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 is applied to the land, the person who proposes to apply the bulk sewage sludge shall contact the department to determine whether bulk sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 has been applied to the site since July 20, 1993.

b. If bulk sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 has not been applied to the site since July 20, 1993, the cumulative amount for each pollutant listed in Table 2 of 9 VAC 25-31-540 may be applied to the site in accordance with 9 VAC 25-31-540 A 2 a.

c. If bulk sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk sewage sludge since

that date is known, the cumulative amount of each pollutant applied to the site shall be used to determine the additional amount of each pollutant that can be applied to the site in accordance with 9 VAC 25-31-540 A 2 a.

d. If bulk sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk sewage sludge since that date is not known, an additional amount of each pollutant shall not be applied to the site in accordance with 9 VAC 25-31-540 A 2 a.

F. When a person who prepares bulk sewage sludge provides the bulk sewage sludge to a person who applies the bulk sewage sludge to the land, the person who prepares the bulk sewage sludge shall provide the person who applies the sewage sludge notice and necessary information to comply with the requirements in this article.

G. When a person who prepares sewage sludge provides the sewage sludge to another person who prepares the sewage sludge, the person who provides the sewage sludge shall provide the person who receives the sewage sludge notice and necessary information to comply with the requirements in this article.

H. The person who applies bulk sewage sludge to the land shall provide the owner or lease holder of the land on which the bulk sewage sludge is applied notice and necessary information to comply with the requirements in this article.

I. Any person who prepares bulk sewage sludge in another state that is applied to land in Virginia shall provide written notice to the department prior to the initial application of bulk sewage sludge to the land application site by the applier. The notice shall include:

1. The location, by either street address or latitude and longitude, of each land application site;

2. The approximate time period bulk sewage sludge will be applied to the site;

3. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who prepares the bulk sewage sludge; and

4. The name, address, telephone number, and National (or Virginia) Pollutant Discharge Elimination System permit number (if appropriate) for the person who will apply the bulk sewage sludge.

J. Any person who applies bulk sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 to the land shall provide written notice, prior to the initial application of bulk sewage sludge to a land application site by the applier, to the department and the department shall retain and provide access to the notice. The notice shall include:

1. The location, by either street address or latitude and longitude, of the land application site; and

2. The name, address, telephone number, and Virginia Pollutant Discharge Elimination System permit number (if appropriate) of the person who will apply the bulk sewage sludge.

**9 VAC 25-31-540. Pollutant limits.**

A. Sewage sludge.

1. Bulk sewage sludge or sewage sludge sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for the pollutant in Table 1 of this section.

2. If bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site, either:

a. The cumulative loading rate for each pollutant shall not exceed the cumulative pollutant loading rate for the pollutant in Table 2 of this section; or

b. The concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 3 of 9 VAC 25-31-540.

3. If bulk sewage sludge is applied to a lawn or a home garden, the concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 3 of this section.

4. If sewage sludge is sold or given away in a bag or other container for application to the land, either:

a. The concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 3 of this section; or

b. The product of the concentration of each pollutant in the sewage sludge and the annual whole sludge application rate for the sewage sludge shall not cause the annual pollutant loading rate for the pollutant in Table 4 of this section to be exceeded. The procedure used to determine the annual whole sludge application rate is presented in D of this section.

B. Pollutant concentrations and loading rates - sewage sludge.

1. Ceiling concentrations

**TABLE 1 OF 9 VAC 25-31-540 -- CEILING CONCENTRATIONS**

| Pollutant | Ceiling Concentration (milligrams per kilogram) * |
|---|---|
| Arsenic | 75 |
| Cadmium | 85 |
| Copper | 4300 |
| Lead | 840 |
| Mercury | 57 |
| Molybdenum | 75 |
| Nickel | 420 |
| Selenium | 100 |
| Zinc | 7500 |

* Dry weight basis

2. Cumulative pollutant loading rates

**TABLE 2 OF 9 VAC 25-31-540 -- CUMULATIVE POLLUTANT LOADING RATES**

| Pollutant | Cumulative Pollutant Loading Rate (kilograms per hectare) |
|---|---|
| Arsenic | 41 |
| Cadmium | 39 |
| Copper1 | 500 |
| Lead | 300 |
| Mercury | 17 |
| Nickel | 420 |
| Selenium | 100 |
| Zinc | 2800 |

3. Pollutant concentrations

**TABLE 3 OF 9 VAC 25-31-540 -- POLLUTANT CONCENTRATIONS**

| Pollutant | Monthly Average Concentration (milligrams per kilogram) * |
|---|---|
| Arsenic | 41 |
| Cadmium | 39 |
| Copper1 | 500 |
| Lead | 300 |
| Mercury | 17 |
| Nickel | 420 |
| Selenium | 100 |
| Zinc | 2800 |

* Dry weight basis

4. Annual pollutant loading rates

**TABLE 4 OF 9 VAC 25-31-540 -- ANNUAL POLLUTANT LOADING RATES**

| Pollutant | Annual Pollutant Loading Rate (kilograms per hectare per 365 day period) |
|---|---|
| Arsenic | 2.0 |
| Cadmium | 1.9 |
| Copper | 75 |
| Lead | 15 |
| Mercury | 0.85 |
| Nickel | 21 |
| Selenium | 5.0 |
| Zinc | 140 |

C. Domestic septage. The annual application rate for domestic septage applied to agricultural land, forest, or a reclamation site shall not exceed the annual application rate calculated using equation (1).

$$AAR = \frac{N}{0.0026} \qquad (1)$$

Where:

AAR = Annual application rate in gallons per acre per 365 day period.
N = Amount of nitrogen in pounds per acre per 365 day period needed by the crop or vegetation grown on the land.

D. Procedures to determine the annual whole sludge application rate for sewage sludge. 9 VAC 25-31-540 A 4 b requires that the product of the concentration for each pollutant listed in Table 4 of this section in sewage sludge sold or given away in a bag or other container for application to the land and the AWSAR for the sewage sludge not cause the annual pollutant loading rate for the pollutant in Table 4 to be exceeded. This section contains the procedure used to determine the AWSAR for a sewage sludge that does not cause the annual pollutant loading rates in Table 4 of this section to be exceeded.

The relationship between the APLR for a pollutant and the AWSAR for a sewage sludge is shown in equation (1).

$$APLR = C \times AWSAR \times 0.001 \qquad (1)$$

Where:
APLR = Annual pollutant loading rate in kilograms per hectare per 365 day period.
C = Pollutant concentration in milligrams per kilogram of total solids (dry weight basis).
AWSAR = Annual whole sludge application rate in metric tons per hectare per 365 day period (dry weight basis).
0.001 = A conversion factor.

To determine the AWSAR, equation (1) is rearranged into equation (2):

$$AWSAR = \frac{APLR}{C \times 0.001} \qquad (2)$$

The procedure used to determine the AWSAR for a sewage sludge is presented below.

1. Analyze a sample of the sewage sludge to determine the concentration for each of the pollutants listed in Table 4 of this section in the sewage sludge.

2. Using the pollutant concentrations from Step 1 and the APLRs from Table 4 of this section, calculate an AWSAR for each pollutant using equation (2) above.

3. The AWSAR for the sewage sludge is the lowest AWSAR calculated in Step 2.

**9 VAC 25-31-550. Management practices.**

A. Bulk sewage sludge shall not be applied to the land if it is likely to adversely affect a threatened or endangered species listed in 9 VAC 25-260-320 or §4 of the Endangered Species Act (16 USC §1533) or if the land application is likely to adversely affect its designated critical habitat.

B. Bulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a wetland or other surface waters except as provided in a VPDES permit or a permit issued pursuant to §404 of the CWA.

C. Bulk sewage sludge shall not be applied to agricultural land, forest, or a reclamation site that is 10 meters or less from surface waters, unless otherwise specified by the board.

D. Bulk sewage sludge shall be applied to agricultural land, forest, a public contact site, or a reclamation site at a whole sludge application rate that is equal to or less than the agronomic rate for the bulk sewage sludge, unless, in the case of a reclamation site, otherwise specified by the board.

E. Either a label shall be affixed to the bag or other container in which sewage sludge that is sold or given away for application to the land, or an information sheet shall be provided to the person who receives sewage sludge sold or given away in an other container for application to the land. The label or information sheet shall contain the following information:

1. The name and address of the person who prepared the sewage sludge that is sold or given away in a bag or other container for application to the land;

2. A statement that application of the sewage sludge to the land is prohibited except in accordance with the instructions on the label or information sheet; and

3. The annual whole sludge application rate for the sewage sludge that does not cause any of the annual pollutant loading rates in Table 4 of 9 VAC 25-31-540 to be exceeded.

**9 VAC 25-31-560. Operational standards, pathogens, and vector attraction reduction.**

A. Pathogens - sewage sludge.

1. The Class A pathogen requirements in 9 VAC 25-31-710 A or the Class B pathogen requirements and site restrictions in 9 VAC 25-31-720 B shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

2. The Class A pathogen requirements in 9 VAC 25-31-710 A shall be met when bulk sewage sludge is applied to a lawn or a home garden.

3. The Class A pathogen requirements in 9 VAC 25-31-710 A shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

B. Pathogens - domestic septage. The requirements in either 9 VAC 25-31-710 C 1 or C 2 shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

C. Vector attraction reduction - sewage sludge.

1. One of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 10 shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

2. One of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8 shall be met when bulk sewage sludge is applied to a lawn or a home garden.

3. One of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8 shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

D. Vector attraction reduction - domestic septage. The vector attraction reduction requirements in 9 VAC 25-31-720 B 9, B 10, or B 12 shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

**9 VAC 25-31-570. Frequency of monitoring.**

A. Sewage sludge.

1. The frequency of monitoring for the pollutants listed in Tables 1 through 4 of 9 VAC 25-31-540; the pathogen density requirements in 9 VAC 25-31-710 A and B 2 through B 4; and the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 4, B 7 and B 8 shall be the frequency in Table 1 of this section.

**TABLE 1 OF 9 VAC 25-31-570 -- FREQUENCY OF MONITORING - LAND APPLICATION**

| Amount of sewage sludge* (metric tons per 365 day period) | Frequency |
|---|---|
| Greater than zero but less than 290 | once per year |
| Equal to or greater than 290 but less than 1,500 | once per quarter (four times per year) |
| Equal to or greater than 1,500 but less than 15,000 | once per 60 days (six times per year) |
| Equal to or greater than 15,000 | once per month (12 times per year) |

* Either the amount of bulk sewage sludge applied to the land or the amount of sewage sludge prepared for sale or give-away in a bag or other container for application to the land (dry weight basis).

2. After the sewage sludge has been monitored for two years at the frequency in Table 1 of this section, the board may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in 9 VAC 25-31-710 A 5 b and c.

B. Domestic septage. If either the pathogen requirements in 9 VAC 25-31-710 C 2 or the vector attraction reduction requirements in 9 VAC 25-31-720 B 12 are met when domestic septage is applied to agricultural land, forest, or a reclamation site, each container of domestic septage applied to the land shall be monitored for compliance with those requirements.

**9 VAC 25-31-580. Recordkeeping.**

A. Sewage sludge.

1. The person who prepares the sewage sludge in 9 VAC 25-31-510 B 1 or E shall develop the following information and shall retain the information for five years:

a. The concentration of each pollutant listed in Table 3 of 9 VAC 25-31-540 in the sewage sludge;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in 9 VAC 25-31-710 A and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the Class A pathogen requirements in 9 VAC 25-31-710 A are met; and

d. A description of how one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8 is met.

2. The person who derives the material in 9 VAC 25-31-510 C 1 or in 9 VAC 25-31-510 F shall develop the following information and shall retain the information for five years:

a. The concentration of each pollutant listed in Table 3 of 9 VAC 25-31-540 in the material;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in 9 VAC 25-31-710 A and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the Class A pathogen requirements in 9 VAC 25-31-710 A are met; and

d. A description of how one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8 is met.

3. If the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and the vector attraction reduction requirements in either 9 VAC 25-31-720 B 9 or B 10 are met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site:

a. The person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(1) The concentration of each pollutant listed in Table 3 of 9 VAC 25-31-540 in the bulk sewage sludge;

(2) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in 9 VAC 25-31-710 A was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

(3) A description of how the pathogen requirements in 9 VAC 25-31-710 A are met.

b. The person who applies the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(1) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9 VAC 25-31-550 and the vector attraction reduction requirement in (insert either 9 VAC 25-31-720 B 9 or B 10) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment.";

(2) A description of how the management practices in 9 VAC 25-31-550 are met for each site on which bulk sewage sludge is applied; and

(3) A description of how the vector attraction reduction requirements in either 9 VAC 25-31-720 B 9 or B 10 are met for each site on which bulk sewage sludge is applied.

4. If the pollutant concentrations in 9 VAC 25-31-540 B 3 and the Class B pathogen requirements in 9 VAC 25-31-710 B are met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site:

a. The person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(1) The concentration of each pollutant listed in Table 3 of 9 VAC 25-31-540 in the bulk sewage sludge;

(2) The following certification statement:

"I certify under, penalty of law, that the information that will be used to determine compliance with the Class B pathogen requirements in 9 VAC 25-31-710 B and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8, if one of those requirements is met) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(3) A description of how the Class B pathogen requirements in 9 VAC 25-31-710 B are met; and

(4) When one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8 is met, a description of how the vector attraction reduction requirement is met.

b. The person who applies the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(1) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9 VAC 25-31-550, the site restrictions in 9 VAC 25-31-710 B 5, and the vector attraction reduction requirements in (insert either 9 VAC 25-31-720 B 9 or B 10, if one of those requirements is met) was prepared for each site on which bulk sewage sludge is applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(2) A description of how the management practices in 9 VAC 25-31-550 are met for each site on which bulk sewage sludge is applied;

(3) A description of how the site restrictions in 9 VAC 25-31-710 B 5 are met for each site on which bulk sewage sludge is applied;

(4) When the vector attraction reduction requirement in either 9 VAC 25-31-720 B 9 or B 10 is met, a description of how the vector attraction reduction requirement is met; and

(5) The date bulk sewage sludge is applied to each site.

5. If the requirements in 9 VAC 25-31-540 A 2 a are met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site:

a. The person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(1) The concentration of each pollutant listed in Table 1 of 9 VAC 25-31-540 in the bulk sewage sludge;

(2) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in (insert either 9 VAC 25-31-710 A or B and the vector attraction reduction requirement in insert one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8, if one of those requirements is met) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(3) A description of how the pathogen requirements in either 9 VAC 25-31-710 A or B are met; and

(4) When one of the vector attraction requirements in 9 VAC 25-31-720 B 1 through B 8 is met, a description of how the vector attraction requirement is met.

b. The person who applies the bulk sewage sludge shall develop the following information, retain the information in 9 VAC 25-31-580 A 5 b (1) through b (7) indefinitely, and retain the information in 9 VAC 25-31-580 A 5 b (8) through b (13) for five years:

(1) The location, by either street address or latitude and longitude, of each site on which bulk sewage sludge is applied;

(2) The number of hectares in each site on which bulk sewage sludge is applied;

(3) The date bulk sewage sludge is applied to each site;

(4) The cumulative amount of each pollutant (i.e., kilograms) listed in Table 2 of 9 VAC 25-31-540 in the bulk sewage sludge applied to each site, including the amount in 9 VAC 25-31-530 E 2 c;

(5) The amount of sewage sludge (i.e., metric tons) applied to each site;

(6) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the requirements to obtain information in 9 VAC 25-31-530 E 2 was prepared for each site on which bulk sewage sludge is applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment.";

(7) A description of how the requirements to obtain information in 9 VAC 25-31-530 E 2 are met;

(8) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9 VAC 25-31-550 was prepared for each site on which bulk sewage sludge is applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment.";

(9) A description of how the management practices in 9 VAC 25-31-550 are met for each site on which bulk sewage sludge is applied;

(10) The following certification statement when the bulk sewage sludge meets the Class B pathogen requirements in 9 VAC 25-31-710 B:

"I certify, under penalty of law, that the information that will be used to determine compliance with the site restrictions in 9 VAC 25-31-710 B 5 was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment.";

(11) A description of how the site restrictions in 9 VAC 25-31-710 B 5 are met for each site on which Class B bulk sewage sludge is applied;

(12) The following certification statement when the vector attraction reduction requirement in either 9 VAC 25-31-720 B 9 or B 10 is met:

"I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirement in (insert either 9 VAC 25-31-720 B 9 or B 10) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

(13) If the vector attraction reduction requirements in either 9 VAC 25-31-720 B 9 or B 10 are met, a description of how the requirements are met.

6. If the requirements in 9 VAC 25-31-540 A 4 b are met when sewage sludge is sold or given away in a bag or other container for application to the land, the person who prepares the sewage sludge that is sold or given away in a bag or other container shall develop the following information and shall retain the information for five years:

a. The annual whole sludge application rate for the sewage sludge that does not cause the annual pollutant loading rates in Table 4 of 9 VAC 25-31-540 to be exceeded;

b. The concentration of each pollutant listed in Table 4 of 9 VAC 25-31-540 in the sewage sludge;

c. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practice in 9 VAC 25-31-550 E, the Class A pathogen requirement in 9 VAC 25-31-710 A, and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

d. A description of how the Class A pathogen requirements in 9 VAC 25-31-710 A are met; and

e. A description of how one of the vector attraction requirements in 9 VAC 25-31-720 B 1 through B 8 is met.

B. Domestic septage. When domestic septage is applied to agricultural land, forest, or a reclamation site, the person who applies the domestic septage shall develop the following information and shall retain the information for five years:

1. The location, by either street address or latitude and longitude, of each site on which domestic septage is applied;

2. The number of acres in each site on which domestic septage is applied;

3. The date domestic septage is applied to each site;

4. The nitrogen requirement for the crop or vegetation grown on each site during a 365-day period;

5. The rate, in gallons per acre per 365-day period, at which domestic septage is applied to each site;

6. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in (insert either 9 VAC 25-31-710 C 1 or 2) and the vector attraction reduction requirements in (insert 9 VAC 25-31-720 B 9, 10, or 12) was prepared under my direction and supervision in accordance with the system designed to

ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

7. A description of how the pathogen requirements in either 9 VAC 25-31-710 C 1 or 2 are met; and

8. A description of how the vector attraction reduction requirements in 9 VAC 25-31-720 B 9, 10, or 12 are met.

**9 VAC 25-31-590. Reporting.**

A. Class I sludge management facilities, POTWs with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more shall submit the following information to the department:

1. The information in 9 VAC 25-31-580 A, except the information in 9 VAC 25-31-580 A 3 b, 4 b and 5 b, for the appropriate requirements on February 19 of each year for the previous calendar year's activity; and

2. The information in 9 VAC 25-31-580 A 5 b (1) through (7) on February 19 of each year for the previous calendar year's activity when 90% or more of any of the cumulative pollutant loading rates in Table 2 of 9 VAC 25-31-540 is reached at a land application site.

**Subpart C--Surface Disposal**

**9 VAC 25-31-600. Applicability.**

A. This article applies to any person who prepares sewage sludge that is placed on a surface disposal site, to the owner/operator of a surface disposal site, to sewage sludge placed on a surface disposal site, and to a surface disposal site.

B. This article does not apply to sewage sludge stored on the land or to the land on which sewage sludge is stored. It also does not apply to sewage sludge that remains on the land for longer than two years when the person who prepares the sewage sludge demonstrates that the land on which the sewage sludge remains is not an active sewage sludge unit. The demonstration shall include the following information, which shall be retained by the person who prepares the sewage sludge for the period that the sewage sludge remains on the land:

1. The name and address of the person who prepares the sewage sludge;

2. The name and address of the person who either owns the land or leases the land;

3. The location, by either street address or latitude and longitude, of the land;

4. An explanation of why sewage sludge needs to remain on the land for longer than two years prior to final use or disposal; and

5. The approximate time period when the sewage sludge will be used or disposed.

C. This article does not apply to sewage sludge treated on the land or to the land on which sewage sludge is treated.

**9 VAC 25-31-610. [Reserved]**

**9 VAC 25-31-620. General requirements.**

A. No person shall place sewage sludge on an active sewage sludge unit unless the requirements in this article are met.

B. An active sewage sludge unit located within 60 meters of a fault that has displacement in Holocene time; located in an unstable area; or located in a wetland, except as provided in a permit issued pursuant to the law and §402 or 404 of the CWA, shall close by March 22, 1994, unless, in the case of an active sewage sludge unit located within 60 meters of a fault that has displacement in Holocene time, otherwise specified by the board.

C. The owner/operator of an active sewage sludge unit shall submit a written closure and post closure plan to the department 180 days prior to the date that the active sewage sludge unit closes. The plan shall describe how the sewage sludge unit will be closed and, at a minimum, shall include:

1. A discussion of how the leachate collection system will be operated and maintained for three years after the sewage sludge unit closes if the sewage sludge unit has a liner and leachate collection system;

2. A description of the system used to monitor for methane gas in the air in any structures within the surface disposal site and in the air at the property line of the surface disposal site, as required in 9 VAC 25-31-640 J 2; and

3. A discussion of how public access to the surface disposal site will be restricted for three years after the last sewage sludge unit in the surface disposal site closes.

D. The owner of a surface disposal site shall provide written notification to the subsequent owner of the site that sewage sludge was placed on the land.

**9 VAC 25-31-630. Pollutant limits (other than domestic septage).**

A. Active sewage sludge unit without a liner and leachate collection system.

1. Except as provided in subdivision A 2 and subsection B of this section, the concentration of each pollutant listed in Table 1 of this section in sewage sludge placed on an active sewage sludge unit shall not exceed the concentration for the pollutant in Table 1 of this section.

**TABLE 1 OF 9 VAC 25-31-630 -- POLLUTANT CONCENTRATIONS - ACTIVE SEWAGE SLUDGE UNIT WITHOUT A LINER AND LEACHATE COLLECTION**

| Pollutant | Concentration (milligrams per kilogram*) |
|---|---|
| Arsenic | 73 |
| Chromium | 600 |
| Nickel | 420 |

* Dry weight basis

2. Except as provided in subsection B of this section, the concentration of each pollutant listed in Table 1 of this section in sewage sludge placed on an active sewage sludge unit whose boundary is less than 150 meters from the property line of the surface disposal site shall not exceed the concentration determined using the following procedure.

a. The actual distance from the active sewage sludge unit boundary to the property line of the surface disposal site shall be determined.

b. The concentration of each pollutant listed in Table 2 of this section in the sewage sludge shall not exceed the concentration in Table 2 of this section that corresponds to the actual distance in subdivision 2 a of this subsection.

**TABLE 2 OF 9 VAC 25-31-630 -- POLLUTANT CONCENTRATIONS - ACTIVE SEWAGE SLUDGE UNIT WITHOUT A LINER AND LEACHATE COLLECTION SYSTEM THAT HAS A UNIT BOUNDARY TO PROPERTY LINE DISTANCE LESS THAN 150 METERS**

| Unit boundary to property line distance (meters) | Pollutant concentration* | | |
|---|---|---|---|
| | Arsenic (mg/kg) | Chromium (mg/kg) | Nickel (mg/kg) |
| 0 to less than 25 | 30 | 200 | 210 |
| 25 to less than 50 | 34 | 220 | 240 |
| 50 to less than 75 | 39 | 260 | 270 |
| 75 to less than 100 | 46 | 300 | 320 |
| 100 to less than 125 | 53 | 360 | 390 |
| 125 to less than 150 | 62 | 450 | 420 |

* Dry weight basis

B. Active sewage sludge unit without a liner and leachate collection system - site-specific limits.

1. At the time of permit application, the owner/operator of a surface disposal site may request site-specific pollutant limits in accordance with subdivision B 2 of this section for an active sewage sludge unit without a liner and leachate collection system when the existing values for site parameters specified by the board are different from the values for those parameters used to develop the pollutant limits in Table 1 of this section and when the board determines that site-specific pollutant limits are appropriate for the active sewage sludge unit.

2. The concentration of each pollutant listed in Table 1 of this section in sewage sludge placed on an active sewage sludge unit without a liner and leachate collection system shall not exceed either the concentration for the pollutant determined during a site-specific assessment, as specified by the board, or the existing concentration of the pollutant in the sewage sludge, whichever is lower.

**9 VAC 25-31-640. Management practices.**

A. Sewage sludge shall not be placed on an active sewage sludge unit if it is likely to adversely affect a threatened or endangered species listed in 9 VAC 25-260-320 or §4 of the Endangered Species Act (16 USC §1533 et seq.) or its designated critical habitat.

B. An active sewage sludge unit shall not restrict the flow of a base flood.

C. When a surface disposal site is located in a seismic impact zone, an active sewage sludge unit shall be designed to withstand the maximum recorded horizontal ground level acceleration.

D. An active sewage sludge unit shall be located 60 meters or more from a fault that has displacement in Holocene time, unless otherwise specified by the board.

E. An active sewage sludge unit shall not be located in an unstable area.

F. An active sewage sludge unit shall not be located in a wetland, except as provided in a permit issued by the board.

G. 1. Run-off from an active sewage sludge unit shall be collected and shall be disposed in accordance with this chapter and any other applicable requirements.

2. The run-off collection system for an active sewage sludge unit shall have the capacity to handle run-off from a 24-hour, 25-year storm event.

H. The leachate collection system for an active sewage sludge unit that has a liner and leachate collection system shall be operated and maintained during the period the sewage sludge unit is active and for three years after the sewage sludge unit closes.

I. Leachate from an active sewage sludge unit that has a liner and leachate collection system shall be collected and shall be disposed in accordance with the applicable requirements during the period the sewage sludge unit is active and for three years after the sewage sludge unit closes.

J. When a cover is placed on an active sewage sludge unit, the concentration of methane gas in air in any structure within the surface disposal site shall not exceed 25% of the lower explosive limit for methane gas during the period that the sewage sludge unit is active and the concentration of methane gas in air at the property line of the surface disposal site shall not exceed the lower explosive limit for methane gas during the period that the sewage sludge unit is active.

When a final cover is placed on a sewage sludge unit at closure, the concentration of methane gas in air in any structure within the surface disposal site shall not exceed 25% of the lower explosive limit for methane gas for three years after the sewage sludge unit closes and the concentration of methane gas in air at the property line of the surface disposal site shall not exceed the lower explosive limit for methane gas for three years after the sewage sludge unit closes, unless otherwise specified by the board.

K. A food crop, a feed crop, or a fiber crop shall not be grown on an active sewage sludge unit unless the owner/operator of the surface disposal site demonstrates to the board that through management practices, public health and the environment are protected from any reasonably anticipated adverse effects of pollutants in sewage sludge when crops are grown.

L. Animals shall not be grazed on an active sewage sludge unit unless the owner/operator of the surface disposal site demonstrates to the board that through management practices, public health and the environment are protected from any reasonably anticipated adverse effects of pollutants in sewage sludge when animals are grazed.

M. Public access to a surface disposal site shall be restricted for the period that the surface disposal site contains an active sewage sludge unit and for three years after the last active sewage sludge unit in the surface disposal site closes.

N. Sewage sludge placed on an active sewage sludge unit shall not contaminate an aquifer. Results of a groundwater monitoring program developed by a qualified groundwater scientist or a certification by a qualified groundwater scientist shall be used to demonstrate that sewage sludge placed on an active sewage sludge unit does not contaminate an aquifer.

**9 VAC 25-31-650. Operational standards - pathogens and vector attraction reduction.**

A. Pathogens-sewage sludge (other than domestic septage). The Class A pathogens requirements in 9 VAC 25-31-710 A or one of the Class B pathogen requirements in 9 VAC 25-31-710 B 2 through B 4 shall be met when sewage sludge is placed on an active sewage sludge unit, unless the vector attraction reduction requirement in 9 VAC 25-31-720 B 11 is met.

B. Vector attraction reduction - sewage sludge (other than domestic septage). One of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 11 shall be met when sewage sludge is placed on an active sewage sludge unit.

C. Vector attraction reduction - domestic septage. One of the vector attraction reduction requirement in 9 VAC 25-31-720 B 9 through B 12 shall be met when domestic septage is placed on an active sewage sludge unit.

**9 VAC 25-31-660. Frequency of monitoring.**

A. Sewage sludge (other than domestic septage).

1. The frequency of monitoring for the pollutants in Tables 1 and 2 of 9 VAC 25-31-630; the pathogen density requirements in 9 VAC 25-31-710 A and in 9 VAC 25-31-710 B 2; and the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 4, B 7 and B 8 for sewage sludge placed on an active sewage sludge unit shall be the frequency in Table 1 of this section.

**TABLE 1 OF 9 VAC 25-31-660 -- FREQUENCY OF MONITORING - SURFACE DISPOSAL**

| Amount of sewage sludge* (metric tons per 365 day period) | Frequency |
|---|---|
| Greater than zero but less than 290 | once per year |

| | |
|---|---|
| Equal to or greater than 290 but less than 1,500 | once per quarter (four times per year) |
| Equal to or greater than 1,500 but less than 15,000 | once per 60 days (six times per year) |
| Equal to or greater than 15,000 | once per month (12 times per year) |

* Amount of sewage sludge placed on an active sewage sludge unit (dry weight basis).

2. After the sewage sludge has been monitored for two years at the frequency in Table 1 of this section, the board may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in 9 VAC 25-31-710 A 5 b and c.

B. Domestic septage. If the vector attraction reduction requirements in 9 VAC 25-31-720 B 12 are met when domestic septage is placed on an active sewage sludge unit, each container of domestic septage shall be monitored for compliance with those requirements.

C. Air. Air in structures within a surface disposal site and at the property line of the surface disposal site shall be monitored continuously for methane gas during the period that the surface disposal site contains an active sewage sludge unit on which the sewage sludge is covered and for three years after a sewage sludge unit closes when a final cover is placed on the sewage sludge.

**9 VAC 25-31-670. Recordkeeping.**

A. When sewage sludge (other than domestic septage) is placed on an active sewage sludge unit:

1. The person who prepares the sewage sludge shall develop the following information and shall retain the information for five years:

a. The concentration of each pollutant listed in Table 1 of 9 VAC 25-31-630 in the sewage sludge when the pollutant concentrations in Table 1 of 9 VAC 25-31-630 are met;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in (insert 9 VAC 25-31-710 A, B 2, B 3, or B 4 when one of those requirements is met) and the vector attraction reduction requirements in (insert one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8 when one of those requirements is met) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the pathogen requirements in 9 VAC 25-31-710 A, B 2, B 3, or B 4 are met when one of those requirements is met; and

d. A description of how one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8 is met when one of those requirements is met.

2. The owner/operator of the surface disposal site shall develop the following information and shall retain that information for five years:

a. The concentration of each pollutant listed in Table 2 of 9 VAC 25-31-630 in the sewage sludge when the pollutant concentrations in Table 2 of 9 VAC 25-31-630 are met or when site-specific pollutant limits in 9 VAC 25-31-630 B are met;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9 VAC 25-31-640 and the vector attraction reduction requirement in (insert one of the requirements in 9 VAC 25-31-720 B 9 through B 11, if one of those requirements is met) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the management practices in 9 VAC 25-31-640 are met; and

d. A description of how the vector attraction reduction requirements in 9 VAC 25-31-720 B 9 through B 11 are met, if one of those requirements is met.

B. When domestic septage is placed on a surface disposal site.

1. If the vector attraction reduction requirements in 9 VAC 25-31-720 B 12 are met, the person who places the domestic septage on the surface disposal site shall develop the following information and shall retain the information for five years:

a. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirements in 9 VAC 25-31-720 B 12 was prepared under my direction and supervision in accordance with

the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment"; and

b. A description of how the vector attraction reduction requirements in 9 VAC 25-31-720 B 12 are met.

2. The owner/operator of the surface disposal site shall develop the following information and shall retain that information for five years:

a. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9 VAC 25-31-640 and the vector attraction reduction requirements in (insert 9 VAC 25-31-720 B 9 through B 11 when one of those requirements is met) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine or imprisonment.";

b. A description of how the management practices in 9 VAC 25-31-640 are met; and

c. A description how the vector attraction reduction requirements in 9 VAC 25-31-720 B 9 through B 11 are met, if one of those requirements is met.

**9 VAC 25-31-680. Reporting.**

Class I sludge management facilities, POTWs with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more shall submit the information in 9 VAC 25-31-670 A to the department on February 19 of each year for the previous year's activity.

**Subpart D--Pathogens and Vector Attraction Reduction**

**9 VAC 25-31-690. Scope.**

A. This article contains the requirements for a sewage sludge to be classified either Class A or Class B with respect to pathogens.

B. This article contains the site restrictions for land on which a Class B sewage sludge is applied.

C. This article contains the pathogen requirements for domestic septage applied to agricultural land, forest, or a reclamation site.

D. This article contains alternative vector attraction reduction requirements for sewage sludge that is applied to the land or placed on a surface disposal site.

**9 VAC 25-31-700. [Reserved]**

**9 VAC 25-31-710. Pathogens.**

A. Sewage sludge—Class A.

1. The requirement in subdivision 2 of this subsection and the requirements in either subdivisions 3, 4, 5, 6, 7, or 8 of this subsection shall be met for a sewage sludge to be classified Class A with respect to pathogens.

2. The Class A pathogen requirements in subdivisions 3 through 8 of this subsection shall be met either prior to meeting or at the same time the vector attraction reduction requirements in 9 VAC 25-31-720, except the vector attraction reduction requirements in 9 VAC 25-31-720 B 6 through B 8, are met.

3. Class A—Alternative 1.

a. Either the density of fecal coliform in the sewage sludge shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed; at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in 9 VAC 25-31-510 B, C, E, or F.

b. The temperature of the sewage sludge that is used or disposed shall be maintained at a specific value for a period of time.

(1) When the percent solids of the sewage sludge is 7.0% or higher, the temperature of the sewage sludge shall be 50°C or higher; the time period shall be 20 minutes or longer; and the temperature and time period shall be determined using equation (3), except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

$$D = \frac{131{,}700{,}000}{10^{0.1400t}} \qquad (3)$$

Where,
D = time in days.
t = temperature in degrees Celsius.

(2) When the percent solids of the sewage sludge is 7.0% or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge shall be 50°C or higher; the time period shall be 15 seconds or longer; and the temperature and time period shall be determined using equation (3).

(3) When the percent solids of the sewage sludge is less than 7.0% and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using equation (3).

(4) When the percent solids of the sewage sludge is less than 7.0%; the temperature of the sewage sludge is 50°C or higher; and the time period is 30 minutes or longer, the temperature and time period shall be determined using equation (4).

$$D = \frac{50{,}070{,}000}{10^{0.1400t}} \qquad (4)$$

Where,
D = time in days.
t = temperature in degrees Celsius.

4. Class A—Alternative 2.

a. Either the density of fecal coliform in the sewage sludge shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed; at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in 9 VAC 25-31-510 B, C, E, or F.

b. (1) The pH of the sewage sludge that is used or disposed shall be raised to above 12 and shall remain above 12 for 72 hours.

(2) The temperature of the sewage sludge shall be above 52°C for 12 hours or longer during the period that the pH of the sewage sludge is above 12.

(3) At the end of the 72-hour period during which the pH of the sewage sludge is above 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50%.

5. Class A—Alternative 3.

a. Either the density of fecal coliform in the sewage sludge shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed; at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in 9 VAC 25-31-510 B, C, E, or F.

b. (1) The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses.

(2) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses until the next monitoring episode for the sewage sludge.

(3) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the enteric virus density requirement are documented.

(4) After the enteric virus reduction in subdivision 5 b (3) of this subsection is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in subdivision 5 b (3) of this subsection.

c. (1) The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains viable helminth ova.

(2) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(3) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less than one per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(4) After the viable helminth ova reduction in subdivision 5 c (3) of this subsection is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in subdivision 5 c (3) of this subsection.

6. Class A—Alternative 4.

a. Either the density of fecal coliform in the sewage sludge shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed; at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in 9 VAC 25-31-510 B, C, E, or F.

b. The density of enteric viruses in the sewage sludge shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed; at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in 9 VAC 25-31-510 B, C, E, or F, unless otherwise specified by the board.

c. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed; at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in 9 VAC 25-31-510 B, C, E, or F unless otherwise specified by the board.

7. Class A—Alternative 5.

a. Either the density of fecal coliform in the sewage sludge shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella, sp. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed; at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in 9 VAC 25-31-510 B, C, E, or F.

b. Sewage sludge that is used or disposed shall be treated in one of the processes to further reduce pathogens described in 9 VAC 25-31-710 E.

8. Class A—Alternative 6.

a. Either the density of fecal coliform in the sewage sludge shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella, sp. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed; at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in 9 VAC 25-31-510 B, C, E, or F.

b. Sewage sludge that is used or disposed shall be treated in a process that is equivalent to a process to further reduce pathogens, as determined by the board.

B. Sewage sludge—Class B.

1. a. The requirements in either 9 VAC 25-31-710 B 2, B 3, or B 4 shall be met for a sewage sludge to be classified Class B with respect to pathogens.

b. The site restrictions in 9 VAC 25-31-710 B 5 shall be met when sewage sludge that meets the Class B pathogen requirements in 9 VAC 25-31-710 B 2, B 3, or B 4 is applied to the land.

2. Class B—Alternative 1.

a. Seven representative samples of the sewage sludge that is used or disposed shall be collected.

b. The geometric mean of the density of fecal coliform in the samples collected in subdivision 2 a of this subsection shall be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

3. Class B—Alternative 2. Sewage sludge that is used or disposed shall be treated in one of the processes to significantly reduce pathogens described in 9 VAC 25-31-710 D.

4. Class B—Alternative 3. Sewage sludge that is used or disposed shall be treated in a process that is equivalent to a process to significantly reduce pathogens, as determined by the board.

5. Site restrictions.

a. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.

b. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for four months or longer prior to incorporation into the soil.

c. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than four months prior to incorporation into the soil.

d. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of sewage sludge.

e. Animals shall not be grazed on the land for 30 days after application of sewage sludge.

f. Turf grown on land where sewage sludge is applied shall not be harvested for one year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the board.

g. Public access to land with a high potential for public exposure shall be restricted for one year after application of sewage sludge.

h. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge.

C. Domestic septage.

1. The site restrictions in subdivision B 5 of this section shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site; or

2. The pH of domestic septage applied to agricultural land, forest, or a reclamation site shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for 30 minutes and the site restrictions in subdivisions B 5 a through B 5 d of this section shall be met.

D. Processes to significantly reduce pathogens (PSRP).

1. Aerobic digestion. Sewage sludge is agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 40 days at 20°C and 60 days at 15°C.

2. Air drying. Sewage sludge is dried on sand beds or on paved or unpaved basins. The sewage sludge dries for a minimum of three months. During two of the three months, the ambient average daily temperature is above 0°C.

3. Anaerobic digestion. Sewage sludge is treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 15 days at 35°C to 55°C and 60 days at 20°C.

4. Composting. Using either the within-vessel, static aerated pile, or windrow composting methods, the temperature of the sewage sludge is raised to 40°C or higher and remains at 40°C or higher for five days. For four hours during the five days, the temperature in the compost pile exceeds 55°C.

5. Lime stabilization. Sufficient lime is added to the sewage sludge to raise the pH of the sewage sludge to 12 after two hours of contact.

E. Processes to further reduce pathogens (PFRP).

1. Composting. Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the sewage sludge is maintained at 55°C or higher for three days. Using the windrow composting method, the

temperature of the sewage sludge is maintained at 55°C or higher for 15 days or longer. During the period when the compost is maintained at 55°C or higher, there shall be a minimum of five turnings of the windrow.

2. Heat drying. Sewage sludge is dried by direct or indirect contact with hot gases to reduce the moisture content of the sewage sludge to 10.0% or lower. Either the temperature of the sewage sludge particles exceeds 80°C or the wet bulb temperature of the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds 80°C.

3. Heat treatment. Liquid sewage sludge is heated to a temperature of 180°C or higher for 30 minutes.

4. Thermophilic aerobic digestion. Liquid sewage sludge is agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the sewage sludge is 10 days at 55°C to 60°C.

5. Beta ray irradiation. Sewage sludge is irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (ca. 20°C).

6. Gamma ray irradiation. Sewage sludge is irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at dosages of at least 1.0 megarad at room temperature (ca. 20°C).

7. Pasteurization. The temperature of the sewage sludge is maintained at 70°C or higher for 30 minutes or longer.

**9 VAC 25-31-720. Vector attraction reduction.**

A. 1. One of the vector attraction reduction requirements in subdivisions B 1 through B 10 of this section shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

2. One of the vector attraction reduction requirements in subdivisions B 1 through B 8 of this section shall be met when bulk sewage sludge is applied to a lawn or a home garden.

3. One of the vector attraction reduction requirements in subdivisions B 1 through B 8 of this section shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

4. One of the vector attraction reduction requirements in subdivisions B 1 through B 11 of this section shall be met when sewage sludge (other than domestic septage) is placed on an active sewage sludge unit.

5. One of the vector attraction reduction requirements in subdivision B 9, B 10, or B 12 of this section shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site and one of the vector attraction reduction requirements in subdivisions B 9 through B 12 of this section shall be met when domestic septage is placed on an active sewage sludge unit.

B. 1. The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38%, calculated according to the method in 9 VAC 25-31-490 B 8.

2. When the 38% volatile solids reduction requirement in subdivision 1 of this subsection cannot be met for an anaerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30°C and 37°C. When at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17%, vector attraction reduction is achieved.

3. When the 38% volatile solids reduction requirement in subdivision 1 of this section cannot be met for an aerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge that has a percent solids of 2.0% or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20°C. When at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15%, vector attraction reduction is achieved.

4. The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20°C.

5. Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40°C and the average temperature of the sewage sludge shall be higher than 45°C.

6. The pH of sewage sludge shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours.

7. The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials.

8. The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials.

9. a. Sewage sludge shall be injected below the surface of the land.

b. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.

c. When the sewage sludge that is injected below the surface of the land is Class A with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

10. a. Sewage sludge applied to the land surface or placed on an active sewage sludge unit shall be incorporated into the soil within six hours after application to or placement on the land, unless otherwise specified by the board.

b. When sewage sludge that is incorporated into the soil is Class A with respect to pathogens, the sewage sludge shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

11. Sewage sludge placed on an active sewage sludge unit shall be covered with soil or other material at the end of each operating day.

12. The pH of domestic septage shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for 30 minutes.

## PART VII
## GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

**9 VAC 25-31-730. Purpose and applicability.**

A. This part establishes the responsibilities of state and local government, industry and the public to implement the national pretreatment standards and requirements to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works (POTWs) or which may contaminate sewage sludge.

B. This part applies:

1. To pollutants from nondomestic sources covered by pretreatment standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs;

2. To POTWs which receive wastewater from sources subject to national pretreatment standards; and

3. To any new or existing source subject to pretreatment standards. National pretreatment standards do not apply to sources which discharge to a sewer which is not connected to a POTW treatment plant.

**9 VAC 25-31-740. Objectives of general pretreatment regulations.**

By establishing the responsibilities of government and industry to implement national pretreatment standards and requirements this part fulfills three objectives:

A. To prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge;

B. To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and

C. To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

**9 VAC 25-31-750. Incorporation of federal regulations.**

The following federal regulations are hereby incorporated into this chapter:

1. 40 CFR Part 403 (2000), Appendix B—E, and Appendix G

2. 40 CFR Part 136 (2000), Guidelines for Establishing Test Procedures for the Analysis of Pollutants.

**9 VAC 25-31-760. Local law.**

Nothing in this part is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as the local requirements are not less stringent than any set forth in national pretreatment standards, or any other requirements or prohibitions established under the Clean Water Act, the law, or this chapter.

**9 VAC 25-31-770. National pretreatment standards: prohibited discharges.**

A. 1. General prohibitions. A user may not introduce into any POTW any pollutant or pollutants which cause pass through, interference or violation of water quality standards. These general prohibitions and the specific prohibitions in subsection B of this section apply to each user introducing pollutants into a POTW whether or not the user is subject to other national pretreatment standards or any national, state, or local pretreatment requirements.

2. Affirmative defenses. A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in subdivision A 1 of this section and the specific prohibitions in subdivisions B 3, 4, 5, 6, and 7 of this section where the user can demonstrate that:

a. It did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and

b. (1) A local limit designed to prevent pass through or interference or both, as the case may be, was developed in accordance with subsection C of this section for each pollutant in the user's discharge that caused pass through or interference, and the user was in compliance with each such local limit directly prior to and during the pass through or interference; or

(2) If a local limit designed to prevent pass through or interference or both, as the case may be, has not been developed in accordance with subsection C of this section for the pollutant or pollutants that caused the pass through or interference, the user's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the POTW's VPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

B. Specific prohibitions. In addition, the following pollutants shall not be introduced into a POTW:

1. Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140°F or 60°C using the test methods specified in 40 CFR 261.21 (2005);

2. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges;

3. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference;

4. Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate or pollutant concentration which will cause interference with the POTW;

5. Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40°C (104°F) unless the director, upon request of the POTW, approves alternate temperature limits;

6. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

7. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; or

8. Any trucked or hauled pollutants, except at discharge points designated by the POTW.

C. When specific limits must be developed by POTW.

1. Each POTW developing a POTW pretreatment program pursuant to 9 VAC 25-31-800 shall develop and enforce specific limits to implement the prohibitions listed in subdivisions A 1 and subsection B of this section. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits.

2. All other POTW's shall, in cases where pollutants contributed by users result in interference, pass through or water quality standards violations and such violation is likely to recur, develop and enforce specific effluent limits for industrial users, and all other users, as appropriate, which, together with appropriate changes in the POTW treatment plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's VPDES permit or sludge use or disposal practices.

3. Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

4. All POTWs with approved pretreatment programs shall provide a written technical evaluation of the need to revise their local limits within one year of reissuance of VPDES permits for applicable treatment works, or within one year of VPDES permit modifications resulting in significant changes in VPDES permit limitations, POTW pretreatment operations, or POTW sludge disposal methods.

5. POTWs may develop Best Management Practices (BMPs) to implement subdivisions 1 and 2 of this subsection. Such BMPs shall be considered local limits and pretreatment standards for the purposes of this Part and §307(d) of the Act.

D. Local limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with subsection C of this section, such limits shall be deemed pretreatment standards for the purposes of §307(d) of the CWA.

E. EPA and state enforcement actions under the law and §309(f) of the CWA. If, within 30 days after notice of an interference or pass through violation has been sent by the director or EPA to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, the director or EPA may take appropriate enforcement action under the authority provided by the law and in §309(f) of the CWA.

**9 VAC 25-31-780. National pretreatment standards: categorical standards.**

National pretreatment standards included in the regulations incorporated by reference in 9 VAC 25-31-30, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this part.

A. Category determination request.

1. Application deadline within 60 days after the effective date of a pretreatment standard for a subcategory under which an industrial user may be included, the industrial user or POTW may request that the Water Management Division Director or director, as appropriate, provide written certification on whether the industrial user falls within that particular subcategory. If an existing industrial user adds or changes a process or operation which may be included in a subcategory, the existing industrial user must request this certification prior to commencing discharge from the added or changed processes or operation. A new source must request this certification prior to commencing discharge. Where a certification is submitted by a POTW, the POTW shall notify any affected industrial user of such submission. The industrial user may provide written comments on the POTW submission to the Water Management Division Director or director, as appropriate, within 30 days of notification.

2. Contents of application each request shall contain a statement:

a. Describing which subcategories might be applicable; and

b. Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Any person signing the application statement submitted pursuant to this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

3. Deficient requests. The Water Management Division Director or director will only act on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions will be notified by the Water Management Division Director or director that their requests are deficient and, unless the time period is extended, will be given 30 days to correct the deficiency. If the deficiency is not corrected within 30 days or within an extended period allowed by the Water Management Division Director or the director, the request for a determination shall be denied.

4. Final decision.

a. When the Water Management Division Director or director receives a submittal he will, after determining that it contains all of the information required by subdivision 2 of this subsection, consider the submission, any additional evidence that may have been requested, and any other available information relevant to the request. The Water Management Division Director or director will then make a written determination of the applicable subcategory and state the reasons for the determination.

b. Where the request is submitted to the director, the director shall forward the determination described in this subdivision to the Water Management Division Director who may make a final determination. If the Water Management Division Director does not modify the director's decision within 60 days after receipt thereof, or if the Water Management Division Director waives receipt of the determination, the director's decision is final.

c. Where the request is submitted by the industrial user or POTW to the Water Management Division Director or where the Water Management Division Director elects to modify the director's decision, the Water Management Division Director's decision will be final.

d. The director shall send a copy of the determination to the affected industrial user and the POTW.

5. Requests for public hearing or legal decision. Within 30 days following the date of receipt of notice of the final determination as provided for by subdivision A 4 d of this section, the requester may submit a petition to reconsider or contest the decision to the regional administrator who shall act on such petition expeditiously and state the reasons for his determination in writing.

B. Deadline for compliance with categorical standards. Compliance by existing sources with categorical pretreatment standards shall be within three years of the date the standard is effective unless a shorter compliance time is specified in the regulations incorporated by reference in 9 VAC 25-31-30. Direct dischargers with VPDES permits modified or reissued to provide a variance pursuant to §301(i)(2) of the CWA shall be required to meet compliance dates set in any applicable categorical

pretreatment standard. Existing sources which become industrial users subsequent to promulgation of an applicable categorical pretreatment standard shall be considered existing industrial users except where such sources meet the definition of a new source as defined in 9 VAC 25-31-10. New sources shall install and have in operating condition, and shall "start up" all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), new sources must meet all applicable pretreatment standards.

C. 1. Concentration and mass limits pollutant discharge limits in categorical pretreatment standards will be expressed either as concentration or mass limits. Wherever possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that local, state or federal authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical pretreatment standards shall apply to the effluent of the process regulated by the standard, or as otherwise specified by the standard.

2. When the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the control authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual industrial users.

3. A control authority calculating equivalent mass-per-day limitations under subdivision 2 of this subsection shall calculate such limitations by multiplying the limits in the standard by the industrial user's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the industrial user's actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.

4. A control authority calculating equivalent concentration limitations under subdivision 2 of this subsection shall calculate such limitations by dividing the mass limitations derived under subdivision 3 of this subsection by the average daily flow rate of the industrial user's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the industrial user's actual long-term average flow rate, such as the average daily flow rate during the representative year.

5. When the limits in a categorical pretreatment standard are expressed only in terms of pollutant concentrations, an industrial user may request that the control authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the control authority. The control authority may establish equivalent mass limits only if the industrial user meets all the following conditions in subdivisions 5 a (1) through (5) of this subsection as follows.

a. To be eligible for equivalent mass limits, the industrial user must:

(1) Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;

(2) Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical pretreatment standard, and not have used dilution as a substitute for treatment;

(3) Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;

(4) Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and

(5) Have consistently complied with all applicable categorical pretreatment standards during the period prior to the industrial user's request for equivalent mass limits.

b. An industrial user subject to equivalent mass limits must:

(1) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;

(2) Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;

(3) Continue to record the facility's production rates and notify the control authority whenever production rates are expected to vary by more than 20% from its baseline production rates determined in subdivision 5 a (3) of this subsection. Upon notification of a revised production rate, the Control Authority must reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and

(4) Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to subdivision 5 a (1) of this subsection so long as it discharges under an equivalent mass limit.

c. A control authority that chooses to establish equivalent mass limits:

(1) Must calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the industrial user by the concentration-based daily maximum and monthly average standard for the applicable categorical pretreatment standard and the appropriate unit conversion factor;

(2) Upon notification of a revised production rate, must reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and

(3) May retain the same equivalent mass limit in subsequent control mechanism terms if the industrial user's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to subdivision 5 d of this subsection. The industrial user must also be in compliance with 9 VAC 25-31-890 (regarding the prohibition of bypass).

d. The control authority may not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants which cannot appropriately be expressed as mass.

6. The control authority may convert the mass limits of the categorical pretreatment standards at 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual industrial users under the following conditions: when converting such limits to concentration limits, the control authority must use the concentrations listed in the applicable subparts of 40 CFR Parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by subsection D of this section.

7. Equivalent limitations calculated in accordance with subdivisions 3 4, 5 and 6 of this subsection are deemed pretreatment standards for the purposes of §307(d) of the CWA and this part. The control authority must document how the equivalent limits were derived and make this information publicly available. Once incorporated into its control mechanism, the individual user must comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

8. Many categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or four-day average, limitations. Where such standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

9. Any industrial user operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the control authority within two business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the control authority of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate.

D. Dilution prohibited as substitute for treatment. Except where expressly authorized to do so by an applicable pretreatment standard or requirement, no industrial user shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The control authority may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations is appropriate.

E. Combined wastestream formula. Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the control authority, or by the industrial user with the written concurrence of the control authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the control authority or industrial user shall calculate both an alternative daily maximum value using the daily maximum values specified in the appropriate categorical pretreatment standard or standards and an alternative consecutive sampling day average value using the monthly average values specified in the appropriate categorical pretreatment standards. The industrial user shall comply with the alternative daily maximum and monthly average limits fixed by the control authority until the control authority modifies the limits or approves an industrial user modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An industrial user must immediately report any such material or significant change to the control authority. Where appropriate new alternative categorical limits shall be calculated within 30 days.

1. Alternative limit calculation. For purposes of these formulas, the "average daily flow" means a reasonable measure of the average daily flow for a 30-day period. For new sources, flows shall be estimated using projected values. The alternative limit for a specified pollutant will be derived by the use of either of the following formulas:

a. Alternative concentration limit.

$$C_T = \left( \frac{\sum_{i=1}^{N} C_i F_i}{\sum_{i=1}^{N} F_i} \right) \left( \frac{F_T - F_D}{F_T} \right)$$

where:
$C_T$ = the alternative concentration limit for the combined wastestream.
$C_i$ = the categorical Pretreatment Standard concentration limit for a pollutant in the regulated stream i.
$F_i$ = the average daily flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.
$F_D$ = the average daily flow (at least a 30-day average) from: (i) Boiler blowdown streams, non-contact cooling streams, storm water streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination; or (ii) sanitary wastestreams where such streams are not regulated by a Categorical Pretreatment Standard; or (iii) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards for one or more of the following reasons (see Appendix D of 40 CFR Part 403 (2000):
(1) The pollutants of concern are not detectable in the effluent from the Industrial User;
(2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;
(3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator; or
(4) The wastestream contains only pollutants which are compatible with the POTW.
$F_T$ = The average daily flow (at least a 30-day average) through the combined treatment facility (includes $F_i$, $F_D$ and unregulated streams).
N = The total number of regulated streams.

b. Alternative mass limit.

$$M_T = \left(\sum_{i=1}^{N} M_i\right)\left(\frac{F_T - F_D}{\sum_{i=1}^{N} F_i}\right)$$

where:
$M_T$ = the alternative mass limit for a pollutant in the combined wastestream.
$M_i$ = the categorical Pretreatment Standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production).
$F_i$ = the average flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.
$F_D$ = the average daily flow (at least a 30-day average) from: (i) boiler blowdown streams, non-contact cooling streams, storm water streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination; or (ii) sanitary wastestreams where such streams are not regulated by a categorical Pretreatment Standard; or (iii) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards for one or more of the following reasons (see Appendix D of 40 CFR Part 403 (2000)):
(1) The pollutants of concern are not detectable in the effluent from the Industrial User;
(2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;
(3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator; or
(4) The wastestream contains only pollutants which are compatible with the POTW.
$F_T$ = The average flow (at least a 30-day average) through the combined treatment facility (includes $F_i$, $F_D$ and unregulated streams).
N = The total number of regulated streams.

2. An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.

3. Self-monitoring required to insure compliance with the alternative categorical limit shall be conducted in accordance with the requirements of 9 VAC 25-31-840 G.

4. Where a treated regulated process wastestream is combined prior to treatment with wastewaters other than those generated by the regulated process, the industrial user may monitor either the segregated process wastestream or the

combined wastestream for the purpose of determining compliance with applicable pretreatment standards. If the industrial user chooses to monitor the segregated process wastestream, it shall apply the applicable categorical pretreatment standard. If the user chooses to monitor the combined wastestream, it shall apply an alternative discharge limit calculated using the combined wastestream formula as provided in this section. The industrial user may change monitoring points only after receiving approval from the control authority. The control authority shall ensure that any change in an industrial user's monitoring point or points will not allow the user to substitute dilution for adequate treatment to achieve compliance with applicable standards.

**9 VAC 25-31-790. Removal credits.**

A. General.

1. Definitions for the purpose of this section:

"Removal" means a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal as used in this subpart shall not mean dilution of a pollutant in the POTW.

"Sludge requirements" means the following statutory provisions and regulations or permits issued thereunder (or more stringent Virginia or local regulations): §405 of the CWA; the Solid Waste Disposal Act (SWDA) (42 USC §6901 et seq.) (including Title II more commonly referred to as the Resource Conservation Recovery Act (RCRA) (42 USC §6901 et seq.) and Virginia regulations contained in any Virginia sludge management plan prepared pursuant to Subtitle D of SWDA); the Clean Air Act (42 USC §4701 et seq.); the Toxic Substances Control Act (15 USC §2601 et seq.); and the Marine Protection, Research and Sanctuaries Act (33 USC §1401 et seq.).

2. General. Any POTW receiving wastes from an industrial user to which a categorical pretreatment standards applies may, at its discretion and subject to the conditions of this section, grant removal credits to reflect removal by the POTW of pollutants specified in the categorical pretreatment standards. The POTW may grant a removal credit equal to or, at its discretion, less than its consistent removal rate. Upon being granted a removal credit, each affected industrial user shall calculate its revised discharge limits in accordance with subdivision 4 of this subsection. Removal credits may only be given for indicator or surrogate pollutants regulated in a categorical pretreatment standard if the categorical pretreatment statement so specifies.

3. Conditions for authorization to give removal credits. A POTW is authorized to give removal credits only if the following conditions are met;

a. Application. The POTW applies for, and receives, authorization from the director to give a removal credit in accordance with the requirements and procedures specified in subsection E of this section;

b. Consistent removal determination. The POTW demonstrates and continues to achieve consistent removal of the pollutant in accordance with subsection B of this section;

c. POTW local pretreatment program. The POTW has an approved pretreatment program in accordance with and to the extent required by this part; provided, however, a POTW which does not have an approved pretreatment program may, pending approval of such a program, conditionally give credits as provided in subsection D of this section;

d. Sludge requirements. The granting of removal credits will not cause the POTW to violate the local, state and federal sludge requirements which apply to the sludge management method chosen by the POTW. Alternatively, the POTW can demonstrate to the director that even though it is not presently in compliance with applicable sludge requirements, it will be in compliance when the industrial users to whom the removal credit would apply is required to meet its categorical pretreatment standards as modified by the removal credit. If granting removal credits forces a POTW to incur greater sludge management costs than would be incurred in the absence of granting removal costs, the additional sludge management costs will not be eligible for EPA grant assistance. Removal credits may be made available for the following pollutants:

(1) For any pollutant listed in Appendix G-I of the regulation incorporated by reference in 9 VAC 25-31-750 for the use or disposal practice employed by the POTW, when the requirements of Part VI of this chapter for that practice are met;

(2) For any pollutant listed in Appendix G-II of the regulation incorporated by reference in 9 VAC 25-31-750 for the use or disposal practice employed by the POTW when the concentration for a pollutant listed in Appendix G-II of the regulation incorporated by reference in 9 VAC 25-31-750 in the sewage sludge that is used or disposed does not exceed the concentration for the pollutant in Appendix G-II of the regulation incorporated by reference in 9 VAC 25-31-750; and

(3) For any pollutant in sewage sludge when the POTW disposes all of its sewage sludge in a municipal solid waste landfill that meets the criteria in the Code of Virginia and the Solid Waste Management Regulation, 9 VAC 20-80;

e. VPDES permit limitations. The granting of removal credits will not cause a violation of the POTW's permit limitations or conditions. Alternatively, the POTW can demonstrate to the director that even though it is not presently in compliance with

applicable limitations and conditions in its VPDES permit, it will be in compliance when the industrial user or users to whom the removal credit would apply is required to meet its categorical pretreatment standard or standards, as modified by the removal credit provision.

4. Calculation of revised discharge limits. Revised discharge limits for a specific pollutant shall be derived by use of the following formula:

$$y = \frac{x}{1 - r}$$

where:
x = pollutant discharge limit specified in the applicable categorical Pretreatment Standard
r = removal credit for that pollutant as established under subsection B of this section (percentage removal expressed as a proportion, i.e., a number between 0 and 1)
y = revised discharge limit for the specified pollutant (expressed in same units as x)

B. Establishment of removal credits; demonstration of consistent removal.

1. Definition of "consistent removal." "Consistent removal" means the average of the lowest 50% of the removal measured according to subdivision 2 of this subsection. All sample data obtained for the measured pollutant during the time period prescribed in subdivision 2 of this subsection must be reported and used in computing consistent removal. If a substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the POTW at its discretion and subject to approval by the director. If the substance is not measurable in the influent, the data may not be used. Where the number of samples with concentrations equal to or above the limit of measurement is between eight and 12, the average of the lowest six removals shall be used. If there are less than eight samples with concentrations equal to or above the limit of measurement, the director may approve alternate means for demonstrating consistent removal. The term "measurement" refers to the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

2. Consistent removal data. Influent and effluent operational data demonstrating consistent removal or other information, as provided for in subdivision 1 of this subsection, which demonstrates consistent removal of the pollutants for which discharge limit revisions are proposed. This data shall meet the following requirements:

a. Representative data; seasonal. The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed;

b. Representative data; quality and quantity. The data shall be representative of the quality and quantity of normal effluent and influent flow if such data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate consistent removal as provided for in subdivision 1 of this subsection;

c. Sampling procedures: composite.

(1) The influent and effluent operational data shall be obtained through 24-hour flow-proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least 12 aliquots shall be composited. Discrete sampling may be flow-proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow proportional to each stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

(2)(a) Twelve samples shall be taken at approximately equal intervals throughout one full year. Sampling must be evenly distributed over the days of the week so as to include no-workdays as well as workdays. If the director determines that this schedule will not be most representative of the actual operation of the POTW treatment plant, an alternative sampling schedule will be approved.

(b) In addition, upon the director's concurrence, a POTW may utilize an historical data base amassed prior to July 24, 1996, provide that such data otherwise meet the requirements of this paragraph. In order for the historical data base to be approved it must present a statistically valid description of daily, weekly and seasonal sewage treatment plant loadings and performance for at least one year.

(3) Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the director requires detention time compensation. The director may require that each effluent sample be taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year.

d. Sampling procedures: Grab. Where composite sampling is not an appropriate sampling technique, a grab sample or samples shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should precede

collection of effluent samples by approximately one detention period. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, where the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period because of biological, chemical or physical interactions which take place after sample collection and affect the results. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes;

e. Analytical methods. The sampling referred to in subdivisions 2 a through d of this subsection and an analysis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 (2005) and amendments thereto. Where 40 CFR Part 136 (2005) does not contain sampling or analytical techniques for the pollutant in question, or where the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator; and

f. Calculation of removal. All data acquired under the provisions of this section must be submitted to the department. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percentage of the influent concentration, or, where such data cannot be obtained, removal may be demonstrated using other data or procedures subject to concurrence by the director as provided for in subdivision 1 of this subsection.

C. Provisional credits. For pollutants which are not being discharged currently (i.e., new or modified facilities, or production changes) the POTW may apply for authorization to give removal credits prior to the initial discharge of the pollutant. Consistent removal shall be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities where the quality and quantity of influent are similar. Within 18 months after the commencement of discharge of pollutants in question, consistent removal must be demonstrated pursuant to the requirements of subsection B of this section. If, within 18 months after the commencement of the discharge of the pollutant in question, the POTW cannot demonstrate consistent removal pursuant to the requirements of subsection B of this section, the authority to grant provisional removal credits shall be terminated by the director and all industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the director.

D. Exception to POTW pretreatment program requirement. A POTW required to develop a local pretreatment program by 9 VAC 25-31-800 may conditionally give removal credits pending approval of such a program in accordance with the following terms and conditions:

1. All industrial users who are currently subject to a categorical pretreatment standard and who wish conditionally to receive a removal credit must submit to the POTW the information required in 9 VAC 25-31-840 B 1 through 7 (except new or modified industrial users must only submit the information required by 9 VAC 25-31-840 B 1 through 6), pertaining to the categorical pretreatment standard as modified by the removal credit. The industrial users shall indicate what additional technology, if any, will be needed to comply with the categorical pretreatment standard or standards as modified by the removal credit;

2. The POTW must have submitted to the department an application for pretreatment program approval meeting the requirements of 9 VAC 25-31-800 and 9 VAC 25-31-810 in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's VPDES permit, but in no case later than July 1, 1983, where no permit deadline exists;

3. The POTW must:

a. Compile and submit data demonstrating its consistent removal in accordance with subsection B of this section;

b. Comply with the conditions specified in subdivision A 3 of this section; and

c. Submit a complete application for removal credit authority in accordance with subsection E of this section;

4. If a POTW receives authority to grant conditional removal credits and the director subsequently makes a final determination, after appropriate notice, that the POTW failed to comply with the conditions in subdivisions 2 and 3 of this subsection, the authority to grant conditional removal credits shall be terminated by the director and all industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the director;

5. If a POTW grants conditional removal credits and the POTW or the director subsequently makes a final determination, after appropriate notice, that the industrial user or users failed to comply with the conditions in subdivision 1 of this subsection, the conditional credit shall be terminated by the POTW or the director for the noncomplying industrial user or users and the industrial user or users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the director. The conditional credit shall not be terminated where

a violation of the provisions of this paragraph results from causes entirely outside of the control of the industrial user or users or the industrial user or users had demonstrated subsequential compliance; and

6. The director may elect not to review an application for conditional removal credit authority upon receipt of such application, in which case the conditionally revised discharge limits will remain in effect until reviewed by the director. This review may occur at any time in accordance with the procedures of 9 VAC 25-31-830, but in no event later than the time of any pretreatment program approval or any VPDES permit reissuance thereunder.

E. POTW application for authorization to give removal credits and director review.

1. Who must apply. Any POTW that wants to give a removal credit must apply for authorization from the director.

2. To whom application is made. An application for authorization to give removal credits (or modify existing ones) shall be submitted by the POTW to the department.

3. When to apply. A POTW may apply for authorization to give or modify removal credits at any time.

4. Contents of the application. An application for authorization to give removal credits must be supported by the following information:

a. List of pollutants. A list of pollutants for which removal credits are proposed;

b. Consistent removal data. The data required pursuant to subsection B of this section;

c. Calculation of revised discharge limits. Proposed revised discharge limits for each affected subcategory of industrial users calculated in accordance with subdivision A 4 of this section;

d. Local pretreatment program certification. A certification that the POTW has an approved local pretreatment program or qualifies for the exception to this requirement found at subsection D of this section;

e. Sludge management certification. A specific description of the POTW's current methods of using or disposing of its sludge and a certification that the granting of removal credits will not cause a violation of the sludge requirements identified in subdivision A 3 d of this section; and

f. VPDES permit limit certification. A certification that the granting of removal credits will not cause a violation of the POTW's VPDES permit limits and conditions as required in subdivision A 3 e of this section.

5. Director review. The director shall review the POTW's application for authorization to give or modify removal credits in accordance with the procedures of 9 VAC 25-31-830 and shall, in no event, have more than 180 days from public notice of an application to complete review.

6. Nothing in this part precludes an industrial user or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization.

F. Continuation and withdrawal of authorization.

1. Effect of authorization. Once a POTW has received authorization to grant removal credits for a particular pollutant regulated in a categorical pretreatment standard it may automatically extend that removal credit to the same pollutant when it is regulated in other categorical standards, unless granting the removal credit will cause the POTW to violate the sludge requirements identified in subdivision A 3 d of this section or its VPDES permit limits and conditions as required by subdivision A 3 e of this section. If a POTW elects at a later time to extend removal credits to a certain categorical pretreatment standard, industrial subcategory or one or more industrial users that initially were not granted removal credits, it must notify the department.

2. Inclusion in POTW permit. Once authority is granted, the removal credits shall be included in the POTW's VPDES permit as soon as possible and shall become an enforceable requirement of the POTW's VPDES permit. The removal credits will remain in effect for the term of the POTW's VPDES permit, provided the POTW maintains compliance with the conditions specified in subdivision 4 of this subsection.

3. Compliance monitoring. Following authorization to give removal credits, a POTW shall continue to monitor and report on (at such intervals as may be specified by the director, but in no case less than once per year) the POTW's removal capabilities. A minimum of one representative sample per month during the reporting period is required, and all sampling data must be included in the POTW's compliance report.

4. Modification or withdrawal of removal credits.

a. Notice of POTW. The director shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to subdivision 3 of this subsection or other relevant information available to it, the director determines:

(1) That one or more of the discharge limit revisions made by the POTW, of the POTW itself, no longer meets the requirements of this section, or

(2) That such discharge limit revisions are causing a violation of any conditions or limits contained in the POTW's VPDES Permit.

b. Corrective action. If appropriate corrective action is not taken within a reasonable time, not to exceed 60 days unless the POTW or the affected industrial users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the director shall either withdraw such discharge limits or require modifications in the revised discharge limits.

c. Public notice of withdrawal or modification. The director shall not withdraw or modify revised discharge limits unless it shall first have notified the POTW and all industrial users to whom revised discharge limits have been applied, and made public, in writing, the reasons for such withdrawal or modification, and an opportunity is provided for a public hearing. Following such notice and withdrawal or modification, all industrial users to whom revised discharge limits had been applied, shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical pretreatment standards, as appropriate, and shall achieve compliance with such limits within a reasonable time (not to exceed the period of time prescribed in the applicable categorical pretreatment standards) as may be specified by the director.

G. Removal credits in state-run pretreatment programs. Where the director elects to implement a local pretreatment program in lieu of requiring the POTW to develop such a program the POTW will not be required to develop a pretreatment program as a precondition to obtaining authorization to give removal credits. The POTW will, however, be required to comply with the other conditions of subdivision A 3 of this section.

H. Compensation for overflow. For the purpose of this section, "overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant. POTWs which at least once annually overflow untreated wastewater to receiving waters may claim consistent removal of a pollutant only by complying with either subdivision 1 or 2 of this subsection. However, this subsection shall not apply where industrial users can demonstrate that overflow does not occur between the industrial users and the POTW treatment plant:

1. The industrial user provides containment or otherwise ceases or reduces discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an overflow event can reasonably be expected to occur at the POTW or at a sewer to which the industrial user is connected. Discharges must cease or be reduced, or pretreatment must be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted where the POTW submits to the department evidence that:

a. All industrial users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an overflow event can reasonably be expected to occur, discharges from the regulated processes which contain pollutants for which an allowance is requested;

b. The POTW has identified circumstances in which an overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that industrial users will learn of an impending overflow in sufficient time to contain, cease or reduce discharging to prevent untreated overflows from occurring. The POTW must also demonstrate that it will monitor and verify the data required in subdivision 1 c of this subsection, to insure that industrial users are containing, ceasing or reducing operations during POTW system overflow; and

c. All industrial users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available, upon request by the POTW, the director or EPA Regional Administrator, daily flow reports or other data sufficient to demonstrate that all discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an overflow event was reasonably expected to occur; or

2. a. The consistent removal claimed is reduced pursuant to the following equation:

$$r_c = r_m \frac{8760 - Z}{8760}$$

where:
$r_m$ = POTW's Consistent Removal rate for that pollutant as established under subdivisions A 1 and B 2 of this section
$r_c$ = removal corrected by the Overflow factor
Z = hours per year that Overflow occurred between the Industrial User(s) and the POTW Treatment Plant, the hours either to be shown in the POTW's current VPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular Industrial User's Discharge Overflows between the Industrial User and the POTW Treatment Plant; and

b. The POTW is complying with all VPDES permit requirements and any additional requirements in any order or decree, issued pursuant to the Clean Water Act affecting combined sewer outflows. These requirements include, but are not limited to, any combined sewer overflow requirements that conform to the Combined Sewer Overflow Control Policy.

**9 VAC 25-31-800. Pretreatment program requirements: development and implementation by POTW.**

A. POTWs required to develop a pretreatment program. Any POTW (or combination of POTWs operated by the same authority) with a total design flow greater than five million gallons per day (mgd) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards will be required to establish a POTW pretreatment program unless the director exercises his or her option to assume local responsibilities. The regional administrator or director may require that a POTW with a design flow of five mgd or less develop a POTW pretreatment program if he finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, violations of water quality standards, or other circumstances warrant in order to prevent interference with the POTW or pass through.

B. Deadline for program approval. POTWs identified as being required to develop a POTW pretreatment program under subsection A of this section shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the director of such identification. The approved program shall be in operation within two years of the effective date of the permit. The POTW pretreatment program shall meet the criteria set forth in subsection F of this section and shall be administered by the POTW to ensure compliance by industrial users with applicable pretreatment standards and requirements.

C. Incorporation of approved programs in permits. A POTW may develop an appropriate POTW pretreatment program any time before the time limit set forth in subsection B of this section. The POTW's VPDES permit will be reissued or modified to incorporate the approved program as enforceable conditions of the permit. The modification of a POTW's VPDES permit for the purposes of incorporating a POTW pretreatment program approved in accordance with the procedures in 9 VAC 25-31-830 shall be deemed a minor permit modification subject to the procedures in 9 VAC 25-31-400.

D. Incorporation of compliance schedules in permits. (Reserved.)

E. Cause for revocation and reissuance or modification of permits. Under the authority of the law and §402 (b)(1)(C) of the CWA, the director may modify, or alternatively, revoke and reissue a POTW's permit in order to:

1. Put the POTW on a compliance schedule for the development of a POTW pretreatment program where the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

2. Coordinate the issuance of §201 construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program;

3. Incorporate a modification of the permit approved under §301(h) or §301(i) of the CWA;

4. Incorporate an approved POTW pretreatment program in the POTW permit;

5. Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit; or

6. Incorporate the removal credits (established under 9 VAC 25-31-790) in the POTW permit.

F. POTW pretreatment requirements. A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

1. Legal authority. The POTW shall operate pursuant to legal authority enforceable in federal, state or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of §§307(b), (c) and (d), and 402(b)(8) of the CWA and any regulations implementing those sections. Such authority may be contained in a statute or ordinances which the POTW is authorized to enact, enter into or implement, and which are authorized by state law. At a minimum, this legal authority shall enable the POTW to:

a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its VPDES permit.

b. Require compliance with applicable pretreatment standards and requirements by industrial users.

c. Control through permit, or order the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. In the case of industrial users identified as significant under 9 VAC 25-31-10, this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such user except as follows:

(1)(a) At the discretion of the POTW, this control may include use of general control mechanisms if the following conditions are met. All of the facilities to be covered must:

(i) Involve the same or substantially similar types of operations;

(ii) Discharge the same types of wastes;

(iii) Require the same effluent limitations;

(iv) Require the same or similar monitoring; and

(v) In the opinion of the POTW, be more appropriately controlled under a general control mechanism than under individual control mechanisms.

(b) To be covered by the general control mechanism, the significant industrial user must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests in accordance with 9 VAC 25-31-840 E 2 for a monitoring waiver for a pollutant neither present nor expected to be present in the discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general control mechanism until after the POTW has provided written notice to the significant industrial user that such a waiver request has been granted in accordance with 9 VAC 25-31-840 E 2. The POTW must retain a copy of the general control mechanism, documentation to support the POTW's determination that a specific significant industrial user meets the criteria in subdivisions 1 c (1) (a) (i) through (v) of this subsection, and a copy of the user's written request for coverage for three years after the expiration of the general control mechanism. A POTW may not control a significant industrial user through a general control mechanism where the facility is subject to production-based categorical pretreatment standards or categorical pretreatment standards expressed as mass of pollutant discharged per day or for industrial users whose limits are based on the Combined Wastestream Formula or Net/Gross calculations (9 VAC 25-31-780 E and 9 VAC 25-31-870).

(2) Both individual and general control mechanisms must be enforceable and contain, at a minimum, the following conditions:

(a) Statement of duration (in no case more than five years);

(b) Statement of nontransferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

(c) Effluent limits, including Best Management Practices, based on applicable general pretreatment standards in this part, categorical pretreatment standards, local limits, and the law;

(d) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the discharge in accordance with 9 VAC 25-31-840 E 2, or a specific waiver pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in this part, categorical pretreatment standards, local limits, and the law;

(e) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements; and any applicable compliance schedules, which may not extend beyond applicable federal deadlines.

(f) Requirements to control slug discharges, if determined by the POTW to be necessary.

d. Require:

(1) The development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; and

(2) The submission of all notices and self-monitoring reports from industrial users as are necessary to assess and ensure compliance by industrial users with pretreatment standards and requirements, including but not limited to the reports required in 9 VAC 25-31-840.

e. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under 9 VAC 25-31-840 O to ensure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under §308 of the CWA.

f. Obtain remedies for noncompliance by any industrial user with any pretreatment standard and requirement. All POTWs shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of $1,000 a day for each violation by industrial users of pretreatment standards and requirements.

Pretreatment requirements which will be enforced through the remedies set forth in this subdivision, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or this part. The POTW shall have authority and procedures (after informal notice to the discharger) to immediately and effectively halt or prevent any discharge of pollutants to the POTW which reasonably

appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The director shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the director believes to be insufficient.

g. Comply with the confidentiality requirements set forth in 9 VAC 25-31-860.

2. Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

a. Identify and locate all possible industrial users which might be subject to the POTW pretreatment program. Any compilation, index or inventory of industrial users made under this subdivision shall be made available to the regional administrator or department upon request.

b. Identify the character and volume of pollutants contributed to the POTW by the industrial users identified under subdivision 2 a of this subsection. This information shall be made available to the regional administrator or department upon request.

c. Notify industrial users identified under subdivision 2 a of this subsection, of applicable pretreatment standards and any applicable requirements under §§204(b) and 405 of the CWA and subtitles C and D of the Resource Conservation and Recovery Act (42 USC §6901 et seq.). Within 30 days of approval pursuant to 9 VAC 25-31-800 F 6, of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.

d. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements in 9 VAC 25-31-840.

e. Randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year except as otherwise specified below.

(1) Where the POTW has authorized the industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard in accordance with 9 VAC 25-31-840 E the POTW must sample for the waived pollutant(s) at least once during the term of the categorical industrial user's control mechanism. In the event that the POTW subsequently determines that a waived pollutant is present or is expected to be present in the industrial user's wastewater based on changes that occur in the user's operations, the POTW must immediately begin at least annual effluent monitoring of the user's discharge and inspection.

(2) Where the POTW has determined that an industrial user meets the criteria for classification as a nonsignificant categorical industrial user, the POTW must evaluate, at least once per year, whether an industrial user continues to meet the criteria in 9 VAC 25-31-10.

(3) In the case of industrial users subject to reduced reporting requirements under 9 VAC 25-31-840 E, the POTW must randomly sample and analyze the effluent from industrial users and conduct inspections at least once every two years. If the industrial user no longer meets the conditions for reduced reporting in 9 VAC 25-31-840 E, the POTW must immediately begin sampling and inspecting the industrial user at least once a year.

f. Evaluate whether each such significant industrial user needs a plan or other action to control slug discharges. For industrial users identified as significant prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2005; additional significant industrial users must be evaluated within one year of being designated a significant industrial user. For purposes of this subsection, a slug discharge is any discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or noncustomary batch discharge that has a reasonable potential to cause interference or pass through, or in any other way violate the POTWs regulating local limits or permit conditions. The results of such activities shall be available to the department upon request. Significant industrial users are required to notify the POTW immediately of any changes at its facility affecting potential for a slug discharge. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

(1) Description of discharge practices, including nonroutine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under 9 VAC 25-31-770 B, with procedures for follow-up written notification within five days; and

(4) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker

training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and measures and equipment necessary for emergency response.

g. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required under 9 VAC 25-31-840, or indicated by analysis, inspection, and surveillance activities described in subdivision 2 e of this subsection. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions.

h. Comply with the public participation requirements of the Code of Virginia and 40 CFR Part 25 (2005) in the enforcement of national pretreatment standards. These procedures shall include provisions for at least annual public notification, in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW of industrial users which, at any time during the previous 12 months were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, a significant industrial user (or any industrial user that violates subdivision 2 h (3), (4) or (8) of this subsection is in significant noncompliance if its violation meets one or more of the following criteria:

(1) Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of all of the measurements taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 9 VAC 25-31-10;

(2) Technical Review Criteria (TRC) violations, defined here as those in which 33% or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement, including instantaneous limits, as defined by 9 VAC 25-31-10; multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(3) Any other violation of a pretreatment standard or requirement as defined by 9 VAC 25-31-10 (daily maximum, long-term average, instantaneous limit, or narrative standard) that the control authority POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

(4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under subdivision 1 f of this subsection to halt or prevent such a discharge;

(5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(6) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance; or

(8) Any other violation or group of violations that may include a violation of Best Management Practices which the POTW determines will adversely affect the operation or implementation of the local pretreatment program.

3. Funding. The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in subdivisions 1 and 2 of this subsection. In some limited circumstances, funding and personnel may be delayed where (i) the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements described in this section, and (ii) a limited aspect of the program does not need to be implemented immediately (see 9 VAC 25-31-810 B).

4. Local limits. The POTW shall develop local limits as required in 9 VAC 25-31-770 C 1, using current influent, effluent and sludge data, or demonstrate that they are not necessary.

5. The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

a. Describe how the POTW will investigate instances of noncompliance;

b. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

c. Identify (by title) the official or officials responsible for each type of response; and

d. Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in subdivisions 1 and 2 of this subsection.

6. The POTW shall prepare and maintain a list of its significant industrial users. The list shall identify the criteria in the definition of significant industrial user in Part I (9 VAC 25-31-10 et seq.) of this chapter which are applicable to each industrial user and, where applicable, shall also indicate whether the POTW has made a determination pursuant to subdivision 3 of that

definition that such industrial user should not be considered a significant industrial user. This list shall be submitted to the department pursuant to 9 VAC 25-31-810 as a nonsubstantial program modification pursuant to 9 VAC 25-31-900 D. Modifications to the list shall be submitted to the department pursuant to 9 VAC 25-31-840 I 1.

G. A POTW that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 (electronic reporting).

**9 VAC 25-31-810. POTW pretreatment programs and/or authorization to revise pretreatment standards: submission for approval.**

A. A POTW requesting approval of a POTW pretreatment program shall develop a program description which includes the information set forth in subdivisions B 1 through B 4 of this section. This description shall be submitted to the department which will make a determination on the request for program approval in accordance with the procedures described in 9 VAC 25-31-830.

B. The program description must contain the following information:

1. A statement from the city solicitor or a city official acting in a comparable capacity (or the attorney for those POTWs which have independent legal counsel) that the POTW has authority adequate to carry out the programs described in 9 VAC 25-31-800. This statement shall:

a. Identify the provision of the legal authority under 9 VAC 25-31-800 F 1 which provides the basis for each procedure under 9 VAC 25-31-800 F 2;

b. Identify the manner in which the POTW will implement the program requirements set forth in 9 VAC 25-31-800, including the means by which pretreatment standards will be applied to individual industrial users (e.g., by order, permit, ordinance, etc.); and

c. Identify how the POTW intends to ensure compliance with pretreatment standards and requirements, and to enforce them in the event of noncompliance by industrial users;

2. A copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the program which meet the requirements of 9 VAC 25-31-800 F 1. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising or funding the POTW pretreatment program if approved;

3. A brief description (including organization charts) of the POTW organization which will administer the pretreatment program. If more than one agency is responsible for administration of the program the responsible agencies shall be identified, their respective responsibilities delineated, and their procedures for coordination set forth in an inter-jurisdictional agreement; and

4. A description of the funding levels and full and part-time manpower available to implement the program.

C. The POTW may request conditional approval of the pretreatment program pending the acquisition of funding and personnel from certain elements of the program. The request for conditional approval must meet the requirements set forth in subsection B of this section except that the requirements of subsection B of this section may be relaxed if the submission demonstrates that:

1. A limited aspect of the program does not need to be implemented immediately;

2. The POTW had adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and

3. Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW will describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the director will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the POTW pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.

D. The request for authority to revise categorical pretreatment standards must contain the information required in 9 VAC 25-31-790 D.

E. Any POTW requesting POTW pretreatment program approval shall submit to the department three copies of the submission described in subsection B, and if appropriate, subsection D of this section. Within 60 days after receiving the submission, the director shall make a preliminary determination of whether the submission meets the requirements of subsection B and, if appropriate, subsection D of this section. If the director makes the preliminary determination that the submission meets these requirements, the director shall:

1. Notify the POTW that the submission has been received and is under review; and

2. Commence the public notice and evaluation activities set forth in 9 VAC 25-31-830.

F. If, after review of the submission as provided for in subsection E of this section, the director determines that the submission does not comply with the requirements of subsections B or C of this section, and, if appropriate, subsection D, of this section, the director shall provide notice in writing to the applying POTW and each person who has requested individual notice. This notification shall identify any defects in the submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of subsections B, C of this section, and, if appropriate, subsection D of this section.

G. Consistency with water quality management plans.

1. In order to be approved the POTW pretreatment program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR Parts 130, 131 (2000), as revised, where such 208 plan includes management agency designations and addresses pretreatment in a manner consistent with this part. In order to assure such consistency the director shall solicit the review and comment of the appropriate 208 planning agency during the public comment period provided for in 9 VAC 25-31-830 B 1 b prior to approval or disapproval of the program.

2. Where no 208 plan has been approved or where a plan has been approved but lacks management agency designations or does not address pretreatment in a manner consistent with this part, the director shall nevertheless solicit the review and comment of the appropriate 208 planning agency.

**9 VAC 25-31-820. [Reserved]**

**9 VAC 25-31-830. Approval procedures for POTW pretreatment programs and POTW granting of removal credits.**

The following procedures shall be adopted in approving or denying requests for approval of POTW pretreatment programs and applications for removal credit authorization:

A. The director shall have 90 days from the date of public notice of any submission complying with the requirements of 9 VAC 25-31-810 B and, where removal credit authorization is sought with 9 VAC 25-31-790 E and 9 VAC 25-31-810 D, to review the submission. The director shall review the submission to determine compliance with the requirements of 9 VAC 25-31-800 B and F, and, where removal credit authorization is sought, with 9 VAC 25-31-790. The director may have up to an additional 90 days to complete the evaluation of the submission if the public comment period provided for in subdivision B 1 b of this section is extended beyond 30 days or if a public hearing is held as provided for in subdivision B 2 of this section. In no event, however, shall the time for evaluation of the submission exceed a total of 180 days from the date of public notice of a submission meeting the requirements of 9 VAC 25-31-810 B and, in the case of a removal credit application, 9 VAC 25-31-790 E and 9 VAC 25-31-810 B.

B. Upon receipt of a submission, the director shall commence its review. Within 20 work days after making a determination that a submission meets the requirements of 9 VAC 25-31-810 B and, where removal allowance approval is sought, 9 VAC 25-31-790 D and 9 VAC 25-31-810 D, the director shall:

1. Issue a public notice of request for approval of the submission.

a. This public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice shall include:

(1) Mailing notices of the request for approval of the submission to designated CWA §208 planning agencies, federal and state fish, shellfish, and wildlife resource agencies (unless such agencies have asked not to be sent the notices); and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and

(2) Publication of a notice of request for approval of the submission in a newspaper(s) of general circulation within the jurisdiction(s) served by the POTW that provides meaningful public notice.

b. The public notice shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the submission.

c. All written comments submitted during the 30-day comment period shall be retained by the director and considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the director.

2. Provide an opportunity for the applicant, any affected state, any interested state or federal agency, person or group of persons to request a public hearing with respect to the submission.

a. This request for public hearing shall be filed within the 30-day (or extended) comment period described in subdivision 1 b of this subsection and shall indicate the interest of the person filing such request and the reasons why a public hearing is warranted.

b. The director shall hold a public hearing if the POTW so requests. In addition, a public hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved. Instances of doubt should be resolved in favor of holding the public hearing.

c. Public notice of a public hearing to consider a submission and sufficient to inform interested parties of the nature of the public hearing and the right to participate shall be published in the same newspaper(s) as the notice of the original request for approval of the submission under subdivision 1 a (2) of this subsection. In addition, notice of the public hearing shall be sent to those persons requesting individual notice.

C. At the end of the 30-day (or extended) comment period and within the 90-day (or extended) period provided for in subsection A of this section, the director shall approve or deny the submission based upon the evaluation in subsection A of this section and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. Where the director makes a determination to deny the request, the director shall so notify the POTW and each person who has requested individual notice. This notification shall include suggested modifications and the director may allow the requestor additional time to bring the submission into compliance with applicable requirements.

D. No POTW pretreatment program or authorization to grant removal allowances shall be approved by the director if following the 30-day (or extended) evaluation period provided for in subdivision B 1 b of this section and any public hearing held pursuant to subdivision B 2 of this section, the regional administrator sets forth in writing objections to the approval of such submission and the reasons for such objections. A copy of the regional administrator's objections shall be provided to the applicant and each person who has requested individual notice. The regional administrator shall provide an opportunity for written comments and may convene a public hearing on his objections. Unless retracted, the regional administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.

E. The director shall notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the director shall cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request for approval of the submission was published. The director shall identify in any notice of POTW pretreatment program approval any authorization to modify categorical pretreatment standards which the POTW may make, in accordance with 9 VAC 25-31-790, for removal of pollutants subject to pretreatment standards.

F. The director shall ensure that the submission and any comments upon such submission are available to the public for inspection and copying.

**9 VAC 25-31-840. Reporting requirements for POTWs and industrial users.**

A. (Reserved.)

B. Reporting requirements for industrial users upon effective date of categorical pretreatment standard baseline report. Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under 9 VAC 25-31-780 A 4, whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the control authority a report which contains the information listed in subdivisions 1 through 7 of this subsection. At least 90 days prior to commencement of discharge, new sources and sources that become industrial users subsequent to the promulgation of an applicable categorical standard shall be required to submit to the control authority a report which contains the information listed in subdivisions 1 through 5 of this subsection. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources shall give estimates of the information requested in subdivisions 4 and 5 of this subsection.

1. Identifying information. The user shall submit the name and address of the facility including the name of the operator and owners.

2. Permits. The user shall submit a list of any environmental control permits held by or for the facility.

3. Description of operations. The user shall submit a brief description of the nature, average rate of production, and standard industrial classification of the operation or operations carried out by such industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

4. Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

a. Regulated process streams; and

b. Other streams as necessary to allow use of the combined wastestream formula of 9 VAC 25-31-780 E. (See subdivision 5 d of this subsection.)

The control authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

5. Measurement of pollutants.

a. The user shall identify the pretreatment standards applicable to each regulated process;

b. In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the standard or control authority) of regulated pollutants in the discharge from each regulated process.

Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the standard requires compliance with a Best Management Practice or pollution prevention alternative, the user shall submit documentation as required by the control authority or the applicable standards to determine compliance with the standard;

c. The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this subsection;

d. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user shall measure the flows and concentrations necessary to allow use of the combined wastestream formula of 9 VAC 25-31-780 E in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 9 VAC 25-31-780 E, this adjusted limit along with supporting data shall be submitted to the control authority;

e. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 (2005) and amendments thereto. Where 40 CFR Part 136 (2005) does not contain sampling or analytical techniques for the pollutant in question, or where the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator;

f. The control authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures; and

g. The baseline report shall indicate the time, date and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW

6. Certification. A statement, reviewed by an authorized representative of the industrial user (as defined in subsection M of this section) and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) or additional pretreatment, or both, are required for the industrial user to meet the pretreatment standards and requirements.

7. Compliance schedule. If additional pretreatment or O and M, or both, will be required to meet the pretreatment standards, the shortest schedule by which the industrial user will provide such additional pretreatment or O and M, or both. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

a. Where the industrial user's categorical pretreatment standard has been modified by a removal allowance (9 VAC 25-31-790), the combined wastestream formula (9 VAC 25-31-780 E), or a fundamentally different factors variance (9 VAC 25-31-850), or any combination of them, at the time the user submits the report required by this subsection, the information required by subdivisions 6 and 7 of this subsection shall pertain to the modified limits.

b. If the categorical pretreatment standard is modified by a removal allowance (9 VAC 25-31-790), the combined wastestream formula (9 VAC 25-31-780 E), or a fundamentally different factors variance (9 VAC 25-31-850), or any combination of them, after the user submits the report required by this subsection, any necessary amendments to the information requested by subdivisions 6 and 7 of this subsection shall be submitted by the user to the control authority within 60 days after the modified limit is approved.

C. Compliance schedule for meeting categorical pretreatment standards. The following conditions shall apply to the schedule required by subdivision B 7 of this section:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.);

2. No increment referred to in subdivision 1 of this subsection shall exceed nine months; and

3. Not later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the control authority.

D. Report on compliance with categorical pretreatment standard deadline. Within 90 days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in subdivisions B 4 through B 6 of this section. For industrial users

subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 9 VAC 25-31-780 C, this report shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

E. Periodic reports on continued compliance.

1. Any industrial user subject to a categorical pretreatment standard, after the compliance date of such pretreatment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority or the director, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in subdivision B 4 of this section except that the control authority may require more detailed reporting of flows. In cases where the pretreatment standard requires compliance with a Best Management Practice (or pollution prevention alternative), the user shall submit documentation required by the control authority or the pretreatment standard necessary to determine the compliance status of the user. At the discretion of the control authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the control authority may agree to alter the months during which the above reports are to be submitted.

2. The control authority may authorize the industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard if the industrial user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the industrial user. This authorization is subject to the following conditions:

a. The control authority may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.

b. The monitoring waiver is valid only for the duration of the effective period of the permit or other equivalent individual control mechanism, but in no case longer than five years. The user must submit a new request for the waiver before the waiver can be granted for each subsequent control mechanism.

c. In making a demonstration that a pollutant is not present, the industrial user must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes. The request for a monitoring waiver must be signed in accordance with subsection L of this subsection, and include the certification statement in 9 VAC 25-31-780 A 2 b. Nondetectable sample results may only be used as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

d. Any grant of the monitoring waiver by the control authority must be included as a condition in the user's control mechanism. The reasons supporting the waiver and any information submitted by the user in its request for the waiver must be maintained by the control authority for three years after expiration of the waiver.

e. Upon approval of the monitoring waiver and revision of the user's control mechanism by the control authority, the industrial user must certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the industrial user:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for 40 CFR [specify applicable national pretreatment standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under 9 VAC 25-31-840 E 1."

f. In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the user's operations, the user must immediately: Comply with the monitoring requirements of subdivision 1 of this subsection or other more frequent monitoring requirements imposed by the control authority, and notify the control authority.

g. This provision does not supersede certification processes and requirements established in categorical pretreatment standards, except as otherwise specified in the categorical pretreatment standard.

3. The control authority may reduce the requirement in the subdivision 1 of this subsection to a requirement to report no less frequently than once a year, unless required more frequently in the pretreatment standard or by the approval authority, where the industrial user meets all of the following conditions:

a. The industrial user's total categorical wastewater flow does not exceed any of the following:

(1) 0.01% of the design dry weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the industrial user discharges in batches;

(2) 0.01% of the design dry weather organic treatment capacity of the POTW; and

(3) 0.01% of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical pretreatment standard for which approved local limits were developed by a POTW in accordance with 9 VAC 25-31-770 C and D.

b. The industrial user has not been in significant noncompliance, as defined in 9 VAC 25-31-800 F 2 g, for any time in the past two years;

c. The Industrial User does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period pursuant to subdivision G 3 of this section;

d. The industrial user must notify the control authority immediately of any changes at its facility causing it to no longer meet conditions of subdivision 3 a or b of this subsection. Upon notification, the industrial user must immediately begin complying with the minimum reporting in subdivision 1 of this subsection; and

e. The control authority must retain documentation to support the control authority's determination that a specific industrial user qualifies for reduced reporting requirements under subdivision 3 of this subsection for a period of three years after the expiration of the term of the control mechanism.

4. Where the control authority has imposed mass limitations on industrial users as provided for by 9 VAC 25-31-780 C, the report required by subdivision 1 of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

5. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 9 VAC 25-31-780 C, the report required by subdivision 1 of this subsection shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by subdivision 1 of this subsection shall include the user's actual average production rate for the reporting period.

F. Notice of potential problems, including slug loading. All categorical and noncategorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by 9 VAC 25-31-770 B, by the industrial user.

G. Monitoring and analysis to demonstrate continued compliance with pretreatment standards and requirements.

1. Except in the case of nonsignificant categorical users, the reports required in subsections B, D, E, and H of this section shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the control authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification required under subdivision B 6 and subsection D of this section. In addition, where the POTW itself collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

2. If sampling performed by an industrial user indicates a violation, the user shall notify the control authority within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 days after becoming aware of the violation. Where the control authority has performed the sampling and analysis in lieu of the industrial user, the control authority must perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis. Resampling is not required if:

a. The control authority performs sampling at the industrial user at a frequency of at least once per month; or

b. The control authority performs sampling at the user between the time when the initial sampling was conducted and the time when the user or the control authority receives the results of this sampling.

3. The reports required in subsection E of this section must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The control authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the control authority. Where time-proportional composite sampling or grab sampling is authorized by the control authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the industrial user file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may

be composited in the laboratory or in the field; for volatile organics and oil and grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the control authority, as appropriate.

4. For sampling required in support of baseline monitoring and 90-day compliance reports required in subsections B and D of this section, a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by subsections E and H of this section, the control authority shall require the number of grab samples necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

5. All analyses shall be performed in accordance with procedures contained in 40 CFR Part 136 (2005) and amendments thereto or with any other test procedures approved by EPA, and shall be reported to the control authority. Sampling shall be performed in accordance with EPA-approved techniques. Where 40 CFR Part 136 (2005) does not include sampling or analytical techniques for the pollutants in question, or where EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by EPA.

6. If an industrial user subject to the reporting requirement in subsection E or H of this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the control authority, using the procedures prescribed in subdivision 5 of this subsection, the results of this monitoring shall be included in the report.

H. Reporting requirements for industrial users not subject to categorical pretreatment standards. The control authority must require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards. Significant noncategorical industrial users must submit to the control authority at least once every six months (on dates specified by the control authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the control authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the user must submit documentation required by the control authority to determine the compliance status of the user. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 CFR Part 136 (2005) and amendments thereto. This sampling and analysis may be performed by the control authority in lieu of the significant noncategorical industrial user.

I. Annual POTW reports. POTWs with approved pretreatment programs shall provide the department with a report that briefly describes the POTW's program activities, including activities of all participating agencies if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's pretreatment program, and at least annually thereafter, and shall include, at a minimum, the following:

1. An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements. The list must also identify industrial users subject to categorical pretreatment standards that are subject to reduced reporting requirements under subdivision E 3 of this section and identify which industrial users are nonsignificant categorical industrial users.

2. A summary of the status of industrial user compliance over the reporting period;

3. A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period;

4. A summary of changes to the POTW's pretreatment program that have not been previously reported to the department; and

5. Any other relevant information requested by the director.

J. Notification of changed discharge. All industrial users shall promptly notify the control authority (and the POTW if the POTW is not the control authority) in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under the Code of Virginia and this section.

K. Compliance schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program required by 9 VAC 25-31-800:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);

2. No increment referred to in subdivision 1 of this subsection shall exceed nine months; and

3. Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the department including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the department.

L. Signatory requirements for industrial user reports. The reports required by subsections B, D, and E of this section shall include the certification statement as set forth in 9 VAC 25-31-780 A 2 b, and shall be signed as follows:

1. By a responsible corporate officer, if the industrial user submitting the reports required by subsections B, D and E of this section is a corporation. For the purpose of this subdivision, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

2. By a general partner or proprietor if the industrial user submitting the reports required by subsections B, D and E of this section is a partnership or sole proprietorship, respectively.

3. By a duly authorized representative of the individual designated in subdivision 1 or 2 of this subsection if:

a. The authorization is made in writing by the individual described in subdivision 1 or 2 of this subsection;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

c. The written authorization is submitted to the control authority.

4. If an authorization under subdivision 3 of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subdivision 3 of this subsection must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.

M. Signatory requirements for POTW reports. Reports submitted to the department by the POTW in accordance with subsection I of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility or the pretreatment program. This authorization must be made in writing by the principal executive officer or ranking elected official, and submitted to the approval authority prior to or together with the report being submitted.

N. Provision governing fraud and false statements. The reports and other documents required to be submitted or maintained under this section shall be subject to:

1. The provisions of 18 USC §1001 relating to fraud and false statements;

2. The provisions of the law or §309(c)(4) of the CWA, as amended, governing false statements, representation or certification; and

3. The provisions of §309(c)(6) of the CWA regarding responsible corporate officers.

O. Recordkeeping requirements.

1. Any industrial user and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section including documentation associated with Best Management Practices. Such records shall include for all samples:

a. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

b. The dates analyses were performed;

c. Who performed the analyses;

d. The analytical techniques/methods used; and

e. The results of such analyses.

2. Any industrial user or POTW subject to the reporting requirements established in this section (including documentation associated with Best Management Practices) shall be required to retain for a minimum of three years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the director and the regional administrator (and POTW in the case of an industrial user). This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the director or the regional administrator.

3. Any POTW to which reports are submitted by an industrial user pursuant to subsections B, D, E, and H of this section shall retain such reports for a minimum of three years and shall make such reports available for inspection and copying by the director and the regional administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the director or the regional administrator.

P. 1. The industrial user shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under the Code of Virginia and 40 CFR Part 261 (2005). Such notification must include the name of the hazardous waste as set forth in the Code of Virginia and 40 CFR Part 261 (2005), the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under subsection J of this section. The notification requirement in this section does not apply to pollutants already reported under self-monitoring requirements of subsections B, D, and E of this section.

2. Dischargers are exempt from the requirements of subdivision 1 of this subsection during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) (2005). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) (2005), requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

3. In the case of any new regulations under §3001 of RCRA (42 USC §6901 et seq.) identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

4. In the case of any notification made under this subsection, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

Q. Annual certification by nonsignificant categorical industrial users. A facility determined to be a nonsignificant categorical industrial user pursuant to 9 VAC 25-31-10 must annually submit the following certification statement, signed in accordance with the signatory requirements in subsection L of this section. This certification must accompany an alternative report required by the control authority:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR ____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year]:

1. The facility described as _____ [facility name] met the definition of a nonsignificant categorical industrial user as described in 9 VAC 25-31-10;

2. The facility complied with all applicable pretreatment standards and requirements during this reporting period; and

3. The facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information.

_____"

R. The control authority that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 (Electronic reporting).

**9 VAC 25-31-850. Variances from categorical pretreatment standards for fundamentally different factors.**

A. The term "requester" means an industrial user or a POTW or other interested person seeking a variance from the limits specified in a categorical pretreatment standard.

B. Any interested person believing that factors relating to an industrial user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that user and further, that the existence of those factors justifies a different discharge limit than specified in the applicable categorical pretreatment standard, may request a fundamentally different factors variance under this section.

C. Criteria.

1. General criteria. A request for a variance based upon fundamentally different factors shall be approved only if:

a. There is an applicable categorical pretreatment standard which specifically controls the pollutant for which alternative limits have been requested;

b. Factors relating to the discharge controlled by the categorical pretreatment standard are fundamentally different from the factors considered by EPA in establishing the standards; and

c. The request for a variance is made in accordance with the procedural requirements in subsections G and H of this section.

2. Criteria applicable to less stringent limits. A variance request for the establishment of limits less stringent than required by the standard shall be approved only if:

a. The alternative limit requested is no less stringent than justified by the fundamental difference;

b. The alternative limit will not result in a violation of prohibitive discharge standards prescribed by or established under 9 VAC 25-31-770;

c. The alternative limit will not result in a nonwater quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the pretreatment standards; and

d. Compliance with the standards (either by using the technologies upon which the standards are based or by using other control alternatives) would result in either:

(1) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the standards; or

(2) A nonwater quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the standards.

3. Criteria applicable to more stringent limits. A variance request for the establishment of limits more stringent than required by the standards shall be approved only if:

a. The alternative limit request is no more stringent than justified by the fundamental difference; and

b. Compliance with the alternative limit would not result in either:

(1) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the standards; or

(2) A nonwater quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the standards.

D. Factors considered fundamentally different. Factors which may be considered fundamentally different are:

1. The nature or quality of pollutants contained in the raw waste load of the user's process wastewater;

2. The volume of the user's process wastewater and effluent discharged;

3. Nonwater quality environmental impact of control and treatment of the user's raw waste load;

4. Energy requirements of the application of control and treatment technology;

5. Age, size, land availability, and configuration as they relate to the user's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology; and

6. Cost of compliance with required control technology.

E. Factors which will not be considered fundamentally different. A variance request or portion of such a request under this section may not be granted on any of the following grounds:

1. The feasibility of installing the required waste treatment equipment within the time the CWA allows;

2. The assertion that the standards cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factors listed in subsection D of this section;

3. The user's ability to pay for the required waste treatment; or

4. The impact of a discharge on the quality of the POTW's receiving waters.

F. Local law. Nothing in this section shall be construed to impair the right of any locality under the Code of Virginia or §510 of the CWA to impose more stringent limitations than required by federal law.

G. Application deadline.

1. Requests for a variance and supporting information must be submitted in writing to the department or to the administrator, as appropriate.

2. In order to be considered, a request for a variance must be submitted no later than 180 days after the date on which a categorical pretreatment standard is published in the Federal Register.

3. Where the user has requested a categorical determination pursuant to 9 VAC 25-31-780 A, the user may elect to await the results of the category determination before submitting a variance request under this section. Where the user so elects, he must submit the variance request within 30 days after a final decision has been made on the categorical determination pursuant to 9 VAC 25-31-780 A 4.

H. Contents submission. Written submissions for variance requests, whether made to the administrator or the department, must include:

1. The name and address of the person making the request;

2. Identification of the interest of the requester which is affected by the categorical pretreatment standard for which the variance is requested;

3. Identification of the POTW currently receiving the waste from the industrial user for which alternative discharge limits are requested;

4. Identification of the categorical pretreatment standards which are applicable to the industrial user;

5. A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought;

6. The alternative discharge limits proposed by the requester for each pollutant or pollutant parameter identified in subdivision 5 of this subsection;

7. A description of the industrial user "s existing water pollution control facilities;

8. A schematic flow representation of the industrial user's water system including water supply, process wastewater systems, and points of discharge; and

9. A statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request, e.g., technical and economic data collected by the EPA and used in developing each pollutant discharge limit in the pretreatment standard.

I. Deficient requests. The administrator or the director will only act on written requests for variances that contain all of the information required. Persons who have made incomplete submissions will be notified by the administrator or the director that their requests are deficient and unless the time period is extended, will be given up to 30 days to remedy the deficiency. If the deficiency is not corrected within the time period allowed by the administrator or the director, the request for a variance shall be denied.

J. Public notice. Upon receipt of a complete request, the administrator or the director will provide notice of receipt, opportunity to review the submission, and opportunity to comment.

1. The public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the request. Procedures for the circulation of public notice shall include mailing notices to:

a. The POTW into which the industrial user requesting the variance discharges;

b. Adjoining states whose waters may be affected; and

c. Designated 208 planning agencies, federal and state fish, shellfish and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists.

2. The public notice shall provide for a period not less than 30 days following the date of the public notice during which time interested persons may review the request and submit their written views on the request.

3. Following the comment period, the administrator or the director will make a determination on the request taking into consideration any comments received. Notice of this final decision shall be provided to the requester (and the industrial user

for which the variance is requested if different), the POTW into which the industrial user discharges and all persons who submitted comments on the request.

K. Review of requests.

1. Where the director finds that fundamentally different factors do not exist, he may deny the request and notify the requester (and industrial user where they are not the same) and the POTW of the denial.

2. Where the director finds that fundamentally different factors do exist, he shall forward the request, with a recommendation that the request be approved, to the administrator.

**9 VAC 25-31-860. Confidentiality.**

Any information submitted to the department pursuant to this part may be claimed as secret formulae, secret processes or secret methods, other than effluent data, by the submitter. Any such claim will be considered under the conditions of 9 VAC 25-31-80.

**9 VAC 25-31-870. Net/gross calculation.**

A. Application. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the industrial user's intake water in accordance with this section. Any industrial user wishing to obtain credit for intake pollutants must make application to the control authority. Upon request of the industrial user, the applicable standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of subsection B of this section are met.

B. Criteria.

1. Either

a. The applicable categorical pretreatment standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or

b. The industrial user demonstrates that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake waters.

2. Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the industrial user demonstrates that the constituents of the generic measure in the user's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

3. Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standards or standards, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standards adjusted under this section.

4. Credit shall be granted only if the user demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The control authority may waive this requirement if it finds that no environmental degradation will result.

**9 VAC 25-31-880. Upset provision.**

A. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection C of this section are met.

C. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the industrial user can identify the cause or causes of the upset;

2. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and

3. The industrial user has submitted the following information to the POTW and control authority within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days):

a. A description of the indirect discharge and cause of noncompliance;

b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

c. Steps being taken or planned, or both, to reduce, eliminate and prevent recurrence of the noncompliance.

D. In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

E. In the usual exercise of prosecutorial discretion, the director should review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitute final director action subject to judicial review. Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

F. The industrial user shall control production or all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

**9 VAC 25-31-890. Bypass.**

A. Definitions. For the purpose of this section:

1. "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user "s treatment facility.

2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

B. Bypass not violating applicable pretreatment standards or requirements. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections C and D of this section.

C. Notice.

1. If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the control authority, if possible at least 10 days before the date of the bypass.

2. An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the control authority within 24 hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within five days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The control authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

D. Prohibition of bypass.

1. Bypass is prohibited, and the control authority may take enforcement action against an industrial user for a bypass, unless;

a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

c. The industrial user submitted notices as required under subsection C of this section.

2. The control authority may approve an anticipated bypass, after considering its adverse effects, if the control authority determines that it will meet the three conditions listed in subdivision 1 of this subsection.

**9 VAC 25-31-900. Modification of POTW pretreatment programs.**

A. Either the director or a POTW with an approved POTW pretreatment program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW pretreatment program that differs from the information in the POTW's submission, as approved under 9 VAC 25-31-830.

B. Substantial modifications defined. Substantial modifications include:

1. Modifications that relax POTW legal authorities (as described in 9 VAC 25-31-800 F 1, except for modifications that directly reflect a revision to this part or to 40 CFR Chapter I, Subchapter N (2000), and are reported pursuant to subsection D of this section;

2. Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the maximum allowable industrial loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported pursuant to subsection D of this section. Maximum allowable industrial loading means the total mass of a pollutant that all industrial users of a POTW (or a subgroup of industrial users identified by the POTW) may discharge pursuant to limits developed under 9 VAC 25-31-770 C;

3. Changes to the POTW's control mechanism as described in 9 VAC 25-31-800 F 1 c;

4. A decrease in the frequency of self-monitoring or reporting required of industrial users;

5. A decrease in the frequency of industrial user inspections or sampling by the POTW;

6. Changes to the POTW's confidentiality procedures; and

7. Other modifications designated as substantial modifications by the director on the basis that the modification could have a significant impact on the operation of the POTW's pretreatment program, could result in an increase in pollutant loadings at the POTW, or could result in less stringent requirements being imposed on industrial users of the POTW.

C. Approval procedures for substantial modifications.

1. The POTW shall submit to the department a statement of the basis for the desired program modification, a modified program description (see 9 VAC 25-31-810 B), or such other documents the director determines to be necessary under the circumstances.

2. The director shall approve or disapprove the modification based on the requirements of 9 VAC 25-31-800 F and using the procedures in 9 VAC 25-31-830 B through F, except as provided in subdivisions C 3 and C 4 of this section. The modification shall become effective upon approval by the director.

3. The director need not publish a notice of decision under 9 VAC 25-31-830 E provided (i) the notice of request for approval under 9 VAC 25-31-830 B 1 states that the request will be approved if no comments are received by a date specified in the notice; (ii) no substantive comments are received; and (iii) the request is approved without change.

4. Notices required by 9 VAC 25-31-830 may be performed by the POTW provided that the director finds that the POTW notice otherwise satisfies the requirements of 9 VAC 25-31-830.

D. Approval procedures for nonsubstantial modifications.

1. The POTW shall notify the department of any nonsubstantial modification at least 45 days prior to implementation by the POTW in a statement similar to that provided for in subdivision C 1 of this section.

2. Within 45 days after the submission of the POTW's statement, the director shall notify the POTW of his decision to approve or disapprove the nonsubstantial modification.

3. If the director does not notify the POTW within 45 days of his decision to approve or deny the modification or to treat the modification as substantial under subdivision B 7 of this section, the POTW may implement the modification.

E. Incorporation in permit. All modifications shall be incorporated into the POTW's VPDES permit upon approval. The permit will be modified to incorporate the approved modification in accordance with 9 VAC 25-31-400.

## PART VIII
## ENFORCEMENT

### 9 VAC 25-31-910. Enforcement.

A. The board may enforce the provisions of this chapter by:

1. Issuing directives in accordance with the law;

2. Issuing special orders in accordance with the law;

3. Issuing emergency special orders in accordance with the law;

4. Seeking injunction, mandamus or other appropriate remedy as authorized by the law;

5. Seeking civil penalties under the law; or

6. Seeking remedies under the law, the CWA or under other laws including the common law.

B. The board encourages citizen participation in all its activities, including enforcement. In particular:

1. The board will investigate citizen complaints and provide written response to all signed, written complaints from citizens concerning matters within the board's purview;

2. The board will not oppose intervention in any civil enforcement action when such intervention is authorized by statute or Supreme Court rule; or in any administrative enforcement action when authorized by the board's procedural rule; and

3. At least 30 days prior to the final settlement of any civil enforcement action or the issuance of any consent special order, the board will publish public notice of such settlement or order in a newspaper of general circulation in the county, city or town in which the discharge is located, and in The Virginia Register of Regulations. This notice will identify the owner, specify the enforcement action to be taken and specify where a copy of the settlement or order can be obtained. Appeals of the enforcement action will be public noticed in accordance with Procedural Rule No. 1 (9 VAC 25-230-10 et seq.). A consent special order is a special order issued without a public hearing and with the written consent of the affected owner. For the purpose of this chapter, an emergency special order is not a consent special order. The board shall consider all comments received during the comment period before taking final action.

C. When a permit is amended solely to reflect a new owner, and the previous owner had been issued a consent special order that, at the time of permit amendment was still in full force and effect, a consent special order issued to the new owner does not have to go to public notice provided that:

a. The permit amendment does not have to go to public notice; and

b. The terms of the new consent order are the same as issued to the previous owner.

D. Notwithstanding subdivision B 3 of this subsection, a special order may be issued by agreement at a board meeting without further notice when a public hearing has been scheduled to issue a special order to the affected owner, whether or not the public hearing is actually held.

## PART IX
## MISCELLANEOUS

**9 VAC 25-31-920. Delegation of authority.**

The director may perform any act of the board provided under this chapter, except as limited by §62.1-44.14 of the Code of Virginia. Until March 23, 2000, the director shall have no authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal; until that time, such authority is delegated to the deputy director or his designee.

**9 VAC 25-31-930. Transition.**

Upon the effective date of this chapter the following will occur:

A. All applications received after the effective date of the new chapter will be processed in accordance with these new procedures.

B. A National Pollutant Discharge Elimination System Permit issued by the board has the same effect as a VPDES permit.

## PART X
## DELEGATION OF PERMITTING AND ENFORCEMENT AUTHORITY

**9 VAC 25-31-940. Delegation of authority to the Department of Mines, Minerals and Energy for coal surface mining operations.**

For the purpose of Part X of this chapter, NPDES and VPDES permits are synonymous.

A. The board pursuant to §45.1-254 of the Code of Virginia hereby delegates to the Department of Mines, Minerals and Energy (DMME), Division of Mined Land Reclamation (DMLR) or its authorized agents its authority to issue, revoke and reissue, modify, or terminate NPDES permits for the discharge of industrial wastes or other wastes other than sewage from coal surface mining operations as defined in §45.1-229 of the Code of Virginia. Any NPDES permit issued, modified or revoked and reissued, under this delegation that meets the conditions set forth in this chapter shall be as valid and enforceable as if issued by the board.

B. The delegation of authority contained in subsection A of this section is conditioned upon compliance with the following provisions:

1. That every permit issued, revoked and reissued, or modified shall conform to the requirements of this chapter, the CWA, and all pertinent regulations adopted by the board under law and those adopted under the CWA;

2. That the DMLR shall transmit to the department a copy of each application for a NPDES permit received by it, a copy of every draft NPDES permit prepared by it, and written notice of every action taken or contemplated to be taken by the DMLR with respect to such a permit; and

3. That no NPDES permit shall be issued, revoked and reissued, or modified if, within 30 days of the date of the transmittal to the department of the complete application and the draft NPDES permit to it, the board objects in writing to the issuance, revocation and reissuance, or modification of such permit. Where required, the board shall stipulate more stringent permit conditions as necessary to maintain applicable water quality standards and provisions of the law. Each such stipulation shall be accompanied by a justifying documentation to the DMLR. Such stipulations shall be binding upon the DMLR. However,

nothing herein shall affect or impair any rights that the applicant may have to a public hearing before the board pursuant to the law or to judicial review of such decision pursuant to the law.

C. The board hereby delegates to the DMLR its authority to enforce NPDES permits issued to coal surface mining operations for the discharge of industrial wastes and other wastes; provided, however, that the board reserves the right to assert its enforcement authority as provided in §45.1-254 E of the Code of Virginia and provided further that the board reserves the right to take emergency enforcement action where the DMLR has not taken or cannot take effective emergency enforcement action.

**FORMS**

VPDES Sewage Sludge Permit Application Form with instructions (rev. 2000).

Application Form 1—General Information, Consolidated Permits Program, EPA Form 3510-1 (June 1980).

Virginia State Water Control Board Fish Farm Questionnaire (July 1996).

Application Form 2A—NPDES Form 2A Application for Permit to Discharge Municipal Wastewater, EPA Form 3510-2A (eff. 1/99).

Application Form 2C—Wastewater Discharge Information, Consolidated Permits Program, EPA Form 3510-2C (rev. February 1985).

Application Form 2D—New Sources and New Dischargers: Application for Permit to Discharge Process Wastewater, EPA Form 3510-2D (September 1986).

Application Form 2E—Facilities Which Do Not Discharge Process Wastewater, EPA Form 3510-2E (September 1986).

Form 2F NPDES, Application for Permit to Discharge Stormwater, Discharges Associated with Industrial Activity, EPA Form 3510-2F (November 1990).

Local Government Ordinance Form (eff. 2000).