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# THE VIRGINI REGISTER

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# THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative. THE VIRGINIA REGISTER has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in THE VIRGINIA REGISTER OF REGULATIONS. In addition, THE VIRGINIA REGISTER is a source of other information about state government, including all emergency regulations and executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

## ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period.

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

## EMERGENCY REGULATIONS

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation; and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 9-6.14.7.1 et seq.) of Chapter 1.1:1 of the Code of Virginia be examined carefully.

## CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. 12:8 V.A.R. 1096-1106 January 8, 1996, refers to Volume 12, Issue 8, pages 1096 through 1106 of the *Virginia Register* issued on January 8, 1996.

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The *Virginia Register of Regulations* is published pursuant to Article 7 (§ 9-6.14.22 et seq.) of Chapter 1.1:1 of Title 9 of the Code of Virginia. Individual copies, if available, may be purchased for \$4.00 each from the Registrar of Regulations.

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

Staff of the Virginia Register: E. M. Miller, Jr., Acting Registrar of Regulations; Jane D. Chaffin, Deputy Registrar of Regulations.

# PUBLICATION DEADLINES AND SCHEDULES

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

## April 1998 through March 1999

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

\*Filing deadlines are Wednesdays unless otherwise specified.

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# NOTICES OF INTENDED REGULATORY ACTION

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## Symbol Key

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

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to consider **repealing 12 VAC 5-420-10 et seq. Rules and Regulations Governing Restaurants and promulgating 12 VAC 5-421-10 et seq. Regulations Governing Restaurants.** The purpose of the proposed action is to promulgate regulations to replace the existing regulations which are being repealed. The new regulations will better reflect current food service. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 35.1-11 of the Code of Virginia.

Public comments may be submitted until April 30, 1998.

Contact: Gary L. Hagy, Division Director, Department of Health, Division of Food and Environmental Services, P.O. Box 2448, Room 115, Richmond, VA 23218, telephone (804) 225-4022 or FAX (804) 225-4003.

VA.R. Doc. No. R98-216; Filed March 11, 1998, 11:51 a.m.

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# PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



## PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

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

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

## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

**May 28, 1998 - 1 p.m. – Public Hearing**

Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Training Room, Glen Allen, Virginia.

**June 26, 1998** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: 9 VAC 25-590-10 et seq. **Petroleum Underground Storage Tank Financial Responsibility Requirements.** The proposed amendments serve four purposes: (i) to make the regulation conform to amendments in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and to federal financial responsibility requirements; (ii) to permit local government underground storage tank owners to use additional financial responsibility demonstration mechanisms; (iii) to provide liability relief for lenders in accordance with federal and state law; and (iv) to correct typographical errors and omissions.

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

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

**Location of Proposal:** The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed amendments, an explanation of need for the proposed amendments, an estimate of the impact of the proposed amendments upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Office of Spill Response and Remediation, 629 East Main Street, 7th

Floor, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

#### Southwest Regional Office

Department of Environmental Quality  
355 Deadmore Street  
Abingdon, Virginia  
Phone: (540) 676-4800

#### West Central Regional Office

Department of Environmental Quality  
3019 Peters Creek Road  
Roanoke, Virginia  
Phone: (540) 562-6700

#### Lynchburg Satellite Office

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

#### Valley Regional Office

Department of Environmental Quality  
4411 Early Road  
Harrisonburg, Virginia  
Phone: (540) 574-7800

#### Fredericksburg Satellite Office

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

#### Piedmont Regional Office

Department of Environmental Quality  
4949-A Cox Road  
Glen Allen, Virginia  
Phone: (804) 527-5020

#### Tidewater Regional Office

Department of Environmental Quality  
5636 Southern Boulevard  
Virginia Beach, Virginia  
Phone: (757) 518-2000

## Public Comment Periods - Proposed Regulations

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

Statutory Authority: §§ 62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m. June 26, 1998.

Contact: Mary-Ellen Kendall, Financial Programs Manager, Office of Spill Response and Remediation, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4298, FAX (804) 698-4266, toll-free 1-800-592-5482 or (804) 698-4021/TDD ♦

## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

June 26, 1998 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to adopt regulations entitled: 12 VAC 30-100-10 et seq. **Health Insurance Program for Working Uninsured Individuals**. These regulations establish the Health Insurance Program for Working Uninsured Individuals. The regulations define, in a fair and equitable manner, who is eligible to receive premium subsidies, how beneficiaries will be enrolled and disenrolled, and what appeal rights they have. The regulations outline the rights and responsibilities of the providers and describe how the Department of Medical Assistance Services monitors the services provided by the managed care plans. The regulations also outline the administrative structure and reimbursement methodology and provide information on the benefit package or covered services.

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

Public comments may be submitted until June 26, 1998, to John Kenyon, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### MOTOR VEHICLE DEALER BOARD

June 15, 1998 - 10 a.m. – Public Hearing

Department of Motor Vehicles, 2300 West Broad Street, Williamsburg Room, Richmond, Virginia.

June 27, 1998 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Motor Vehicle Dealer Board intends to amend regulations entitled: **24 VAC 22-30-10 et seq. Motor Vehicle Dealer Advertising Practices and Enforcement Regulations**. The purpose of the proposed amendments is to expand the definition of advertisement to include all types of media, including electronic media, and clarify the definition of the terms "free" and "dealer rebates" when used in advertisements.

Statutory Authority: §§ 46.2-1506 and 46.2-1582 of the Code of Virginia.

Contact: Bruce Gould, Executive Director, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053 or toll-free 1-800-272-9268/TDD ♦

# PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

## Symbol Key

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

## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### BOARD OF GAME AND INLAND FISHERIES

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of § 9-6.14:4.1 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

**Title of Regulation:** 4 VAC 15-260-10 et seq. **Game: Waterfowl and Waterfowl Blinds (amending 4 VAC 15-260-140; adding 4 VAC 15-260-170).**

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

#### Notice to the Public:

The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29.1-501 and 29.1-502 of the Code of Virginia, the following proposed amendments to board regulations. A public comment period on the proposed regulations opened April 2, 1998, and remains open until July 16, 1998. Comments submitted must be in writing; must be accompanied by the name, address and telephone number of the party offering the comments; should state the regulatory action desired; and should state the justification for the desired action. Send comments no later than July 9, 1998, to Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia 23230, in order to be assured that the board will have the opportunity to review them before taking final action.

A public hearing on the advisability of adopting, or amending and adopting, the proposed regulations, or any parts thereof, will be held during a meeting of the board to take place at the Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia, beginning at 9 a.m. on Thursday, July 16, 1998, at which time any interested citizen present shall be heard.

If the board is satisfied that the proposed regulations, or any parts thereof, are advisable, in the form in which published or as amended after receipt of the public's comments, the board may adopt regulation amendments as final at the July meeting. The regulations or regulation amendments adopted may be either more liberal or more restrictive than those proposed and being advertised under this notice.

#### Summary:

*The proposed amendments (i) allow any nontoxic shot approved by the U.S. Fish and Wildlife Service for use in waterfowl hunting to be approved by the Director of the Department of Game and Inland Fisheries for such use in Virginia and (ii) add a section to allow hunting within the Dutch Gap Conservation Area by permit only, and to prohibit the construction of permanent blinds on the shores of and adjacent to the Dutch Gap Conservation Area.*

#### 4 VAC 15-260-140. Nontoxic shot required for waterfowl hunting.

It shall be unlawful to take or attempt to take ducks, geese (including, brant), swans or coots while possessing shotshells loaded with shot other than steel, bismuth-tin or, tungsten-iron or other nontoxic shot approved for such use by the director, if such shot is permissible under federal migratory waterfowl regulations.

#### 4 VAC 15-260-170. Waterfowl hunting on Dutch Gap Conservation Area in Chesterfield and Henrico counties.

A. As used in this section, "affected area" means all of that portion of the James River known as the Dutch Gap Cutoff and waters adjacent to and within the Dutch Gap Conservation Area and Henricus Park, from the Dutch Gap Boat Landing downstream to the northeast tip of Farrar's Island in Henricus Park, including the old channel of the James River adjoining the Dutch Gap Conservation Area on Farrar's Island.

B. The hunting of waterfowl in the affected area is prohibited except as authorized by, and subject to the terms and conditions specified in, a department-issued permit.

C. No stationary waterfowl blinds shall be licensed in the affected area.

D. The prohibitions in subsections B and C of this section shall not apply to, and shall not alter in any respect, the privileges prescribed in §§ 29.1-344 and 29.1-347 of the Code of Virginia for riparian owners, their lessees, and permittees.

V.A.R. Doc. No. R98-231; Filed April 8, 1998, 11:02 a.m.

# Proposed Regulations

## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

Title of Regulation: 9 VAC 25-590-10 et seq. Petroleum Underground Storage Tank Financial Responsibility Requirements (amending 9 VAC 25-590-10 through 9 VAC 25-590-230, and Appendices I, II, and V through X; adding 9 VAC 25-590-240, 9 VAC 25-590-250, 9 VAC 25-590-260, and Appendix XI).

Statutory Authority: §§ 62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

Public Hearing Date: May 28, 1998 - 1 p.m.

Public comments may be submitted until June 26, 1998.  
(See Calendar of Events section  
for additional information)

Basis: Section 62.1-44.34:9 authorizes the board to promulgate such regulations as may be necessary to carry out its powers and duties with regard to underground storage tanks in accordance with applicable federal laws and regulations.

Purpose: The purpose of the regulation is to protect public health, safety and welfare by ensuring that owners/operators of regulated underground storage tanks have the financial ability to pay corrective action and third party liability costs arising from releases. The amendments further the purpose of the regulation by making the regulation conform with recent amendments to the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia). Second, the amendments provide additional financial responsibility demonstration mechanisms which are designed specifically for the type of financial records maintained by local government owners and operators. Third, the amendments incorporate federal lender liability regulations into the state regulation. These regulations provide a basis for limiting lender liability for underground storage tank regulatory requirements in certain circumstances. Fourth, the amendments correct existing typographical errors and omissions.

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

1. Conformity with State Water Control Law amendments. The amendments:
  - a. Eliminate financial responsibility demonstration requirement for petroleum storage tank vendors.
  - b. Eliminate financial responsibility demonstration requirement for all heating oil underground storage tanks.
2. The amendments specify the compliance deadlines for financial responsibility demonstration for underground storage tank owners. In the existing regulation, the compliance deadlines refer to deadlines in federal regulation, without specifying the exact deadlines. The

amendments eliminate the need to refer to the federal regulation to determine the compliance deadlines. This amendment does not change existing deadlines.

3. The amendments clarify that the owner/operator's financial responsibility requirement is either \$500,000 or \$1,000,000 per occurrence depending on whether the owner/operator is a petroleum marketer and the owner/operator's annual throughput and \$1,000,000 or \$2,000,000 annual aggregate depending on the number of tanks owned. The Virginia Petroleum Storage Tank Fund (Fund) provides the balance of the financial responsibility requirement which is in excess of the sliding scale. These amendments do not change the owner/operator's financial responsibility requirement. The sliding scale previously in place still constitutes the amount for which demonstration must be provided.

4. The amendments add financial responsibility demonstration mechanisms which may be used by local government owners and operators and clarify the types of supporting documents which must be maintained for each type of mechanism. Because local government financial records differ from those of private entities, the existing mechanisms may be inadequate to allow for self-insurance by local governments. The amendments include self-insurance mechanisms tailored to local government financial recordkeeping.

5. The amendments require underground storage tank owners and operators to include any demonstration requirements for tank vessels and aboveground storage tank facilities in the calculation for minimum tangible net worth requirements for self-insurance.

6. The amendments clarify the Dun and Bradstreet ratings which correspond to the owner/operator's financial responsibility requirement. These ratings may be used as a less expensive alternative to audited financial statements to meet the self-insurance requirements. This amendment does not change existing financial responsibility demonstration requirements.

7. The amendments clarify that if an owner/operator has more than one release within the effective period of the financial responsibility mechanism, submission of the original mechanism is required only once during that period. This amendment does not change existing financial responsibility demonstration reporting requirements.

8. The amendments clarify that compensation from the Virginia Petroleum Storage Tank Fund for bodily injury and property damage claims will be paid for final court orders where the judgments are not subject to appeal. This amendment does not change existing requirements for compensation for third party claims.

9. The amendments clarify that the board's preapproval requirement for settlements to allow third party compensation from the Virginia Petroleum Storage Tank

# Proposed Regulations

Fund does not constitute a waiver of sovereign immunity. This amendment does not constitute a change of the Commonwealth's position with regard to this issue. There has never been a waiver of sovereign immunity with regard to the Virginia Petroleum Storage Tank Fund.

10. The amendments eliminate the provisions relating to corrective action conducted jointly by the owner/operator and the Commonwealth. Because joint corrective action has never been conducted, these provisions are not necessary and do not change the manner in which corrective actions are conducted.

11. The amendments clarify that owners and operators must pay the financial responsibility requirement for each occurrence. This requirement already exists in the State Water Control Law; therefore, this amendment does not change existing financial responsibility payment requirements.

12. The amendments clarify certain corrective action costs that are not reimbursable by the Fund. These amendments correspond to amendments of the State Water Control Law.

13. The amendments clarify certain situations where third party bodily injury and property damage claims would not be reimbursable by the Fund in order to reflect amendments made in the State Water Control Law.

14. The amendments clarify that the Fund will be managed to provide for cleanup to an acceptable level of risk. Because cleanups in the Commonwealth have been risk-based, this does not change the manner in which corrective action has been conducted and/or managed in the Commonwealth.

15. The amendments incorporate by reference the federal regulations for lender liability contained in 40 CFR §§ 280.200 through 280.230 (1997).

16. The amendments incorporate by reference the federal regulations on local government financial responsibility demonstration contained in 40 CFR §§ 280.104 through 280.107 (1997). See subdivision 4 above for further information.

17. The amendments modify the certification of financial responsibility to provide more information and allow the owner or operator to complete the form more easily. This amendment was added to simplify the demonstration process.

18. The amendments add a short form of the letter from the chief financial officer to be used by a petroleum storage tank owner or operator who does not own or operate any hazardous waste facilities, underground injection facilities, aboveground storage tanks or tank vessels. The amendment was added to simplify the demonstration process.

19. The amendments correct typographical errors and omissions.

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

1. Public: The primary advantage to the regulated community is the addition of financial responsibility mechanisms some of which have been tailored to take into consideration the specific accounting methods of local governments and some of which have been simplified for use by private owners and operators. The advantages are decreased time and costs to obtain and prepare financial responsibility mechanisms.

Another advantage to the regulated community is the potential for increased availability of credit to underground storage tank owners and operators. The lender liability provisions relieve many lenders of liability concerns for leaking underground storage tanks thus increasing the likelihood that owners and operators, who are otherwise creditworthy, can obtain loans secured by land on which an underground storage tank is located.

The amendments present no discernible disadvantages to the public.

2. Department: The amendments do not increase the department's workload. The amendments may decrease costs and increase ease of demonstrating financial responsibility for underground storage tanks. This advantageous to the department in that it may decrease costs of bringing owners and operators into compliance with the regulation and possibly reduce the need for enforcement actions.

The amendments present no discernible disadvantages to the agency.

Impact: The primary purpose of the amendments is to bring the regulation into conformity with state law and federal regulation. Because the state law currently in effect was amended this year to incorporate these changes, the practical effect on the regulated community should be slight. Virginia has approximately 8,000 owners and operators of active underground storage tanks. Approximately 2,600 of these are local governments. Local governments may be impacted by the amendments through increased flexibility of choice in compliance mechanisms and decreased costs to comply with financial responsibility requirements. These costs cannot be quantified at this time; however, an example of the economic impact would be a local government which would be required to obtain a letter of credit at a cost of \$1,000 per year plus collateral, now can demonstrate using a bond rating test at essentially zero cost. Private owners and operators are not impacted in any appreciable manner; however, some may now find it easier to obtain loans secured by property containing underground storage tanks whereas in the past, a lender would refuse to extend credit for fear of liability for the tank. There is no locality which bear any identified disproportionate material impact due to the proposed amendments which would not be experienced by other localities. It is not expected that the amendments

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will result in any cost to the department beyond that currently in the budget.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed changes to this regulation fall into three categories: (i) minor edits and correction of typographical errors, (ii) clarificatory changes that do not change existing requirements in any way, and (iii) substantive changes that either implement new statutory changes or modify the way the financial assurance law is implemented. The modifications in the first two categories have no economic impact and will not be discussed in this document.

The changes in the third category are substantive. These include:

1. Two small simplifications in the process of demonstrating financial assurance;
2. Eliminating the financial responsibility demonstration requirement for firms that sell petroleum storage tanks;
3. Eliminating the demonstration requirement for heating oil underground storage tanks with a capacity of over 5,000 gallons;
4. Requiring tank owners to include any demonstration requirements for tank vessels and aboveground storage tank facilities in the calculation of minimum tangible net worth requirements for self-insurance;
5. Clarifying that certain corrective action costs are not reimbursable by the Fund, as required by amendments to state law;
6. Specifying certain situations where third party bodily injury and property damage claims would not be reimbursed by the Fund, as required by changes to state law; and
7. Absolving lenders of residual responsibility for damages from leaks should they foreclose on properties where the leak occurred, as required by changes to state law.

Estimated economic impact.

Background. An underground storage tank system (UST) is a tank and any underground piping connected to the tank that has at least 10 percent of its combined volume underground. The federal UST regulations apply only to underground tanks and piping storing either petroleum or certain hazardous substances.

The U.S. Environmental Protection Agency (EPA) estimates that there are about 1.1 million federally regulated USTs buried at over 400,000 sites nationwide. Nearly all USTs at these sites contain petroleum. These sites include marketers who sell gasoline to the public (such as service stations and convenience stores) and non-marketers who use tanks solely for their own needs (such as fleet service operators and local governments). EPA estimates about 25,000 tanks hold hazardous substances covered by the UST regulations.

Until the mid-1980s, most USTs were made of bare steel, which is likely to corrode over time and allow UST contents to leak into the environment. Faulty installation or inadequate operating and maintenance procedures also can cause USTs to release their contents into the environment. The greatest potential hazard from a leaking UST is that the petroleum or other hazardous substance can seep into the soil and contaminate groundwater. A leaking UST can present other health and environmental risks, including the potential for fire and explosion.

In 1984, Congress added Subtitle I to the Resource Conservation and Recovery Act (RCRA). Subtitle I required EPA to develop a comprehensive regulatory program for USTs storing petroleum or certain hazardous substances. This law required EPA to publish regulations that would require owners and operators of new tanks and tanks already in the ground to prevent, detect, and clean up releases. At the same time, Congress banned the installation of unprotected steel tanks and piping beginning in 1985.

In 1986 Congress amended Subtitle I of RCRA to establish financial responsibility requirements. Congress required that EPA publish regulations to require UST owners and operators to demonstrate they are financially capable of cleaning up releases and compensating third parties for resulting damages.

The following USTs are excluded from regulation and, therefore, do not need to meet federal requirements for USTs:

1. Farm and residential tanks of 1,100 gallons or less capacity holding motor fuel used for noncommercial purposes;
2. Tanks storing heating oil used on the premises where it is stored;
3. Tanks on or above the floor of underground areas, such as basements or tunnels;
4. Septic tanks and systems for collecting storm water and wastewater;
5. Flow-through process tanks;

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6. Tanks of 110 gallons or less capacity; and
7. Emergency spill and overfill tanks.

In 1988, EPA issued regulations setting minimum standards for new tanks and requiring owners of existing tanks to upgrade, replace, or close them. The UST regulations are divided into three sections: technical requirements, financial responsibility requirements, and state program approval objectives. EPA's technical regulations for USTs are designed to reduce the chance of releases from USTs, detect leaks and spills when they do occur, and secure a prompt cleanup. Owners must upgrade, replace, or close existing UST systems by 1998. Tanks remaining in operation must have leak detection and leak prevention components. The rules also require that owners of regulated petroleum USTs demonstrate the financial ability to provide between \$500,000 and \$2,000,000 of coverage annually for cleanup and third party liability costs in the event of a release from their USTs.

In 1987, the Virginia General Assembly enacted Articles 9 and 10 of the State Water Control Law (SWCL). Article 9 grants the power to the State Water Control Board (Board) to regulate USTs. Article 10 created the Virginia Petroleum Storage Tank Fund (Fund) to be used by the Board to administer Virginia's UST programs and to demonstrate part of the federal financial responsibility requirement for UST owners in Virginia. Virginia law provides that the Fund be used to satisfy most of the federal demonstration requirement for Virginia UST owners and operators.

For example, an owner of a fairly small petroleum storage facility might be required, under the federal and state rules, to demonstrate the ability to pay \$1,000,000 in a year for damages due to leaks. The owner of the tank is responsible for the first \$20,000 of that amount and any amount over \$1,000,000. If a cleanup costs more than the limit of what the fund will pay and the owner is not able or available to pay for the cleanup, then DEQ is authorized to perform the cleanup and federal funds are available to pay the costs.

The federal law does not cover USTs storing heating oil to be used on the premises where it is stored. These tanks do not need to make a financial demonstration nor are they required to install the safety devices required of other USTs. Until recent changes in the state law, the provisions of the law required that heating oil USTs with a capacity of greater than 5,000 gallons were required to make a financial demonstration and were required to make the design changes (required of other USTs) for the prevention and detection of leaks. Modifications made to the law in 1996 removed these larger heating oil tanks from coverage of the law, which removes both the financial demonstration requirement and the requirement of design modifications. However, the law left intact coverage of leaks from these tanks, subject to a \$500 deductible.

DEQ data indicates that there are just over 71,000 USTs registered in Virginia. According to DEQ, 3,886 of these registered tanks are heating oil USTs. Of these registered heating oil USTs, about 3,000 are more than 20 years old. More than 2,000 of the heating oil USTs have a capacity of

greater than 5,000 gallons. This last group is of particular relevance here because these tanks are not required to be equipped with modern leak prevention and detection systems, and these same tanks are fully insured by the state free of charge for any cleanup costs they cause between \$500 and \$1,000,000.

**Estimated impact of the changes.** Virginia has experienced approximately 5,000 claims on the Fund since its inception in 1990. The Fund pays about \$15 million per year in claims. About \$1 million of this amount is to pay for cleanup on about 200 heating oil tank claims each year. Many of the heating oil claims are for home heating oil tanks that have never been covered by these regulations. Some of the claims, however, are for heating oil tanks that are newly deregulated by this proposal.

Economic theory and substantial empirical evidence suggest that when some activity is fully insured, the insured party may respond by changing its behavior in ways that save money but increase the probability that an accident may occur. The reason for this is that once the insurance is obtained, the insured party can save money by reducing expenditures on measures that reduce the risk of the accident occurring. This change in the level of care by insured individuals is often referred to as "moral hazard." The extent of moral hazard can be limited by having co-payments, by limiting coverage, and by directly regulating the behavior of the insured.

All three of these strategies are used by the Fund on nonheating oil tanks. First, owners are responsible for a small portion of cleanup costs before any cleanup costs are paid by the Fund. These deductible amounts are generally too small to have much of an effect on levels of care.

Second, owners are responsible for all damages over the Fund limits, generally \$1 million. Since the initiation of the Fund, only one cleanup has cost more than the amount covered by the fund. This could be due, in part, to tank owners' care to see that the cost of leaks do not exceed the available coverage. However, since the upper limit is so high relative to the usual costs of cleanup, the coverage limits probably do not prevent behaviors that could lead to substantial contamination problems.

The most significant limit on moral hazard for USTs is the direct regulation of the design of the tanks. That all tanks must be designed to prevent leaks and to make detection of leaks quick and inexpensive greatly limits the tendency of the Fund to encourage actions that might increase the risk of leaks. Tank owners still have strong incentive to take less care than they would if they faced the full potential liability from leaking tanks. However, the design and detection rules greatly limit owner flexibility and limit the extent to which their level of care will contribute to the probability of leaks.

Heating oil USTs with a capacity under 5,000 gallons have never been subject to the design and leak detection requirements of the regulations. This proposal implements the new statutory provision that heating oil tanks with a capacity greater than 5,000 gallons no longer be covered. However, heating oil tanks are insured more fully by the Fund

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than are other types of USTs since the deductible on damages for leaks from these tanks is only \$500. Owners of these tanks will remain responsible for damages due to bodily injury and diminution of property value by third parties. Cleanup costs generally make up a large share of the costs arising from tank leaks. Thus, insuring owners against cleanup costs greatly reduces owners' incentives to take care to avoid leaks. The design of their tanks is not regulated, and they are insured against most of the consequences of all but the most catastrophic leaks.

It is to be expected that owners of heating oil tanks with a capacity greater than 5,000 gallons will respond to these incentives by relaxing their level of care in avoiding leaks of heating oil. In particular, the level of care taken by owners of heating oil tanks will fall below what it would be if these owners were subject to the same standards as owners of other USTs and should be expected to fall far below the level of care that would occur if these owners were subject to common law tort liability.

The economic consequences of removing large heating oil USTs from the requirements of the regulation will likely be that the number and size of claims from these tanks may be expected to rise relative to what they would have been under the old rule. This will increase the damages that may be expected for large heating oil USTs and will increase the amount of transfers of the tax revenues supporting the Fund that will have to be used to pay for damages and clean-up.

Amendments to the SWCL require that tank vendors no longer be subject to the regulations. Second, lenders are no longer liable for damages from leaks on property acquired through foreclosure. For nonheating oil USTs, these new rules will probably have a beneficial economic impact.

The vendor demonstration, while somewhat costly, probably does not produce any significant change in the level of damages arising from leaking storage tanks. This is due to the substantial regulation of tank design and to the residual liability that vendors may face due to their contractual relations with tank owners. For nonheating oil USTs, vendor financial demonstration is not needed because owners of these tanks are, for all practical purposes, fully insured against damages from these tanks. Eliminating the costs of the vendor demonstration for nonheating oil USTs will generate a small economic benefit.

The impact of limiting lender liability is somewhat less clear. Lenders, by their residual liability, may have some incentive to ensure that tank owners take somewhat greater care than that required by regulation. Even without residual liability for the damage caused by USTs on property securing loans, lenders would want owners to take precautions to protect the value of the security asset. Making lenders responsible for the potentially large cleanup costs increases their risk and increases their incentive to ensure that tank owners take care to avoid leaks. Lender liability also increases the cost of funds and, in the extreme, may make loans difficult to obtain or standard financial institutions.

As already noted, the design requirements on new nonheating oil USTs limit the value of lender oversight on tank owners. The absence of design requirements for heating oil USTs means that lender oversight may have more of an impact on the number and magnitude of leaks. The residual liability would make lenders less likely to lend money to owners of heating oil USTs and would also make lenders less likely to foreclose once damage has occurred. It cannot be known at this time what impact removal of lender liability will have on the number and size of claims for damages from leaking heating oil tanks. Without further study, it cannot be known whether the change will result in a net economic gain or loss.

Changes to Appendix I and the addition of the new Appendix XI make some minor simplifications to the process of demonstrating financial responsibility. These changes will reduce slightly the cost of complying with the demonstration requirements. Since there is no change in the actual level of financial assurance or in DEQ's ability to enforce the provisions of the law, this change may be expected to result in a small net economic gain for Virginia. Given the information available at this time, estimating the exact size of this gain is not possible.

**Businesses and entities affected.** DEQ indicates that there are approximately 8,000 owners and operators of active underground storage tanks. Approximately 2,600 of these are local governments. Local governments and owners of large heating oil tanks may have slightly lower compliance costs. Also, lenders benefit by having any residual liability for cleanup removed. Finally, storage tank vendors will have somewhat lower compliance costs. The magnitude of these changes cannot be accurately estimated at this time.

**Localities particularly affected.** It is not expected that this regulation will have a disproportionate impact on any particular localities.

**Projected impact on employment.** The proposed changes will not have a significant impact on employment in Virginia.

**Effects on the use and value of private property.** The potential effects on private property are difficult to assess. Owners of large heating oil tanks will receive a benefit since they will no longer be required to satisfy design and leak detection standards required of other types of USTs. Neighboring property owners may be subject to somewhat higher risk of contamination from leaking heating oil tanks. However, since the Fund insures against most reasonable damages, it is not expected that there should be much of an impact on the use and value of property adjacent to properties with large heating oil tanks.

**Summary of analysis.** The changes proposed in this regulation are required either to bring the regulations into a form required by EPA for approval of the state UST program or to reflect changes in the SWCL. Most of the changes to the regulation are not expected to have a significant economic impact. However, the provisions removing large heating oil tanks from the design and leak detection standards while insuring owners against nearly all cleanup

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costs, as required by state law, are likely to lead to more and larger claims against the Fund than would otherwise occur. The increased damages could easily outweigh any expected savings in leak prevention and detection activities of large heating oil tank owners.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The majority of the report focuses on the impact of eliminating regulation of heating oil underground storage tanks (USTs) with a storage capacity of 5,000 gallons or more. This regulatory change was mandated by an amendment to the State Water Control Law which became effective July 1, 1996. DEQ has no discretion in implementing the regulatory change as the Commonwealth no longer has the statutory authority to regulate any heating oil UST.

In addition, this statutory/regulatory amendment makes Virginia law conform with federal law. The federal government has never regulated heating oil tanks since the inception of the federal UST Program in 1984.

The report implies that the Virginia Petroleum Storage Tank Fund is an insurance fund which guarantees coverage for all costs associated with tank operation. Although the Fund provides reimbursement for some costs associated with UST cleanup, the Fund is not an insurance program covering all costs related to USTs. By statute, the Fund may be used to reimburse UST owners and operators for eligible costs of cleanup. Some costs of tank operation, such as tank upgrades, closure, and tank removal, are not eligible for reimbursement. The first \$500 in cleanup costs is also ineligible for reimbursement by statute. Tank owners have no Fund coverage for ineligible costs, and may not be eligible for any reimbursement of cleanup costs if the tank owner is negligent or if the release is covered under an insurance policy issued by an insurer licensed by the State Corporation Commission to sell policies in Virginia. Finally, there is no reimbursement for any costs incurred to pay third party liability damage claims.

The second issue raised by the report concerns the lender liability exemption. This regulatory change was mandated by an amendment to the State Water Control Law which became effective July 1, 1996. DEQ has no discretion in implementing the regulatory change as the State Water Control Law requires DEQ to grant the exemption to qualified lenders. The law was passed on the federal and state levels to encourage lenders to provide loans for replacing older tanks and installing leak detection equipment to prevent future releases.

This statutory liability exemption, which mirrors federal law, is limited to lenders who provide loans for regulated UST owners and operators. Heating oil USTs greater than 5,000 gallons make up a very small percentage of the approximately 500,000 heating oil tanks in Virginia. Because the majority of the heating oil USTs in Virginia do not exceed 275 gallons in size, the economic impact of the lender liability exemption would be negligible.

Summary:

*The regulation concerns financial responsibility demonstration requirements for owners/operators of regulated underground storage tanks. The proposed amendments (i) conform the regulation with amendments to the State Water Control Law enacted after November 1993; (ii) add mechanisms for demonstrating financial responsibility which are designed specifically for local government owners/operators; (iii) incorporate federal lender liability regulations; and (iv) correct typographical errors and omissions in the existing regulation.*

## 9 VAC 25-590-10. Definitions.

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

*"Accidental release"* means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action or compensation, or both, for bodily injury or property damage neither expected nor intended by the tank owner or operator ~~or petroleum storage tank vendor~~.

*"Annual aggregate"* means the maximum financial responsibility requirement that an owner or operator is required to demonstrate annually.

*"Board"* means the State Water Control Board.

*"Bodily injury"* means the death or injury of any person incident to an accidental release from a petroleum underground storage tank; but not including any death, disablement, or injuries covered by workers' compensation, disability benefits or unemployment compensation law or other similar law. Bodily injury may include payment of medical, hospital, surgical, and funeral expenses arising out of the death or injury of any person. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

*"Controlling interest"* means direct ownership of at least 50% of the voting stock of another entity.

*"Corrective action"* means all actions necessary to abate, contain and clean-up ~~cleanup~~ a release from an underground storage tank, to mitigate the public health or environmental threat from such releases and to rehabilitate state waters in accordance with Parts V (9 VAC 25-580-190 et seq.) and VI (9 VAC 25-580-230 et seq.) of ~~9 VAC 25-580-190 through 9 VAC 25-580-220 and 9 VAC 25-580-230 through 9 VAC 25-580-300~~ (9 VAC 25 Chapter 580, Underground Storage Tanks; Technical Standards and Corrective Action Requirements regulation). The term does not include those actions normally associated with closure or change in service as set out in Part VII (9 VAC 25-580-320 et seq.) of ~~9 VAC 25-580-310 through 9 VAC 25-580-350~~ 9 VAC 25 Chapter 580 or the replacement of an underground storage tank.

*"Department of Waste Management"* means the Virginia Department of Waste Management which has jurisdiction

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~~over the proper handling and disposal of solid and hazardous wastes in the Commonwealth of Virginia.~~

"Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared: (i) a 10 K report submitted to the U.S. Securities and Exchange Commission (SEC); (ii) an annual report of tangible net worth submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration; or (iv) a year-end financial statement authorized under 9 VAC 25-590-60 B or C of this chapter. "Financial reporting year" may thus comprise a fiscal or calendar year period.

"Gallons of petroleum pumped" means either the amount pumped into or the amount pumped out of a petroleum underground storage tank.

"Legal defense cost" is any expense that an owner or operator, or petroleum storage tank vendor, or provider of financial assurance incurs in defending against claims or actions brought (i) by the federal government or the board to require corrective action or to recover the costs of corrective action, or to collect civil penalties under federal or state law or to assert any claim on behalf of the Virginia Underground Petroleum Storage Tank Fund; (ii) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (iii) by any person to enforce the terms of a financial assurance mechanism.

"Local government entity" means a municipality, county, town, commission, separately chartered and operated special district, school boards or board, political subdivision of a state, or other special purpose government which provides essential services.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

NOTE: This definition is intended to assist in the understanding of this chapter and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Owner" means:

1. In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and
2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

The term "owner" shall not include any person, who, without participating in the management of an underground

storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Owner" or "operator," when the owner or operator are separate parties, refers to the party that person who is obtaining or has obtained financial assurances.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute).

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firms" means all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

~~"Petroleum storage tank vendor" means a person who manufactures, sells, installs, or services an underground petroleum storage tank, its connective piping and associated equipment.~~

"Property damage" means the loss or destruction of, or damage to, the property of any third party including any loss, damage or expense incident to an accidental release from a petroleum underground storage tank. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

~~"Provider of financial assurance" means an entity a person that provides financial assurance to an owner, or operator or petroleum storage tank vendor of an underground storage tank through one of the mechanisms listed in 9 VAC 25-590-60 through 9 VAC 25-590-120 and 9 VAC 25-590-250, including a guarantor, insurer, group self-insurance pool, surety, or issuer of a letter of credit.~~

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water, or upon lands, subsurface soils or storm drain systems.

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"Responsible person" means any person who is an owner or operator of an underground storage tank at the time the release is reported to the board.

"Substantial business relationship" means the extent of a business relationship necessary under Virginia law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator of petroleum storage tank vendor.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Termination" under Appendix III and Appendix IV means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
2. Tank used for storing heating oil for consumption on the premises where stored, except for tanks having a capacity of more than 5,000 gallons and used for storing heating oil;
3. Septic tank;
4. Pipeline facility (including gathering lines) regulated under:
  - a. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, et seq.);
  - b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, et seq.); or
  - c. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4 a or 4 b of this definition;
5. Surface impoundment, pit, pond, or lagoon;
6. Stormwater or wastewater collection system;
7. Flow-through process tank;

8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"9 VAC 25-580-10 et seq." means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements regulation promulgated by the board.

## 9 VAC 25-590-20. Applicability.

A. This chapter applies to owners and operators of all petroleum ~~underground storage tank (UST)~~ systems regulated under 9 VAC 25-580-10 et seq. (~~Underground storage tanks; Technical standards and corrective action requirements regulation~~) and ~~petroleum storage tank vendors~~, except as otherwise provided in this section.

B. Owners and operators of petroleum UST systems ~~and petroleum storage tank vendors~~ are subject to these requirements if they are in operation on or after the date for compliance established in 9 VAC 25-590-30.

C. State and federal government entities whose debts and liabilities are the debts and liabilities of the Commonwealth of Virginia or the United States have the requisite financial strength and stability to fulfill their financial assurance requirements and are relieved of the requirements to further demonstrate an ability to provide financial responsibility under this chapter.

D. The requirements of this chapter do not apply to owners and operators of any UST system described in 9 VAC 25-580-20 B or C.

E. If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in 9 VAC 25-590-30.

## 9 VAC 25-590-30. Compliance dates.

Owners of petroleum underground storage tanks ~~and petroleum storage tank vendors~~ are required to comply with the requirements of this chapter ~~in accordance with the compliance dates established in federal regulations by the United States Environmental Protection Agency~~ by the following dates:

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1. All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of \$20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration: January 24, 1989; except that compliance for owners and operators using the mechanisms specified in 9 VAC 25-590-70 or 9 VAC 25-590-90 is required by July 24, 1989.
  2. All petroleum marketing firms owning 100-999 USTs: October 26, 1989;
  3. All petroleum marketing firms owning 13-99 USTs at more than one facility: April 26, 1991;
  4. All petroleum UST owners not described in subdivision 1, 2, or 3 of this section, excluding local government entities: December 31, 1993;
  5. All local government entities (including Indian tribes) not included in subdivision 6 of this section: February 18, 1994; or
  6. Indian tribes that own USTs on Indian lands which meet the applicable technical requirements of 9 VAC 25-580-10 et seq.: December 31, 1998.
- 9 VAC 25-590-40. Amount and scope of required financial responsibility requirement.**
- A. Owners or operators of petroleum underground storage tanks and petroleum storage tank vendors must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in the following per-occurrence and annual aggregate amounts:
1. Owners and operators with 600,000 gallons or less of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$5,000 per occurrence for taking corrective action and \$15,000 per occurrence for compensating third parties, with an annual aggregate of \$20,000;
  2. Owners and operators with between 600,001 to 1,200,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$10,000 per occurrence for taking corrective action and \$30,000 per occurrence for compensating third parties, with an annual aggregate of \$40,000;
  3. Owners and operators with between 1,200,001 to 1,800,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$20,000 per occurrence for taking corrective action and \$60,000 per occurrence for compensating third parties, with an annual aggregate of \$80,000;
  4. Owners and operators with between 1,800,001 to 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$30,000 per occurrence for taking corrective action and \$90,000 per occurrence for compensating third parties, with an annual aggregate of \$120,000;
- B. Owners and operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:
1. For owners and operators of 1 to 100 petroleum underground storage tanks, \$1 million; and
  2. For owners and operators of 101 or more petroleum underground storage tanks, \$2 million.
- C. Owners and operators who demonstrate financial responsibility shall maintain copies of those records on which the determination is based. The following documents may be used for purposes of demonstrating financial responsibility by owners or operators to support a financial responsibility requirement determination:
1. Copies of invoices from petroleum suppliers which indicate the gallons of petroleum pumped into all underground storage tanks on an annual basis.
  2. Copies of disposal or recycling receipts which indicate the gallons of petroleum pumped out of all underground storage tanks on an annual basis.
  3. Letters from petroleum suppliers or disposal or recycling firms on the supplier's, disposer's or recycler's letterhead, which are signed by the appropriate financial officer and which indicate the gallons of petroleum pumped into or out of all of the owner's or operator's underground storage tanks on an annual basis.
  4. Any other form of documentation which the board may deem to be acceptable evidence to support the financial responsibility requirement determination.

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~~B. D.~~ For the purposes of subsections A and E only this section, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

~~C.~~ Except as provided in subsection D, E. If the owner or operator ~~or petroleum storage tank vendor~~ uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for: 1- (i) taking corrective action; 2- (ii) compensating third parties for bodily injury and property damage caused by sudden accidental releases; or 3- (iii) compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms ~~must~~ shall be in the full amount specified in subsection A of this section.

~~D. F.~~ If an owner or operator ~~or petroleum storage tank vendor~~ uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required for each mechanism shall be \$200,000 ~~the amount specified in subsection B~~.

~~E. G.~~ If assurance is being demonstrated by a combination of mechanisms, the owner or operator ~~or petroleum storage tank vendor~~ shall demonstrate financial responsibility in the appropriate amount specified in 9 VAC 25-590-40-A of annual aggregate assurance ~~specified in subsection B of this section~~, by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

~~F. H.~~ The amounts of assurance required under this section exclude legal defense costs.

~~G. I.~~ The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator ~~and petroleum storage tank vendor~~.

## 9 VAC 25-590-50. Allowable mechanisms and combinations of mechanisms.

A. Subject to the limitations of subsection B of this section, an owner or operator ~~or petroleum storage tank vendor~~ may use any one or combination of the mechanisms listed in 9 VAC 25-590-60 through 9 VAC 25-590-120 to demonstrate financial responsibility under this chapter for one or more underground storage tanks. A local government owner or operator may use any one or combination of the mechanisms listed in 9 VAC 25-590-60 through 9 VAC 25-590-110 and 9 VAC 25-590-250 to demonstrate financial responsibility under this chapter for one or more underground storage tanks.

B. An owner or operator ~~or petroleum storage tank vendor~~ may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this chapter, the financial statements of the owner or operator ~~or petroleum storage tank vendor~~ are not consolidated with the financial statements of the guarantor.

## 9 VAC 25-590-60. Financial test of self-insurance.

A. An owner or operator ~~petroleum storage tank vendor~~, and/or guarantor, may satisfy the requirements of 9 VAC 25-590-40 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator ~~petroleum storage tank vendor~~, and/or guarantor ~~must~~ shall meet the requirements of subsections B or C, and D of this section based on year-end financial statements for the latest completed fiscal financial reporting year.

B. 1. The owner or operator ~~petroleum storage tank vendor~~, and/or guarantor ~~must~~ shall have a tangible net worth at least equal to the total of the applicable aggregate amount required by 9 VAC 25-590-40 A B for which a financial test is used to demonstrate financial responsibility, except as provided in 9 VAC 25-590-210.

2. In addition to the requirement set forth in subdivision 1 of this subsection, the owner or operator and/or guarantor shall also have a tangible net worth at least equal to 10 times the total applicable aggregate amount required for demonstration of financial responsibility for operators of facilities and vessels in accordance with § 62.1-44.34:16 of the Code of Virginia for which a financial test for self-insurance is used.

2. 3. In addition to the requirements set forth in subdivisions 1 and 2 of this subsection, the owner or operator, ~~petroleum storage tank vendor~~, and/or guarantor ~~must~~ shall also have a tangible net worth of at least 10 times:

a. The sum of the corrective action cost estimates, the current closure and postclosure care cost estimates, and amount of liability coverage for which a financial test for self-insurance is used in each state of business operations to demonstrate financial responsibility to the EPA under 40 CFR §§ 264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 (1997), to another state implementing agency under a state program authorized by EPA under 40 CFR Part 271 (1997) or the Department of Waste Management Virginia Waste Management Board under 9 VAC 20-60-590 C, 9 VAC 20-60-590 E, 9 VAC 20-60-590 G, 9 VAC 20-60-790 L, 9 VAC 20-60-810 C, 9 VAC 20-60-810 E, 9 VAC 20-60-810 G (of the Virginia Hazardous Waste Management Regulations); and

b. The sum of current plugging and abandonment cost estimates for which a financial test for self-insurance is used in each state of business operations to demonstrate financial responsibility to EPA under 40 CFR 144.63 (1997) or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145 (1997).

3. 4. The owner and operator, ~~petroleum storage tank vendor~~ and/or guarantor ~~must~~ shall comply with either subdivision a or b below:

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a. (1) The *fiscal financial reporting* year-end financial statements of the owner or operator ~~or petroleum storage tank vendor~~, and/or guarantor ~~must shall~~ be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination; and

(2) The *firms financial reporting* year-end financial statements of the owner or operator and/or guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

b. (1) (a) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(b) Report annually the *firms* tangible net worth of the owner or operator and/or guarantor to Dun and Bradstreet, and Dun and Bradstreet ~~must shall~~ have assigned the firm a financial strength rating of at least BB (\$200,000 to \$299,999) which at least equals the amount of financial responsibility required by the owner or operator under subdivisions 1, 2, and 3 of this subsection. Relevant Dun and Bradstreet ratings are as follows (current Dun and Bradstreet ratings will be used for demonstration requirements which exceed the annual aggregate amounts listed below):

Annual Aggregate Requirement	Dun and Bradstreet Rating
\$20,000	EE (\$20,000 to \$34,999)
\$40,000	DC (\$50,000 to \$74,999)
\$80,000	CB (\$125,000 to \$199,999)
\$150,000	BB (\$200,000 to \$299,999)
\$200,000	BB (\$200,000 to \$299,999); and

(2) The *firms financial reporting* year-end financial statements of the owner or operator and/or guarantor, if, independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

4. 5. The owner or operator ~~or petroleum storage tank vendor~~ and/or guarantor ~~must shall~~ have a letter signed by the chief financial officer worded identically as specified in Appendix I/Alternative I or Appendix XI.

C. 1. The owner or operator ~~or petroleum storage tank vendor~~, and/or guarantor ~~must shall~~ have a tangible net worth at least equal to the total of the applicable aggregate amount required by 9 VAC 25-590-40 A B for which a financial test is used to demonstrate financial responsibility, except as provided in 9 VAC 25-590-210.

2. In addition to the requirement set forth in subdivision 1 of this subsection, the owner or operator and/or guarantor shall also have a tangible net worth at least equal to six times the total applicable aggregate amount required for demonstration of financial responsibility for operators of facilities and vessels in accordance with § 62.1-44.34:16 of the Code of Virginia for which a financial test for self-insurance is used.

2. 3. In addition to the requirements set forth in subdivisions 1 and 2 of this subsection, the owner or operator ~~or petroleum storage tank vendor~~, and/or guarantor ~~must shall~~ also have a tangible net worth of at least six times:

a. Meet The financial test requirements for self insurance of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage in each state of business operations to the EPA under 40 CFR §§ 264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 (1997), to another state implementing agency under a state program authorized by EPA under 40 CFR Part 271 (1997) or the Department of Waste Management Virginia Waste Management Board under 9 VAC 20-60-590 C, 9 VAC 20-60-590 E, 9 VAC 20-60-590 G, 9 VAC 20-60-790 L, 9 VAC 20-60-810 C, 9 VAC 20-60-810 E, 9 VAC 20-60-810 G + of the Virginia Hazardous Waste Management Regulations); and

b. Meet The financial test requirements for self-insurance of current plugging and abandonment cost estimates in each state of business operations to EPA under 40 CFR § 144.63 (1997) or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145 (1997).

3. 4. The *fiscal financial reporting* year-end financial statements of the owner or operator ~~or petroleum storage tank vendor~~, and/or guarantor ~~must shall~~ be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

4. 5. The *firms financial reporting* year-end financial statements of the owner or operator and/or guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

5. 6. If the financial statements of the owner or operator ~~or petroleum storage tank vendor~~, and/or guarantor are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator ~~or petroleum storage tank vendor~~, and/or guarantor ~~must shall~~ obtain a special report by an independent certified public accountant stating that:

a. He The accountant has compared the data that the letter from the chief financial officer specified as having been derived from the latest *financial reporting*

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year-end financial statements of the owner or operator ~~or petroleum storage tank vendor~~, and/or guarantor, with the amounts in such financial statements; and

b. In connection with that comparison, no matters came to his *the accountant's* attention which caused him to believe that the specified data should be adjusted.

6. 7. The owner or operator ~~or petroleum storage tank vendor~~, and/or guarantor ~~must shall~~ have a letter signed by the chief financial officer, worded identically as specified in Appendix I/Alternative II.

D. To demonstrate that it meets meet the financial demonstration test under subsections B or C of this section, the chief financial officer of the owner or operator, ~~petroleum storage tank vendor~~, and/or guarantor ~~must shall~~ sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded identically as specified in Appendix I with the appropriate alternative I~~-II~~ or Appendix XI, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

E. If an owner or operator ~~or petroleum storage tank vendor~~ using the test to provide financial assurance finds that he no longer meets the requirements of the financial test based on the *financial reporting* year-end financial statements, the owner or operator ~~or petroleum storage tank vendor~~ ~~must shall~~ obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

F. The board may require reports of financial condition at any time from the owner or operator, ~~petroleum storage tank vendor~~, and/or guarantor. If the board finds, on the basis of such reports or other information, that the owner or operator, ~~petroleum storage tank vendor~~, and/or guarantor no longer meets the financial test requirements of subsection B or C and D of this section, the owner or operator ~~or petroleum storage tank vendor~~ ~~must shall~~ obtain alternate coverage within 30 days after notification of such a finding.

G. If the owner or operator ~~or petroleum storage tank vendor~~ fails to obtain alternate assurance within 150 days of finding that he no longer meets the requirements of the financial test based on the *financial reporting* year-end financial statements, or within 30 days of notification by the board that he or she no longer meets the requirements of the financial test, the owner or operator ~~or petroleum storage tank vendor~~ ~~must shall~~ notify the board of such failure within 10 days.

## 9 VAC 25-590-70. Guarantee.

A. An owner or operator ~~or petroleum storage tank vendor~~ may satisfy the requirements of 9 VAC 25-590-40 by obtaining a guarantee that conforms to the requirements of this section. The guarantor ~~must shall~~ be:

1. A firm that:

a. Possesses a controlling interest in the owner or operator ~~or petroleum storage tank vendor~~; or

b. Possesses a controlling interest in a firm described under subdivision A 1 a of this section; or

c. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator ~~or petroleum storage tank vendor~~; or

2. A firm engaged in a substantial business relationship with the owner or operator ~~or petroleum storage tank vendor~~ and issuing the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year, the guarantor ~~must shall~~ demonstrate that it meets the financial test criteria of 9 VAC 25-590-60 B or C and D based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I or Appendix XI and ~~must shall~~ deliver the letter to the owner or operator ~~or petroleum storage tank vendor~~. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator ~~or petroleum storage tank vendor~~. If the board notifies the guarantor that he no longer meets the requirements of the financial test of 9 VAC 25-590-60 B or C and D, the guarantor ~~must shall~~ notify the owner or operator ~~or petroleum storage tank vendor~~ within 10 days of receiving such notification from the board. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator ~~or petroleum storage tank vendor~~ receives the notification, as evidenced by the return receipt. The owner or operator ~~or petroleum storage tank vendor~~ ~~must shall~~ obtain alternate coverage as specified in 9 VAC 25-590-190 G.

C. The guarantee ~~must shall~~ be worded identically as specified in Appendix II, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

D. An owner or operator ~~or petroleum storage tank vendor~~ who uses a guarantee to satisfy the requirements of 9 VAC 25-590-40 ~~must shall~~ establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the board under 9 VAC 25-590-170. This standby trust fund ~~must shall~~ meet the requirements specified in 9 VAC 25-590-120.

## 9 VAC 25-590-80. Insurance and group self-insurance pool coverage.

A. 1. An owner or operator ~~or petroleum storage tank vendor~~ may satisfy the requirements of 9 VAC 25-590-40 by obtaining liability insurance that conforms to the

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requirements of this section from a qualified insurer or group self-insurance pool.

2. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

3. Group self-insurance pools ~~must shall~~ comply with § 62.1-44.34:12 of the Code of Virginia and the State Corporation Commission Bureau of Insurance Regulation No. 33 (14 VAC 5-380-10 et seq.).

B. Each insurance policy ~~must shall~~ be amended by an endorsement worded in no respect less favorable than the coverage as specified in Appendix III, or evidenced by a certificate of insurance worded identically as specified in Appendix IV, except that instructions in brackets ~~must shall~~ be replaced with the relevant information and the brackets deleted.

C. Each insurance policy ~~must shall~~ be issued by an insurer or a group self-insurance pool that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or approved surplus lines insurer in the Commonwealth of Virginia.

D. Each insurance policy shall provide first dollar coverage. The insurer or group self-insurance pool shall be liable for the payment of all amounts within any deductible applicable to the policy to the provider of corrective action or damaged third party, as provided in this chapter, with a right of reimbursement by the insured for any such payment made by the insurer or group. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9 VAC 25-590-60 through 9 VAC 25-590-110 and 9 VAC 25-590-250.

### 9 VAC 25-590-90. Surety bond.

A. An owner or operator ~~or petroleum storage tank vendor~~ may satisfy the requirements of 9 VAC 25-590-40 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond ~~must shall~~ be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond ~~must shall~~ be worded identically as specified in Appendix V, except that instructions in brackets ~~must shall~~ be replaced with the relevant information and the brackets deleted.

C. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator ~~or petroleum storage tank vendor~~ fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

D. The owner or operator ~~or petroleum storage tank vendor~~ who uses a surety bond to satisfy the requirements of 9 VAC 25-590-40 ~~must shall~~ establish a standby trust fund

when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the board under 9 VAC 25-590-170. This standby trust fund ~~must shall~~ meet the requirements specified in 9 VAC 25-590-120.

### 9 VAC 25-590-100. Letter of credit.

A. An owner or operator ~~or petroleum storage tank vendor~~ may satisfy the requirements of 9 VAC 25-590-40 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution ~~must shall~~ be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit ~~must shall~~ be worded identically as specified in Appendix VI, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

C. An owner or operator ~~or petroleum storage tank vendor~~ who uses a letter of credit to satisfy the requirements of 9 VAC 25-590-40 ~~must shall~~ also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the board will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the board under 9 VAC 25-590-170. This standby trust fund ~~must shall~~ meet the requirements specified in 9 VAC 25-590-120.

D. The letter of credit ~~must shall~~ be irrevocable with a term specified by the issuing institution. The letter of credit ~~must shall~~ provide that credit will be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator ~~or petroleum storage tank vendor~~ by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator ~~or petroleum storage tank vendor~~ receives the notice, as evidenced by the return receipt.

### 9 VAC 25-590-110. Trust fund.

A. An owner or operator ~~or petroleum storage tank vendor~~ may satisfy the requirements of 9 VAC 25-590-40 by establishing an irrevocable trust fund that conforms to the requirements of this section. The trustee ~~must shall~~ be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the grantor and the trustee, or by the trustee and the State Water Control Board, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the owner or operator ~~or petroleum storage tank vendor~~. The wording of the trust

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agreement ~~must shall~~ be identical to the wording specified in Appendix VII, and ~~must shall~~ be accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The irrevocable trust fund, when established, ~~must shall~~ be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism or mechanisms that provide the remaining required coverage.

D. If the value of the trust fund is greater than the required amount of coverage, the owner or operator ~~or petroleum storage tank vendor~~ may submit a written request to the board for release of the excess.

E. If other financial assurance as specified in this chapter is substituted for all or part of the trust fund, the owner or operator ~~or petroleum storage tank vendor~~ may submit a written request to the board for release of the excess.

F. Within 60 days after receiving a request from the owner or operator ~~or petroleum storage tank vendor~~ for release of funds as specified in subsection D or E of this section, the board will instruct the trustee to release to the owner or operator ~~or petroleum storage tank vendor~~ such funds as the board specifies in writing.

## 9 VAC 25-590-120. Standby trust fund.

A. An owner or operator ~~or petroleum storage tank vendor~~ using any one of the mechanisms authorized by 9 VAC 25-590-70, 9 VAC 25-590-90 and 9 VAC 25-590-100 ~~must shall~~ establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund ~~must shall~~ be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The standby trust agreement or trust agreement ~~must shall~~ be worded identically as specified in Appendix VII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The board will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the board determines that no additional corrective action costs or third party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

D. An owner or operator ~~or petroleum storage tank vendor~~ may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

## 9 VAC 25-590-130. Substitution of financial assurance mechanisms by owner or operator ~~or petroleum storage tank vendor~~.

A. An owner or operator ~~or petroleum storage tank vendor~~ may substitute any alternate financial assurance mechanisms as specified in this chapter, provided that at all times he maintains an effective financial assurance mechanism or

combination of mechanisms that satisfies the requirements of 9 VAC 25-590-40.

B. After obtaining alternate financial assurance as specified in this chapter, an owner or operator ~~or petroleum storage tank vendor~~ may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

## 9 VAC 25-590-140. Cancellation or nonrenewal by a provider of financial assurance.

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator ~~or petroleum storage tank vendor~~.

1. Termination of a *local government guarantee*, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator ~~or petroleum storage tank vendor~~ receives the notice of termination, as evidenced by the return receipt.

2. Termination of insurance or group self-insurance pool coverage, except for nonpayment or misrepresentation by the insured, may not occur until 60 days after the date on which the owner or operator ~~or petroleum storage tank vendor~~ receives the notice of termination, as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 15 days after the date on which the owner or operator ~~or petroleum storage tank vendor~~ receives the notice of termination, as evidenced by the return receipt.

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in 9 VAC 25-590-150 9 VAC 25-590-190, the owner or operator ~~or petroleum storage tank vendor~~ ~~must shall~~ obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator ~~or petroleum storage tank vendor~~ fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator ~~or petroleum storage tank vendor~~ ~~must shall~~ immediately notify the board of such failure and submit:

1. The name and address of the provider of financial assurance;
2. The effective date of termination; and
3. The evidence of the financial assurance mechanism subject to the termination maintained in accordance with 9 VAC 25-590-160 B.

## 9 VAC 25-590-150. Reporting by owner or operator ~~or petroleum storage tank vendor~~.

A. An owner or operator ~~must shall~~ submit the appropriate *original* forms listed in 9 VAC 25-590-160 B documenting current evidence of financial responsibility to the board within 30 days after the owner or operator identifies or confirms a

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release from an underground storage tank required to be reported under 9 VAC 25-580-220 or 9 VAC 25-580-240. For all subsequent releases within the same period of time for which the documents submitted according to this subsection are still effective, the owner or operator shall submit a letter which identifies the owner's or operator's name and address and the underground storage tanks' location by site name, street address, board incident designation number and a statement that the financial responsibility documentation previously provided to the board is currently in force.

B. An owner or operator ~~or petroleum storage tank vendor~~ must ~~shall~~ submit the appropriate forms listed in 9 VAC 25-590-160 B documenting current evidence of financial responsibility to the board if the owner or operator ~~or petroleum storage tank vendor~~ fails to obtain alternate coverage as required by this chapter within 30 days after the owner or operator ~~or petroleum storage tank vendor~~ receives notice of:

1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor;
2. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;
3. Failure of a guarantor to meet the requirements of the financial test; or
4. Other incapacity of a provider of financial assurance.

C. An owner or operator ~~or petroleum storage tank vendor~~ must ~~shall~~ submit the appropriate forms listed in 9 VAC 25-590-160 B documenting current evidence of financial responsibility to the board as required by 9 VAC 25-590-60 G and 9 VAC 25-590-140 B.

D. An owner or operator ~~must shall~~ certify compliance with the financial responsibility requirements of this chapter as specified in the new tank notification form when notifying the board of the installation of a new underground storage tank under 9 VAC 25-580-70.

E. The board may require an owner or operator ~~or petroleum storage tank vendor~~ to submit evidence of financial assurance as described in 9 VAC 25-590-160 B or other information relevant to compliance with this chapter at any time.

### 9 VAC 25-590-160. Recordkeeping.

A. Owners or operators ~~and petroleum storage tank vendors~~ ~~must shall~~ maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this chapter for an underground storage tank until released from the requirements of this chapter under 9 VAC 25-590-180. An owner or operator ~~and petroleum storage tank vendor~~ ~~must shall~~ maintain such evidence at the underground storage tank site or the owner's or operator's ~~and petroleum storage tank vendor's~~ place of business work in this Commonwealth. Records maintained

off-site ~~must shall~~ be made available upon request of the board.

B. Owners or operators ~~and petroleum storage tank vendors~~ ~~must shall~~ maintain the following types of evidence of financial responsibility:

1. An owner or operator ~~or petroleum storage tank vendor~~ using an assurance mechanism specified in 9 VAC 25-590-60 through 9 VAC 25-590-110 ~~must and~~ 9 VAC 25-590-250 ~~shall~~ maintain a copy of the instrument worded as specified.
2. An owner or operator ~~or petroleum storage tank vendor~~ using a financial test or guarantee ~~must~~, or a local government financial test or a local government guarantee supported by the local government financial test, ~~shall~~ maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence ~~must shall~~ be on file no later than 120 days after the close of the financial reporting year.
3. An owner or operator ~~or petroleum storage tank vendor~~ using a guarantee, surety bond, or letter of credit ~~must shall~~ maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
4. A local government owner or operator using a local government guarantee with standby trust under 9 VAC 25-590-250 ~~shall~~ maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
5. A local government owner or operator using the local government bond rating test under 9 VAC 25-590-250 ~~shall~~ maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.
6. A local government owner or operator using the local government guarantee under 9 VAC 25-590-250, where the guarantor's demonstration of financial responsibility relies on the bond rating test under 9 VAC 25-590-250 ~~shall~~ maintain a copy of the guarantor's bond rating published within the last 12 months by Moody's or Standard & Poor's.
7. An owner or operator ~~or petroleum storage tank vendor~~ using an insurance policy or group self-insurance pool coverage ~~must shall~~ maintain a copy of the signed insurance policy or group self-insurance pool coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.
8. An owner or operator using a local government fund under 9 VAC 25-590-250 ~~shall~~ maintain the following documents:
  - a. A copy of the state constitutional provision or local government statute, charter, ordinance or order dedicating the fund; and

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b. Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under 40 CFR 280.107(a)(3) (1997) (as incorporated by reference in 9 VAC 25-590-250) using incremental funding backed by bonding authority, the financial statements shall show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.

c. If the fund is established under 40 CFR 280.107(a)(3) (1997) (as incorporated by reference in 9 VAC 25-590-250) using incremental funding backed by bonding authority, the owner or operator shall also maintain documentation of the required bonding authority, including either the results of a voter referendum (under 40 CFR 280.107(a)(3)(i) (1997)) (as incorporated by reference in 9 VAC 25-590-250), or attestation by the Virginia Attorney General as specified under 40 CFR 280.107(a)(3)(ii) (1997) (as incorporated by reference in 9 VAC 25-590-250).

9. A local government owner or operator using the local government guarantee supported by the local government fund shall maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

5. 10. a. An owner or operator ~~or petroleum storage tank vendor~~ using an assurance mechanism specified in 9 VAC 25-590-60 through 9 VAC 25-590-110 ~~must~~ or 9 VAC 25-590-250 shall maintain an updated copy of a certification of financial responsibility worded identically as specified in Appendix IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

b. The owner or operator ~~or petroleum storage tank vendor~~ ~~must~~ shall update this certification whenever the financial assurance mechanism or mechanisms used to demonstrate financial responsibility changes.

## 9 VAC 25-590-170. Drawing on financial assurance mechanism.

A. Except as specified in subsection D of this section, the board shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the board, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

1. a. The owner or operator ~~or petroleum storage tank vendor~~ fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit; and

b. The board determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator, ~~or petroleum storage tank vendor~~, or the owner or operator has notified the board pursuant to Parts V (9 VAC 25-580-190 et seq.) and VI, 9 VAC 25-

580-190 through 9 VAC 25-580-220 and 9 VAC 25-580-230 through 9 VAC 580-300 (9 VAC 25-580-230 et seq.) of 9 VAC 25 Chapter 580 of a release from an underground storage tank covered by the mechanism; or

2. The conditions of subdivision B 1 or B 2 a or B 2 b subsection B of this section are satisfied.

B. The board may draw on a standby trust fund when:

1. The board makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under Part VI, (9 VAC 25-580-230 through 9 VAC 25-580-300 et seq.); or

2. The board has received either:

a. Certification from the owner or operator ~~or petroleum storage tank vendor~~ and the third party liability claimant or claimants and from attorneys representing the owner or operator and the third party liability claimant or claimants that a third party liability claim should be paid. The certification ~~must~~ shall be worded identically as specified in Appendix X, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; or

b. A valid final court order establishing a judgment against the owner or operator ~~or petroleum storage tank vendor~~ for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this chapter and the board determines that the owner or operator ~~or petroleum storage tank vendor~~ has not satisfied the judgment.

C. If the board determines that the amount of corrective action costs and third party liability claims eligible for payment under subsection B of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The board shall direct payment from the standby trust fund for third party liability claims in the order in which the board receives certifications under subdivision B 2 a of this section and valid court orders under subdivision B 2 b of this section.

D. A local government acting as guarantor under 40 CFR 280.106(e) (1997) (as incorporated by reference in 9 VAC 25-590-250), the local government guarantee without standby trust, shall make payments as directed by the director under the circumstances described in subsection A, B or C of this section.

## 9 VAC 25-590-180. Release from the requirements.

An owner or operator is no longer required to maintain financial responsibility under this chapter for an underground

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storage tank after the tank has been properly closed or a change-in-service properly completed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by Part VII, ~~9 VAC 25-580-310 through 9 VAC 25-580-350 (9 VAC 25-580-320 et seq.) of 9 VAC 25 Chapter 580.~~

**9 VAC 25-590-190. Bankruptcy or other incapacity of owner, operator, ~~petroleum storage tank vendor~~ or provider of financial assurance.**

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator ~~or petroleum storage tank vendor~~ as debtor, the owner or operator ~~or petroleum storage tank vendor~~ must shall notify the board by certified mail of such commencement and submit the appropriate forms listed in 9 VAC 25-590-160 B documenting current financial responsibility.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must shall notify the owner or operator ~~or petroleum storage tank vendor~~ by certified mail of such commencement as required under the terms of the guarantee specified in 9 VAC 25-590-70.

C. *Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator shall notify the director by certified mail of such commencement and submit the appropriate forms listed in 9 VAC 25-590-160 B documenting current financial responsibility.*

D. *Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor shall notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in 40 CFR 280.106 (1997) (as incorporated by reference in 9 VAC 25-590-250).*

E. An owner or operator ~~or petroleum storage tank vendor~~ who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, group self-insurance pool coverage policy, surety bond, or letter of credit. The owner or operator ~~or petroleum storage tank vendor~~ must shall obtain alternate financial assurance as specified in this regulation within 30 days after receiving notice of such an event. If the owner or operator ~~or petroleum storage tank vendor~~ does not obtain alternate coverage within 30 days after such notification, he must shall immediately notify the board in writing.

F. Within 30 days after receipt of written notification that the Virginia Underground Petroleum Storage Tank Fund has become incapable of covering costs in excess of those specified in 9 VAC 25-590-40 up to \$1 million, for paying for assured corrective action or third party compensation costs, the owner or operator ~~or petroleum storage tank vendor~~ must shall obtain alternate financial assurance in accordance with Subpart H of 40 CFR Part 280 (1997).

**9 VAC 25-590-200. Replenishment of guarantees, letters of credit or surety bonds.**

A. If at any time after a standby trust is funded upon the instruction of the board with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator ~~or petroleum storage tank vendor~~ shall by the anniversary date of the financial mechanism from which the funds were drawn:

1. Replenish the value of financial assurance to equal the full amount of coverage required; or
2. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 9 VAC 25-590-40. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

**9 VAC 25-590-210. Virginia Underground Petroleum Storage Tank Fund (Fund).**

A. The Virginia Petroleum Storage Tank Fund will be used for costs in excess of the financial responsibility requirements specified under ~~9 VAC 25-590-40 A subsection B of this section~~ up to \$1 million per occurrence for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks in accordance with the following:

1. Corrective action disbursements for accidental releases with no associated third party disbursements from the fund shall not exceed:
  - a. \$995,000 for the \$5,000 corrective action requirement;
  - b. \$990,000 for the \$10,000 corrective action requirement;
  - c. \$980,000 for the \$20,000 corrective action requirement;
  - d. \$970,000 for the \$30,000 corrective action requirement;
  - e. \$950,000 for the \$50,000 corrective action requirement.

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Third party disbursements for accidental releases with no corrective action disbursements from the fund shall not exceed:

- a. \$985,000 for the \$15,000 third party requirement;
- b. \$970,000 for the \$30,000 third party requirement;
- c. \$940,000 for the \$60,000 third party requirement;
- d. \$880,000 for the \$120,000 third party requirement;
- e. \$850,000 for the \$150,000 third party requirement.

Combined corrective action and third party disbursements from the fund shall not exceed:

- a. \$980,000 for the \$20,000 combined requirement;
- b. \$960,000 for the \$40,000 combined requirement;
- c. \$920,000 for the \$80,000 combined requirement;
- d. \$850,000 for the \$150,000 combined requirement;
- e. \$800,000 for the \$200,000 combined requirement.

The first priority for disbursements from the fund shall be for corrective action costs necessary to protect human health and the environment.

*2. Compensation for bodily injury and property damage shall be paid to third party liability claims against the Fund shall parties only be paid (i) in accordance with final court orders in cases which have been tried to final judgment no longer subject to appeal, (ii) in accordance with final arbitration awards not subject to appeal, or (iii) where the board has been represented or in cases of an agreed settlement between the third party and the board approved the settlement of claim between the owner or operator and the third party prior to execution by the parties.*

*The Commonwealth has not waived its sovereign immunity and does not believe that it is a necessary party to a private action against an owner or operator for third party bodily injury and property damage.*

*2. 3. Owner or operator managed cleanups. An owner or operator responding to a release and conducting a board approved corrective action plan in accordance with Parts V and VI, (9 VAC 25-580-190 through 9 VAC 25-580-300 9 VAC 25-580-310) may proceed to pay for all costs incurred for such activities. An accounting submitted to the board of all costs incurred will be reviewed and those costs in excess of the financial responsibility requirements up to \$1 million which are reasonable and have been approved by the board will be reimbursed from the fund.*

*3. Joint owner or operator and board managed cleanups. An owner or operator responding to a release and conducting a board approved corrective action plan in accordance with Parts V and VI, 9 VAC 25-580-190 through 9 VAC 25-580-300 may proceed to pay for those costs up to the amount of required financial responsibility*

~~specified in 9 VAC 25-580-40 A. An accounting of all costs incurred shall be submitted to the board and those costs which are reasonable and approved by the board will be applied to the owner or operator financial responsibility requirement. After the owner or operator meets the financial responsibility requirement the site will become a state managed cleanup. In order to have an orderly transition from the owner or operator managed cleanup to a board managed cleanup, the owner or operator shall only initiate activities associated with Part VI, 9 VAC 25-580-260 through 9 VAC 25-580-300 which can be completed within the owner or operator financial responsibility requirement.~~

~~Owners or operators who cannot complete a corrective action activity within the financial responsibility requirement, shall make available upon demand by the board the unexpended financial requirement moneys for the board's use in continuing a state managed cleanup at the site. The foregoing does not relieve owners or operators of their responsibility to conduct activities associated with Part VI, 9 VAC 25-580-230 through 9 VAC 25-580-250.~~

*4. Owners or operators shall pay the financial responsibility requirement specified in this section for each occurrence.*

*4. 5. No person shall receive reimbursement from the fund for any costs or damages incurred:*

*a. Where the person, his employee or agent, or anyone within the privity or knowledge of that person, has violated substantive environmental regulations under 9 VAC 25-580-10 et seq. or this chapter; or*

*b. Where the release occurrence is caused, in whole or in part, by the willful misconduct or negligence of the person, his employee or agent, or anyone within the privity or knowledge of that person; or*

*c. Where the person, his employee or agent, or anyone within the privity or knowledge of that person, has (i) failed to carry out the instructions of the board, committed willful misconduct or been negligent in carrying out or conducting actions under Part V or VI (9 VAC 25-580-190 through 9 VAC 25-580-300 9 VAC 25-580-310) or (ii) has violated applicable federal or state safety, construction or operating laws or regulations in carrying out or conducting actions under Parts V or VI (9 VAC 25-580-190 through 9 VAC 25-580-300 9 VAC 25-580-310); or*

*d. Where the claim has been reimbursed or is reimbursable, by an insurance policy, self-insurance program or other financial mechanism; or*

*e. Where the costs or damages were incurred pursuant to Article 4.1 (§ 10.1-1429.1 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia and the regulations promulgated thereunder;*

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- f. For corrective action taken prior to December 22, 1989, by an owner or operator of an underground storage tank, or an owner of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in 9 VAC 25-590-10, or an owner of an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored; or
- g. Prior to January 1, 1992, by an operator of a facility for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 of the Code of Virginia.
5. No person shall receive reimbursement from the fund for third party bodily injury or property damage claims:
- a. Where the release, occurrence, injury or property damage is caused, in whole or in part, by the willful misconduct or negligence of the claimant owner or operator, his employee or agent, or anyone within his privity or knowledge; or
  - b. Where the claim cost has been reimbursed or is reimbursable, by an insurance policy, self-insurance program or other financial mechanism;
  - c. Where the costs or damages were incurred pursuant to Article 4.1 (§ 10.1-1429.1 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia and the regulations promulgated thereunder;
  - d. Where the release was reported before December 22, 1989; or
  - e. Where the owner or operator does not demonstrate the reasonableness and necessity of the claim costs.
- B. 1. The fund will be used to demonstrate financial responsibility requirements for owners or operators in excess of the amounts specified under 9 VAC 25-590-40 A in this subdivision up to the \$1 million or \$2 million annual aggregate, as applicable, required by 40 CFR 280, Subpart H per occurrence and annual aggregate requirements specified in 9 VAC 25-590-40 for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks.
- a. Owners and operators with 600,000 gallons or less of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$5,000 per occurrence for taking corrective action and \$15,000 per occurrence for compensating third parties, with an annual aggregate of \$20,000.
  - b. Owners and operators with between 600,001 to 1,200,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$10,000 per occurrence for taking corrective action and \$30,000 per occurrence for compensating third parties, with an annual aggregate of \$40,000.
- c. Owners and operators with between 1,200,001 to 1,800,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$20,000 per occurrence for taking corrective action and \$60,000 per occurrence for compensating third parties, with an annual aggregate of \$80,000.
- d. Owners and operators with between 1,800,001 to 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$30,000 per occurrence for taking corrective action and \$120,000 per occurrence for compensating third parties, with an annual aggregate of \$150,000.
- e. Owners and operators with in excess of 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$50,000 per occurrence for taking corrective action and \$150,000 per occurrence for compensating third parties, with an annual aggregate of \$200,000.
2. The fund may be used to satisfy only the portion of an owner or operator's financial responsibility requirement specified in subdivision 1 of this subsection and, therefore, shall be used in combination with one or more of the mechanisms specified in 9 VAC 25-590-60 through 9 VAC 25-590-110 and 9 VAC 25-590-250.
3. The requirements of 9 VAC 25-590-40 B apply solely to financial responsibility demonstration requirements under this section, and shall not affect reimbursements paid under this section.
- C. This fund may also be used for the following:
1. Costs incurred by the board for taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the board to protect human health and the environment.
  2. Costs incurred by the board for taking both corrective action and compensating third party liability claims parties up to \$1 million for any release of petroleum into the environment from an underground storage tank:
    - a. Whose owner or operator cannot be determined by the board within 90 days; or
    - b. Whose owner or operator is incapable, in the judgment of the board, of carrying out such corrective action properly and paying for third party liability claims.
  3. Costs incurred by the board for taking corrective action for any release of petroleum into the environment from tanks which are otherwise specifically listed in 9 VAC 25-580-10 9 VAC 25-590-10 as exemptions in the definition of an underground storage tank.

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4. All other uses authorized by § 62.1-44.34:11 of the Code of Virginia.

D. The board shall seek recovery of fund moneys expended for corrective action in accordance with § 62.1-44.34:11 of the Code of Virginia where the owner or operator has violated substantive environmental regulations under 9 VAC 25-580-10 et seq. or this chapter.

E. The board shall have the right of subrogation for moneys expended from the fund as compensation for bodily injury, death, or property damage against any person who is liable for such injury, death or damage.

F. No funds shall be paid for reimbursement of ~~moneys expended costs incurred~~ by an owner or operator for corrective action and for compensating third parties for bodily injury and property damage prior to December 22, 1989.

G. No disbursements shall be made from the fund for owners or operators who are federal government entities or whose debts and liabilities are the debts and liabilities of the United States.

H. *The fund will be managed to provide for cleanup of each occurrence to an acceptable level of risk.*

## 9 VAC 25-590-220. Notices to the State Water Control Board.

All requirements of this regulation for notification to the State Water Control Board shall be addressed as follows:

Director  
Department of Environmental Quality  
629 E. Main Street  
P.O. Box 10009  
Richmond, Virginia 23240-0009

## 9 VAC 25-590-230. Delegation of authority.

The Director of the Department of Environmental Quality, or in his absence a designee acting for him, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

## 9 VAC 25-590-240. Lender liability.

*The U.S. Environmental Protection Agency regulations on lender liability contained in the Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) (40 CFR 280.200 through 280.230 (1997)) are incorporated by reference into this chapter as amended by the word or phrase substitutions given in 9 VAC 25-590-260.*

## 9 VAC 25-590-250. Local government financial responsibility demonstration.

*The U.S. Environmental Protection Agency regulations on local government financial responsibility demonstration contained in the Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) (40 CFR 280.104 through 280.107 (1997)) are incorporated by reference into this chapter as*

*amended by the word or phrase substitutions given in 9 VAC 25-590-260.*

## 9 VAC 25-590-260. Word or phrase substitutions.

*In 9 VAC 25-590-240 and 9 VAC 25-590-250, the following substitutions apply:*

1. *All terms which are defined in 9 VAC 25-590-10 shall be given the definition contained in 9 VAC 25-590-10;*
2. a. *Director of the Department of Environmental Quality for director of the implementing agency;*
- b. *Department of Environmental Quality for the implementing agency;*
- c. *UST preventative and operating requirements under 9 VAC 25-580-10 et seq. for UST technical standards;*
- d. *9 VAC 25-580-10 et seq. and 9 VAC 25-590-10 et seq. for 40 CFR Part 280 (1997);*
- e. *9 VAC 25-580-230 through 9 VAC 25-580-300 for 40 CFR Part 280, Subpart F (1997);*
- f. *9 VAC 25-590-10 et seq. for 40 CFR Part 280, Subpart H (1997);*
- g. *9 VAC 25-580-50 for 40 CFR 280.20;*
- h. *9 VAC 25-580-60 for 40 CFR 280.21;*
- i. *9 VAC 25-580-70 for 40 CFR 280.22 (1997);*
- j. *9 VAC 25-580-90 for 40 CFR 280.31;*
- k. *9 VAC 25-580-200 through 9 VAC 25-580-300 for 40 CFR 280.51 through 280.67;*
- l. *9 VAC 25-580-310 for 40 CFR 280.70;*
- m. *9 VAC 25-580-320 through 9 VAC 25-580-350 for 40 CFR 280.71 through 280.74;*
- n. *9 VAC 25-580-330 for 40 CFR 280.72;*
- o. *9 VAC 25-590-20 through 9 VAC 25-590-160 for 40 CFR 280.90 through 280.111;*
- p. *9 VAC 25-590-40 for 40 CFR 280.93;*
- q. *9 VAC 25-590-170 for 40 CFR 280.112 (1997); and*
- r. *9 VAC 25-590-190 for 40 CFR 280.114.*

## APPENDIX I. LETTER FROM CHIEF FINANCIAL OFFICER.

NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.

I am the chief financial officer of [insert name and address of the owner or operator or guarantor]. This letter is in support of the use of [insert "the financial test of self-insurance," and/or "Guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert "sudden accidental releases"

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and/or "nonsudden accidental releases"] in the amount of at least [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert "owner or operator," and/or "guarantor"]: [List for each facility the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 9 VAC 25-580-70 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements)].

A [insert "financial test," and/or "guarantee"] is also used by this [insert "owner or operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145 (1997):

EPA Regulation for each state of business operations (specify state):

	Amount
Closure (Sections 264.143 and 265.143)	\$ _____
Post-Closure Care (Sections 264.145 and 265.145)	\$ _____
Liability Coverage (Sections 264.147 and 265.147)	\$ _____
Corrective Action (Sections Section 264.101(b))	\$ _____
Plugging and Abandonment (Section 144.63)	\$ _____
<i>Other State Programs (specify state):</i>	
<i>Closure</i>	\$ _____
<i>Post-Closure Care</i>	\$ _____
<i>Liability Coverage</i>	\$ _____
<i>Corrective Action</i>	\$ _____
<i>Plugging and Abandonment</i>	\$ _____
Virginia Hazardous Waste Management Regulations:	
Closure (9 VAC 20-60-810 C and 9 VAC 20-60-590 C)	\$ _____
Post-Closure Care (9 VAC 20-60-810 E and 9 VAC 20-60-590 E)	\$ _____
Liability Coverage (9 VAC 20-60-810 G and 9 VAC 20-60-590 G)	\$ _____
Corrective Action (9 VAC 20-60-790 L 2)	\$ _____
Plugging and Abandonment (40 CFR Section 144.63) (1997)	\$ _____

A [insert: "financial test" and/or "guarantee"] is also used by this [insert: "owner or operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts for the operation of facilities and/or tank vessels in accordance with § 62.1-44.34:16 of the Code of Virginia.

The amount of annual aggregate coverage for facility(ies) \$ \_\_\_\_\_

The amount of annual aggregate coverage for tank vessels \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

This [insert "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of § 6 9 VAC 25-590-60 B are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of § 6 9 VAC 25-590-60 C are being used to demonstrate compliance with the financial test requirements.]

### ALTERNATIVE I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee.....\$ \_\_\_\_\_
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs and annual aggregate coverage for facilities and/or tank vessels covered by a financial test, and/or guarantee.....\$ \_\_\_\_\_
3. Sum of lines 1 and 2.....\$ \_\_\_\_\_
4. Total tangible assets.....\$ \_\_\_\_\_
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line or add that amount to line 6].....\$ \_\_\_\_\_
6. Tangible net worth [subtract line 5 from line 4].....\$ \_\_\_\_\_
7. Is line 6 at least equal to line 1 above? Yes.... No....
8. Is line 6 at least equal to the sum of line 1 plus 10 times line 2? Yes.... No....
9. Have financial statements for the latest *fiscal financial reporting* year been filed with the Securities and Exchange Commission? Yes.... No....
10. Have financial statements for the latest *fiscal financial reporting* year been filed with the Energy Information Administration? Yes.... No....
11. Have financial statements for the latest *fiscal financial reporting* year been filed with the Rural Electrification Administration? Yes.... No....

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12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of at least BB (~~\$200,000 to 299,999~~ equal to the amount of annual UST aggregate coverage being assured according to the table below?

Annual Aggregate Requirement	Dun and Bradstreet Rating
\$20,000	EE (\$20,000 to \$34,999)
\$40,000	DC (\$50,000 to \$74,999)
\$80,000	CB (\$125,000 to \$199,999)
\$150,000	BB (\$200,000 to \$299,999)
\$200,000	BB (\$200,000 to \$299,999)

[Answer "Yes" only if both criteria have been met.] Yes.... No....

13. If you did not answer yes to one of lines 9 through 12, please attach a report from a certified public accountant certifying that there are no material differences between the data reported in ~~line lines~~ 4 through 8 above and the financial statements for the latest *fiscal financial reporting year*.

## ALTERNATIVE II

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee

2. Amount of corrective action closure and post-closure care costs, liability coverage, and plugging and abandonment costs *and annual aggregate coverage for facilities and/or tank vessels covered by a financial test, and/or guarantee*.....\$\_\_\_\_\_

3. Sum of lines 1 and 2.....\$\_\_\_\_\_

4. Total tangible assets.....\$\_\_\_\_\_

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line or add that amount to line 6].....\$\_\_\_\_\_

6. Tangible net worth [subtract line 5 from line 4].....\$\_\_\_\_\_

7. Total assets in the U.S. [required only if less than 90% of assets are located in the U.S.].....\$\_\_\_\_\_

8. Is line 6 at least equal to line 1 above? Yes\_\_\_\_\_  
No\_\_\_\_\_

9. Is line 6 at least equal to the sum of line 1 plus 6 times the sum of line 2? Yes\_\_\_\_\_  
No\_\_\_\_\_

10. Are at least 90% of assets located in the U.S.? [If "No," complete line 11.] Yes\_\_\_\_\_  
No\_\_\_\_\_

11. Is line 7 at least equal to the sum of line 1 plus 6 times the sum of line 2? Yes\_\_\_\_\_  
No\_\_\_\_\_

[Fill in either lines 12-15 or lines 16-18:]

12. Current assets.....\$\_\_\_\_\_

13. Current liabilities.....\$\_\_\_\_\_

14. Net working capital subtract line 13 from line 12.....\$\_\_\_\_\_

15. Is line 14 at least equal to the sum of line 1 plus 6 times the sum of line 2? Yes\_\_\_\_\_  
No\_\_\_\_\_

16. Current bond rating of most recent bond issue?  
Yes\_\_\_\_\_  
No\_\_\_\_\_

17. Name of rating service Yes\_\_\_\_\_  
No\_\_\_\_\_

18. Date of maturity of bond Yes\_\_\_\_\_  
No\_\_\_\_\_

19. Have financial statements for the latest *fiscal financial reporting year* been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration? Yes\_\_\_\_\_  
No\_\_\_\_\_

[If "no," please attach a report from an independent certified public accountant certifying that there are no material differences between the data reported in lines 4-18 above and the financial statements for the latest *fiscal financial reporting year*.]

[For Alternatives I and II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Appendix I of this chapter as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

\*NOTE: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.

## APPENDIX II. GUARANTEE.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the State Water Control Board of the Commonwealth of Virginia and to any and all third parties, and obligees, on behalf of [owner or operator<sup>†</sup>] of [business address].

\*NOTE: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.

## Proposed Regulations

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of 9 VAC 25-590-60 B or C and D of the Virginia Petroleum Underground Storage Tank Financial Responsibility Requirements Regulation, 9 VAC 25-590-10 et seq., and agrees to comply with the requirements for guarantors as specified in 9 VAC 25-590-70 B.

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 9 VAC 25-580-70. (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility]. This guarantee satisfies this chapter's requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the State Water Control Board and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the State Water Control Board has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the State Water Control Board, shall fund a standby trust fund in accordance with the provisions of 9 VAC 25-590-170, in an amount not to exceed the coverage limits specified above.

In the event that the State Water Control Board determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 9 VAC 25-580-230 through 9 VAC 25-580-300 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), the guarantor upon written instructions from the State Water Control Board shall

fund a standby trust in accordance with the provisions of 9 VAC 25-590-170, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the State Water Control Board, shall fund a standby trust in accordance with the provisions of 9 VAC 25-590-170 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 9 VAC 25-590-60 B or C and D, guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 9 VAC 25-580-10 et seq. and 9 VAC 25-590-10 et seq..

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must shall comply with the applicable financial responsibility requirements of 9 VAC 25-590-10 et seq. for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

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(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank; or

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-590-40.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the State Water Control Board, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix II of 9 VAC 25-590-10 et seq. as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

## APPENDIX V. PERFORMANCE BOND.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Date bond executed:

Period of coverage:

Principal: [legal name and business address of owner or operator.]<sup>\*</sup>

Type of organization: [insert "individual" "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable):

Surety(ies): [name(s) and business address(es)]

Scope of coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 9 VAC 25-580-70 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden"

"accidental releases" or "accidental releases" "arising from operating the underground storage tank".]

Penal sums of bond:

Corrective Action (per occurrence) \$....

Third Party Liability (per occurrence) \$....

Annual aggregate \$....

Surety's bond number:

Know all Persons by These Presents, that we, the principal and Surety(ies), hereto are firmly bound to the State Water Control Board of the Commonwealth of Virginia, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under §§ 62.1-44.34:8 through § 62.1-44.34:12 of the Code of Virginia, Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, and under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (9 VAC 25-590-10 et seq.), to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully [take corrective action, in accordance with Part VI of 9 VAC 25-580-230 through 25-580-300. (Underground Storage Tanks; Technical Standards and Corrective Action Requirements) and the State Water Control Board's instructions for, and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 9 VAC 25-590-10 et seq., within 120 days after the date the notice of cancellation

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is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator\*] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-590-40.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the State Water Control Board that the Principal has failed to ["take corrective action, in accordance with Part VI of 9 VAC 25-580-230 through 25-580-300 and the State Water Control Board's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in, accordance with 9 VAC 25-580-10 et seq. and the board's instructions," and/or "third party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the State Water Control Board under 9 VAC 25-590-170.

Upon notification by the State Water Control Board that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the State Water Control Board has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the State Water Control Board under 9 VAC 25-590-170.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix V of 9 VAC 25-590-10 et seq. as such regulations were constituted on the date this bond was executed.

### PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

### CORPORATE SURETY(IES)

[Name and address]

State of Incorporation:

Liability limit.....\$ . . .

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]

Bond premium:.....\$ . . .

~~\*Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.~~

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## APPENDIX VI.

### IRREVOCABLE STANDBY LETTER OF CREDIT.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[Name and address of issuing institution]

[Name and address of the Executive Director of the State Water Control Board of the Commonwealth of Virginia and Director(s) of other state implementing agency(ies)]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No . . . . in your favor, at the request and for the account of [owner or operator ~~name~~] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation [insert, if more than one director of a state implementing agency is a beneficiary, "by any one of you"] of

(1) your sight draft, bearing reference to this letter of credit, No. . . and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of §§ 62.1-44.34:8 through 62.1-44.34:12 of the Code of Virginia and Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$ [insert dollar amount] per occurrence and [in words] \$ [insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 9 VAC 25-580-70 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

- (a) Any obligation, of [insert owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-590-40 (Virginia Petroleum Underground Storage Tank Financial Responsibility Requirements Regulation).

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Appendix VI of 9 VAC 25-590-10 et seq. as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

~~Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.~~

## APPENDIX VII. TRUST AGREEMENT.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator ~~name~~], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of . . . . or a national bank"], the "Trustee."

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Whereas, the State Water Control Board of the Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standby trust agreement.

Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

## Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) "9 VAC 25-590-10 et seq." is the Petroleum Underground Storage Tank Financial Requirements Regulation promulgated by the State Water Control Board for the Commonwealth of Virginia.

## Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

## Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State Water Control Board of the Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the State Water Control Board's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee

pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the State Water Control Board.

## Section 4. Payment for ["Corrective Action" and/or "Third Party Liability Claims"].

The Trustee shall make payments from the Fund as the State Water Control Board shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-590-40.

The Trustee shall reimburse the Grantor, or other persons as specified by the State Water Control Board, from the Fund for corrective action expenditures and/or third party liability claims in such amounts as the State Water Control Board shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the State Water Control Board specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined here.

## Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

## Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in

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accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

## Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC § 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

## Section 8. Express Powers of Trustee.

Without in any way limiting the powers and dispositions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and

all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

## Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

## Section 10. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

## Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

## Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those

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conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

## Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and instructions by the State Water Control Board to the Trustee shall be in writing, signed by the Executive Director of the State Water Control Board, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the State Water Control Board hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the State Water Control Board, except as provided for herein.

## Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the State Water Control Board if the Grantor ceases to exist.

## Section 15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the State Water Control Board, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

## Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the State Water Control Board issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and

against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

## Section 17. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia, or the Comptroller of the Currency in the case of National Association banks.

## Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix VII of 9 VAC 25-590-10 et seq. as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

~~\*Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.~~

## APPENDIX VIII. CERTIFICATION OF ACKNOWLEDGMENT.

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

State of . . . .

County of . . . .

# Proposed Regulations

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

My Commission expires:

~~Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.~~

## APPENDIX IX.

### CERTIFICATION OF FINANCIAL RESPONSIBILITY.

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[Owner or operator or petroleum storage tank vendor] hereby certifies that it is in compliance with the requirements of 9 VAC 25-590-10 et seq. (Petroleum Underground Storage Tank Financial Requirements Regulation).

The financial assurance mechanism[s] used to demonstrate financial responsibility under 9 VAC 25-590-10 et seq. is [are] as follows:

~~[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases."]~~

Indicate type of Mechanism (Note: the Fund may not be used as the sole mechanism):

- Virginia Petroleum Storage Tank Fund ("the Fund")
- Letter from Chief Financial Officer
- Guarantee
- Insurance Endorsement or Certificate
- Letter of Credit
- Surety Bond
- Trust Fund

Name of Issuer (for mechanism other than the Fund):

Mechanism Number (if applicable):

Amount of coverage for mechanism other than the Fund:

\$ \_\_\_\_\_ corrective action per occurrence

\$ \_\_\_\_\_ third party liability per occurrence

\$ \_\_\_\_\_ annual aggregate

Amount of coverage under Virginia Petroleum Storage Tank Fund:

\$ \_\_\_\_\_ per occurrence and \$ \_\_\_\_\_ annual aggregate

Effective period of coverage: \_\_\_\_\_ to \_\_\_\_\_

Do(es) mechanism(s) cover(s): taking corrective action and/or compensating third parties for bodily injury and property damage caused by either sudden accidental releases or nonsudden accidental releases or accidental releases? Yes \_\_\_\_\_ No \_\_\_\_\_

If "No," specify in the following space the items the mechanism covers:

[Signature of owner or operator or petroleum storage tank vendor]

[Name of owner or operator or petroleum storage tank vendor] [Title] [Date]

[Signature of notary]

[Name of notary] [Date] My Commission expires:

## APPENDIX X.

### CERTIFICATION OF VALID CLAIM.

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[. . .].

[Signatures] [Signature(s)]

Owner or Operator Claimant(s)

Attorney for Attorney(s) for

Owner or Operator Claimant(s)

(Notary) Date (Notary) Date

~~Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.~~

## APPENDIX XI.

### LETTER FROM CHIEF FINANCIAL OFFICER (SHORT FORM).

[Note: This Appendix may only be used by owners, operators or petroleum storage tank vendors who do not own or

## Proposed Regulations

operate hazardous waste facilities, underground injection control wells, aboveground storage tank facilities or tank vessels.]

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

I am the chief financial officer of [insert: name and address of the owner or operator or guarantor]. This letter is in support of the use of [insert "the financial test of self-insurance," and/or "Guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert "owner or operator," and/or "guarantor"]: [List for each facility the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 9 VAC 25-580-70 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements)].

I am not required to demonstrate evidence of financial responsibility for any other EPA regulation or state programs authorized by EPA or for operation of facilities and/or tank vessels in accordance with § 62.1-44.34:16 of the Code of Virginia.

This [insert "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on the financial statements for the latest completed financial reporting year.

[Fill in the information below to demonstrate compliance with the financial test requirements.]

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee.....\$--
2. Total tangible assets.....\$--
3. Total liabilities (if any of the amount reported on line 1 is included in total liabilities, you may deduct that amount from this line or add that amount to line 4).....\$--
4. Tangible net worth [subtract line 3 from line 2].....\$--
5. Is line 4 at least equal to line 1 above? Yes... No...
6. Have financial statements for the latest financial reporting year been filed with the Securities and Exchange Commission? Yes... No...

7. Have financial statements for the latest financial reporting year been filed with the Energy Information Administration? Yes... No...

8. Have financial statements for the latest financial reporting year been filed with the Rural Electrification Administration? Yes... No...

9. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating at least equal to the amount of annual UST aggregate coverage being assured according to the table below?

Annual Aggregate Requirement	Dun and Bradstreet Rating
\$20,000	EE (\$20,000 to \$34,999)
\$40,000	DC (\$50,000 to \$74,999)
\$80,000	CB (\$125,000 to \$199,999)
\$150,000	BB (\$200,000 to \$299,999)
\$200,000	BB (\$200,000 to \$299,999)

[Answer "Yes" only if BOTH criteria have been met.] Yes... No...

10. If you did not answer yes to one of lines 6 through 9, please attach a report from a certified public accountant certifying that there are no material differences between the data reported in lines 2 through 5 above and the financial statements for the latest financial reporting year.

I hereby certify that the wording of this letter is identical to the wording specified in Appendix XI of this chapter as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

### FORMS

Virginia Department of Environmental Quality Water Division Corporate Ability Pay Claim.

Individual Ability to Pay Claim.

Appendix I-Letter from Chief Financial Officer.

Appendix II-Guarantee.

Appendix III-Endorsement.

Appendix IV-Certificate of Insurance.

Appendix V-Performance Bond.

Appendix VI-Irrevocable Standby Letter of Credit.

Appendix VII-Trust Agreement.

Appendix VIII-Certification of Acknowledgment.

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Appendix IX-Certification of Financial Responsibility.

Appendix X-Certification of Valid Claim.

Appendix XI-Letter from Chief Financial Officer (Short Form).

Notice of Intent to Seek Reconsideration.

Form 1-Virginia Underground Petroleum Storage Tank Fund Cost Justification and Application for Reimbursement of Corrective Action Costs, VWCB USTRF-10, (eff. 7/91).

Form 2-VUPSTF Summary of All Costs, Cost Detail Worksheets A-E, USTRF-20, (eff. 7/91).

Form 3-CPA Affidavit, USTRF-30, (eff. 7/91).

Form 4-Corrective Action Activity Regional Office Review, USTRF-40, (eff. 7/91).

Form 5-Owner Identification and Assignment Certification, USTRF-50, (eff. 7/91).

Form 6-Agent Assignment Certification, USTRF-60, (eff. 7/91).

Form 7-Assignment of VUPSTF Proceeds to Financial Institutions, USTRF-70, (eff. 7/91).

Certification of AST Facility Storage Capacity for Access to the Virginia Petroleum Storage Tank Fund.

Certification of Annual Gallonage.

Estate Ability to Pay Application Instructions.

V.A.R. Doc. No. R98-209; Filed April 8, 1998, 11:59 a.m.

## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: 12 VAC 30-100-10 et seq. State Programs: Part IV, Health Insurance Program for Working Uninsured Individuals (adding 12 VAC 30-100-400, 12 VAC 30-100-410, 12 VAC 30-100-420, 12 VAC 30-100-430, 12 VAC 30-100-440, 12 VAC 30-100-450, 12 VAC 30-100-460 and 12 VAC 30-100-470).

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

Public Hearing Date: N/A -- Public comments may be submitted until June 26, 1998.

(See Calendar of Events section  
for additional information)

Basis: Item 323 of Chapter 924 of the 1997 Virginia Acts of Assembly directed DMAS to promulgate regulations to implement a demonstration project for providing insurance premium subsidies to low-income working uninsured individuals. The agency's basic authority to implement this program lies in §§ 32.1-332 and 32.1-333 of the Code of Virginia.

Purpose: The regulation is needed for this pilot project which is attempting to develop more efficient and economical means of providing health care services to uninsured individuals. The demonstration project is designed to begin to address two related problems—the numbers of Virginians who are uninsured and the volume of hospital-based uncompensated care.

Approximately 14% of all Virginians are uninsured, and many are unable to pay for hospital care. This uncompensated hospital care results in higher prices and higher health insurance premiums for those who are covered, as hospitals are forced to shift the costs of uncompensated care to the paying customers. Providing more people with access to preventive and primary health care services delivered through a managed care organization will reduce unnecessary hospitalizations. Furthermore, a certain portion of the beneficiaries of this project would become eligible for Medicaid services without the benefits provided under the project. Providing health insurance for these beneficiaries will prevent their need for services under Medicaid. Not having to provide services to these individuals under Medicaid will result in cost savings. Providing health insurance through a public/private partnership involving employers, employees, health care providers, and the Trust Fund will help leverage Trust Fund contributions with additional funds from individuals and businesses. Finally, the project should help Virginia's efforts to reform the welfare system by providing additional assistance to individuals who are making the transition from welfare to the work force.

Substance and Analysis: In 1993, the General Assembly, in an effort to address the problem of the uninsured in Virginia, passed Senate Joint Resolution 315. This resolution directed the Technical Advisory Panel (TAP) of the Indigent Health Care Trust Fund (Trust Fund) to support strategies which will increase the number of Virginians with health insurance. The Trust Fund was established to help offset some of the charity care provided by Virginia's private acute care hospitals, and is funded with a combination of state general fund appropriations and private hospital donations. The TAP, working with DMAS staff, has developed a proposal to use a portion of the contributions to the Trust Fund to test a method to expand health insurance coverage to the uninsured who are employed by small businesses, and to provide subsidies to low-income employees who couldn't otherwise afford to participate.

Although this program can trace its origins to SJR 315 (1993), it was not until the fall of 1996 that a consensus was reached about how the program should be implemented based on the TAP proposal. The 1997 General Assembly directed that the program become operational by July 1997. Therefore, emergency regulations were needed in order to implement the program as directed, and to avoid the risk of losing the funding commitment from Inova Health System.

Individuals without insurance will often delay seeking medical care and will often seek care in hospital emergency rooms, thus incurring relatively high medical expenditures which they cannot afford. This uncompensated care is often shifted to

## Proposed Regulations

those who have insurance, resulting in more expensive medical care for everyone. By providing health insurance to this population, the program aims to accomplish several objectives which will benefit all Virginians. The program aims to reduce charity care costs provided in hospitals. Subsidizing health insurance premiums and providing a medical benefits package which includes primary as well as preventive health care services through a managed care plan should reduce unnecessary hospitalizations and emergency room care for the uninsured population.

These regulations establish the Health Insurance Program for Working Uninsured Individuals. DMAS will contract with a managed care plan in each pilot site. The managed care plan will be responsible for marketing the program to small businesses and employees, and for providing the Essential Health Benefits Plan to the beneficiaries for a fixed monthly health insurance payment which will come from contributions from employers, employees and the project subsidy. The applications of employees requesting the subsidy will be forwarded by the contractor to DMAS where their eligibility for the premium subsidies will be determined. If determined eligible, the employees will be enrolled into the health plan, and DMAS will remit the subsidy for eligible employees to the managed care plan.

This program will provide Virginia with a chance to test the provision of health insurance premium subsidies on a small scale with the possibility of later expanding to a statewide program. As part of the product development phase of the project, market research was conducted in two potential pilot sites (Northern Virginia and Tidewater) to gauge the level of interest of small employers and their employees in providing and obtaining health insurance, and to determine the level of subsidy that will be needed to ensure adequate participation in the subsidized health insurance program. The market research identified a willingness to pay for a sizable portion of the premium both on the part of the employers and the employees.

**Issues:** The program is an incremental approach to health care reform, and one which will not involve any additional funds on the part of the state. The program will be funded with donations from hospitals which have expressed an interest in implementing a pilot site in their service area. Inova Health System has been committed to providing funding for a pilot site in the Northern Virginia area from the beginning stages of the project.

This program will provide insights into what kind of coverage, at what price, will induce this low-income working population to purchase health insurance. The program will help determine to what extent the premium subsidies help employees obtain health insurance for themselves and their dependents, and to what extent the provision of subsidies serves as an incentive for small businesses to offer health insurance to their employees. Employing a public-private partnership with various cost-sharing mechanisms, and allowing each contributor to leverage his contribution and multiply its effect, will provide preliminary information on total

funding needed for a large scale effort to provide health insurance to this population.

These regulations, define, in a fair and equitable manner, who is eligible to receive premium subsidies, how beneficiaries will be enrolled and disenrolled, and what appeal rights they have. The regulations outline the rights and responsibilities of the providers and describe how DMAS monitors the services provided by the managed care plans. The regulations also outline the administrative structure and reimbursement methodology. Finally they provide information on the benefit package or covered services.

These regulations represent an advantage to the public because they provide information on a mechanism to increase the number of Virginians with health insurance.

These regulations provide an advantage to the state in that this program will provide insights into what kind of coverage, at what price, will induce this low-income working population to purchase health insurance.

The program will help determine to what extent the premium subsidies help employees obtain health insurance for themselves and their dependents and to what extent the provision of subsidies serves as an incentive for small businesses to offer health insurance to their employees.

Employing a public-private partnership with various cost-sharing mechanisms, and allowing each contributor to leverage his contribution and multiply its effect, will provide preliminary information on total funding needed for a large scale effort to provide health insurance to this population.

There are no known disadvantages to the agency or the public.

**Fiscal/Budget Impact:** This program does not require any additional general fund tax dollars. The funds to start the project will come from contributions or donations from hospitals. Two or three hospitals which are net recipients of funds from the Trust Fund have expressed an interest in donating money for the project. In exchange for donating these funds, the hospitals have requested that DMAS contract with their own managed care plan to provide health services to residents in their own service area. The funds donated by the hospitals will be administered by DMAS, and will be leveraged by requiring the employers and employees to contribute towards the cost of providing health insurance. Thus, the total cost of the health insurance premiums will be shared between the employers, employees and the program subsidy. This program is not a Medicaid entitlement program.

**Forms:** This program will require the development of a new form to determine the eligibility of an applicant for the premium subsidy. This form will be developed jointly with the health maintenance organization contractor, and will include information the contractor will need in order to enroll the employee into its health plan.

**Department of Planning and Budget's Economic Impact Analysis:** The Department of Planning and Budget (DPB)

# Proposed Regulations

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has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. Item 323 (B) and (C) of the 1997 Appropriation Act requires the Department of Medical Assistance Services (DMAS) to implement a demonstration project "to assist employers and employees in financing health insurance for households that are at or below 200 percent of United States non-farm poverty income guidelines and are employed in firms that on at least 50% of their working days during the preceding year, employed no more than twenty-five eligible employees and not less than two unrelated eligible employees." The Health Insurance Program for Working Uninsured Individuals fulfills this mandate by providing subsidized health insurance for qualifying individuals. Approximately \$1 million of the donations to the Indigent Health Care Trust Fund will be used for the implementation of this program, in order to provide coverage for approximately 2,000 individuals.

These proposed regulations are intended to permanently implement emergency regulations which define who is eligible to receive health insurance premium subsidies, how beneficiaries will be enrolled and removed from the program, and what appeal rights they will have. The regulations outline the rights and responsibilities of the providers and describe how DMAS will monitor the services provided by the contracted managed care plans. The regulations also outline the administrative structure and the reimbursement methodology.

Estimated economic impact. Individuals without health insurance often delay seeking preventive and primary medical care. In many cases this behavior leads to unnecessary hospitalization or hospital emergency room visits, either of which result in high medical expenditures that many uninsured individuals could not afford. This uncompensated care is often shifted to persons who have insurance, resulting in more expensive health care costs for everyone. By lowering the price of health insurance for qualifying individuals, the proposed regulations will likely increase the number of Virginians that purchase health insurance and reduce charity care costs provided by hospitals.

These regulations can also be expected to contribute to Virginia's welfare reform efforts by providing additional assistance to individuals who are making the transition from welfare to the work force.

While the proposed regulation is likely to increase the number of Virginians who have health insurance, reduce the amount of uncompensated care provided by hospitals, and assist individuals transitioning from welfare to the workplace, there is not enough information available at this time to estimate the exact magnitudes of these benefits. There are no foreseeable economic costs associated with this proposal, therefore it can be expected to result in a net economic gain for Virginia.

Businesses and entities affected. This proposal will affect small businesses (defined as employing between 2 and 25 full-time employees), all qualifying employees, and the contracting health maintenance organizations.

Localities particularly affected. This proposal is currently being implemented in Northern Virginia, but DMAS is working to implement the program in the Tidewater region as well.

Projected impact on employment. By providing subsidized health insurance to qualifying workers, the proposal may provide some additional incentive for individuals to enter the workforce who otherwise would not. An exact magnitude of any potential increase in employment would be difficult to measure at this time.

Effects on the use and value of private property. This proposal is not expected to have any significant effect on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the Economic Impact Analysis prepared by the Department of Planning and Budget regarding the regulations concerning Health Insurance Program for Working Uninsured Individuals.

## Summary:

*These regulations establish the Health Insurance Program for Working Uninsured Individuals. This program will provide Virginia with a chance to test the provision of health insurance premium subsidies on a small scale with the possibility of later expanding to a statewide program. These regulations define who is eligible to receive premium subsidies, how beneficiaries will be enrolled and disenrolled, and what appeal rights they have. The regulations outline the rights and responsibilities of the providers and describe how DMAS monitors the services provided by the managed care plans. The regulations also outline the administrative structure and reimbursement methodology. Finally, they provide information on the benefit package or covered services.*

## *PART IV.*

### *HEALTH INSURANCE FOR THE WORKING UNINSURED.*

#### **12 VAC 30-100-400. Applicability.**

*In the event that definitions or provisions of this part conflict with definitions or provisions of the Bureau of Insurance statutes or regulations governing health*

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*maintenance organizations, then the relevant Bureau of Insurance definitions and provisions shall take precedence.*

### **12 VAC 30-100-410. Definitions.**

*A. In this part, the Health Insurance Program for Working Uninsured Individuals will be referred to as "program." When reference is made to eligibility for the program, or to program benefits, the intent is to refer specifically to the health insurance premium subsidies provided through the program.*

*B. The following words and terms when used in this part shall have the following meanings unless the context clearly indicates otherwise:*

**"Appeal"** means any written communication from a subscriber or his representative which clearly expresses that he wants to present his case to a reviewing authority.

**"Applicant"** means an individual who has applied for or is in the process of applying for health insurance premium subsidies.

**"Applicant's or subscriber's representative"** means a person who, because of the applicant's or subscriber's mental or physical incapacity, is authorized to complete, sign, or withdraw an application for the benefits of the program; activate the appeal process; and otherwise supply any information requested by the program on behalf of the applicant or subscriber.

**"Contractor"** means a health maintenance organization in each pilot site that enters into a contract with DMAS to provide the Essential Health Benefits Plan to beneficiaries of the program.

**"Covered services"** means services as defined in the Essential Health Benefits Plan.

**"Date of application"** means either the date that the contractor officially receives an application from an employee or the date that the contractor officially receives enough employee applications from any given employer to meet its minimum participation requirement if the contractor has such a requirement.

**"Department"** or **"DMAS"** means the Department of Medical Assistance Services.

**"Dependent"** means the spouse or child of an eligible employee, subject to the applicable terms of the policy, contract or plan covering the eligible employee.

**"Disenrollment"** means a subscriber voluntarily decides to discontinue receiving subsidized health insurance premiums, or is determined ineligible by DMAS to continue receiving subsidized health insurance benefits.

**"Eligible alien"** means an individual who satisfies the alien status criteria for medical assistance services administered by the Department of Medical Assistance Services (see 12 VAC 30-40-10 and 12 VAC 30-110-1300).

**"Eligible person"** or **"eligible employee"** means a full-time employee of a primary small employer determined by DMAS

to meet the qualifications needed to receive premium subsidies under the program. Other employees who do not meet the necessary income requirements may enroll in the contractor's health plan if they pay the cost of the premium beyond any contribution from their employer. However, throughout this part, employees described as eligible for the program are those eligible for premium subsidies.

**"Eligible employer"** or **"eligible firm"** means any employer determined by the program and the contractor to meet the qualifications needed in order for its employees to be qualified to enroll in the program.

**"Emergency services"** means those health care services that are rendered by affiliated or nonaffiliated providers after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent layperson who possesses an average knowledge of health and medicine to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment of the individual's bodily functions, (iii) serious dysfunction of any of the individual's bodily organs, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus. Emergency services provided within the plan's service area shall include covered health care services from nonaffiliated providers only when delay in receiving care from a provider affiliated with the health maintenance organization could reasonably be expected to cause the subscriber's condition to worsen if left unattended.

**"Essential Health Benefits Plan"** means a health benefit package developed pursuant to § 38.2-3431 C of the Code of Virginia.

**"Family"** means the spouse or child of an eligible employee, subject to the applicable terms of the policy, contract or plan covering the eligible employee.

**"Grievance"** means any request by a subscriber to a contractor to resolve a dispute.

**"Health care plan"** means any arrangement in which any health maintenance organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services. A significant part of the arrangement shall consist of arranging for or providing health care services, as distinguished from mere indemnification against the cost of the services, on a prepaid basis.

**"Health insurance premium subsidy"** means the portion of the health insurance premiums paid by the program on behalf of an individual eligible to participate in the program.

**"HMO"** means a health maintenance organization which undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

**"Initial enrollment period"** means a period of at least 30 days.

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"Late subscriber" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer after the initial enrollment period provided under the terms of the health benefit plan.

"Minimum participation requirement" means the minimum percentage of employees in a given firm who are required to enroll in the health plan before the contractor agrees to provide coverage to that firm. The minimum participation requirement may be met through the enrollment of subsidized as well as nonsubsidized employees within any given firm.

"Network" means doctors, hospitals or other health care providers who participate or contract with a managed care plan and, as a result, agree to accept a mutually-agreed upon sum or fee schedule as payment in full for covered services.

"Primary small employer" means any person actively engaged in business that, on at least 50% of its working days during the preceding year, employed no more than 25 qualified employees and not less than two unrelated qualified employees, except as provided in subdivision A 2 of § 38.2-3523 of the Code of Virginia, the majority of whom are enrolled within this Commonwealth. Primary small employer includes companies that are affiliated companies or that are eligible to file a combined tax return. Except as otherwise provided, the provisions of Article 5 (§ 38.2-3431 et seq.) of Chapter 34 of Title 38.2 of the Code of Virginia that apply to a primary small employer shall apply until the earlier of the plan anniversary or one year following the date the employer no longer meets the requirements of that subsection.

"Program" means the Health Insurance Program for Working Uninsured Individuals. References to eligibility for the program specifically refer to subsidized health insurance premium payments.

"Qualified employee" means an employee who works for a small group employer on a full-time basis; has a normal work week of 30 or more hours; has satisfied applicable waiting period requirements; and is not a part-time, temporary or substitute employee.

"Service area" means a clearly defined geographic area in which the health maintenance organization has arranged for the provision of health care services to be generally available and readily accessible to subscribers.

"Subscriber" means an individual who has been determined to be eligible for, and is receiving, premium subsidies through the program.

## 12 VAC 30-100-420. Program subscribers.

A. DMAS shall determine whether individuals who apply for premium subsidies are eligible for the premium subsidies. This section specifically applies to individuals eligible for premium subsidies. Employees of eligible firms who are not eligible for the premium subsidy, or who choose not to apply for the subsidy, may enroll with the contractor to receive the Essential Health Benefits Plan subject to requirements the contractor may impose. These employees' rights and responsibilities as well as those of the contractor, the

employers and the providers will be governed by relevant state or federal laws and regulations that apply to HMOs.

B. Eligibility requirements. Employees and their dependents shall be eligible for receiving health insurance premium subsidies through the program if the following requirements are met:

1. The employee's gross household income is at or under 200% of the United States nonfarm poverty income guidelines.
2. The employee is a U.S. citizen or eligible alien, and a resident of Virginia.
3. The employee has no health insurance and is ineligible for Medicaid.
4. The employee is employed by a primary small employer which is located in the geographical area covered by the program.
5. The employee works full time (30 hours per week or more).
6. The employer agrees to pay at least 50% of the cost of the premium for all his employees. The employer is not obligated to contribute toward the cost of health insurance for the employee's dependents.
7. The employer has not offered health insurance to his employees for 12 months prior to his employees enrolling in the program.
8. A contractor may exclude a late subscriber from coverage for up to 18 months. If a contractor does impose a waiting period on late subscribers, then the enrollment of employees in any given eligible firm shall be limited to the initial enrollment period, subject to the provisions of subsection J of § 38.2-3432.3 of the Code of Virginia.
9. A contractor may impose a minimum participation requirement for each firm. Thus, although an employee and his employer may have met all the other eligibility requirements, the contractor will not enroll any employees until the minimum participation requirement for each firm is met.

C. Determination of countable income. When determining eligibility for the program, income shall include total projected family income for the year beginning with the month of application to the program, including but not limited to:

1. Wages;
2. Commissions and fees;
3. Salaries and tips;
4. Profit from self-employment;
5. Dividends or interest income;
6. Disability benefits;
7. Unemployment; and

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8. Pension or retirement.

D. Subscriber application and enrollment process. The HMO contracted to provide services in each pilot area will market the program to the employers and employees in its service area. Employees not requesting the subsidy shall be enrolled directly by the contractor, while the applications of the employees requesting the subsidy shall be forwarded to DMAS where their eligibility for the subsidies shall be determined. Eligible persons shall be enrolled in the program on a first-come, first-served basis taking into account that the contractor may have a minimum participation requirement. Eligible individuals shall be enrolled until the available funding limit for that pilot site is reached as provided for in subsection F of this section.

1. An applicant or applicant's representative shall complete an application on the form designated by DMAS and the contractor. The application shall include information requested by the contractor for purposes of enrolling the applicant into the health plan, as well as financial information requested by DMAS to determine the applicant's eligibility for the program.

2. Applications shall conform with the requirements of this part and shall be approved by DMAS. DMAS may request additional documentation for eligibility determination purposes as it deems necessary. Applicants shall provide additional documentation requested by DMAS within 20 days of the date that DMAS mails its request for information. Applicants shall be determined ineligible without prejudice when they fail to provide information sufficient for the determination of eligibility.

3. An applicant or applicant's representative shall sign a statement authorizing DMAS to verify from any source, including banks and public or private agencies providing monetary benefits, qualifying information submitted to the program as part of the application process. Refusal to sign an authorization is considered failure to provide sufficient information, and applicants shall be determined ineligible in accordance with the provisions of this part.

4. Eligibility determination by DMAS shall be made promptly, not later than 30 days from the date of receipt of the completed application by the program. This time standard shall be extended for reasons of just cause as determined by DMAS.

5. An applicant or applicant's representative may voluntarily withdraw the application at any time without prejudice.

6. Program enrollment shall be effective following determination by DMAS that the applicant is eligible for a premium subsidy and that there is an available applicant space. The actual date of enrollment of the subscriber into the health plan shall be specified in the contract between the contractor and DMAS. For individuals found eligible after appeal of an ineligibility decision, program participation shall be retroactive to the first day

of the month following the decision that was the subject of appeal. Under these circumstances, the employer and employee shall be responsible for payment of any unpaid premiums to the contractor, and DMAS shall reimburse the subscriber for the amount that the premium subsidy would have covered during that time.

E. DMAS will promptly redetermine eligibility when it receives information concerning an applicant's or subscriber's circumstances that may affect eligibility.

1. The subscriber or his representative shall notify DMAS within 10 working days of any changes in circumstances which would affect continuing eligibility, including but not limited to a change in:

- a. Income;
- b. Name or address;
- c. Employment status; or
- d. Marital status.

2. If any changes in status result in a subscriber no longer qualifying for the program, the premium subsidy payments will be canceled. The cancellation shall be effective at the end of the month of determination of ineligibility. DMAS shall notify the subscriber and the contractor of its determination and inform the subscriber of any legal rights to appeal the decision pursuant to the notification requirements of this part. If the subscriber who no longer qualifies for the subsidy chooses, he may continue to receive the Essential Health Benefit Plan through the contractor by agreeing to pay any premium amount not covered by his employer. If a subscriber's employment status changes such that he is no longer eligible for health insurance coverage under his employer, he shall be responsible for paying the full cost of any replacement health insurance coverage.

F. The number of subscribers enrolled in the program shall be limited to the number that can be covered by the program's available funding based on DMAS' projections of expenditures.

1. When enrollment into the project is initiated, enrollment of eligible applicants will be performed on a first-come, first-served basis once any minimum participation requirement for each firm has been reached. If the contractor has a minimum participation requirement, available openings in the program shall be filled based on the official date of receipt by the contractor of a batch of applications from each firm with sufficient employees to meet the minimum participation requirement of the contractor. If the contractor does not have a minimum participation requirement, enrollment of eligible employees shall be performed on a first-come, first-served basis based on the date the employee's application is officially received by the contractor. If the contractor imposes a waiting period on late subscribers, employees who choose not to enroll during the initial enrollment period shall not be allowed to enroll in the

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program. New employees hired by a firm after the initial enrollment period will be permitted to apply for subsidized health insurance at the discretion of the contractor as long as there are available openings in the program.

2. As the enrollment cap is reached, DMAS shall limit the number of premium-eligible subscribers who are enrolled in the program in such a way as to allow for enrollment of additional subscribers from firms which are already participating in the program, or to allow for the enrollment of all premium-eligible subscribers from a new firm.

3. DMAS shall maintain a waiting list of applicants who are determined to be eligible for the program but for whom openings are not available when the eligibility determinations are made. DMAS shall send this waiting list to the contractor on a monthly basis or more often if the contractor so requests.

4. Available openings shall be filled from the waiting list on a first-come, first-served basis, except that applicants from firms that are already participating shall be given preference over applicants from firms that are not participating. Enrollment of eligible applicants from the waiting list shall also take into account that the contractor may have minimum participation requirements. A minimum participation requirement would have to be fulfilled for any given firm before any applicants on the waiting list from that firm are enrolled.

5. If openings become available, the applicant, employer, and contractor shall be notified in writing by DMAS. The applicant and the employer must provide any necessary information to the contractor and to DMAS to verify that they are still eligible within 10 days of receiving notification. The 10-day period may be extended by DMAS for just cause. If determined to be still eligible, the applicant shall be enrolled.

G. Authorization for premium subsidies under this program shall be granted until program termination, unless the subscriber's status changes so that he no longer meets the eligibility criteria or unless the contractor terminates coverage of a subscriber or an employer for failure to comply with the contract between the contractor and the employer or the subscriber. Program termination is projected to be two years after the date the program is implemented unless funding is not available, and the program must be terminated before the projected two-year period. If additional funding becomes available, the program may be extended as funding permits.

H. Disenrollment. A subscriber may request to disenroll from the premium subsidy program at any time. Participation in the premium subsidy program is voluntary. However, once a subscriber disenrolls from the premium subsidy program, he may not be allowed to enroll in the premium subsidy program again at a later date.

## 12 VAC 30-100-430. Program contractors.

A. The department shall contract with one HMO in each pilot site to market the program, enroll the beneficiaries, and provide medical care services. These HMOs are referred to as the contractors.

B. The contractors shall be responsible for the following services:

1. Each contractor shall market the program to the employers and employees in its respective pilot area and enroll subscribers into its health plan according to provisions of the contract between the contractor and DMAS.

2. The contractors shall provide, at a minimum, all medically necessary covered services provided under the Essential Health Benefits Plan, except as otherwise modified or excluded in this part. The contractor shall provide subscribers with evidence of coverage and charges for health care services as provided for in § 38.2-4306 of the Code of Virginia.

3. The contractor shall provide emergency services as provided for in § 38.2-4300 of the Code of Virginia.

4. The contractors shall pay for services furnished in facilities or by practitioners outside the contractors' networks if the needed medical services or necessary supplementary resources are required by the Essential Health Benefit Plan and are not available in the contractors' networks. The contractor may establish procedures to authorize these services.

5. The contractors shall verify that applicants for premium subsidies are employed full time by primary small employers, that the employers agree to pay 50% of the cost of employee-only or single coverage for their employees, and that the employer has not offered health insurance to its employees in the past 12 months.

6. The contractor shall maintain such records as may be required by state law and regulation. The contractor shall furnish such required information to DMAS or to the Attorney General of Virginia or his authorized representatives on request and in the form requested.

7. The contractor shall ensure that the health care provided to its subscribers meets all applicable federal and state mandates and standards for quality.

C. DMAS shall monitor to determine if the contractor:

1. Imposes on subscribers premium amounts in excess of premiums permitted as outlined in the contract between the contractor and DMAS.

2. Misrepresents or falsifies information that it furnishes to DMAS, an individual, or any other entity.

D. If DMAS determines that a contractor is not in compliance with its program contract, DMAS may impose sanctions on the contractor. The sanctions may include but are not limited to:

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1. Developing procedures with which the contractor must comply to eliminate specific noncompliance;
2. Freezing subsidy payments for new program applicants;
3. Imposing a fine if the contractor does not take steps to correct a problem in a timely fashion; and
4. Terminating the contractor's program contract.

E. When DMAS determines that a contractor committed one of the violations specified in subsection C of this section, DMAS shall consider imposing one or more of the sanctions listed in subsection D of this section. Any sanction imposed pursuant to subsection D of this section shall be binding upon the contractor. The contractor shall have the appeals rights for any sanction imposed pursuant to subsection D of this section as specified in 12 VAC 30-100-470.

## 12 VAC 30-100-440. Subscribers' employers.

In order for their employees to be eligible for premium subsidies, employers must meet the following requirements and assume the following responsibilities:

1. Employers must be located in the geographical region covered by the pilot program.
2. Firms must be primary small employers (have between two and 25 employees who work full time and on at least 50% of its working days during the preceding year, employed no more than 25 qualified employees and not less than two unrelated qualified employees).
3. Employers shall provide assurances to the contractor that they have not offered health insurance to their employees in the 12 months preceding the application for their employees to the program.
4. Employers shall agree to pay at least 50% of the cost of the health insurance premium for a single employee (an employee-only policy) and must agree to cover such costs for all employees.
5. Employers shall agree to withhold the employee's share of the premium payment from their pay, and to send the employee's and the employer's share of the premium payment to the contractor on a monthly basis.
6. A contractor may impose a minimum participation requirement for each firm before any employees of that firm receive coverage through the program.

## 12 VAC 30-100-450. Program reimbursement.

A. Premium subsidy payments to cover the portion of the premium not paid by the employer and the employee will be made by DMAS to the contractor according to procedures established by DMAS. Payments under this program are limited to the cost of the health insurance premium subsidy and will not include copayments, deductibles, or any other costs incurred by the subscribers of the program.

B. In all cases in which program premium subsidies have been incorrectly paid to the contractor, the program shall

seek recovery from the contractor according to the department's recovery policies. Likewise, the contractor shall seek recovery from the program for premium subsidies which have not been paid or have been incorrectly paid.

C. Cases of suspected misrepresentation or fraud shall be investigated according to the department's fraud prevention and control policies, and any other applicable statutory provision.

## 12 VAC 30-100-460. Confidentiality.

All information maintained by DMAS containing personal data including name, address, employer, insurance company, health status, application to or enrollment in the program, and any other information which could identify or be reasonably used to identify any applicant or subscriber in the program shall be maintained in confidence according to all applicable DMAS policies and procedures and any other applicable laws or regulations. Such information may not be disclosed to any individual or organization without the written and dated consent of the applicant, subscriber, or subscriber's representative.

## 12 VAC 30-100-470. Appeals process.

A. Appeals relating to disputes about eligibility for or payment of health insurance premium subsidies shall be managed by the department. All other subscriber appeals, grievances or complaints shall be managed by the contractor.

### B. Subscriber appeals.

1. An applicant or subscriber who is dissatisfied with a decision, action, or inaction of the contractor with regard to the provision of medical services may request and shall be granted an opportunity to appeal an adverse decision to the contractor as provided for under 14 VAC 5-210-70 H.
2. An applicant, subscriber, or subscriber's representative may request and shall be granted an opportunity to appeal an adverse decision to DMAS when:
  - a. His application for health insurance premium subsidies is denied. However, if an application for premium subsidies is denied because of a lack of funds, then there shall be no right to appeal.
  - b. DMAS takes action or proposes to take action which will adversely affect, reduce, or terminate his receipt of premium subsidies.
  - c. DMAS does not act with reasonable promptness on his application for premium subsidies.
3. An applicant's, subscriber's, or subscriber representative's appeal to DMAS shall be heard as provided for under the applicable provisions of the department's appeals regulations (Part I of 12 VAC 30-110). The following listing of the sections of the department's appeals regulations indicates whether the

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provision is applicable to appeals heard under this program:

12 VAC 30-110-10	Applicable
12 VAC 30-110-20	Applicable
12 VAC 30-110-30	The federal regulations imposing a time limitation for appeals do not apply to this program. However, for this program, appeals shall be scheduled and conducted within 90 days, unless waived in writing by the appellant or appellant's representative.
12 VAC 30-110-40 through 12 VAC 30-110-80	Applicable
12 VAC 30-110-90	Not applicable. An applicant's right to appeal is stipulated in subdivision 2 of this subsection.
12 VAC 30-110-100 through 12 VAC 30-110-190	Applicable
12 VAC 30-110-200	Not applicable. Decisions or actions regarding the provision of medical services shall be appealed to the contractor.
12 VAC 30-110-210 A	Applicable
12 VAC 30-110-210 B	Not applicable if there is a right to appeal under subdivision 2 of this subsection.
12 VAC 30-110-220 through 12 VAC 30-110-350	Applicable
12 VAC 30-110-360	With the exception that subsection A, providing for an independent medical assessment, is not applicable to this program.
12 VAC 30-110-370	Applicable
12 VAC 30-110-380	Applicable

4. The following provisions shall apply to appeals by an applicant, subscriber or subscriber's representative to DMAS:

a. If an applicant is found eligible for the premium subsidy as a result of an appeal, the program shall reimburse the applicant directly for the premium subsidy amount paid by the applicant, beginning with a payment for the month following the application. The

applicant shall provide proof of payment of premiums for health insurance.

b. Cases in or pending appeal shall be considered filled subscriber openings until the appeal process has been completed.

C. Employer appeals. An employer who is dissatisfied with a decision, action, or inaction of the contractor with regard to the firm's meeting the requirements of this part so that their employees may participate in the program, may request, and shall be granted an opportunity to appeal an adverse decision to the contractor. The contractor shall develop an appeals process to respond to complaints from employers. This appeals process shall follow the model for applicant appeals as provided for under 14 VAC 5-210-70.

D. Contractor appeals. In accordance with the terms of the contract, contractors shall have the right to appeal any adverse action taken by DMAS. For appeal procedures not addressed by the contract, the contractor shall proceed in accordance with the appeals provisions of the Virginia Public Procurement Act (§ 11-35 et seq. of the Code of Virginia). Pursuant to §§ 11-70 and 11-71 of the Code of Virginia, DMAS establishes an administrative appeals procedure, which the contractor may elect to appeal decisions on disputes arising during the performance of its contract. Pursuant to § 11-71 of the Code of Virginia, such appeal shall be heard by a hearing officer; however, in no event shall the hearing officer be an employee of DMAS. In conducting the administrative appeal, the hearing officer shall follow the hearing procedure used in § 9-6.14.12 of the Code of Virginia.

V.A.R. Doc. No. R97-338; Filed March 26, 1998, 11:07 a.m.

## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### MOTOR VEHICLE DEALER BOARD

Title of Regulation: 24 VAC 22-30-10 et seq. Motor Vehicle Dealer Advertising Practices and Enforcement Regulations (amending 24 VAC 22-30-20 and 24 VAC 22-30-30).

Statutory Authority: §§ 46.2-1506 and 46.2-1582 of the Code of Virginia.

Public Hearing Date: June 15, 1998 - 10 a.m.

Public comments may be submitted until June 27, 1998.  
(See Calendar of Events section  
for additional information)

Basis: Section 46.2-1506 of the Code of Virginia provides the Motor Vehicle Dealer Board with broad authority to promulgate regulations. Specifically, § 46.2-1582 states that the board may promulgate regulations reasonably necessary for enforcement of Article 9: Motor Vehicle Dealer Advertising.

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Purpose: The Motor Vehicle Dealer Board is responsible for the oversight of the automobile dealer industry. At the root of all of the board's mandates and programs is protection of the consumer. Aside from the purchase of a house, the purchase of an automobile is probably the most expensive item a consumer will purchase. The General Assembly has chosen to oversee this industry through the board. The board seeks with this proposal to further protect consumers by defining the word "advertisement" and clarifying the definition of the terms "free" and "rebate" when used in an advertisement.

The current regulation frequently refers to the word "advertisement" but contains no definition of the word. Further, new technology such as the Internet has changed the way in which business can be conducted. The board has worked with the Virginia Automobile Dealers Association (VADA), the Virginia Independent Automobile Dealers Association (VIADA) and the Better Business Bureau to craft a definition that will meet the needs of all automobile dealers. How to define advertisement has been discussed in board meetings, and the board plans to hold at least four public hearings around the state before finalizing the definition.

Section 46.2-1581(11) of the Code of Virginia states that "'free,' 'at no cost,' or other words to that effect shall not be used unless the 'free' item . . . is available without a purchase." Defining "other words to that effect" has been a source of some confusion to automobile dealers. With the consent of its member dealers, the board seeks to define that phrase, to clarify when these words can be used and what criteria must apply. The same situation applies to the term "dealer rebates" as used in § 46.2-1581(10). The board seeks to clarify what constitutes a dealer rebate. Finally, the board is using this opportunity to clean up some of the language, for instance, substituting the full word 'advertisement' where it currently refers to an 'ad.'

The increased clarity of this regulation will further protect consumers from deceptive and misleading advertising practices.

Substance: The regulation will define the word "advertisement" and clarify what constitutes a dealer rebate and what terms may not be used to advertise "free" items, merchandise or services. The proposed definition of "advertisement" covers all possible types of advertisements in every possible media. This definition is written so that as new advertising media is explored and used, the definition will remain relevant and will not need to be revised. The Code of Virginia prohibits "dealer rebates." The proposal would clarify use of similar terms.

The Code of Virginia provides the basic guideline that in order to advertise an item as "free," it must be provided at no cost and it must not be dependent on a purchase of any kind. However, it does not define the phrase "or other words to that effect." The board, working with the cooperation of the VADA, VIADA and its members, has developed a listing of words that may not be used.

Issues: Automobile dealers have requested clarification of these terms and of their application. Dealers will benefit in that terms and their use in advertisements will be clear and unambiguous. The public will benefit in that dealer advertisements will be clearer as to when an item is "free."

The current regulation does not define an advertisement, and new technology is changing the way many people, both merchants and customers, want to conduct business. For these reasons, the board developed a definition that will meet the needs of automobile dealers now and in the future.

The proposed amendments to these existing regulations do not create any disadvantages to the consumer or dealers or the agency.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Motor Vehicle Dealer Advertising Practices and Enforcement Regulations set forth general requirements for advertising by motor vehicle dealers. The proposed revisions to this regulation define the word "advertisement" and clarify the definition of the word "free" when used in an advertisement.

Estimated economic impact. The current regulation contains no definition of the word "advertisement." The Virginia Motor Vehicle Dealer Board (MVDB) has worked with industry representatives to draft a definition that will cover all possible types of advertisements in every existing and future form of media. The current regulation also provides restrictions on advertising items as "'free,' 'at no cost,' or other words to that effect . . . unless the 'free' item . . . is available without a purchase." The phrase "or other words to that effect" has been a source of confusion for automobile dealers. At their request, the MVDB has developed a listing of words, clarified when these words can be used, and what criteria must apply.

The increased clarity of this regulation will further protect consumers and legitimate motor vehicle dealers from deceptive and misleading advertising practices. While it would be difficult to measure the magnitude of any gains from these changes, it is likely that reducing the ambiguity of the regulatory language will produce some small net economic gain.

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**Businesses and entities affected.** There are approximately 4,000 dealers and 21,000 salespersons in the Commonwealth who will be affected by this regulation. Since these changes have met with the approval of the automobile dealer industry, it is likely that the businesses affected will receive some small net economic gain. This regulation, while also benefiting automobile consumers, will probably not have any impact on the demand for automobiles.

**Localities particularly affected.** No locality will be disproportionately affected by this regulation.

**Projected impact on employment.** This regulation is not expected to have any impact on employment in Virginia.

**Effects on the use and value of private property.** This regulation is not expected to have any effect on the use and value of private property.

**Agency's Response to the Department of Planning and Budget's Economic Impact Analysis:** The agency agrees with DPB's analysis and conclusions.

## Summary:

*The current regulation sets forth general requirements for advertising by motor vehicle dealers. The proposed amendment adds a definition for the term "advertisement," clarifies what constitutes "dealer rebates" and clarifies what terms may not be used to advertise "free items," merchandise or services.*

## **24 VAC 22-30-20. Definitions.**

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

**"Act"** means Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2 of the Code of Virginia.

**"Administrative penalties"** means the denial, suspension or revocation of a license as allowed in § 46.2-1576 of the Act and based on one or more of the grounds specified in § 46.2-1575 of the Act.

**"Advertisement"** means an oral, written, graphic or pictorial statement made in the course of soliciting business, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, or letter, or on radio, the Internet, or via an on-line computer service, or on television. The term does not include an in-person oral communication by a dealer's employee with a prospective customer.

**"Advertiser"** means same as licensee.

**"Board"** means the Motor Vehicle Dealer Board of this Commonwealth.

**"Civil penalty"** means the monetary assessment imposed by the board or the executive director against a licensee not to exceed \$1,000 for any single violation of § 46.2-1581 of the Code of Virginia.

**"Disclaimer"** means those words or phrases used to provide a clear understanding or limitation to an advertised statement but not used to contradict or change the meaning of the statement.

**"Disclosure"** means a statement in clear terms of the dollar amounts, time frames, down payments and other terms which may be needed to provide a full understanding of credit terms, periodic payment, interest rates, time payment plans, etc.

**"Executive director"** means the Executive Director of the Motor Vehicle Dealer Board of this Commonwealth.

**"Internet"** means a system that connects computers or computer networks.

**"License"** means the document issued to a Virginia motor vehicle dealer and which permits such dealer to engage in the business of buying and selling new and used motor vehicles or used motor vehicles only.

**"Licensee"** means any person, partnership, association, corporation or entity which is required to be licensed as a motor vehicle dealer in this Commonwealth.

**"Line-make marketing group"** means an association of motor vehicle dealers franchised to sell and advertise the same line-make of new motor vehicles.

**"New motor vehicle"** means a vehicle which meets all of the following criteria. The new motor vehicle has:

1. Had limited use necessary in moving or road testing the vehicle prior to delivery to a customer;
2. Been transferred by a manufacturer's or distributor's certificate of origin which is the document provided by the manufacturer of a new motor vehicle, or its distributor to its franchised motor vehicle dealer;
3. The manufacturer's or distributor's certification that it conforms to all applicable federal motor vehicle safety and emission standards;
4. Not been previously sold by a dealer except for the purpose of resale and when the exchange is between franchised dealers of the same line-make;
5. Not been used as a rental, driver education, or demonstration motor vehicle; and
6. Not been used for the personal and business transportation of the manufacturer, distributor or dealer or any of their employees.

**"On-line service"** means a network that connects computer users.

**"Repossessed vehicle"** means a vehicle which meets all of the following criteria. It has:

1. Been sold, titled, registered, and taken back from a purchaser for nonpayment; and
2. Not yet been resold to an ultimate user.

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"Sale" means there is a significant reduction from the advertiser's usual and customary price of a motor vehicle and the offer is for a limited period of time.

"Used motor vehicle" means any vehicle other than a new motor vehicle as defined in this chapter.

## 24 VAC 22-30-30. Practices.

For purposes of this chapter, a violation of the following regulated advertising practices shall be an unfair, deceptive, or misleading act or practice.

A. New motor vehicle. A motor vehicle shall not be advertised as new, either by word or implication, unless it is one which conforms to the definition of a "new motor vehicle" as defined in 24 VAC 22-30-20.

### B. Used motor vehicle.

1. The fact that a motor vehicle is used should be clearly and unequivocally expressed by the term "used" or by such other term as is commonly understood to mean that the vehicle is used. For example, "special purchase" or "program cars" by itself is not a satisfactory disclosure; however, such terms as "demonstrator" or "former leased and/or rental vehicles" used alone clearly express that they meet the definition of a used vehicle for advertising purposes. When in doubt, the dealer should provide more information or simply say "used."

2. Once a certificate of origin as defined in § 46.2-1500 has been assigned to a purchaser, the motor vehicle becomes a used vehicle and must be advertised as such.

### C. Finance charges or interest rates advertisements.

1. Advertisements of finance charges or other interest rates "below market" (or words to that effect) shall not be used unless it is manufacturer or distributor sponsored or substantiated by a written agreement with the finance source.

2. Advertisement of finance charges or other interest rates shall not be used when there is a cost to buy-down said charge or rate which is passed on, in whole or in part, to the purchaser.

### D. Terms, conditions, and disclaimers.

1. When terms, conditions or disclaimers are used, they shall always be stated clearly and conspicuously. An asterisk or other reference symbol may be used to point to a disclaimer or other information; but, the disclaimer shall not be used as a means of contradicting or changing the meaning of an advertised statement. In addition, they must meet the Federal Trade Commission Truth in Lending Act Requirements 15 USC §§ 1601 et seq., 12 CFR 226 (Regulation Z) or the Federal Trade Commission Truth in Leasing Act Requirements, as applicable.

2. In all printed media, where terms, conditions or disclaimers are used, they shall be clearly and

conspicuously visible and printed in not less than 8-point type print or printed in 6-point upper case type print. If a processing fee or freight or destination charges are not included in the advertised price, the amount of any such processing fee and freight or destination charge must be clearly and conspicuously disclosed in not less than 8-point boldface type. When billboards, portable signs, posters, etc., are used, all terms, conditions or disclaimers need to be displayed and phrased in a manner which is clear and conspicuous.

3. In radio ads advertisements, where terms, conditions or disclaimers are used, they shall be clearly announced during the ad advertisement. They must be explained clearly and at an understandable speed and volume level.

4. In television ads advertisements, where terms, conditions or disclaimers are used, they shall be clearly and conspicuously displayed or announced, or both, during the ad advertisement. They shall be at an understandable speed or understandable volume level, or both.

E. Sale or sales. The expiration date of an advertised "sale" shall be clearly and conspicuously disclosed. If the sale exceeds 30 days, the advertiser should be prepared to substantiate that the offering is indeed a valid reduction and has not become his regular price.

F. "List price," "sticker price," "suggested retail price." These terms and similar terms shall be used only as follows:

1. In reference to the manufacturer's or distributor's suggested retail price for new vehicles; or

2. The dealer's own usual and customary price for used vehicles.

### G. "Cost" and "invoice price" terms.

1. "At cost," "below cost," "\$ off cost" shall not be used in advertisements because of the difficulty in determining a dealer's actual net cost at the time of sale.

2. "Invoice price," "\$ over invoice," may be used, provided that the invoice referred to is the manufacturer's factory invoice, distributor's invoice, or a bona fide bill of sale, as applicable, and that it is available for customer inspection.

3. "Manufacturer's factory invoice" or "distributor's invoice" means that document supplied by the manufacturer or the distributor listing the manufacturer's or distributor's charge to the dealer before any deduction for items such as holdback, group advertising, factory incentives or rebates, or any governmental charges.

H. Price or credit terms of advertised vehicles. When the price or credit terms of a vehicle are advertised in print, or on radio, or television, the vehicle should be fully identified as to year, make, and model. In addition, in all advertisements placed by individual dealers and not marketing groups, the stated advertised price or credit terms shall include all

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charges which the buyer must pay to the seller including "freight" or "destination charges." If there are deferred payments on credit sales where accrued finance charges are ultimately charged to the consumer for any part of the deferred period, then these charges must be clearly stated. State and local fees and taxes and *buyer-selected options* need not be included in the *stated advertised price*. If the buyer will be required to pay to the seller charges which increase the advertised price, the charges must be disclosed as *set-out in subsection D of this section* and priced in the advertisement.

I. Matching or bettering competitor's price *ads advertisements*. Advertisements which set out a policy matching or bettering a competitor's price shall not be used unless the terms of the offer are specific, verifiable, and reasonable. All terms of the offer shall be included in the disclosure and disclaimer area and may not say such things as "rules or terms available in showroom" or "available before delivery." ~~You must fully disclose as a part of the ad~~ Any material or significant conditions which must be met or the evidence the consumer must present to take advantage of the offer *must be fully disclosed as a part of the advertisement*.

J. Advertisements of dealer rebates shall not be used. Offers to match down payments or guarantee minimum trade-in allowances or *offers of cash or money back* are forms of dealer rebates.

K. "Free," "at no extra cost" terms. ~~In a negotiated sale no "free," "at no cost" (or any words to that effect) offer of equipment, accessory, other merchandise or service, shall be made. No equipment, accessory, other merchandise or service shall be described as "free" or "at no cost," if its cost, or any part of its cost, is included in the price of the vehicle, or if the vehicle can be purchased for a lesser price without accepting the free offer, or using any of the terms listed below if a purchase is required in order to receive the free "free" offer. Prohibited terms are:~~

1. Free.
2. Complimentary.
3. At no extra cost.
4. At no extra charge.
5. At no extra fee.
6. At no extra price.
7. At no additional cost.
8. At no additional charge.
9. At no additional fee.
10. At no additional price.
11. Present.
12. Gift.
13. On the house.

L. "Bait advertising" shall not be used.

1. The purpose of this section is to ensure that customers will be informed the vehicle is in limited quantity or availability. If a specific vehicle is advertised, the seller shall be in possession of a reasonable supply of said vehicles and they shall be available at the advertised price. If the advertised vehicle is available only in limited numbers or only by order, that shall be stated in the *ad advertisement*. The listing of vehicles by stock numbers or vehicle identification numbers is permissible and is one means of satisfactorily disclosing a limitation of availability, provided a separate number is used for each vehicle. For new vehicles, if the offer is limited, you will be able to say such things as "in stock" or "will order" provided you can order the vehicle just as advertised and delivery can be assured as soon as the manufacturer or distributor can confirm the order and deliver it to your dealership. If you cannot get an order confirmation within 30 days, you must refund all moneys collected from the buyer at his request. If the vehicle is available only by order then it must be clearly and conspicuously disclosed in the advertisement.

2. Advertising a vehicle at a certain price (including "as low as" statements), but having available for sale only vehicles equipped with dealer added cost "options" which increase the selling price above the advertised price, may also be considered "bait advertising."

3. If a lease payment is advertised, the fact that it is a lease arrangement shall be disclosed.

M. The term "repossessed vehicle" shall not be used unless the full criteria of the definition in 24 VAC 22-30-20 is met. Advertisers offering such vehicles for sale shall provide proof of repossession upon request.

N. "Finance" or "loan." Words such as "finance" or "loan" shall not be used in a motor vehicle dealer advertiser's firm name or trade name unless that person is actually engaged in the financing of motor vehicles.

O. "Special arrangement or relationship" advertisements. Statements such as "big volume buying power," "manufacturer's outlet," "factory authorized outlet," and "factory wholesale outlet," shall not be used. Any term that gives the consumer the impression the dealer has a special arrangement with the manufacturer or distributor as compared to similarly situated dealers, is misleading and shall not be used.

P. Records retention. Advertisers shall maintain and make available to the board and the board staff, if requested, the original or a clear facsimile copy of all *ads advertisements* in a manner that permits systematic retrieval for a period of 60 days subsequent to the expiration date of the advertisement.

# FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

## Symbol Key

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

## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### BOARD OF GAME AND INLAND FISHERIES

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of § 9-6.14.4.1 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

**Title of Regulations:** 4 VAC 15-290-10 et seq. **Game:** Permits (amending 4 VAC 15-290-140).

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

**Effective Date:** July 1, 1998.

**Summary:**

*The amendment rescinds the requirement of possessing or displaying a validation card for hunting geese and establishes the requirement of possessing and displaying upon request a harvest information program registration number for hunting any migratory game bird. The registration number will be required of all persons hunting such game beginning in the 1998-99 hunting season. Enforcement of the requirement may constitute a warning for the first violation during the period July 1, 1998, through June 30, 1999.*

**Agency Contact:** Copies of the regulation may be obtained from Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341.

**4 VAC 15-290-140. Possession and display of a validation card harvest information program registration number or permit to hunt.**

Every person required to obtain a validation card harvest information program registration number or permit to hunt must carry the validation card and registration number or permit or both on his person when hunting and shall present it immediately upon demand of any officer whose duty it is to enforce the game and inland fish laws. Enforcement of the requirement to possess the harvest information program registration number may constitute a warning for the first violation during the period July 1, 1998, through June 30, 1999. The penalty for violation of this section is prescribed by § 29.1-505 of the Code of Virginia.

V.A.R. Doc. No. R98-182; Filed April 8, 1998, 11:02 a.m.

## MARINE RESOURCES COMMISSION

**REGISTRAR'S NOTICE:** The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 9-6.14.4.1 F of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

**Title of Regulation:** 4 VAC 20-380-10 et seq. Pertaining to Grey Trout (amending 4 VAC 20-380-10, 4 VAC 20-380-30, and 4 VAC 20-380-60).

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

**Effective Date:** March 31, 1998.

**Summary:**

*The amendments (i) clarify the purpose of the regulation as specified in the Fishery Management Plan for Grey Trout, (ii) clarify the minimum size limit on grey trout for persons fishing with commercial hook and line, and (iii) establish recreational fishing seasons for grey trout and minimum size limits and possession limits during those seasons.*

**Agency Contact:** Copies of the regulation may be obtained from Deborah R. Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

### 4 VAC 20-380-10. Purpose.

The purpose of this chapter is to ~~maintain at least a 33% reduction in~~ reduce the grey trout fishing mortality rate until March 31, 1998, thereby reducing to 0.5, then maintain the fishing mortality rate of 0.5, in order to reduce the probability of recruitment failure and stock collapse and allowing for a rebuilding of the spawning stock. This chapter is designed to be consistent with federal and interstate management measures.

### 4 VAC 20-380-30. Commercial minimum size limits.

A. For any person fishing with pound net or haul seine there shall be no minimum size limit on grey trout.

B. It shall be unlawful for any person fishing with gill nets to possess any grey trout less than 12 inches in length.

C. It shall be unlawful for any trawl boat to land any grey trout in Virginia that are less than 12 inches in length.

D. It shall be unlawful for any person fishing with commercial hook and line, ~~rod and reel, or hand line~~ to possess any grey trout less than 12 inches in length.

# Final Regulations

E. It shall be unlawful for any person using any gear type not specified in subsection A, B, C or D of this section to possess any grey trout less than nine inches in length.

F. During a closed season it shall be unlawful for any person using any gear type which is regulated by a closed season to possess any grey trout less than 12 inches in length.

G. Length is measured in a straight line from the tip of the nose to the tip of the tail.

## **4 VAC 20-380-60. Recreational fishing seasons, minimum size limits, and possession limit limits.**

A. It shall be unlawful for any person fishing with hook and line, rod and reel or hand line to possess more than four grey trout from May 1 through August 15, and the minimum size limit during this fishing season shall be 12 inches in length.

B. It shall be unlawful for any person fishing with recreational hook and line, rod and reel, or hand line to possess more than 14 grey trout from August 16 through April 30, and the minimum size limit during this fishing season shall be 14 inches in length.

C. When fishing from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by four the designated possession limits established in subsections A and B of this section. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any grey trout taken after the possession limit has been reached shall be returned to the water immediately.

VA.R. Doc. No. R98-229; Filed March 31, 1998, 3:55 p.m.

## **4 VAC 20-620-50. Minimum size limits.**

A. The minimum size for Summer Flounder harvested by commercial fishing gear shall be 14 inches, total length.

B. The minimum size of Summer Flounder harvested by recreational fishing gear, including but not limited to, hook and line, rod and reel, spear and gig, shall be 14½ 15 inches, total length.

C. Length shall be measured in a straight line from tip of nose to tip of tail.

D. It shall be unlawful for any person to possess any Summer Flounder smaller than the designated minimum size limit.

## **4 VAC 20-620-60. Possession limit.**

A. It shall be unlawful for any person fishing with recreational hook and line, rod and reel, spear, gig or other recreational gear to possess more than 40 eight Summer Flounder. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 40 eight. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any Summer Flounder taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of Summer Flounder which exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

VA.R. Doc. No. R98-227; Filed March 31, 1998, 4:30 p.m.

\* \* \* \* \*

Title of Regulation: 4 VAC 20-620-10 et seq. Pertaining to Summer Flounder (amending 4 VAC 20-620-50 and 4 VAC 20-620-60).

Statutory Authority: §§ 28.2-201 and 28.2-204 of the Code of Virginia.

Effective Date: April 1, 1998.

### Summary:

The amendments increase the minimum size of Summer Flounder harvested by recreational gear from 14½ inches to 15 inches and decrease the recreational possession limit of Summer Flounder from 10 fish to eight fish.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

Title of Regulation: 4 VAC 20-950-10 et seq. Pertaining to Black Sea Bass (amending 4 VAC 20-950-30 and 4 VAC 20-950-45).

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

Effective Date: April 1, 1998.

### Summary:

The amendments modify the method of determining the total length of black sea bass and establish a closed recreational fishing season and possession limit for black sea bass.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

## **4 VAC 20-950-30. Minimum size limit.**

A. The minimum size for black sea bass harvested by commercial fishing gear shall be 10 inches, total length.

B. The minimum size of black sea bass harvested by recreational gear, including but not limited to, hook and line, rod and reel, spear and gig, shall be nine 10 inches, total length.

C. It shall be unlawful for any person to possess any black sea bass smaller than the minimum size limit, as designated respectively, in subsections A and B of this section.

D. It shall be unlawful for any person to sell, trade, or barter, or offer to sell, trade, or barter any black sea bass less than 10 inches, total length.

E. Total length shall be measured ~~in a straight line along the lateral midline from tip of nose to tip of tail excluding the caudal fin filament.~~

#### **4 VAC 20-950-45. Possession limits and harvest quotas.**

A. During the period January 1 through March 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 11,000 pounds of black sea bass, except when it is announced that the coastwide quota for this period has been reached.

B. During the period April 1 through June 30 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 7,000 pounds of black sea bass, except when it is announced that the coastwide quota for this period has been reached.

C. During the period July 1 through September 30 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 3,000 pounds of black sea bass, except when it is announced that the coastwide quota for this period has been reached.

D. During the period October 1 through December 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 4,000 pounds of black sea bass, except when it is announced that the coastwide quota for this period has been reached.

E. It shall be unlawful for any person to possess or to land any black sea bass for commercial purposes after the coastwide quota for the designated period as described in subsections A through D of this section has been attained and announced as such.

F. It shall be unlawful for any buyer of seafood to receive any black sea bass after any commercial harvest quota has been attained and announced as such.

G. *It shall be unlawful for any person to possess or to land any black sea bass for recreational purposes from August 1 through August 15 of each year.*

H. *It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than 50 black sea bass. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 50. The captain or*

*operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.*

I. *Possession of any quantity of black sea bass which exceeds the possession limit described in subsection H of this section shall be presumed to be for commercial purposes.*

V.A.R. Doc. No. R98-228; Filed March 31, 1998, 3:55 p.m.

\* \* \* \* \*

**Title of Regulation:** 4 VAC 20-960-10 et seq. Pertaining to Tautog (amending 4 VAC 20-960-30; adding 4 VAC 20-960-45 and 4 VAC 20-960-47).

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

**Effective Date:** April 1, 1998.

#### **Summary:**

*The amendments (i) increase the minimum size limit of tautog from 13 inches to 14 inches, (ii) establish a possession limit and a closed fishing season for the recreational harvest of tautog, and (iii) establish a closed fishing season for the commercial harvest of tautog.*

**Agency Contact:** Copies of the regulation may be obtained from Deborah R. Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

#### **4 VAC 20-960-30. Minimum size limits.**

A. The minimum size limit of tautog shall be 13 14 inches total length.

B. It shall be unlawful for any person to possess any tautog less than 13 14 inches total length.

C. It shall be unlawful for any person to sell, trade, or barter, or offer to sell, trade, or barter any tautog less than 13 14 inches total length.

D. Total length shall be measured in a straight line from tip of nose to tip of tail.

#### **4 VAC 20-960-45. Recreational fishing season and possession limits.**

A. *It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than 10 tautog. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 10. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any tautog taken after the possession limit has been reached shall be returned to the water immediately.*

# Final Regulations

B. Possession of any quantity of tautog which exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

C. The recreational fishing season shall be closed from May 1 through June 30, and it shall be unlawful for any person to possess tautog for recreational purposes during this period.

## 4 VAC 20-960-47. Commercial fishing season and possession limits.

The commercial fishing season shall be closed during the period of May 1 through August 31, and it shall be unlawful for any person to possess tautog for commercial purposes during this period.

V.A.R. Doc. No. R98-226; Filed April 1, 1998, 7:53 a.m.

until that time, such authority is delegated to the deputy director or his designee.

V.A.R. Doc. No. R98-232; Filed April 8, 1998, 11:53 a.m.

## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

**REGISTRAR'S NOTICE:** The following regulation is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 2, which excludes regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 9 VAC 25-31-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9 VAC 25-31-920).

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

**Effective Date:** May 27, 1998.

#### Summary:

This amendment removes from the Director of the Department of Environmental Quality and then delegates to the deputy director or his designee, until March 23, 2000, the authority to approve all or portions of Virginia Pollutant Discharge Elimination System (VPDES) Permits.

**Agency Contact:** Copies of the regulation may be obtained from Cindy M. Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378.

#### **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;

## GENERAL NOTICES/ERRATA

# Virginia Tax Bulletin

Virginia Department of Taxation

March 30, 1998

98-3

### INTEREST RATES SECOND QUARTER 1998

**Rates changed:** State and certain local interest rates are subject to change every quarter based on changes in federal rates established pursuant to I.R.C. § 6621. The federal rates for the second quarter of 1998 will be 8% for tax underpayments (assessments), 7% for tax overpayments (refunds), and 10% for "large corporate underpayments" as defined in I.R.C. § 6621(c). Code of Virginia § 58.1-15 provides that the underpayment rate for Virginia taxes will be 2% higher than the corresponding federal rates. Accordingly, the Virginia rates for the second quarter of 1998 are 10% for tax underpayments, 7% for tax overpayments, and 12% for "large corporate underpayments."

#### Rate for Addition to Tax for Underpayments of Estimated Tax

**Taxpayers whose taxable year ends on March 31, 1998:** For the purpose of computing the addition to the tax for underpayment of Virginia estimated income taxes on Form 760C (for individuals, estates and trusts), Form 760F (for farmers and fishermen) or Form 500C (for corporations), the 10% underpayment rate will apply through the due date of the return, July 15, 1998.

**Taxpayers whose taxable year ends on December 31, 1997:** For the purpose of computing the addition to the tax for underpayment of Virginia estimated income taxes on Form 760C (for individuals, estates and trusts), Form 760F (for farmers and fishermen) or Form 500C (for corporations), the first quarter 1998 11% underpayment rate will apply through the due date of the return, April 15, 1998, (for corporations), and May 1, 1998, (for individuals and fiduciaries).

#### Local Tax

**Assessments:** Localities assessing interest on delinquent taxes pursuant to Code of Virginia § 58.1-3916 may impose interest at a rate not to exceed 10% for the first year of delinquency, and at a rate not to exceed 10% or the federal underpayment rate in effect for the applicable quarter, whichever is greater, for the second and subsequent years of delinquency. For the second quarter of 1998, the federal underpayment rate is 8%.

**Refunds:** Localities which have provided for refunds of erroneously assessed taxes may provide by ordinance that such refunds are repaid with interest at a rate which does not exceed the rate imposed by the locality for delinquent taxes.

**BPOL Refunds:** Effective January 1, 1997, interest on any refund will be paid at the same rate as assessments under Code of Virginia § 58.1-3916.

## General Notices/Errata

Virginia Tax Bulletin 98-3

Page 2

### Recent Interest Rates

<u>Beginning</u>	<u>Accrual Period Through</u>	<u>Overpayment (Refund)</u>	<u>Underpayment (Assessment)</u>	<u>Large Corporate Underpayment</u>
1-Jan-87	30-Sep-87	8%	9%	---
1-Oct-87	31-Dec-87	9%	10%	---
1-Jan-88	31-Mar-88	10%	11%	---
1-Apr-88	30-Sep-88	9%	10%	---
1-Oct-88	31-Mar-89	10%	11%	---
1-Apr-89	30-Sep-89	11%	12%	---
1-Oct-89	31-Mar-91	10%	11%	---
1-Apr-91	30-Jun-91	9%	10%	---
1-Jul-91	31-Dec-91	9%	12%	14%
1-Jan-92	31-Mar-92	8%	11%	13%
1-Apr-92	30-Sep-92	7%	10%	12%
1-Oct-92	30-Jun-94	6%	9%	11%
1-Jul-94	30-Sep-94	7%	10%	12%
1-Oct-94	31-Mar-95	8%	11%	13%
1-Apr-95	30-Jun-95	9%	12%	14%
1-Jul-95	31-Mar-96	8%	11%	13%
1-Apr-96	30-Jun-96	7%	10%	12%
1-Jul-96	31-Mar-98	8%	11%	13%
1-Apr-98	30-Jun-98	7%	10%	12%

**For additional information:** Contact the Office of Customer Services, Virginia Department of Taxation, P. O. Box 1115, Richmond, Virginia 23218-1115, or call the following numbers for additional information about interest rates and penalties.

Individual & Fiduciary Income Tax	(804) 367-8031
Corporation Income Tax	(804) 367-8037
Withholding Tax	(804) 367-8037
Soft Drink Excise Tax	(804) 367-8098
Aircraft Sales & Use Tax	(804) 367-8098
Other Sales & Use Taxes	(804) 367-8037

### STATE WATER CONTROL BOARD

#### Proposed Consent Special Orders

Town of Boones Mill  
Magnox Pulaski, Inc.  
Roanoke Ice & Cold Storage, Inc.

#### Proposed Amendment to Consent Special Orders

Bedford County Public Schools

The State Water Control Board and the Department of Environmental Quality propose to issue Consent Special Orders for:

1. Town of Boones Mill Sewage Treatment Plant (VA0067245), on Magodee Creek in Franklin County. The order will require an engineering review of the plant, certain repairs, and the rehabilitation of the rapid infiltration basins adjacent to Magodee Creek. In addition, the order requires payment of a civil charge of \$300.
2. Magnox Pulaski, Inc. (VA0000281), on Peak Creek in Pulaski County. This order will require an intensive effort to identify and remove the causes of whole effluent toxicity in the plant's discharge. In addition, the order assesses a civil charge of \$25,000, all of which is suspended conditional upon the plant achieving full compliance with its whole effluent toxicity limits and other requirements of the order.
3. Roanoke Ice & Cold Storage, Inc., 806 Wasena Avenue, Roanoke, for an unpermitted discharge and associated fish kill. The order will require the plant to eliminate the risk of future ammonia spills by connecting to city sewer, or obtaining a discharge permit, or eliminating the use of ammonia at the plant. In addition, the order requires payment of a civil charge of \$100,000 of which \$10,000 is payable under a payment schedule and \$90,000 is suspended conditional on the achievement of full compliance as required by the order. The order requires reimbursement of the state's investigative and fish replacement costs for fish killed in September 1997.

The State Water Control Board and the Department of Environmental Quality propose to amend a Consent Special Order for:

4. Bedford County Public Schools, for seven schools. The amendment will revise the schedule for wastewater treatment plant upgrades at seven schools--Body Camp Elementary (VA0020818), Liberty High (VA0020796), New London (VA0020826), Otter River Elementary (VA0020851), Staunton River High (VA0063738), Stewartsille Elementary (VA0020842), and Thaxton Elementary (VA0020869)--and correction of hydraulic

overloading at Stewartsille. All work will be complete by October 31, 2000.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments relating to the proposed actions until May 27, 1998. Comments should be addressed to James F. Smith, West Central Regional Office, Department of Environmental Quality, 3019 Peters Creek Road, NW, Roanoke, VA 24019, or fax 540-562-6725, and should refer to Bedford Schools, Boones Mill, Magnox Pulaski, or Roanoke Ice & Cold Storage.

The proposed orders may be examined at the Department of Environmental Quality, Office of Enforcement, 629 East Main Street, Richmond, VA, or at the Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, NW, Roanoke, VA. Copies of the orders and amendments may be obtained in person or by mail from these offices.

#### Proposed Special Order Evergreen Country Club Wastewater Treatment Plant

The State Water Control Board (board) proposes to issue a Consent Special Order (order) to Evergreen Country Club (permittee) regarding the wastewater treatment plant (plant) located in Prince William County, Virginia.

The plant is subject to VPDES Permit No. VA0087891. The order provides that the permittee operate the plant in a workmanlike manner and submit an operations and maintenance manual. The permittee has agreed to the issuance of the order.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will accept written comments relating to the order through May 27, 1998. Please address comments to Vanessa Dao, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia, 22193. Please write or visit the Woodbridge address or call (703) 583-3863 to examine or obtain a copy of the order.

#### Proposed Consent Special Order Michael Fraykor d/b/a Poor Boys

The State Water Control Board proposes to issue a Consent Special Order to Michael Fraykor d/b/a Poor Boys located on U.S. Rt. 15, at Gold Hill in Buckingham County, Virginia. The proposed order requires Mr. Fraykor to submit and implement an approvable plan and schedule to bring the wastewater treatment facilities which serves the Poor Boys Laundromat into compliance with the VPDES Permit.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments until May 27, 1998, relating to the proposed order. Comments should be addressed to Cynthia Akers, Department of

## **General Notices/Errata**

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Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia 23060-6295. A copy of the order may be obtained in person or by mail from the above office.

### **Proposed Special Order Town of Hamilton Hamilton Water Treatment Plant**

The State Water Control Board (board) proposes to issue a Consent Special Order (order) to the Town of Hamilton (permittee) regarding the Hamilton drinking water treatment plants (plants), located in the Town of Hamilton, Virginia.

The plants are subject to VPDES Permit No. VA0070173. The order provides that the permittee complete the construction of connections for the plants' outfalls. The permittee has agreed to the issuance of the order.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will accept written comments relating to the order through May 27, 1998. Please address comments to Vanessa Dao, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia, 22193. Please write or visit the Woodbridge address or call (703) 583-3863 to examine or obtain a copy of the order.

### **Proposed Special Order Hartland Institute of Education and Health Hartland Institute Wastewater Treatment Lagoon**

The State Water Control Board (board) proposes to issue a Consent Special Order (order) to Hartland Institute of Education and Health (permittee) regarding the Hartland Institute Wastewater Treatment Lagoon (lagoon) located in Madison County, Virginia.

The lagoon is subject to VPDES Permit No. VA0068591. The order provides that the permittee install a synthetic liner and aeration system at the lagoon and provide a sludge management plan for incorporation into the lagoon's operation and maintenance manual. The permittee has agreed to the issuance of the order.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written comments relating to the order through May 27, 1998. Please address comments to Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia, 22193. Please write or visit the Woodbridge address or call (703) 583-3886 in order to examine or to obtain a copy of the order.

### **Proposed Consent Special Order Town of Lovettsville**

The State Water Control Board (board) proposes to issue a Consent Special Order (order) to the Town of Lovettsville regarding the town's aerated lagoon, located in Lovettsville, Virginia. The town's aerated lagoon is subject to VPDES Permit No. VA0023183.

The order provides, among other things, that they submit a plan and schedule for upgrade of the treatment plant and comply with all final permit effluent limitations and monitoring requirements ensuring compliance with applicable statutory and regulatory requirements on or before March 10, 2001. The Town of Lovettsville has agreed to the issuance of the order.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written comments relating to the order through May 1, 1998. Please address comments to Douglas E. Washington, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia, 22193. Please write or visit the Woodbridge address or call (703) 583-3888 in order to examine or to obtain a copy of the order.

### **Proposed Amended Special Order Star Enterprise**

The State Water Control Board (board) proposes to issue an amendment to a Consent Special Order (order) issued April 30, 1993, to Star Enterprise, Texaco Inc., Texaco Refining and Marketing Inc., Texaco Refining and Marketing (East) Inc., and Saudi Refining Inc. (company).

The amendment acknowledges that the company has complied with certain representations and provisions of the order and cancels those provisions with which the company has complied.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written comments relating to the order through May 27, 1998. Please address comments to Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia, 22193. Please write or visit the Woodbridge address or call (703) 583-3886 in order to examine or to obtain a copy of the amended order.

### **Proposed Special Consent Order West Sand and Gravel, Inc.**

The State Water Control Board proposes to issue a Consent Special Order to West Sand and Gravel, Inc. located on Darbytown Road in Henrico County, Virginia. The proposed order addresses an unpermitted discharge of fine silt, clay, gravel and wastewater from the McNeil Plant to state waters. The order also states the corrective actions that West Sand and Gravel is taking to address this discharge. In addition,

the order provides for the payment of a \$5,000 civil charge and reimbursement of \$226.07 state investigative costs.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments until May 27, 1998, relating to the proposed order. Comments should be addressed to Cynthia Akers, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia 23060-6295. A copy of the order may be obtained in person or by mail from the above office.

### VIRGINIA CODE COMMISSION

#### Notice to Subscribers

Beginning with Volume 14, Issue 1 of the Virginia Register (14:1 V.A.R. September 29, 1997), the format of the Register changed slightly. Regulations and other information previously published in the State Corporation Commission, Marine Resources Commission, State Lottery Department, and Tax Bulletin sections have been merged into the Proposed Regulations, Final Regulations, Emergency Regulations, or General Notices sections as appropriate. In addition, regulations appear in order by Virginia Administrative Code (VAC) title order to correspond with the VAC.

#### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

#### Forms for Filing Material for Publication in *The Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material for publication in *The Virginia Register of Regulations*. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

**Internet:** Forms and other *Virginia Register* resources may be printed or downloaded from the *Virginia Register* web page: <http://legis.state.va.us/codecomm/regindex.htm>

#### FORMS:

- NOTICE of INTENDED REGULATORY ACTION - RR01
- NOTICE of COMMENT PERIOD - RR02
- PROPOSED (Transmittal Sheet) - RR03
- FINAL (Transmittal Sheet) - RR04
- EMERGENCY (Transmittal Sheet) - RR05
- NOTICE of MEETING - RR06
- AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS  
- RR08

## ERRATA

### TITLE 4. CONSERVATION AND NATURAL RESOURCES

#### DEPARTMENT OF MINES MINERALS AND ENERGY

Title of Regulation: 4 VAC 25-40-10 et seq. Safety and Health Regulations for Mineral Mining.

Publication: 14:8 V.A.R. 1198-1230 January 5, 1998.

Corrections to Proposed Regulation:

Page 1217, column 1, 4 VAC 25-40-2550, line 6, after "Persons shall" insert "not"

Page 1224, column 1, 4 VAC 25-40-4140, line 4, after "provided with" strike "overspeed"

# CALENDAR OF EVENTS

## Symbol Key

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

 Location accessible to handicapped

 Telecommunications Device for Deaf (TDD)/Voice Designation

## NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TDD, or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

## EXECUTIVE

### BOARD FOR ACCOUNTANCY

April 27, 1998 - 10 a.m. -- Open Meeting

April 28, 1998 - 8 a.m. -- Open Meeting

Department of Professional and Occupational Regulation,  
3600 West Broad Street, 5th Floor, Richmond, Virginia.

An open meeting to discuss regulatory review, requests for proposals for privatization, committee reports, disciplinary cases and other matters requiring board action. All meetings are subject to cancellation. Time of meeting subject to change. Call board office at least 24 hours in advance. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or (804) 367-9753/TDD 

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

† May 14, 1998 - 9 a.m. -- Open Meeting

Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

A meeting to discuss issues related to Virginia agriculture and consumer protection, and to consider regulatory actions. The board will entertain public comment for a period not to exceed 30 minutes. Any

person who needs any accommodation in order to participate at the meeting should contact Roy E. Seward at least five days before the meeting date so that suitable arrangements can be made.

Contact: Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 211, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3538.

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

#### Virginia Marine Products Board

† June 17, 1998 - 6 p.m. -- Open Meeting

The Backfin Restaurant, 213 Virginia Street, Urbanna, Virginia.

A meeting to receive reports from the Executive Director of the Virginia Marine Products Board on finance, marketing, past and future program planning, publicity/public relations, and old/new business. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Shirley Estes at least five days before the meeting date so that suitable arrangements can be made.

Contact: Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Boulevard, Suite B, Newport News, VA 23608, telephone (757) 874-3474 or FAX (757) 886-0671.

#### Virginia Seed Potato Board

† May 12, 1998 - 8 p.m. -- Open Meeting

Eastern Shore Agricultural Research and Extension Center, Research Drive, Painter, Virginia.

## Calendar of Events

A meeting to review regulations and the 1998 seed season, and to discuss other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact J. William Mapp at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** J. William Mapp, Program Director, Virginia Seed Potato Board, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867 or FAX (757) 787-1041.

### Virginia Winegrowers Advisory Board

**April 28, 1998 - 10 a.m. -- Open Meeting**

Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, 2nd Floor Conference Room, Richmond, Virginia. ☎

A regular meeting to discuss committee reports and other business, and to hear budget requests from individuals seeking grants for the 1998-99 fiscal year. The board will entertain public comment after the grant proposals have been given before the board votes on the proposals. Any person who needs any accommodations in order to participate at the meeting should contact Mary E. Davis-Barton at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Mary E. Davis-Barton, Secretary, Virginia Winegrowers Advisory Board, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1010, Richmond, VA 23219, telephone (804) 786-0481.

### ALCOHOLIC BEVERAGE CONTROL BOARD

**May 4, 1998 - 9:30 a.m. -- Open Meeting**

**May 18, 1998 - 9:30 a.m. -- Open Meeting**

**June 1, 1998 - 9:30 a.m. -- Open Meeting**

**June 15, 1998 - 9:30 a.m. -- Open Meeting**

**June 29, 1998 - 9:30 a.m. -- Open Meeting**

Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ☎

A meeting to receive reports from and discuss activities of staff members, and to discuss other matters not yet determined.

**Contact:** W. Curtis Coleburn, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409 or FAX (804) 213-4442.

### BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

**April 29, 1998 - 9 a.m. -- Open Meeting**

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

The Architect Section will meet to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

**† May 7, 1998 - 9 a.m. -- Open Meeting**

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

The Professional Engineer Section will meet to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

**† May 13, 1998 - 9 a.m. -- Open Meeting**

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

The Land Surveyor Section will meet to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

### VIRGINIA BOARD FOR ASBESTOS AND LEAD

**May 5, 1998 - 10 a.m. -- Open Meeting**

Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5 West, Richmond, Virginia. ☎

## Calendar of Events

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8595, FAX (804) 367-2475 or (804) 367-9753/TDD , or e-mail asbestos@dpor.state.va.us.

### BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

**† May 21, 1998 - 9:30 a.m. -- Open Meeting**  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting to discuss general business. Public comments will be received for 15 minutes prior to the beginning of the meeting.

**Contact:** Senita Booker, Program Support Technician Senior, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7390, FAX (804) 662-9523 or (804) 662-7197/TDD 

### VIRGINIA AVIATION BOARD

**April 28, 1998 - 3 p.m. -- Open Meeting**  
Department of Aviation, 5702 Gulfstream Road, Richmond International Airport, Virginia. (Interpreter for the deaf provided upon request)

A workshop for the board. No formal actions will be taken. Individuals with disabilities should contact Margaret Pugh at least 10 days prior to the meeting if assistance is needed.

**Contact:** Margaret Pugh, Department of Aviation, 5702 Gulfstream Road, Richmond International Airport, VA 23250-2422, telephone (804) 236-3632 or (804) 236-3624/TDD 

**April 29, 1998 - 9 a.m. -- Open Meeting**  
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular bimonthly meeting of the board. Applications for state funding will be presented to the board and other matters of interest to the Virginia aviation community will be discussed. Individuals with disabilities should contact Margaret Pugh at least 10 days prior to the meeting if assistance is needed.

**Contact:** Margaret Pugh, Department of Aviation, 5702 Gulfstream Road, Richmond International Airport, VA 23250-2422, telephone (804) 236-3632 or (804) 236-3624/TDD 

### BOARD FOR BARBERS

**June 8, 1998 - 10 a.m. -- Open Meeting**  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD 

### BOARD FOR BRANCH PILOTS

**April 27, 1998 - 9:30 a.m. -- Open Meeting**  
**April 28, 1998 - 9:30 a.m. -- Open Meeting**  
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia.

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD 

### CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

**May 5, 1998 - 10 a.m. -- Open Meeting**  
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Northern Area Review Committee will review Chesapeake Bay Preservation Area programs for the northern area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the meeting; however, written comments are welcome.

**Contact:** Carolyn J. Elliott, Executive Secretary, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-

## Calendar of Events

3440, FAX (804) 225-3447 or toll-free 1-800-243-7229/TDD  
¶

**May 5, 1998 - 2 p.m. -- Open Meeting**  
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia.¶ (Interpreter for the deaf provided upon request)

The Southern Area Review Committee will review Chesapeake Bay Preservation Area programs for the southern area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the meeting; however, written comments are welcome.

**Contact:** Carolyn J. Elliott, Executive Secretary, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440, FAX (804) 225-3447 or toll-free 1-800-243-7229/TDD  
¶

### STATE BOARD FOR COMMUNITY COLLEGES

**May 20, 1998 - 2:30 -- Open Meeting**  
Southwest Virginia Community College, Richlands, Virginia.¶ (Interpreter for the deaf provided upon request)

A regular board meeting.

**Contact:** Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, Virginia Community College System, James Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126, FAX (804) 371-0085, or (804) 371-8504/TDD ¶

**May 21, 1998 - 9 a.m. -- Open Meeting**  
Virginia Highlands Community College, Abingdon, Virginia.¶ (Interpreter for the deaf provided upon request)

A regular board meeting.

**Contact:** Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, Virginia Community College System, James Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126, FAX (804) 371-0085, or (804) 371-8504/TDD ¶

### COMPENSATION BOARD

**May 28, 1998 - 11 a.m. -- Open Meeting**  
Ninth Street Office Building, 202 North Ninth Street, 9th Floor, Room 913/913A, Richmond, Virginia.¶ (Interpreter for the deaf provided upon request)

A routine business meeting.

**Contact:** Bruce W. Haynes, Executive Secretary, P.O. Box 710, Richmond, VA 23218-0710, telephone (804) 786-0786, FAX (804) 371-0235, or (804) 786-0786/TDD ¶

### DEPARTMENT OF CONSERVATION AND RECREATION

**April 28, 1998 - 9:30 a.m. -- Open Meeting**  
Chippokes Plantation State Park, Stewart Mansion House, 695 Chippokes Park Road, Surry, Virginia.¶ (Interpreter for the deaf provided upon request)

A meeting to review goals and objectives and prepare recommendations for development of park programs and facilities for consideration in the master plan.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899 or (804) 786-2121/TDD  
¶

**May 27, 1998 - 9:30 a.m. -- Open Meeting**  
Chippokes Plantation State Park, Stewart Mansion House, 695 Chippokes Park Road, Surry, Virginia.¶ (Interpreter for the deaf provided upon request)

A meeting to finalize goals and objectives and recommend developments and phasing programs to be included in the master plan.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899 or (804) 786-2121/TDD  
¶

### Virginia Cave Board

**† May 30, 1998 - 1 p.m. -- Open Meeting**  
Department of Conservation and Recreation, Zinke Building, 203 Governor Street, Room 200, Richmond, Virginia.¶

A regular meeting to discuss issues relating to cave and karst conservation. A public comment period has been set aside on the agenda.

**Contact:** Lawrence R. Smith, Natural Area Protection Manager, Department of Conservation and Recreation, Division of Natural Heritage, 1500 E. Main St., Suite 312, Richmond, VA 23219, telephone (804) 786-7951, FAX (804) 371-2674 or (804) 786-2121.

### Falls of the James Scenic River Advisory Board

**† May 7, 1998 - Noon -- Open Meeting**  
**† June 4, 1998 - Noon -- Open Meeting**  
City Hall, 900 East Broad Street, 5th Floor, Planning Commission Conference Room, Richmond, Virginia.¶ (Interpreter for the deaf provided upon request)

A meeting to discuss river issues. Persons desiring interpreter services should contact the board at least one week prior to the meeting date.

## Calendar of Events

**Contact:** Richard G. Gibbons, Environmental Program Manager, Division of Planning and Recreation Resources, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD 

### Goose Creek Scenic River Advisory Board

† May 11, 1998 - 1:30 p.m. -- Open Meeting  
Loudoun County Administration Building, Lovettsville Room, Leesburg, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to review river issues. Persons desiring interpreter services should contact the board at least one week prior to the meeting date.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Division of Planning and Recreation Resources, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD 

### Virginia State Parks Foundation

† May 7, 1998 - 11 a.m. -- Open Meeting  
Pocahontas State Park, 10301 State Park Road, Chesterfield, Virginia.

A regular business meeting of the Board of Directors to discuss the Foundation Operation Spruce Up project at Pocahontas State Park. A public comment period will follow the meeting.

**Contact:** Leon E. App, Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570 or FAX (804) 786-6141.

### Shenandoah Scenic River Advisory Board

† May 14, 1998 - 4 p.m. -- Open Meeting  
Clarke County Courthouse, Board of Supervisors Room, Berryville, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to review river issues. Persons desiring interpreter services should contact the board at least one week prior to the meeting date.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Division of Planning and Recreation Resources, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD 

### BOARD FOR CONTRACTORS

April 28, 1998 - 9 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

The Disciplinary Committee will meet to review board member reports and summaries from informal fact-finding conferences held pursuant to the Administrative Process Act and to review consent order offers in lieu of further disciplinary proceedings. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least two weeks prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Geralde W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785 or (804) 367-9753/TDD 

### BOARD OF CORRECTIONAL EDUCATION

† April 30, 1998 - 10 a.m. -- Open Meeting  
Department of Correctional Education, James Monroe Building, 101 North 14th Street, 7th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A monthly meeting to discuss general business.

**Contact:** Patty Ennis, Board Clerk, Board of Correctional Education, James Monroe Bldg., 101 N. 14th St., 7th Floor, Richmond, VA 23219, telephone (804) 225-3314.

### BOARD OF CORRECTIONS

† May 12, 1998 - 9:30 a.m. -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia. 

A meeting of the Correctional Services Committee.

**Contact:** Barbara Fellows, Secretary to the Board, Board of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

† May 13, 1998 - 8:30 a.m. -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia. 

A meeting of the Administration Committee.

**Contact:** Barbara Fellows, Secretary to the Board, Board of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

† May 13, 1998 - 10 a.m. -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A meeting of the full board to discuss matters which may be presented.

## Calendar of Events

**Contact:** Barbara Fellows, Secretary to the Board, Board of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

### BOARD FOR COSMETOLOGY

**† May 4, 1998 - 9 a.m. -- Open Meeting**  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5 W, Richmond, Virginia. (Interpreter for the deaf will be provided upon request)

The board and subject matter experts will meet to conduct an exam workshop. A public comment period will be held at the beginning of the meeting. After the public comment period the workshop will be conducted in closed executive session under authority of § 2.1-344 A 11 of the Code of Virginia due to the confidential nature of the examination. The public will not be admitted to the closed executive session.

**Contact:** George O. Bridewell, Examination Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8572 or (804) 367-9753/TDD (Interpreter for the deaf will be provided)

**June 1, 1998 - 10 a.m. -- Open Meeting**  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf will be provided)

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request at least 10 days in advance.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD (Interpreter for the deaf will be provided)

### DEPARTMENT FOR THE DEAF AND HARD-OF-HARING

**May 6, 1998 - 10 a.m. -- Open Meeting**  
Department for the Deaf and Hard-of-Hearing, Koger Center, 1602 Rolling Hills Drive, Suite 203, Richmond, Virginia. (Interpreter for the deaf will be provided)

A regular quarterly meeting of the Virginia Department for the Deaf and Hard-of-Hearing Advisory Board. Public comments will be received with advance notice.

**Contact:** Beverly Dickinson, Executive Secretary, Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Dr., Suite 203, Richmond, VA 23229, telephone (804) 662-9705/VTY/TDD or toll-free 1-800-552-7917 (V/TTY).

### BOARD OF DENTISTRY

**April 30, 1998 - 9 a.m. -- Open Meeting**  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf will be provided upon request)

A regular business meeting to (i) hear committee reports; (ii) discuss upcoming meetings; (iii) review consent orders, minutes and general requests; and (iv) discuss amending § 54.1-2709 of the Code of Virginia, License; application; qualifications; examinations, as it pertains to graduates of foreign dental schools. Public comment will be received at the beginning of the meeting.

**Contact:** Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD (Interpreter for the deaf will be provided)

### DISABILITY SERVICES COUNCIL

**May 11, 1998 - 3 p.m. -- Open Meeting**  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. (Interpreter for the deaf will be provided)

A meeting to review the FY 1999 Rehabilitative Services Incentive Fund (RSIF) appeal letters.

**Contact:** LaDonna Rogers, Administrative Staff Assistant, Disability Services Council, 8004 Franklin Farms Dr., Richmond, VA 23288, telephone (804) 662-7154/Voice/TTY, toll-free 1-800-552-5019 or 1-800-464-9950/TDD (Interpreter for the deaf will be provided)

**July 29, 1998 - 11 a.m. -- Open Meeting**  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. (Interpreter for the deaf will be provided)

A meeting to review the FY 1999 Rehabilitative Services Incentive Fund (RSIF) Competitive Proposals for approval.

**Contact:** LaDonna Rogers, Administrative Staff Assistant, Disability Services Council, 8004 Franklin Farms Dr., Richmond, VA 23288, telephone (804) 662-7154/Voice/TTY, toll-free 1-800-552-5019 or 1-800-464-9950/TDD (Interpreter for the deaf will be provided)

### VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP

**† May 21, 1998 - 8:30 a.m. -- Open Meeting**  
Virginia Economic Development Partnership, 901 East Byrd Street, Riverfront Plaza, West Tower, 19th Floor, Green Conference Room, Richmond, Virginia. (Interpreter for the deaf will be provided upon request)

A meeting of the Nominating Committee of the Board of Directors to discuss the upcoming election of officers and the slate to be presented at the next full board meeting on June 2, 1998.

## Calendar of Events

**Contact:** Kim Ellett, Administrative Assistant, Virginia Economic Development Partnership, P.O. Box 798, Richmond, VA 23218-0798, telephone (804) 371-8108 or FAX (804) 371-8112.

† June 2, 1998 - 11 a.m. -- Open Meeting

Virginia Economic Development Partnership, 901 East Byrd Street, Riverfront Plaza, West Tower, 19th Floor, Board Room, Richmond, Virginia. (Interpretation for the deaf provided upon request)

A meeting of the Board of Directors to discuss matters related to the Virginia Economic Development Partnership.

**Contact:** Kim Ellett, Administrative Assistant, Virginia Economic Development Partnership, P.O. Box 798, Richmond, VA 23218-0798, telephone (804) 371-8108 or FAX (804) 371-8112.

### Virginia Tourism Corporation

April 29, 1998 - 10 a.m. -- Open Meeting

Virginia Economic Development Partnership, 901 East Byrd Street, Riverfront Plaza, West Tower, 19th Floor, Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Board of Directors to discuss strategic planning and budgets related to the Virginia Tourism Corporation. The agenda is available upon request. Public comment will be taken at the beginning of the meeting.

**Contact:** Judy H. Bulls, Assistant to the President and CEO, Virginia Tourism Corporation, 901 East Byrd St., Richmond, VA 23219, telephone (804) 371-8174, FAX (804) 786-1919 or (804) 371-0327/TDD (Interpretation for the deaf provided upon request)

### STATE BOARD OF EDUCATION

April 30, 1998 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to adopt regulations entitled: 8 VAC 20-21-10 et seq. **Licensure of Regulations for School Personnel.** During the January 8, 1998, meeting of the Board of Education, approval was granted to the Licensure of Regulations for School Personnel in all areas except 8 VAC 20-21-430 - special education: mild-moderate disabilities K-12 and 8 VAC 20-21-440 - special education: moderate-severe disabilities K-12. On February 26, 1998, the Board of Education approved a substitute proposal in the endorsement areas of special education-learning disabilities K-12, special education-emotional retardation K-12, special education-emotionally disturbed K-12, and special education-severe disabilities K-12. The Board of Education will hold a public hearing on the proposal. Registration for those wishing to speak begins at 6 p.m. Speakers are requested to limit their

remarks to three minutes each. In the event a large number of persons request to speak, the hearing chairman may request that the time limit for each speaker be shortened to less than three minutes. A written copy of remarks is requested. Written comments may also be submitted directly to Dr. Thomas A. Elliott.

Statutory Authority: §§ 22.1-298 and 22.1-299 of the Code of Virginia.

Public comments may be submitted until April 30, 1998.

**Contact:** Dr. Thomas A. Elliott, Assistant Superintendent for Compliance, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 371-2522.

### LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

May 7, 1998 - 5:30 p.m. -- Open Meeting

June 4, 1998 - 5:30 p.m. -- Open Meeting  
6610 Public Safety Way, Chesterfield, Virginia.

A regular meeting.

**Contact:** Lynda G. Furr, Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

### LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER

† May 27, 1998 - 6:30 p.m. -- Open Meeting

Courthouse Office Building, 6467 Main Street, Gloucester, Virginia. (Interpreter for the deaf provided upon request)

The biannual meeting of the committee to discuss a training exercise and a public information campaign for the current fiscal year.

**Contact:** Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042 or (804) 693-1479.

### DEPARTMENT OF ENVIRONMENTAL QUALITY

May 6, 1998 - 9 a.m. -- Open Meeting

Confederate Hills Recreation Center, 302 Lee Avenue, Highland Springs, Virginia. (Interpretation for the deaf provided upon request)

The Virginia Coastal Program will hold a second meeting to discuss development of its multi-year strategic plan. The contractor for this work, the University of Virginia's Institute for Environmental Negotiation, will present research findings, draft options and focus group results. The draft strategic plan is due in June and the plan will be finalized by fall of 1998.

**Contact:** Laura McKay, Virginia Coastal Program Manager, Department of Environmental Quality, 629 E. Main St.,

## Calendar of Events

Richmond, VA 23219, telephone (804) 698-4323 or FAX (804) 698-4319.

**† May 13, 1998 - 7 p.m. -- Public Hearing**  
Lee Center, 1108 Jefferson Street, Alexandria, Virginia.

A public hearing on a proposed revision to the Commonwealth of Virginia State Implementation Plan consisting of a determination as to reasonably available control technology (RACT) for the control of emissions of nitrogen oxides (NO<sub>x</sub>) to the atmosphere from the Alexandria/Arlington Resource Recovery Facility (municipal waste incinerator), operated in Alexandria by Ogden Martin Systems of Alexandria/Arlington, Inc.

**Contact:** John McKie, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3831 or FAX (804) 583-3801.

### Virginia Ground Water Protection Steering Committee

**May 19, 1998 - 9 a.m. -- Open Meeting**  
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. (■)

A regularly scheduled meeting. Anyone interested in ground water protection issues is encouraged to attend. To obtain minutes and a meeting agenda contact Mary Ann Massie at (804) 698-4042.

**Contact:** Mary Ann Massie, Environmental Program Planner, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4042 or FAX (804) 698-4032.

### BOARD OF FORESTRY

**April 27, 1998 - 9 a.m. -- Open Meeting**  
Department of Forestry, Fontaine Research Park, 900 Natural Resources Drive, Board Room, Charlottesville, Virginia. (■) (Interpreter for the deaf provided upon request)

A regular meeting to conduct general business. Please notify the board five working days prior to the meeting for interpreter services.

**Contact:** Barbara A. Worrell, Administrative Staff Specialist, Department of Forestry, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555 or (804) 977-6555/TDD (■)

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

**May 13, 1998 - 9 a.m. -- Open Meeting**  
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. (■)

A Resident Trainee Task Force Committee meeting to discuss the resident trainee study guide and other

related issues. Public comments will be received for 15 minutes at the beginning of the meeting.

**Contact:** Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9523.

**† May 27, 1998 - 9 a.m. -- Open Meeting**  
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. (■)

A meeting of the Regulatory and Bylaws Committees to discuss regulations governing crematories.

**Contact:** Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9523.

**June 10, 1998 - 9 a.m. -- Open Meeting**  
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. (■)

A general board meeting. Public comments will be received for 15 minutes at the beginning of the meeting.

**Contact:** Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9523.

### BOARD OF GAME AND INLAND FISHERIES

**† June 4, 1998 - 9 a.m. -- Open Meeting**  
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia. (■) (Interpreter for the deaf provided upon request)

The Finance Committee will meet and review the status of the agency's fiscal year 1997-1998 budget and discuss the agency's planned budget for fiscal year 1998-1999. The committee may take any actions deemed appropriate. Other items, including general and administrative matters, may be discussed.

**Contact:** Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2311.

### DEPARTMENT OF GENERAL SERVICES

#### Design-Build/Construction Management Review Board

**May 18, 1998 - 11 a.m. -- Open Meeting**  
**June 15, 1998 - 11 a.m. -- Open Meeting**  
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. (■) (Interpreter for the deaf provided upon request)

A meeting to review requests submitted by localities for the use of the design-build or construction management

## Calendar of Events

type of contract. Public comments will be taken. The chairman may cancel the meeting if there is not business for the board's consideration. Please contact the Division of Engineering and Buildings to confirm meeting date and time.

**Contact:** Sandra H. Williams, Board Clerk, Division of Engineering and Buildings, Department of General Services, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263 or (804) 786-6152/TDD 

### GEORGE MASON UNIVERSITY

#### Board of Visitors

**May 13, 1998 - Time to be announced -- Open Meeting**  
George Mason University, Mason Hall, Room D23, Fairfax, Virginia. 

A regular meeting to hear reports of the standing committees of the board and to act on those recommendations presented by the standing committees. An agenda will be available seven days prior to the board meeting for those individuals and organizations who request it.

**Contact:** Patricia E. Roney, Administrative Assistant, Office of the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-8700.

### STATE BOARD OF HEALTH

**April 30, 1998 - 1 p.m. -- Public Hearing**  
Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia.

**May 18, 1998 - Public comments may be submitted until 5 p.m. on this date.**

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-600-10 et seq. Waterworks Operation Fee**. These proposed amendments change the existing annual waterworks operation fee schedule from set fees to capped fees so owners of waterworks can be charged amounts lower than presently allowed in the regulation.

Statutory Authority: §§ 32.1-12, 32.1-170 and 32.1-171.1 of the Code of Virginia.

**Contact:** Thomas B. Gray, P.E., Special Projects Manager, Division of Water Supply Engineering, Department of Health, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-1087, FAX (804) 786-5567 or toll-free 1-800-828-1120/TDD 

### DEPARTMENT OF HEALTH

**† June 3, 1998 - 10:15 a.m. -- Open Meeting**  
Department of Health, Main Street Station, 1500 East Main Street, Room 121, Richmond, Virginia. 

A quarterly meeting of the AIDS Drug Advisory Committee to discuss the state ADAP and the state medication formulary.

**Contact:** Ann Elam, Public Health Nurse Supervisor, Department of Health, P.O. Box 2448, Room 112, Richmond, VA 23219, telephone (804) 371-8294 or toll-free 1-800-533-4148.

### DEPARTMENT OF HEALTH PROFESSIONS

**April 30, 1998 - 3 p.m. -- Open Meeting**  
Fort Magruder Inn and Conference Center, Williamsburg, Virginia.  (Interpreter for the deaf provided upon request)

The Intervention Program Committee will meet with its contractor and representatives to consider requests for stayed disciplinary action and to hear reports from the contractor. The committee may meet in executive session for the purpose of consideration of specific requests from applicants or participants in the program.

**Contact:** John W. Hasty, Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9424, FAX (804) 662-9114 or (804) 662-7197/TDD 

### BOARD FOR HEARING AID SPECIALISTS

**May 18, 1997 - 8:30 a.m. -- Open Meeting**  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5 West, Richmond, Virginia. 

A routine business meeting. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact David Dick at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475 or (804) 367-9753/TDD , or e-mail [hearingaidspec@dpor.state.va.us](mailto:hearingaidspec@dpor.state.va.us).

## Calendar of Events

### STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† May 1, 1998 - 8:30 a.m. -- Open Meeting  
Virginia Military Institute, Lexington, Virginia. ☎

Committees will begin at 8:30 a.m. and will follow one another without a break. The council will meet at 1 p.m. Times are approximate and may change depending on the time needed for discussion.

Contact: Pamela H. Landrum, Administrative Staff Assistant, State Council of Higher Education, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2602 or FAX (804) 371-7911.

### HOPEWELL INDUSTRIAL SAFETY COUNCIL

† May 5, 1998 - 9 a.m. -- Open Meeting  
† June 2, 1998 - 9 a.m. -- Open Meeting  
† July 7, 1998 - 9 a.m. -- Open Meeting

Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☎ (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

### COUNCIL ON INFORMATION MANAGEMENT

† May 15, 1998 - 10 a.m. -- Open Meeting  
Council on Information Management, 1100 Bank Street, Suite 901, Richmond, Virginia. ☎

A regular bimonthly meeting.

Contact: Linda Hening, Administrative Assistant, Council on Information Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or toll-free 1-800-828-1120/TDD ☎

### VIRGINIA INFORMATION PROVIDERS NETWORK AUTHORITY

† May 28, 1998 - 1 p.m. -- Open Meeting  
Council on Information Management, 1100 Bank Street, Suite 901, Richmond, Virginia. ☎

A regular monthly meeting of the Board of Directors.

Contact: Linda Hening, Administrative Assistant, Council on Information Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or toll-free 1-800-828-1120/TDD ☎

### JAMESTOWN-YORKTOWN FOUNDATION

† May 4, 1998 - 11:30 a.m. -- Open Meeting  
† May 5, 1998 - 8:30 a.m. -- Open Meeting  
Fort Magruder Inn, 6945 Pocahontas Trail, Williamsburg, Virginia. ☎

A semiannual board meeting and board committees meeting, including the Executive, Finance, Buildings and Grounds, Exhibitions and Collections, Education and Interpretation, Marketing, Nominating, and Administration and Personnel Committees. Public comment will not be received.

Contact: Laura W. Bailey, Administrative Staff Specialist Senior, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (757) 253-4840, FAX (757) 253-5299, toll-free 1-888-593-4682 or (757) 253-7236.

### STATE BOARD OF JUVENILE JUSTICE

May 13, 1998 - 9 a.m. -- Open Meeting  
700 Centre, 700 East Franklin Street, 4th Floor, Richmond, Virginia. ☎

The Secure and Nonsecure Services Committees will meet at 9 a.m. The full board will meet at 10 a.m. to consider certification of residential and nonresidential programs, to adopt policies implementing regulatory requirements, and to consider other matters that may come before the board.

Contact: Donald R. Carignan, Policy Analyst Senior, Department of Juvenile Justice, 700 E. Franklin St., P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

### THE LIBRARY OF VIRGINIA

May 15, 1998 - 11 a.m. -- Open Meeting  
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. ☎

A meeting of the State Networking Users Advisory Board.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219, telephone (804) 692-3535.

† May 18, 1998 - 9 a.m. -- Open Meeting  
Hyatt Richmond Hotel, 6624 West Broad, Richmond, Virginia. ☎

A retreat for the Library Board to review and finalize The Library of Virginia strategic plan presented by library staff.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219, telephone (804) 692-3535.

## Calendar of Events

### COMMISSION ON LOCAL GOVERNMENT

**May 18, 1998 - 10 a.m. -- Open Meeting**

Eighth Street Office Building, 805 East Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting to consider such matters as may be presented. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

**Contact:** Barbara Bingham, Administrative Assistant, Commission on Local Government, Eighth Street Office Bldg., 805 E. Broad St., Room 702, Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TDD

### VIRGINIA MANUFACTURED HOUSING BOARD

**† May 20, 1998 - 10 a.m. -- Open Meeting**

Department of Housing and Community Development, The Jackson Center, 501 North 2nd Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting of the board.

**Contact:** Curtis L. McIver, Associate Director, Department of Housing and Community Development, Manufactured Housing Office, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160 or (804) 371-7089/TDD

### MARINE RESOURCES COMMISSION

**April 28, 1998 - 9 a.m. -- Open Meeting**

**May 26, 1998 - 9 a.m. -- Open Meeting**

**June 30, 1998 - 9 a.m. -- Open Meeting**

Marine Resources Commission, 2600 Washington Avenue, Room 403, Newport News, Virginia. (Interpreter for the deaf provided upon request)

The commission will hear and decide the following marine environmental matters at 9 a.m.: permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues. The commission will hear and decide the following fishery management items at approximately noon: regulatory proposals, fishery management plans; fishery conservation issues; licensing; shellfish leasing. Meetings are open to the public. Testimony will be taken under oath from parties addressing agenda items on permits and licensing. Public comments will be taken on resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

**Contact:** LaVerne Lewis, Secretary to the Commission, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (757) 247-2261, toll-free 1-800-541-4646 or (757) 247-2292/TDD

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**May 1, 1998 - Public comments may be submitted until this date.**

Notice is hereby given in accordance with § 9.6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: 12 VAC 30-20-10 et seq. Administration of Medical Assistance and 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality of Care. These regulations amend the specialized care program to update the definitions of provider and recipient criteria, as required by legislation.

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

Public comments may be submitted until May 1, 1998, to Regina Anderson-Cloud, LTC Policy, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

**May 20, 1998 - 2 p.m. -- Open Meeting**

Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia.

A meeting to conduct routine business of the Drug Utilization Review Board.

**Contact:** Marianne Rollings, Pharmacist, Department of Medical Assistance Services, Program Operations, Pharmacy Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4268.

**June 8, 1998 - 1 p.m. -- Open Meeting**

Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia.

A meeting to conduct routine business of the Pharmacy Liaison Committee.

**Contact:** Marianne Rollings, Pharmacist, Department of Medical Assistance Services, Program Operations, Pharmacy Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4268.

## Calendar of Events

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**June 26, 1998** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to adopt regulations entitled: 12 VAC 30-100-10 et seq. **Health Insurance Program for Working Uninsured Individuals**. These regulations establish the Health Insurance Program for Working Uninsured Individuals. The regulations define, in a fair and equitable manner, who is eligible to receive premium subsidies, how beneficiaries will be enrolled and disenrolled, and what appeal rights they have. The regulations outline the rights and responsibilities of the providers and describe how the Department of Medical Assistance Services monitors the services provided by the managed care plans. The regulations also outline the administrative structure and reimbursement methodology and provide information on the benefit package or covered services.

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

Public comments may be submitted until June 26, 1998, to John Kenyon, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

### BOARD OF MEDICINE

**May 6, 1998 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Advisory Committee on Acupuncturists will meet to discuss regulatory review of 18 VAC 85-110-10 et seq., Licensed Acupuncturists, and such other issues which may be presented. The committee will entertain public comments during the first 15 minutes on agenda items.

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD



**May 6, 1998 - 1 p.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Advisory Committee on Radiologic Technologists will meet to review public comments and make recommendations to the board regarding 18 VAC 85-101-10 et seq., Regulations Governing the Licensure of

Radiologic Technologist Practitioners and Radiologic Technologists-Limited, and such other issues which may be presented. The advisory committee will entertain public comments during the first 15 minutes on agenda items.

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD



**May 7, 1998 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Advisory Board on Occupational Therapy will meet to review public comments and make recommendations to the board regarding the regulatory review of 18 VAC 85-80-10 et seq., Regulations for Certification of Occupational Therapists, and such other issues which may be presented. The advisory board will entertain public comments during the first 15 minutes on agenda items.

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD



**May 7, 1998 - 1 p.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Advisory Board on Respiratory Therapy will meet to review public comments and make recommendations to the board regarding the regulatory review of 18 VAC 85-40-10 et seq., Regulations Governing the Practice of Respiratory Therapy Practitioners, and such other issues which may be presented. The advisory board will entertain public comments during the first 15 minutes on agenda items.

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD



**May 8, 1998 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Advisory Board on Physical Therapy will meet to review public comments and make recommendations to the board regarding the regulatory review of 18 VAC 85-31-10 et seq., Regulations Governing the Practice of Physical Therapy, and such other issues which may be

## Calendar of Events

presented. The advisory board will entertain public comments during the first 15 minutes on agenda items.

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD 

**May 8, 1998 - 1 p.m. -- Open Meeting**

Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The Advisory Committee on Physician Assistants will meet to review public comments and make recommendations to the board regarding the regulatory review of 18 VAC 85-50-10 et seq., Regulations Governing the Practice of Physician Assistants, and such other issues which may be presented. The committee will entertain public comments during the first 15 minutes on agenda items.

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD 

**May 15, 1998 - 1 p.m. -- Open Meeting**

Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The Legislative Committee will meet to discuss legislative issues related to board activities and regulation, to review any pending regulations pursuant to regulatory review or legislative action, and to consider any other information that may come before the committee. The committee will entertain public comments during the first 15 minutes on agenda items.

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD 

**May 22, 1998 - 10 a.m. -- Open Meeting**

Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

Pursuant to § 54.1-2912.1 of the Code of Virginia, the board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence.

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD 

### Informal Conference Committee

**May 8, 1998 - 10 a.m. -- Open Meeting**

Fort Magruder Inn - Conference Center, Route 60, Williamsburg, Virginia.

**May 14, 1998 - 10:30 a.m. -- Open Meeting**

Roanoke Airport Marriott, 2801 Hershberger Road, Roanoke, Virginia.

**† May 20, 1998 - 9:30 a.m. -- Open Meeting**

Sheraton Inn, 2801 Plank Road, Fredericksburg, Virginia.

**† May 21, 1998 - 9 a.m. -- Open Meeting**

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

**June 26, 1998 - 9:30 a.m. -- Open Meeting**

Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

**Contact:** Karen W. Perrine, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9517 or (804) 662-7197/TDD 

### DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

**† May 7, 1998 - 10 a.m. -- Open Meeting**

Henrico Community Services Board, 10299 Woodman Road, Glen Allen, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Performance Outcome Measurement System Workgroup to (i) review the interpretative guidelines for standardized instruments, (ii) review and comment on the Guide to Clinicians, and (iii) review proposed protocol for measuring family member participation in treatment.

**Contact:** Will Ferriss, Research and Evaluation Associate, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 371-7428 or FAX (804) 786-9428.

## Calendar of Events

### VIRGINIA MILITARY INSTITUTE

**May 14, 1998 - 8:30 a.m. -- Open Meeting**

Virginia Military Institute, Smith Hall Board Room, Lexington, Virginia. ☎

A regular meeting of the Board of Visitors to (i) hear committee reports; (ii) approve budget and awards, distinctions and diplomas; (iii) discuss personnel changes; and (iv) elect president pro tem. The Board of Visitors will not provide an opportunity for public comment at this meeting.

**Contact:** Colonel Edwin L. Dooley, Jr., Secretary to the Board, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (540) 464-7206 or FAX (540) 464-7600.

### MOTOR VEHICLE DEALER BOARD

**† June 15, 1998 - 10 a.m. -- Public Hearing**

Department of Motor Vehicles, 2300 West Broad Street, Williamsburg Room, Richmond, Virginia.

**June 27, 1998 - Public comments may be submitted until this date.**

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Motor Vehicle Dealer Board intends to amend regulations entitled: **24 VAC 22-30-10 et seq. Motor Vehicle Dealer Advertising Practices and Enforcement Regulations.** The purpose of the proposed amendments is to expand the definition of advertisement to include all types of media, including electronic media, and clarify the definition of the terms "free" and "dealer rebates" when used in advertisements.

**Statutory Authority:** §§ 46.2-1506 and 46.2-1582 of the Code of Virginia.

**Contact:** Bruce Gould, Executive Director, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053 or toll-free 1-800-272-9268/TDD ☎

### VIRGINIA MUSEUM OF FINE ARTS

**† May 20, 1998 - 4:30 p.m. -- Open Meeting**

Virginia Museum of Fine Arts, 2800 Grove Avenue, Marble Hall, Richmond, Virginia. ☎

A joint meeting of the Board of Trustees and the Board of Directors to discuss matters of mutual interest regarding fundraising. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

### Buildings and Grounds Committee

**† May 21, 1998 - Time to be determined -- Open Meeting**

Virginia Museum of Fine Arts, 2800 Grove Avenue, Payne Room (member's suite), Richmond, Virginia. ☎

A meeting to receive an update on (i) the Center for Education and Outreach renovation project, (ii) maintenance reserve projects, and (iii) other buildings and grounds concerns. Public comment will not be received..

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

### Collections Committee

**† May 19, 1998 - 11 a.m. -- Open Meeting**

Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. ☎

A meeting to consider gift offers, purchases and loans of works of art. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

### Communications and Marketing Committee

**† May 21, 1998 - 10 a.m. -- Open Meeting**

Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. ☎

Agenda to be determined. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

### Education and Programs Committee

**† May 21, 1998 - 2 p.m. -- Open Meeting**

Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. ☎

A review of statewide task force findings. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

### Executive Committee

**† May 5, 1998 - 8 a.m. -- Open Meeting**

Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia. ☎

# Calendar of Events

A monthly briefing with the staff. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

## Exhibitions Committee

† May 21, 1998 - 10 a.m. -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue,  
Auditorium, Richmond, Virginia. (I)

A meeting to consider upcoming and proposed exhibitions. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

## Finance Committee

† May 21, 1998 - 11 a.m. -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue,  
Conference Room, Richmond, Virginia. (I)

A meeting to review the budget. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

## Food Service Task Force Committee

† May 21, 1998 - 9 a.m. -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue,  
Conference Room, Richmond, Virginia. (I)

A regular meeting. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

## Board of Trustees

† May 21, 1998 - 12:30 p.m. -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue,  
Auditorium, Richmond, Virginia. (I)

A year-end meeting to review committee work and budget, and review and consider art acquisitions.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

## COMMONWEALTH NEUROTRAUMA INITIATIVE ADVISORY BOARD

† July 23, 1998 - 9:30 a.m. -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. (I) (Interpreter for the deaf provided upon request)

A quarterly board meeting.

**Contact:** Charlotte Neal, Board Administrator, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23288-0300, telephone (804) 662-7082, toll-free 1-800-552-5019 or 1-800-464-9950/TDD (T)

## BOARD OF NURSING

April 29, 1998 - 9 a.m. --Open Meeting  
April 30, 1998 - 9 a.m. -- Open Meeting  
† May 11, 1998 - 9 a.m. -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (I) (Interpreter for the deaf provided upon request)

A Special Conference Committee will conduct informal conferences with licensees and certificate holders. Public comment will not be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD (T)

## BOARD OF NURSING HOME ADMINISTRATORS

April 28, 1998 - 9 a.m. -- Open Meeting  
April 29, 1998 - 9 a.m. -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (I)

A Special Conference Committee will hold informal hearings. No public comments will be heard.

**Contact:** Senita Booker, Administrative Staff Assistant, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9523 or (804) 662-7197/TDD (T)

† May 12, 1998 - 9 a.m. -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (I)

A formal hearing. No public comments will be heard.

**Contact:** Senita Booker, Administrative Staff Assistant, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9523 or (804) 662-7197/TDD (T)

## Calendar of Events

### BOARDS OF NURSING AND MEDICINE

**† May 6, 1998 - 9 a.m. -- Open Meeting**

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A Special Conference Committee of the Joint Boards of Nursing and Medicine will conduct informal conferences with licensees. Public comment will not be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD

### BOARD FOR OPTICIANS

**May 15, 1998 - 10 a.m. -- Open Meeting**

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review, disciplinary cases and other matters requiring board action. All meetings are subject to cancellation. The time of the meeting is subject to change. Call the board's office at least 24 hours in advance. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or (804) 367-9753/TDD

### BOARD OF OPTOMETRY

**April 30, 1998 - 9 a.m. -- Open Meeting**

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

**May 15, 1998 - 8:30 a.m. -- Open Meeting**

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct informal conferences. This is a public meeting; however, public comment will not be received.

**Contact:** Carol Stamey, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th

Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD

### VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

**May 27, 1998 - 1 p.m. -- Open Meeting**

202 North Ninth Street, 9th Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Executive Committee will meet to discuss business and prepare for the May 28, 1998, board meeting.

**Contact:** Thomas Ariail, Business Manager, Virginia Board for People with Disabilities, 202 N. Ninth St., 9th Floor, Richmond, VA 23219, telephone (804) 786-0016/TDD or FAX (804) 786-1118 or toll-free 1-800-846-4464.

**May 28, 1998 - 9 a.m. -- Open Meeting**

202 North Ninth Street, 9th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Education, Community Living and Employment Committees will meet from 9 a.m. to noon to discuss business and prepare for the afternoon business meeting. The board business meeting will be held from 1 p.m. to 4:30 p.m. A public comment period will begin before the board business meeting. Consumers, family members, and service providers are encouraged to comment on the needs and issues facing people with disabilities in Virginia.

**Contact:** Thomas Ariail, Business Manager, Virginia Board for People with Disabilities, 202 N. Ninth St., 9th Floor, Richmond, VA 23219, telephone (804) 786-0016, FAX (804) 786-1118 or toll-free 1-800-846-4464.

### BOARD OF PHARMACY

**April 28, 1998 - 9 a.m. -- Open Meeting**

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A special conference committee will conduct informal conferences. Public comment will not be received.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313 or (804) 662-7197/TDD

## Calendar of Events

### BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE TREATMENT PROFESSIONALS

**May 8, 1998 - 10:30 a.m. -- Open Meeting**

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ☎

A Credentials Committee meeting to review applicant credentials. Public comments will not be heard.

**Contact:** Evelyn Brown, Executive Director, or Joyce Williams, Administrative Assistant, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912 or FAX (804) 662-9943.

† **May 13, 1998 - 1 p.m. -- Open Meeting**

† **May 14, 1998 - 9 a.m. -- Open Meeting (if necessary)**

The Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, Virginia.

A meeting of the Regulatory Committee to consider requirements for licensure of substance abuse treatment practitioners and consider amendments to the Regulations Governing the Practice of Marriage and Family Therapists, 18 VAC 115-50-10 et seq., pursuant to a petition for rulemaking. Public comment will be received at the beginning of the meeting. If necessary, the committee will reconvene on May 14 to continue discussion on agenda items.

**Contact:** Evelyn B. Brown, Executive Director, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9575, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

\* \* \* \* \*

**May 13, 1998 - 11 a.m. -- Public Hearing**  
Hospitality House, Williamsburg, Virginia.

**June 12, 1998 -** Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals intends to amend regulations entitled: **18 VAC 115-40-10 et seq. Regulations Governing the Certification of Rehabilitation Providers.** The proposed amendments will replace emergency regulations which have been in effect since October 1, 1997, and are intended to more clearly define the scope of practice and the mandate for certification to those who exercise professional judgment in the provision of rehabilitation services.

Statutory Authority: §§ 54.1-2400 and 54.1-3515 of the Code of Virginia.

**Contact:** Evelyn B. Brown, Executive Director, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912 or FAX (804) 662-9943.

**May 14, 1998 - 9 a.m. -- Open Meeting**

Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, Virginia. ☎

The Supervision Committee will meet at 9 a.m. to consider recommendations regarding supervision requirements for the professional counselor license. The Examination Committee will meet at 10 a.m. to consider examination processes. The Executive Committee will meet at 11 a.m. to consider recommended activities of the board. Public comments will not be heard at any meetings.

**Contact:** Evelyn Brown, Executive Director, or Joyce Williams, Administrative Assistant, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912 or FAX (804) 662-9943.

**May 14, 1998 - 1 p.m. -- Open Meeting**

Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, Virginia. ☎

A meeting to plan, set goals, and set objectives for future activities of the board. Public comments will be received at the beginning of the meeting.

**Contact:** Evelyn Brown, Executive Director, or Joyce Williams, Administrative Assistant, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912 or FAX (804) 662-9943.

**May 15, 1998 - 9 a.m. -- Open Meeting**

Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, Virginia. ☎

A continuation of the board meeting to (i) conduct general board business; (ii) consider committee reports, correspondence and any other matters under the jurisdiction of the board; and (iii) conduct regulatory review, including consideration of adoption of amendments to the Regulations Governing the Practice of Marriage and Family Therapy. Public comments will be received at the beginning of the meeting.

**Contact:** Evelyn Brown, Executive Director, or Joyce Williams, Administrative Assistant, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912 or FAX (804) 662-9943.

## Calendar of Events

### BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

**May 15, 1998 - 10:30 a.m.** -- Public Hearing  
Roanoke City Council Chamber, 215 Church Avenue, S.W.,  
Room 450, Roanoke, Virginia. ☎

A public hearing in connection with the board's study of the need to regulate cemeteries. The study is a result of House Bill 1077 and Senate Bill 700, which passed in the 1998 Session of the General Assembly. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

**Contact:** Debra L. Vought, Agency Management Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519 or (804) 367-9753/TDD ☎

**June 5, 1998 - 10 a.m.** -- Open Meeting  
Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Room B, Virginia Beach, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

**Contact:** Debra L. Vought, Agency Management Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519 or (804) 367-9753/TDD ☎

**June 5, 1998 - 1:30 p.m.** -- Public Hearing  
Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Room B, Virginia Beach, Virginia. ☎

A public hearing in connection with the board's study of the need to regulate electrologists. The study is a result of House Joint Resolution 204 and Senate Joint Resolution 128, which passed in the 1998 Session of the General Assembly. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

**Contact:** Debra L. Vought, Agency Management Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519 or (804) 367-9753/TDD ☎

### BOARD OF PSYCHOLOGY

**May 1, 1998 - 10:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ☎

A meeting of the Examination Committee to review examinations administered on April 8, 1998. Public comment will be received at the beginning of the meeting.

**Contact:** LaDonna Duncan, Administrative Assistant, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9913 or FAX (804) 662-9943.

**† May 6, 1998 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ☎

A meeting of the Credentials Committee to conduct an informal hearing regarding a practitioner's experience credentials. Public comment will be received at the beginning of the meeting.

**Contact:** LaDonna Duncan, Administrative Assistant, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9913 or FAX (804) 662-9943.

**† June 8, 1998 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ☎

A meeting of the Discipline Committee to conduct an informal hearing regarding allegations of practitioner misconduct. Public comment will not be received.

**Contact:** LaDonna Duncan, Administrative Assistant, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9913 or FAX (804) 662-9943.

**† June 9, 1998 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ☎

A regular meeting to discuss board business and receive committee reports. Public comment will be received at the beginning of the meeting.

**Contact:** LaDonna Duncan, Administrative Assistant, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9913 or FAX (804) 662-9943.

### VIRGINIA PUBLIC BROADCASTING BOARD

**† May 6, 1998 - 10 a.m.** -- Open Meeting  
General Assembly Building, 910 Capitol Square, First Floor, Senate Room A, Richmond, Virginia. ☎

A full board meeting to discuss board matters related to PBS television/radio stations.

**Contact:** Brendan LaCivita, Special Assistant to the Secretary of Administration, 9th Street Office Bldg., 6th Floor, Suite 633, Richmond, VA 23219, telephone (804) 786-1201 or FAX (804) 371-0038.

## Calendar of Events

### VIRGINIA PUBLIC SCHOOL AUTHORITY

† June 29, 1998 - 9:30 a.m. -- Open Meeting  
James Monroe Building, 101 North 14th Street, 3rd Floor,  
Richmond, Virginia. (I)

A meeting to consider certain board administrative matters including election of officers, contract review, and other business as necessary.

Contact: Richard A. Davis, Debt Manager, Department of the Treasury, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-4928 or e-mail richard.davis@trs.state.va.us.

### VIRGINIA RACING COMMISSION

May 20, 1998 - 9:30 a.m. -- Public Hearing  
Administrative Building, 12007 Courthouse Circle, New Kent, Virginia.

May 30, 1998 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to amend regulations entitled: **11 VAC 10-180-10 et seq. Medication.** The proposed regulations provided for the use of furosemide and adjunct therapies in racehorses on race day.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.

### REAL ESTATE BOARD

† May 14, 1998 - 8 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (I)

The Education Committee and Fair Housing Committee will meet at 8 a.m. The full board will meet at 9 a.m. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8526, FAX (804) 367-2475, or (804) 367-9753/TDD (I)

### Common Interest Community Management Information Fund Advisory Committee

† May 21, 1998 - 10 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (I)

A meeting to develop recommendations for the Real Estate Board on uses of money collected pursuant to the Common Interest Community Management Fund for the benefit of common interest communities and their members.

Contact: Emily O. Wingfield, Property Registration Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8510 or (804) 367-9753/TDD (I)

### STATEWIDE REHABILITATION ADVISORY COUNCIL

† May 11, 1998 - 10 a.m. -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. (I) (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Kay Magill, SRAC Liaison, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23288, telephone (804) 662-7527, FAX (804) 662-7696, toll-free 1-800-552-5019/TDD and Voice, or (804) 464-9950/TDD (I)

### BOARD OF REHABILITATIVE SERVICES

May 7, 1998 - 10 a.m. -- Open Meeting  
Holiday Inn Executive Center, 5655 Greenwich Road, Virginia Beach, Virginia. (I) (Interpreter for the deaf provided upon request)

A quarterly business meeting.

Contact: Sandra Prince, Administrative Staff Specialist, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, (804) 662-9040/TDD (I) or toll-free 1-800-552-5019/Voice and 1-800-464-9950/TDD (I)

### DEPARTMENT OF REHABILITATIVE SERVICES

#### Statewide Independent Living Council

May 6, 1998 - 10 a.m. -- Open Meeting  
Norfolk Airport Hilton, 1500 North Military Highway, James Room, Norfolk, Virginia. (I) (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Jim Rothrock, Statewide Independent Living Council Staff, 1802 Marriott Rd., Richmond, VA 23229, telephone (804) 673-0119, FAX (804) 282-7112, toll-free 1-800-552-5019/TDD (I) and Voice, or e-mail jarothrock@aol.com.

## Calendar of Events

### VIRGINIA RESOURCES AUTHORITY

- May 12, 1998 - 9:30 a.m. -- Open Meeting**  
The Mutual Building, 909 East Main Street, Suite 700,  
Richmond, Virginia.
- June 9, 1998 - 9:30 a.m. -- Open Meeting**  
Ramada Oceanfront Tower and Conference Center, 58th and  
Oceanfront, Virginia Beach, Virginia.

A meeting to approve minutes of the meeting of the prior month, to review the authority's operations for the prior month, and to consider other matters and take other actions as the authority may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

**Contact:** Shockley D. Gardner, Jr., Executive Director, Virginia Resources Authority, P.O. Box 1300, Richmond, VA 23218, telephone (804) 644-3100 or FAX (804) 644-3109.

### VIRGINIA SMALL BUSINESS ADVISORY BOARD

- May 11, 1998 - 10 a.m. -- Open Meeting**  
Department of Business Assistance, 707 East Main Street,  
2nd Floor Board Room, Richmond, Virginia. (I)

A meeting to advise, counsel and confer with the Virginia Small Business Development Center Network on matters pertaining to the operation of the center.

**Contact:** Anthony Moore, Sr., Associate State Director, Virginia Small Business Development Center, 707 E. Main St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-8258 or FAX (804) 225-3384.

### VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

- April 28, 1998 - 10 a.m. -- Open Meeting**  
Department of Business Assistance, 901 East Byrd Street,  
19th Floor, Main Board Room, Richmond, Virginia. (I)  
(Interpreter for the deaf provided upon request)

A meeting of the Loan Committee to review applications for loans submitted to the authority for approval. Meeting time is subject to being moved to 8:30 a.m. in the event the Board of Directors decides to combine meeting dates with the committee.

**Contact:** Cathleen Surface, Executive Director, Virginia Small Business Financing Authority, 707 E. Main St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-8254 or FAX (804) 225-3384.

### VIRGINIA SOIL AND WATER CONSERVATION BOARD

- May 4, 1998 - 9 a.m. -- Open Meeting**  
Colonial Farm Credit Conference Room, 6526 Mechanicsville Turnpike, Mechanicsville, Virginia.

A business meeting to discuss the board's financial policy.

**Contact:** Linda J. Cox, Administrative Staff Assistant, Virginia Soil and Water Conservation Board, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2123 or FAX (804) 786-6141.

- May 21, 1998 - 9 a.m. -- Open Meeting**  
Colonial Farm Credit Conference Room, 6526 Mechanicsville Turnpike, Mechanicsville, Virginia.

A regular bimonthly business meeting.

**Contact:** Linda J. Cox, Administrative Staff Assistant, Virginia Soil and Water Conservation Board, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2123 or FAX (804) 786-6141.

### COMMONWEALTH TRANSPORTATION BOARD

- † May 20, 1998 - 2 p.m. -- Open Meeting**  
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. (I) (Interpreter for the deaf provided upon request)

A work session of the board and the Department of Transportation staff.

**Contact:** Shirley J. Ybarra, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675.

- † May 21, 1998 - 10 a.m. -- Open Meeting**  
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. (I) (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact Department of Transportation Public Affairs at (804) 786-2715 for schedule.

**Contact:** Shirley J. Ybarra, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675.

## Calendar of Events

### TREASURY BOARD

**May 20, 1998 - 9 a.m. -- Open Meeting**

James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. 

A regular business meeting.

**Contact:** Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.

### BOARD OF VETERINARY MEDICINE

**† May 12, 1998 - 9 a.m. -- Open Meeting**

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

A board meeting to (i) consider ratification of consent orders, (ii) consider requests for reinstatements and waivers of the National Board Examination and Clinical Competency Test, and (iii) discuss correspondence received and general board business. Brief public comment will be received at the beginning of the meeting.

**Contact:** Terri H. Behr, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9915 or (804) 662-7197/TDD 

**† May 13, 1998 - 10 a.m. -- Open Meeting**

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Virginia.   
(Interpreter for the deaf provided upon request)

Informal conferences. Public comment will not be received.

**Contact:** Terri H. Behr, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9915 or (804) 662-7197/TDD

### DEPARTMENT FOR THE VISUALLY HANDICAPPED

**May 30, 1998 - 10 a.m.-- Open Meeting**

Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

A meeting of the Vocational Rehabilitation Council to advise the department on matters related to vocational rehabilitation services for blind and visually impaired citizens of the Commonwealth.

**Contact:** James G. Taylor, Vocational Rehabilitation Program Director, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155, or (804) 371-3140/TDD 

### VIRGINIA VOLUNTARY FORMULARY BOARD

**† May 29, 1998 - 10 a.m. -- Public Hearing**

Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia.

A public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the formulary add drugs and drug products to the formulary that became effective on January 15, 1996, and its most recent supplement. Copies of the proposed revisions to the formulary are available for inspection at the Department of Health, Bureau of Pharmacy Services, James Monroe Building, 101 North 14th Street, Room S-45, P.O. Box 2448, Richmond, VA 23218. Written comments sent to the above address and received prior to 5 p.m. on May 29, 1998, will be made part of the hearing record.

**Contact:** James K. Thomson, Director, Bureau of Pharmacy Services, Virginia Voluntary Formulary, James Monroe Bldg., 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4326.

**† June 18, 1998 - 10:30 a.m. -- Open Meeting**

Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia.

A meeting to review the public hearing record and product data for products being considered for inclusion in the Virginia Voluntary Formulary.

**Contact:** James K. Thomson, Director, Bureau of Pharmacy Services, Virginia Voluntary Formulary, James Monroe Bldg., 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4326.

### VIRGINIA WASTE MANAGEMENT BOARD

**May 18, 1998 -- Public comments may be submitted until this date.**

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **9 VAC 20-60-10 et seq. Hazardous Waste Management Regulations**. The purpose of amendment 14 is to incorporate the changes made by the United States Environmental Protection Agency from July 1, 1991, through September 19, 1994, plus the Universal Waste Rule of May 11, 1995. The changes reflect EPA changes in the management of used oil, land disposal restrictions, corrective action management units, and other technical corrections for recordkeeping, exporting of hazardous waste, boilers and industrial furnaces, revised treatment standards for hazardous wastes, and universal treatment standards. New, simplified rules for universal waste handlers are included. The corrections include other changes designed to correct inconsistencies between the Virginia regulation and that of EPA. The requirement for annual reports is reduced

## Calendar of Events

to a biennial report requirement to be consistent with EPA.

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on May 18, 1998.

Contact: Robert Wickline, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213, FAX (804) 698-4510, toll-free 1-800-592-5482 or (804) 698-4021/TDD 

\* \* \* \* \*

May 21, 1998 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **9 VAC 20-80-10 et seq. Solid Waste Management Regulations**. Proposed Amendment 2 consists of 513 changes developed as a result of the regulatory review process and in response to a petition for rulemaking. The major changes are proposed in the ground water monitoring program, permit-by-rule for captive industrial landfills, addition of presumptive remedies in corrective action and changes in analytical requirements for contaminated soils.

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Contact: Wladimir Gulevich, Assistant Division Director, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4218, FAX (804) 698-4266, toll-free 1-800-592-5482 or (804) 698-4021/TDD 

### STATE WATER CONTROL BOARD

† May 28, 1998 - 1 p.m. – Public Hearing  
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Training Room, Glen Allen, Virginia. 

June 26, 1998 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-590-10 et seq. Petroleum Underground Storage Tank Financial Responsibility Requirements**. The proposed amendments serve four purposes: (i) to make the regulation conform to amendments in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and to federal financial responsibility requirements; (ii) to permit local government underground storage tank owners to use additional financial responsibility demonstration

mechanisms; (iii) to provide liability relief for lenders in accordance with federal and state law; and (iv) to correct typographical errors and omissions.

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

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

Location of Proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed amendments, an explanation of need for the proposed amendments, an estimate of the impact of the proposed amendments upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Office of Spill Response and Remediation, 629 East Main Street, 7th Floor, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

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

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

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

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

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

## Calendar of Events

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

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

Northern Regional Office  
Department of Environmental Quality  
13901 Crown Court  
Woodbridge, Virginia  
Phone: (703) 583-3800  
Statutory Authority: §§ 62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m. June 26, 1998.

**Contact:** Mary-Ellen Kendall, Financial Programs Manager, Office of Spill Response and Remediation, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4298, FAX (804) 698-4266, toll-free 1-800-592-5482 or (804) 698-4021/TDD

### Technical Advisory Committee

**† April 29, 1998 - 10 a.m. -- Open Meeting**  
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss reissuance of the Virginia Pollution Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining, 9 VAC 25-190-10 et seq. The meeting dates are subject to change. Please call to confirm that the date and time of the meetings have not changed.

**Contact:** Michael B. Gregory, Environmental Engineer, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4065 or FAX (804) 698-4032.

**May 5, 1998 - 9 a.m. -- Open Meeting**  
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss reissuance of the board's general permit regulations for the discharge of industrial stormwater (General VPDES Permit for Stormwater Discharges Associated with Industrial Activity from Heavy Manufacturing, 9 VAC 25-150-10 et seq. and General VPDES Permit for Stormwater Discharges from Construction Sites, 9 VAC 25-180-10 et seq.). The meeting dates are subject to change. Please call to

confirm that the date and time of the meetings have not changed.

**Contact:** Richard Ayers, Technical Services Administrator, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4075 or FAX (804) 698-4032.

### BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

**† May 1, 1998 - 10 a.m. -- Open Meeting**  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4 W, Richmond, Virginia.

Board members and subject matter experts will meet to conduct an exam workshop. A public comment period will be held at the beginning of the workshop. No other board business will be conducted during the workshop.

**Contact:** George O. Bridewell, Examination Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8572 or (804) 367-9753/TDD

### LEGISLATIVE

#### ADMINISTRATIVE LAW ADVISORY COMMITTEE

**† April 30, 1998 - Noon -- Open Meeting**  
General Assembly Building, 2nd Floor, House Redistricting, Richmond, Virginia.

The Hearing Officer Deskbook Subcommittee will meet.

**Contact:** Lyn Coughlin, Program Coordinator, Administrative Law Advisory Committee, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625 or e-mail lcoughlin@leg.state.va.us.

#### VIRGINIA CODE COMMISSION

**April 29, 1998 - 10 a.m. -- Open Meeting**  
General Assembly Building, 910 Capitol Street, Speaker's Conference Room, 6th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to (i) develop a workplan for 1998, (ii) receive a report from the Administrative Law Advisory Committee, (iii) review Code Commission legislation from 1998 General Assembly Session, (iv) discuss codification of authorities, (v) discuss recommendations of the Boyd-Graves conference on codification of Virginia laws of evidence, and (vi) conduct any other business that may come before the commission.

**Contact:** Jane Chaffin, Deputy Registrar, General Assembly Bldg., 910 Capitol Street, 2nd Floor, Richmond, VA 23219,

## Calendar of Events

telephone (804) 786-3591, FAX (804) 692-0625 or e-mail jchaffin@leg.state.va.us.

### JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† May 11, 1998 - 9:30 a.m. – Open Meeting  
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia.

A staff briefing on the Joint Legislative Audit and Review Commission workplan, and a briefing on the 1998 Auditor of Public Accounts workplan.

Contact: Philip A. Leone, Director, Joint Legislative Audit and Review Commission, General Assembly Bldg., 910 Capitol St., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

### CHRONOLOGICAL LIST

#### OPEN MEETINGS

##### April 27

Accountancy, Board for  
Branch Pilots, Board for  
Forestry, Board of

##### April 28

Accountancy, Board for  
Agriculture and Consumer Services, Department of  
- Virginia Winegrowers Advisory Board  
Aviation Board, Virginia  
Branch Pilots, Board for  
Conservation and Recreation, Department of  
Contractors, Board for  
Marine Resources Commission  
Nursing Home Administrators, Board of  
Pharmacy, Board of  
Small Business Financing Authority, Virginia  
- Loan Committee

##### April 29

Architects, Professional Engineers, Land Surveyors and  
Landscape Architects, Board for  
Aviation Board, Virginia  
Code Commission, Virginia  
Economic Development Partnership, Virginia  
- Virginia Tourism Corporation  
Nursing, Board of  
- Special Conference Committee  
Nursing Home Administrators, Board of  
† Water Control Board, State  
- Technical Advisory Committee

##### April 30

† Administrative Law Advisory Committee  
- Hearing Officer Deskbook Subcommittee  
† Correctional Education, Board of

Dentistry, Board of  
Health Professions, Department of  
Nursing, Board of  
- Special Conference Committee  
Optometry, Board of

##### May 1

† Higher Education for Virginia, State Council of  
Psychology, Board of  
† Waterworks and Wastewater Works Operators, Board  
for

##### May 4

Alcoholic Beverage Control Board  
† Cosmetology, Board for  
† Jamestown-Yorktown Foundation  
Soil and Water Conservation Board, Virginia

##### May 5

Asbestos and Lead, Virginia Board for  
Chesapeake Bay Local Assistance Board  
- Northern Area Review Committee  
- Southern Area Review Committee  
† Hopewell Industrial Safety Council  
† Jamestown-Yorktown Foundation  
† Museum of Fine Arts, Virginia  
- Executive Committee  
Water Control Board, State  
- Technical Advisory Committee

##### May 6

Deaf and Hard-of-Hearing, Department for the  
Environmental Quality, Department of  
Medicine, Board of  
† Nursing and Medicine, Boards of  
† Psychology, Board of  
† Public Broadcasting Board, Virginia  
Rehabilitative Services, Board of  
- Statewide Independent Living Council

##### May 7

† Architects, Professional Engineers, Land Surveyors  
and Landscape Architects, Board for  
- Professional Engineers Section  
† Conservation and Recreation, Department of  
- Falls of the James Scenic River Advisory Board  
- Virginia State Parks Foundation  
Emergency Planning Committee, Local - Chesterfield  
County  
Medicine, Board of  
† Mental Health, Mental Retardation and Substance  
Abuse Services, Department of  
- Performance Outcome Measurement System  
(POMS) Advisory Committee  
Rehabilitative Services, Board of

##### May 8

Medicine, Board of  
- Informal Conference Committee  
Professional Counselors, Marriage and Family  
Therapists and Substance Abuse Treatment  
Professionals, Board of Licensed

# Calendar of Events

May 11

- † Conservation and Recreation, Department of
  - Goose Creek Scenic River Advisory Board
- Disability Services Council
- † Legislative Audit and Review Commission, Joint
- † Nursing, Board of
- † Rehabilitation Advisory Council, Statewide
- Small Business Advisory Board, Virginia

May 12

- † Agriculture and Consumer Services, Department of
  - Virginia Seed Potato Board
- † Corrections, Board of
- † Nursing Home Administrators, Board of
- Resources Authority, Virginia
- † Veterinary Medicine, Board of

May 13

- † Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
  - Land Surveyor Section
- † Corrections, Board of
- Funeral Directors and Embalmers, Board of
- George Mason University
  - Board of Visitors
- Juvenile Justice, State Board of
- † Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, Board of Licensed
- † Veterinary Medicine, Board of

May 14

- † Agriculture and Consumer Services, Board of
- † Conservation and Recreation, Department of
  - Shenandoah Scenic River Advisory Board
- Medicine, Board of
  - Informal Conference Committee
- Military Institute, Virginia
- Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, Board of Licensed
- † Real Estate Board
  - Education Committee
  - Fair Housing Committee

May 15

- † Information Management, Council on
- Library of Virginia, The
- Medicine, Board of
- Opticians, Board for
- Optometry, Board of
- Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, Board of Licensed

May 18

- Alcoholic Beverage Control Board
- General Services, Department of
  - Design-Build/Construction Management Review Board
- Hearing Aid Specialists, Board for

† Library of Virginia, The  
Local Government, Commission on

May 19

- Environmental Quality, Department of
  - Virginia Ground Water Protection Steering Committee
- † Museum of Fine Arts, Virginia
  - Collections Committee

May 20

- Community Colleges, State Board for
- † Manufactured Housing Board, Virginia
- † Medicine, Board of
- Medical Assistance Services, Department of
- † Museum of Fine Arts, Virginia
- † Transportation Board, Commonwealth
- Treasury Board

May 21

- † Audiology and Speech Language Pathology, Board of
- Community Colleges, State Board for
- † Economic Development Partnership, Virginia
- † Medicine, Board of
- † Museum of Fine Arts, Virginia
  - Buildings and Grounds Committee
  - Communications and Marketing Committee
  - Education and Programs Committee
  - Exhibitions Committee
  - Finance Committee
  - Food Service Task Force
- † Real Estate Board
  - Common Interest Community Management Information Fund Advisory Committee
- Soil and Water Conservation Board, Virginia
- † Transportation Board, Commonwealth

May 22

- Medicine, Board of

May 26

- Marine Resources Commission

May 27

- Conservation and Recreation, Department of
- † Emergency Planning Committee, Local - Gloucester
- † Funeral Directors and Embalmers, Board of
- People with Disabilities, Virginia Board for

May 28

- Compensation Board
- † Information Providers Network Authority, Virginia
- People with Disabilities, Virginia Board for

May 30

- † Conservation and Recreation, Department of
  - Virginia Cave Board
- Visually Handicapped, Department for the

June 1

- Alcoholic Beverage Control Board
- Cosmetology, Board for

## Calendar of Events

PUBLIC HEARINGS	
June 2	† Economic Development Partnership, Virginia † Hopewell Industrial Safety Council
June 3	† Health, Department of - AIDS Drug Advisory Committee
June 4	† Conservation and Recreation, Department of - Falls of the James Scenic River Advisory Board Emergency Planning Committee, Local - Chesterfield County † Game and Inland Fisheries, Board of
June 5	Professional and Occupational Regulation, Board for
June 8	Barbers, Board for Medical Assistance Services, Department of † Psychology, Board of
June 9	† Psychology, Board of Resources Authority, Virginia
June 10	Funeral Directors and Embalmers, Board of
June 15	Alcoholic Beverage Control Board General Services, Department of - Design-Build/Construction Management Review Board
June 17	† Agriculture and Consumer Services, Department of - Virginia Marine Products Board
June 18	† Voluntary Formulary Board, Virginia
June 26	Medicine, Board of - Informal Conference Committee
June 29	Alcoholic Beverage Control Board † Public School Authority, Virginia
June 30	Marine Resources Commission
July 7	† Hopewell Industrial Safety Council
July 23	† Neurotrauma Initiative Advisory Board, Commonwealth
July 29	Disability Services Council
April 30	Health, State Board of
May 13	† Environmental Quality, Department of Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, Board of Licensed
May 15	Professional and Occupational Regulation, Board for
May 20	Racing Commission, Virginia
May 28	† Water Control Board, State
May 29	† Voluntary Formulary Board, Virginia
June 5	Professional and Occupational Regulation, Board for
June 15	† Motor Vehicle Dealer Board

