

PERMIT REQUIREMENTS FOR DEVELOPMENT  
OF  
ENERGY AND OTHER SELECTED NATURAL RESOURCES  
FOR THE  
STATE OF VIRGINIA

PREPARED FOR  
COASTAL PLAINS REGIONAL COMMISSION  
AND THE  
U.S. GEOLOGICAL SURVEY

BY CLAUDE TERRY ASSOCIATES

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# INTRODUCTION

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## 1.0 INTRODUCTION

This Guide has been produced to compile and summarize the statutes, regulations, and permitting processes of the Commonwealth of Virginia pertaining to environmental and land use elements. It is designed to assist government officials, administrators, business and industry, and citizens in understanding the state regulations and their application. The guide also indicates the relationship between certain state and federal regulations as well as the interrelationships between regulations and environmental/land use elements.

Table 1 is a matrix listing the state regulations and the environmental/land use elements they impact. The major area emphasized by the regulation is indicated by an X, associated areas by asterisks.

All state agencies having jurisdiction over the permits, licenses, and approvals described in this guidebook helped to prepare it, and they reviewed the final draft of each summary for accuracy and completeness. Users of this guidebook should be aware, however, that changes in the laws, rules and regulations, or regulatory personnel since the guidebook was published may cause significant changes in permit requirements.

The guidebook should not be construed as a legal document or a final authority on permits for the Commonwealth of Virginia: it is not intended to be a comprehensive reference to the specific requirements of each permit, but to provide concise, easy-to-use information on the state regulations that govern the development of natural resources. Before attempting to obtain a permit or begin any activity that might require a permit, one should contact the appropriate state agency for further details.

The guide provides a thorough overview of state regulatory and permitting processes in a format that provides information in outline form, based on the major components of regulations. Table 2 describes the format and information contained.

The objective of this guide is to describe state statutes and regulations. However, many of these are based on federal regulations or guidelines. This document does not attempt to provide an exhaustive list of the federal regulations which impact the environmental/land use elements addressed. Rather, the primary federal regulations which serve as a basis or provide guidelines for state legislation are listed under the appropriate elements. When dual permits, i.e., permits required by both federal and state legislation, are necessary, it will be noted in the text. It should be recognized that other federal statutes may also affect a particular element. The main purpose of this document, however, is to describe state permitting policies and requirements.

Table 1. Applicability of State Laws and Regulations to Environmental/Land Use Elements

Environmental/ Land Use Element	Air Quality	Water Quality	Public Water Supply	Solid Waste	Hazardous Waste	Noise	Energy Resources	Metalliferous Mining	Construction Materials	Major Facility Siting	Land Use	Floodplain Manage- ment	Coastal Protection	Endangered Species	Wetlands	Substate Districts	Archaeological/ Historical	Erosion & Sediment Control	Local Land Use
State Law and Regulation	3.1	3.2	3.3	3.4	3.5	3.6	4.1	4.2	4.3	5.1	5.2	5.3	5.4	6.1	6.2	6.3	6.4	7.1	7.2
Virginia Environ- mental Quality Act	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Virginia Environ- mental Impact Reports Act	*	*		*	*	*				*	*	*	*	*	*	*	*		
Virginia Air Pollu- tion Control Law (Control & Abate- ment of Air Pol- lution)	X			*	*					*	*								
State Water Control Law (Water Quality Standards/Sewage Regulations)		X	*	*	*		*	*		*	*	*	*		*		*		
Public Water Supply Act (Waterworks Regulations)		*	X																
Groundwater Act of 1973 (Standards for Waterworks)		*	X	*	*		*	*		*									
Solid Hazardous Waste Management Law (Solid Waste Regu- lations/Hazardous Waste Management Regulations)	*	*		X	X						*								
Oil & Gas Act (Oil & Gas General Rules & Regulations)							X				*						*		
Surface Mining of Coal Act/Virginia Coal Surface Mining Control & Reclama- tion Act of 1979 (Coal Surface Min- ing Regulations)		*					X				*						*		
Virginia Mine Safety Law of 1966 (Regu- lations Governing Vertical Mine Ven- tilation Holes)							X												

X—Primary Applicability

\*—Secondary Applicability

Table 1. Applicability of State Laws and Regulations to Environmental/Land Use Elements

Environmental/ Land Use Element  State Law and Regulation	Air Quality	Water Quality	Public Water Supply	Solid Waste	Hazardous Waste	Noise	Energy Resources	Metalliferous Mining	Construction Materials	Major Facility Siting	Land Use	Floodplain Manage- ment	Coastal Protection	Endangered Species	Wetlands	Substate Districts	Archaeological/ Historical	Erosion & Sediment Control	Local Land Use
	3.1	3.2	3.3	3.4	3.5	3.6	4.1	4.2	4.3	5.1	5.2	5.3	5.4	6.1	6.2	6.3	6.4	7.1	7.2
Disposition of De- partment Lands Act							*	*			*								
Permits for Certain Mining Operations; Reclamation of Land (Minerals Other Than Coal [MOTC] Surface Mining Regulations)		*		*	*			X	*		*								
Flood Damage Reduction Act/Impoundment of Surface Waters Act (Impounding Struc- ture Regulations)			*							*	*	X			*		*	*	
Virginia Wetlands Act (Wetland Guidelines /Zoning Ordinances)											*	*	X		X			X	
Waters of the State, Ports & Harbors Act (Subaqueous Guide- lines)		*											X		*				
Coastal Primary Sand Dune Protection Act (Guidelines for Permitting)											*		X				*	X	
Virginia Historic Landmarks Act																X			
Virginia Cave Pro- tection Act																X			
Erosion & Sediment Control Law		*															X		
Virginia Area Development Act																	*	X	

X—Primary Applicability  
\*—Secondary Applicability



## Table 2. Regulatory Guide Format.

### INTRODUCTION

This section provides information regarding the legislative origin of particular programs along with a statement concerning the intent, purpose or policy of the program.

### AUTHORIZING STATUTE(S)

#### I. FEDERAL

The title and numerical citation of applicable federal legislation is provided in this section.

#### II. STATE

The title and numerical citation of applicable state legislation is provided in this section.

### TITLE OF REGULATION

Specific state regulations pertaining to a particular topic area are cited by title and administrative code number.

### ADMINISTERING AGENCY

The state agency responsible for administering a particular program or implementing certain regulations is specified here. This agency will be the primary contact for applicants seeking more detailed information concerning a particular permitting program. In the case of federal/state dual permitting programs, information concerning the relevant federal agency is provided.

### SUMMARY OF REGULATION

#### I. APPLICABILITY

This section lists the types of activities and/or localities which are subject to the general provisions of a permitting program or specific regulations.

#### II. REGULATORY REQUIREMENTS

The specific activities which are directly regulated by a permitting program and/or sets of regulations are summarized in this section. Included is a consideration of activities that are subject to specific criteria and standards as well as a listing of activities that are expressly prohibited by laws and regulations.

#### III. PERMIT REQUIREMENTS

This section details the procedures established for the granting of specific permits. Included is a discussion of:

Table 2. Continued

1. Time requirements
2. Applications/Information required
3. Agency review and processing procedures, including public hearings
4. Reporting/Monitoring requirements
5. Application fees
6. Appeal process
7. Enforcement and penalties
8. Additional procedures (variances, exemptions, emergency orders, etc.)

**STATE POLICY AND PROCEDURES  
FOR CONSOLIDATED PERMIT PROGRAM**

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## 2.0 STATE POLICY AND PROCEDURES FOR CONSOLIDATED PERMIT PROGRAM

Environmental policy for the Commonwealth of Virginia has a constitutional basis in Article XI, Section 1, of the Constitution of Virginia (1970).

To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources, it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.

Legislation passed by the Virginia General Assembly further defines the environmental policy established in the Constitution and establishes specific procedures and requirements to implement that policy.

## 2.1 State Environmental Policy Statutes

### Virginia Environmental Quality Act

(Title 10, Chapter 17, Code of Virginia (1950) as amended)

Legislation was passed by the Virginia General Assembly in 1972 setting forth the environmental policy of the state and creating the Council on the Environment to implement that policy. As stated in Section 10-178 of the Act:

It shall be the continuing policy of the government of the Commonwealth--in cooperation with the federal government, other state governments, local governments, other public and private organizations and individuals--to initiate, implement, improve, and coordinate environmental plans, programs, and functions of the state in order to promote the general welfare of the people of the Commonwealth and fulfill the State's responsibility as trustee of the environment for the present and future generations.

The Council on the Environment was established to coordinate and implement the State environmental policy. The Council is composed of ten members and an administrator. Three members and the administrator are appointed by the Governor, subject to confirmation by the General Assembly. The chairmen of the State Water Control Board, the Board of Conservation and Economic Development, the Game and Inland Fisheries Commission, the Marine Resources Commission, the Soil and Water Conservation Commission, and the State Air Pollution Control Board and the Commissioner of Health are also members of the Council.

### Virginia Environmental Impact Reports Act

(Title 10, Chapter 1.8, Code of Virginia (1950) as amended).

The Virginia Environmental Impact Reports Act of 1973 requires agencies of the Executive Branch of the Commonwealth of Virginia to document the environmental impacts of their major facilities. Major facilities are defined as "the acquisition of land for any State facility construction, the construction of any facility or expansion of an existing facility which is hereafter undertaken by any State agency, board, commission, authority or any branch of the State government, including state-supported institutions of higher learning, which costs one hundred thousand dollars or more; provided, this term shall not apply to any highway or road construction..."

The required State Environmental Impact Report shall be prepared by any State agency initiating a major project and submitted to the Council on the Environment for official review. Environmental Impact Reports shall include, but not be limited to, the following:

- 1) The environmental impact of the major State project;
- 2) Any adverse environmental effects which cannot be avoided if the major State project is undertaken;
- 3) Measures proposed to minimize the impact of the major State projects;
- 4) Any alternatives to the proposed construction; and
- 5) Any irreversible environmental changes which would be involved in the major State project.

## 2.2 State Clearinghouse

### INTRODUCTION

U.S. office of Management and Budget (OMB) Circular A-95 establishes a procedure for coordinating federal and federally assisted plans and programs at the state, regional and local levels. The purpose of the A-95 review process is to provide state, regional and local organizations with an opportunity to review and comment upon applications for federal assistance. This is intended to eliminate duplication of programs, to ensure proposals compatibility with ongoing state programs, and to mediate interagency conflicts.

### AUTHORIZING STATUTES

#### I. FEDERAL

The A-95 process is required by the provisions of OMB circular A-95, as promulgated through the authority of the Demonstration Cities and Metropolitan Development Act of 1966, Section 204; and Title IV of the Intergovernmental Cooperation Act of 1968.

#### II. STATE

Virginia Area Development Act of 1968 (Section 15.1-1410, Code of Virginia), and Department of Intergovernmental Affairs Legislation (Section 2.4-414.4, Code of Virginia).

### TITLE OF REGULATION

N/A

### ADMINISTERING AGENCY

State Clearinghouse  
Department of Planning and Budget  
Ninth Street Office Building  
Richmond, Virginia 23219  
804/786-1688

### SUMMARY OF REGULATION

#### I. APPLICABILITY

OMB Circular A-95 is divided into four parts describing four types of coverage.

##### Part I. Project Notification and Review System (PNRS)

The PNRS deals with the state and areawide review of proposed applications for assistance from selected federal programs. The Catalog of Domestic Federal Assistance identifies approximately 200 federal programs that are subject to the PNRS. The PNRS requires that state and areawide clearinghouses be provided an opportunity to review and comment on proposed projects before the federal agency considers funding.

##### Part II. Direct Federal Development

Direct Federal Development directs federal agencies undertaking federal development projects to consult with state and local governments that

might be affected by the projects.

#### Part III. State Plan.

The State Plan provides for clearinghouse review and gubernatorial approval of state plans required under certain federal formula-grant programs. The Catalog of Domestic Federal Assistance identifies approximately 80 such programs.

#### Part IV. Coordinating of Planning in Multi-Jurisdictional Areas.

This promotes coordination of federally assisted planning at the substate level. OMB Circular A-95 encourages governors of each state to establish multi-jurisdictional clearinghouses to coordinate A-95 reviews within their respective planning districts.

### II. REGULATORY REQUIREMENTS

Federal law requires that the federal agencies administering certain grant programs have the comments of designated clearinghouses prior to processing applications for grants. Local applicants are required to utilize the A-95 process for projects which require that review.

### III. PERMIT REQUIREMENTS

#### Time Requirements:

All notifications should be submitted no later than 60-90 days prior to the date upon which an application for federal assistance is to be submitted to a federal agency.

#### Forms Required:

Notification of Intent to apply for federal aid is to be made by submitting a completed Federal Assistance Multipurpose Factsheet (Standard Form 424). Copies of the application should be submitted to both the state and areawide clearinghouses. The areawide clearinghouse will thereafter distribute copies to affected local governments as appropriate.

#### Hearings:

No formal public hearings are held but an "A-95 Conference" may be held to bring interested parties, including private groups and citizens, together to discuss issues.

#### Review and Processing:

Copies of the project proposal will be circulated for review and comment to all interested state, areawide, and metropolitan clearinghouses.

If in the review process no adverse comments are received, the state clearinghouse will notify the applicant within 30 days that it may transmit a formal application to the federal agency. Should problems arise or if more information is needed, the state clearinghouse will have the option of requesting copies of the full application when it is completed. The clearinghouse will then have an additional 30 days after receiving the full application to complete the review and transmit comments to the applicant.

The applicant is responsible for including all letters of approval, comments or conditions that result from the review process in the full

application to the federal agency.

Reporting/Monitoring:

N/A

Appeal Process:

If the applicant disagrees with the comments submitted by the clearinghouse, it has several options including (1) requesting a conference with the reviewer for the purpose of discussing his comments; (2) writing a response to the clearinghouse and sending copies to the federal agency along with the clearinghouse comments; (3) revising the application in response to the comments received.

Exemptions:

Certain types of activities are exempt from A-95 review. Applicants should contact the state or appropriate regional clearinghouse for the latest listing of exempt programs.



## 2.3 Council on the Environment/Multiple Permit Coordination Services

### INTRODUCTION

The Council on the Environment, established by the Virginia Environmental Quality Act, is the official coordinating office for environmental impact review. State Environmental Impact Reports, prepared in accordance with the Virginia Environmental Impact Reports Act (Virginia Code section 10-17.107 et seq.), are submitted to the Council for official review and comment. In addition, the Council coordinates the State's review of Federal Environmental Impact Statements and provides the initiating agencies with the fully consolidated comments of the State. The Council's comments represent the State's review of the proposed action from the perspective of the total environment and are not limited to any specific aspect of environmental concern.

The Council has also been mandated (Virginia Code section 10-184.2) to implement the Multiple Permit Coordination Process. This process was established to consolidate, coordinate and expedite the permit review process for projects requiring a permit from more than one regulatory agency.

Note: In March, 1977, the Office of the Attorney General advised the Council that use of a "one-stop" permit coordination process as envisioned by § 10-184.2 could invalidate any permits issued under that process. In particular, the opinion holds that each agency, and not the Council Administrator, is responsible for determining when an application is complete; that the time constraints imposed by corresponding federal laws and regulations cannot be overridden by the process; and that decisions must be based on a hearing record limited to the scope of the permit and not on a single overall record. Consequently, the Council has been advising permit applicants not to request formal permit coordination.

In place of a formal permit coordination process, the Council has developed a package of informal pre-permit information and coordination services which range from simply informing a potential applicant of the regulations which will apply to his project to actually working with the applicant and the various permitting agencies to modify the project, if necessary, so that it will be environmentally acceptable.

The most popular of these services is the arranging of face-to-face meetings between developers of major projects and the agency personnel who will eventually be called upon to evaluate permit applications. Such meetings at an early stage can bring potential problems with the proposed project out into the open where they can be dealt with in a cooperative manner. The use of these informal pre-permit information and coordination services is entirely voluntary on the part of the potential applicant. Involvement by Council staff can be limited to the initial contact, carried through the entire permitting process, or ended at any point in between. Continued involvement, however, is recommended for complex projects, especially those that may also require the development of an environmental impact statement under federal law. In such cases coordination begun early and carried throughout the process can be helpful in seeing that data gathered by the applicant for one purpose (e.g. - a permit application) can serve other purposes as well (e.g. - the environmental impact statement).

AUTHORIZING STATUTE(S)

I. FEDERAL

N/A

II. STATE

Virginia Code section 10-177 et seq: "Virginia Environmental Quality Act."

TITLE OF REGULATION

N/A (See note above).

ADMINISTERING AGENCY

Administrator  
Council on the Environment  
903 Ninth Street Office Building  
Richmond, Virginia 23219  
904/786-4500

SUMMARY OF REGULATION

As noted above, regulations which establish a formal multiple permit coordination process are not in use. All current regulations; standards; permit application and information requirements; review procedures; fees; time limits; and appeal processes of each individual permitting agency will apply to any proposed project as the nature and location of the project dictate. Please see later sections of this document for those requirements. There are no fees associated with the Council's permit coordination services.



# ENVIRONMENTAL QUALITY MANAGEMENT

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### **3.0 ENVIRONMENTAL QUALITY MANAGEMENT**

Environmental quality management pertains primarily to air quality, water quality, and the management of solid and hazardous waste. In Virginia, environmental quality management is the responsibility of three agencies: State Air Pollution Control Board (SAPCB), the State Water Control Board (SWCB) and the State Department of Health (SDH). These agencies have adopted specific regulations and have instituted a variety of permit programs to implement environmental policies mandated by state and federal statutes.

### 3.1 Air Quality

#### INTRODUCTION

The Virginia Air Pollution Control Law establishes the State Air Pollution Control Board (SAPCB) as the regulatory agency concerning air pollution control in Virginia. Regulations for the control and abatement of air pollution have been established in accordance with the State law. These regulations establish ambient air quality standards, emission standards, and procedures for compliance, monitoring and reporting. Permits are required for new or modified major stationary sources of air pollution and open burning within urban areas. Any open burning in Virginia should be approved by the appropriate regional office of the SAPCB.

#### AUTHORIZING STATUTE(S)

I. FEDERAL

Federal Clean Air Act (P.L. 95-95)

II. STATE

Virginia Air Pollution Control Law (Title 10, Chapter 1.2, Code of Virginia (1950), as amended).

#### TITLE OF REGULATION

Regulations for the Control and Abatement of Air Pollution

#### ADMINISTERING AGENCY

Executive Director  
State Air Pollution Control Board  
Room 1106, Ninth Street Office Building  
Richmond, Virginia 23219  
804/786-2378

#### SUMMARY OF REGULATION

I. APPLICABILITY

The regulations established by the SAPCB are applicable throughout the Commonwealth of Virginia and applicable only to those pollutants for which ambient air quality standards have been established. Specific regulations apply to existing sources of air pollution, new and modified sources, and hazardous air pollutant sources (hazardous air pollutants are defined as a pollutant to which no ambient air quality standard is applicable and which may cause, or contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness).

Under state regulations, local governments may adopt ordinances pertaining to air pollution. Any provisions of local ordinances which have been approved by the SAPCB and are more strict than State regulations shall take precedence over State regulations within the respective locality. The following counties and cities have comprehensive air pollution ordinances:

Fairfax County  
City of Alexandria

City of Richmond  
City of Lynchburg

## II. REGULATORY REQUIREMENTS

The regulations for the control and abatement of air pollution in Virginia establish primary and secondary ambient air quality standards for particulates, sulfur oxides, carbon monoxide, ozone, hydrocarbons, nitrogen dioxide, and lead. Emission standards have been established in conjunction with the ambient air quality standards. Regulations concerning existing and certain other sources of air pollution provide compliance schedules and requirements, including emission testing procedures and monitoring and reporting programs. Specific rules and standards are outlined for the following:

- Open Burning
- Visible Emissions and Fugitive Dust/Emissions
- Particulate Emissions from Fuel Burning Equipment
- Particulate Emissions from Manufacturing Operations
- Gaseous Pollutants (sulfur oxides, hydrocarbons, nitrogen oxides and volatile organic compound emissions)
- Odor
- Incinerators
- Coal Refuse Disposal Areas
- Coke Ovens
- Mobile Sources

New and modified sources of air pollution are addressed separately, and compliance schedules, performance testing and monitoring procedures are outlined. Standards of performance are specifically addressed for the following:

- Visible Emissions and Fugitive Dust/Emissions
- Odorous Emissions
- New Stationary Sources

The U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources (40 CFR Part 60) are incorporated by reference into the state regulations. U.S. EPA regulations on National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61) are also incorporated by reference into the state regulations.

The state regulations for the control and abatement of air pollution also establish definitions and procedures to provide an orderly response to air pollution episodes. Air pollution episode criteria establish four stages: watch, alert, warning and emergency, with specific concentrations of pollutants indicating each stage. The state regulations require standby emission reduction plans for certain pollution sources and outline source curtailment procedures to be implemented during each stage of an air pollution episode.

The Virginia Regulations for the Control and Abatement of Air Pollution require permits for all new and modified stationary sources of air pollution and for open burning under certain circumstances. Requirements for each permit vary and are discussed separately below.

### III. PERMIT REQUIREMENTS

#### 1. Major New or Modified Stationary Sources

The construction, relocation, or modification of any major stationary source of air pollution, including any stationary source of hazardous air pollutants, requires a permit from the SAPCB. Specific regulations covering permits for major new and modified sources locating in nonattainment (NA) areas and prevention of significant deterioration (PSD) areas have been established in response to recent requirements of the U. S. Environmental Protection Agency. The general permit procedures are the same for all new and modified stationary sources.

#### Application:

Application for a permit must be made to the SAPCB or any of its regional offices (see Appendix A). Where several sources are included in one project, a single application covering all sources in the project may be submitted; however, a separate application is required for each location. For projects with phased development, a single application may be submitted covering the entire project.

#### Information Required:

Each application for a permit shall include information as may be required by the SAPCB to determine the effect of the proposed source on air quality and to determine compliance with applicable emission standards. The information required shall include, but not be limited to, the following:

- a. That specified on applicable permit forms furnished by the Board;
- b. Any additional information or documentation that the Board deems necessary to review and analyze the air pollution aspects of the source, including the submission of measured air quality data at the proposed site prior to construction, reconstruction or modification.

#### Review and Processing:

Applications submitted to the SAPCB are initially sent to the appropriate regional office. The regional office reviews applications for technical detail and determination of major source and to outline any pertinent permit conditions concerning construction or operation. Following preliminary review by the regional office, the main office in Richmond reviews the permit. Within 30 days after receipt of an application or any additional information, the Board shall advise the applicant of any deficiency in the application or information. All applications are subject to a control technology review to determine if the proposed source will be designed, built, and equipped to comply with all applicable standards of performance.

Prior to a decision of the Board, permit applications are subject to a public comment period of at least 30 days, followed by a public hearing. Notice of the hearing must be published in a newspaper of general circulation at least 30 days before the hearing. The Board notifies the applicant in writing of its approval or denial of the application.

#### Fee:

None



Time Requirement:

Processing time for a permit is normally 90 days following receipt of a complete application. The Board may extend this time period if additional information is required.

Appeal Process:

Applicants denied a permit by the SAPCB may demand a formal hearing in accordance with the State Administrative Process Act, provided a petition requesting such hearing is filed with the Board. Petitions requesting a formal hearing must be filed within 30 days after written notification of the permit denial. Any decision of the Board resulting from a formal hearing shall constitute the final decision of the Board.

Any applicant aggrieved by a final decision of the SAPCB is entitled to judicial review of the decision in the circuit court of the city of Richmond. A notice of appeal must be filed with the circuit court within 30 days after the final decision of the Board.

2. Open Burning

Except in Air Quality Control Region 7 (Northern Virginia), open burning for disposal of land clearing refuse is allowed on the site of clearing operations, with certain conditions. When this type of burning is to occur within a city or urban area, a permit must be obtained.

Application:

Application for an open burning permit must be submitted on Air Board Form 14 to the appropriate regional office (see Appendix A).

Information Required:

The application for an open burning permit must give the information required on Form 14, including the distance of the burn site from roads and buildings, the size of the area to be cleared, the material to be burned, and alternative disposal methods.

Review and Processing:

The appropriate regional office reviews the permit applications. Open burning permits are granted only after an on-site inspection and confirmation by the Regional Director that the burning can and will comply with the conditions outlined in the regulations. Permits will be issued only if the proposed emission does not cause an apparent health hazard, does not significantly affect air quality, and disposal by other means would produce serious hardship.

Fee:

None

Time Requirement:

Usually less than two weeks.

Appeal Process:

Same as outlined for new and modified source permits.

### **3.2 Water Quality Standards and Regulations**

Water quality management in Virginia is primarily the responsibility of the State Water Control Board (SWCB), operating through a main office in Richmond with six regional offices located throughout the state. With issues concerning domestic wastewater and sewage treatment, the SWCB works in cooperation with the State Department of Health (SDH). With issues concerning coastal waters, the SWCB works in cooperation with the Virginia Marine Resources Commission (VMRC).

Most legislative authority concerning water quality management is contained in the State Water Control Law (Title 62.1, Chapter 3.1 through 3.6, Code of Virginia). This law establishes the powers and duties of the SWCB and sets the framework for establishing regulations pertaining to industrial establishments and sewage discharges.

To implement the laws and policies pertaining to water quality, the SWCB has adopted several regulations and instituted four permit programs. Water quality standards, originally adopted in 1966-68 and subsequently amended, establish standards of quality for surface water and groundwater in Virginia. Sewerage regulations, adopted in conjunction with the SDH, establish design criteria and standards for domestic wastewater treatment facilities. Additional regulations establish guidelines and procedures for the permit programs managed by the SWCB.

The National Pollutant Discharge Elimination System (NPDES) permit, required by every discharger of wastewater into state waters, is a delegated federal system administered in Virginia by the SWCB. In conjunction with the NPDES permit, the SWCB issues a separate certificate to construct/operate any domestic wastewater treatment system which serves more than 400 persons. The SWCB has also instituted a No-Discharge Certificate program for industries and facilities that either store and reuse wastewater or dispose of it without discharging to surface waters. Finally, the 401 certification program provides for state review of the water quality implications of projects and activities that require a federal permit or license.

Each of these permit programs and regulations are discussed in greater detail in the following sub-chapters.

### 3.2.1 NPDES Permit Program

#### INTRODUCTION

The National Pollutant Discharge Elimination System (NPDES) is a federal program established to control discharges into state waters. Under this system, a permit is required for all point source discharges for either industrial wastewater or domestic sewage. The State Water Control Board (SWCB) was authorized by USEPA in March 1975 to administer this permit program in Virginia. In accordance with the State Water Control Law, the SWCB has enacted regulations establishing application criteria and review procedures for all NPDES permits. Sewage discharges will also require a Certificate for Construction/Operation and review by the State Department of Health (SDH) (See Section 3.2.2).

#### AUTHORIZING STATUTE(S)

##### I. FEDERAL

Federal Water Pollution Control Act (P.L. 92-500)

##### II. STATE

State Water Control Law (Title 62.1, Chapter 3.1 through 3.6 Code of Virginia, (1950), as amended).

#### TITLE OF REGULATION

National Pollutant Discharge Elimination System (NPDES) Permit Program  
(Regulation No. 6 Water Quality Standards)

#### ADMINISTERING AGENCY

Executive Director  
State Water Control Board  
2111 Hamilton Street  
(P.O. Box 11143)  
Richmond, Virginia 23230  
804/257-6384

State Health Commissioner  
State Department of Health  
109 Governor Street  
Richmond, Virginia 23219  
804/786-3561

#### SUMMARY OF REGULATION

##### I. APPLICABILITY

The NPDES permit program regulations are applicable to all state surface waters throughout the Commonwealth of Virginia. All industrial wastewater or domestic sewage discharges that discharge to surface waters require an NPDES permit.

##### II. REGULATORY REQUIREMENTS

Regulations pertaining to the NPDES program establish: exempted and prohibited discharges, effluent standards and limitations, compliance schedules and additional terms of the NPDES permits.

Exempted discharges include: sewage from any documented or undocumented boat or vessel; discharges from properly functioning marine engines; well

injection of water, gas, or other material in association with oil or gas production; and dredged or fill material.

Prohibited discharges include the discharge of any radiological, chemical, or biological warfare agent or high level radioactive material; any discharge which would impair anchorage and navigation; any discharge to which the USEPA objects in writing; and any discharge from a point source which is in conflict with any area-wide or basin-wide water quality control and waste management plan.

Effluent limitations, standards of performance for new sources and effluent standards, prohibitions and pretreatment standards promulgated by the USEPA are incorporated by reference into the Virginia regulations. Under certain circumstances, more stringent effluent limitations may be established by the SWCB and applied to certain NPDES permits.

The NPDES permit regulations also establish monitoring, recording and reporting procedures. Procedures are also established for amendment or revocation of NPDES permits and the enforcement of violations.

### III. PERMIT REQUIREMENTS

#### Application:

Any owner subject to the NPDES must file a complete Virginia NPDES application with the appropriate regional office of the SWCB (see Appendix A). In addition, various portions of the State No-Discharge Certificate Application Form may be needed to cover ancillary portions of the manufacturing operation, depending upon design (see Section 3.2.3). Applicants seeking a sewage permit must also file concurrently with the appropriate regional office of the State Department of Health.

#### Information Required:

1. Outfall location;
2. Flow, sources of pollution, and treatment technologies, including concept design of wastewater treatment system;
3. Production rates;
4. Detailed wastewater characteristics (may include intake as well as effluent characteristics; for each outfall, data will be needed on standard, conventional and toxic pollutants.);
5. Baseline groundwater quality data; and
6. Ambient water quality information, including chemical, physical, and biological data.

#### Review and Processing:

Applications submitted to the regional office of the SWCB are initially reviewed for completeness and to determine if the application involves a prohibited discharge. In the case of sewage permits, the State Department of Health determines if the application is complete and advises the SWCB of the requirements necessary to protect public water supplies and shellfish beds.

Once an application is determined to be complete, a draft NPDES permit is produced by the SWCB including tentative determinations concerning proposed effluent limits, proposed schedule of compliance, and a brief description of any other proposed special conditions. The draft NPDES

permit is submitted to the regional EPA office for review within 30 days.

When EPA's concurrence is obtained, the applicant is given a copy of the draft permit with the request that it be reviewed within two weeks. At this time, the applicant must provide public notice of the NPDES permit application once a week for two successive weeks in a newspaper of general circulation in the area in which the proposed discharge will be located. Notice will also be mailed to any person or group upon request. A public comment period of at least 30 days will follow the date of publication of the notice.

During the 30-day comment period, the applicant or any other interested person, group or agency may submit a written request for a public hearing. The SWCB will convene a hearing if there is significant public interest, including the filing of written requests. Following the public notice, comment period and public hearing (if required), the SWCB will make a final decision concerning the application for NPDES permit.

Fee:

None

Time Requirement:

Upon receipt of the complete application, the SWCB within four months must either approve or disapprove the concept design and NPDES permit.

Appeal Process:

Any owner aggrieved by a final decision of the SWCB may appeal the decision within 30 days to either the circuit court of the city of Richmond or in any court of record having jurisdiction in the city or county in which the owner resides or operates his business or in which the property affected by the decision is located. The final decision in all appeals lies with the Supreme Court of Appeals.

### 3.2.2 Certificate to Construct/Operate

#### INTRODUCTION

In accordance with the State Water Control Law, sewage regulations have been jointly adopted by the State Department of Health (SDH) and the State Water Control Board (SWCB). These regulations establish standards and criteria used to review plans for sewerage systems and sewage treatment facilities. If the proposed facilities serve more than 400 persons and will result in a discharge to state waters, a Certificate to Construct/Operate is required as a sub-part of the NPDES program.

#### AUTHORIZING STATUTE(S)

##### I. FEDERAL

Federal Water Pollution Control Act (P.L. 92-500)

##### II. STATE

State Water Control Law (Title 62.1, Chapter 3.1, Code of Virginia (1950), as amended).

#### TITLE OF REGULATION

Sewerage Regulations (Regulation No. 8). Adopted jointly by the State Water Control Board and the State Department of Health.

#### ADMINISTERING AGENCY

Executive Director  
State Water Control Board  
2111 Hamilton Street  
(P.O. Box 11143)  
Richmond, Virginia 23230  
804/257-6384

State Health Commissioner  
State Department of Health  
109 Governor Street  
Richmond, Virginia 23219  
804/786-3561

#### SUMMARY OF REGULATION

##### I. APPLICABILITY

Regulations pertaining to a certificate for construction of sewage treatment facilities apply to the construction, expansion, or operation of a sewerage system or sewage treatment works designed to serve more than 400 persons and which will have a potential discharge to state waters.

##### II. REGULATORY REQUIREMENTS

Sewerage regulations were established to insure that the design, construction, and operation of sewage treatment works and sewerage systems are consistent with public health and water quality objectives in Virginia. The regulations establish design criteria and specifications (minimum requirements) used by the SDH and the SWCB for review of plans for sewage treatment works. Owners of facilities to which these regulations are applicable are required to submit plans and specifications for the treatment facility (after standards have been established under the NPDES program) to the SDH and the SWCB for approval before

construction is started. A separate certificate to operate is required after construction is completed and approved.

### III. PERMIT REQUIREMENTS

#### Application:

The owner of sewage treatment facilities to which these regulations apply must first submit an application for an NPDES permit. In addition, the applicant must provide a preliminary engineering proposal and final plans and specifications of the treatment works to the SDH and the SWCB.

#### Information Required:

1. A complete NPDES permit application;
2. Preliminary engineering proposal; and
3. Final plans and specifications.

#### Review and Processing

Once the effluent limitations and water quality standards have been set under the NPDES program, the applicant attends a preliminary conference with the SWCB and the SDH. At this conference the preliminary treatment proposal is discussed and the reliability classification is established.

Following the preliminary conference, the applicant must submit complete final plans and specifications to the SDH and the SWCB. The SDH has 60 days to review the plans and specifications and prepare a written report to the SWCB recommending approval or denial. The SWCB must act within 21 days after receipt of the SDH's comments, either issuing or denying the Certificate to Construct.

After construction, the applicant must provide a Statement of Completion of Construction to the SWCB. Following an inspection by the SDH and the SWCB, the SWCB issues a Certificate to Operate.

#### Fee:

None.

#### Time Requirement:

Approximately 90 days following approval of the NPDES permit application.

#### Appeal Process:

Same as for the NPDES permit.

### 3.2.3 No-Discharge Certificate

#### INTRODUCTION

A No-Discharge Certificate Program has been established in Virginia to complement the NPDES Permit Program. A No-Discharge Certificate is required of all industries that treat and dispose of wastewater without discharging to surface waters. The No-Discharge Certificate Program is administered by the State Water Control Board (SWCB).

#### AUTHORIZING STATUTE(S)

I. FEDERAL:

N/A

II. STATE:

State Water Control Law (Title 62.1, Chapter 3.1, Code of Virginia, as amended)

#### TITLE OF REGULATION

No-Discharge Certificates: Procedures for Applications, for Issuance, and for Requests for Modification or Revocation (Procedural Rule No. 2)

Sewerage Regulations (Regulation No. 8)

#### ADMINISTERING AGENCY

Executive Director  
State Water Control Board  
2111 Hamilton Street  
(P.O. Box 11143)  
Richmond, Virginia 23230  
804/257-6384

#### SUMMARY OF REGULATION

I. APPLICABILITY

A state No-Discharge Certificate is required by an owner who generates wastewaters and then holds the wastewater for further reuse or by an owner who uses land irrigation procedures as the final means of wastewater disposal.

II. REGULATORY REQUIREMENTS

The procedural rule relating to No-Discharge Certificates establishes the application procedure, public notice and hearing requirements, and the procedures for modifications or revocations.

Technical criteria for reviewing plans and specifications of the proposed wastewater storage or disposal facilities are included in the state manual for land application.

A No-Discharge Certificate is required prior to construction, expansion or operation of a new process or establishment which generates industrial wastes, sewage, or other wastes that are not disposed of by point discharge into state waters or municipal treatment facilities. A



certificate is also required prior to the storage or disposal of industrial wastes, sewage, or other wastes.

### III. PERMIT REQUIREMENTS

#### Application:

Application must be made in duplicate on the specified forms to the appropriate regional office of the SWCB. The application must be accompanied by a copy of pertinent plans, specifications, maps, and other relevant information as may be required.

#### Information Required

1. Name and address of the owner or company and the contact person;
2. General location map (U.S.G.S. quadrangle map preferred);
3. Detailed site map;
4. Description of the manufacturing operation including information on wastes and employment;
5. Detailed description of the wastewater treatment facilities; and
6. Detailed site evaluation (supplied on prescribed form).

#### Review and Processing:

Upon initial receipt of the application for a No-Discharge Certificate, the SWCB shall review the application for completeness and request any additional information that may be necessary. Upon receipt of a complete application, a public notice must be published once a week for two successive weeks in a general circulation newspaper within the appropriate locality. A public comment period of not less than 30 days will follow the date of initial publication. Written comments and requests for a public hearing may be submitted to the SWCB during this period.

Based on the comments received and the requests for hearing, the Executive Secretary will determine whether or not to hold a formal hearing in accordance with standard procedures. The Executive Secretary is responsible for making a preliminary recommendation for approval or denial and shall pass the recommendation to the SWCB for final consideration.

#### Fee:

None.

#### Time Requirements:

A 30-day public comment period has been mandated and constitutes the minimum review period.

#### Appeal Process:

Any person aggrieved by a decision of the SWCB must first request a formal hearing if a previous hearing has not been held. Further appeal may be made to the appropriate circuit court.

### 3.2.4 401 Certification

#### INTRODUCTION

The purpose of the 401 Certification Program (required under Section 401 of the Federal Clean Water Act) is to insure that federally licensed projects which may result in discharges to state waters employ sufficient measures to maintain water quality standards established by the state. In Virginia, the 401 Certification Program is managed by the State Water Control Board (SWCB) in cooperation with the Virginia Marine Resources Commission (VMRC) for projects or activities that involve coastal waters. The majority of certifications involve applications to the Corps of Engineers for dredge and fill permits in coastal waters or wetlands.

#### AUTHORIZING STATUTE(S)

I. FEDERAL:

Federal Water Pollution Control Act, Section 401 (P.L. 92-500)

II. STATE:

State Water Control Law (Title 62.1, Chapter 3.1, Code of Virginia, as amended)

#### TITLE OF REGULATION

401 Certifications: Procedures for Applications, for Issuance, and for Requests for Modification or Revocation (Procedural Rule No. 3)

#### ADMINISTERING AGENCIES

Executive Director  
State Water Control Board  
2111 Hamilton Street  
(P.O. Box 11143)  
Richmond, Virginia 23230  
804/257-6384

Commissioner of Marine Resources  
Virginia Marine Resources Commission  
P.O. Box 756  
Newport News, Virginia 23607  
804/245-2811

#### SUMMARY OF REGULATION

I. APPLICABILITY

Any applicant for a federal license or permit to conduct any activity, including, but not limited to, the construction or operation of facilities which may result in a discharge to state waters, must first obtain state certification that the activity will comply with the applicable provisions of federal and state laws concerning water quality.

II. REGULATORY REQUIREMENTS

In accordance with Section 401 of the Federal Water Pollution Control Act, certification by the state must set forth any effluent limitations and other limitations and monitoring requirements necessary to assure compliance with the Act and with other appropriate requirements of state laws. These effluent limitations and monitoring requirements become conditions on the federal license or permit.

Procedural Rule No. 3 establishes the procedures to be followed when applying for certification and when requesting that certification be modified or revoked.

### III. PERMIT REQUIREMENTS

#### Application:

Since most applications for 401 certification involve the application for a 404 permit for dredge and fill activities, VMRC has developed a Local/State/Federal Joint Permit Application Form which should be submitted to VMRC. For activities not involving coastal waters, application can be made directly to the SWCB. The application for certification should be filed prior to or concurrently with the application for federal license or permit.

#### Information Required:

1. Intake and effluent volume, temperature;
2. Probable effects on water quality and aquatic life;
3. Thermal effects;
4. Withdrawal rates during low flows; and
5. Additional information associated with dredge and fill activities.

#### Review and Processing:

Upon receipt of a completed application, the SWCB or VMRC, as appropriate, will arrange to publish a public notice of the application once a week for two consecutive weeks. Notice must be provided in a newspaper of general circulation in the area in which the proposed activity is to occur. The publication will be at the applicant's expense.

A 45-day comment period will follow the date of the first publication. During this comment period interested persons may submit written comments and requests for a hearing on the application. The Executive Secretary of the SWCB considers all written comments and requests for hearing and will make a determination on the necessity of a hearing in accordance with established procedures. The final decision concerning the 401 certification lies with the Executive Secretary of the SWCB.

#### Fee:

None

#### Time Requirement:

According to federal law, SWCB must act within one year of receipt of completed application. Average review time is approximately three months.

#### Appeal Process:

Appeal of the SWCB's decision can be made to the appropriate circuit court, as outlined in Section 3.2.1 (NPDES Permit Program).

### **3.3 Public Water Supply**

Public water supply systems in Virginia are regulated by the State Department of Health (SDH), as authorized by the Virginia Public Water Supply Act. Waterworks regulations administered by the SDH establish drinking water quality standards and operation and design requirements for community water systems (defined as a waterworks which serves at least 15 service connections used by year-round residents). A permit program has been established to regulate the construction, modification and operation of all community water supply systems.

The State Water Control Board (SWCB) is also involved with the regulation of water wells and groundwater resources, authorized by the Groundwater Act of 1973. Under this Act, the SWCB has established several groundwater management areas to regulate and conserve groundwater resources in certain areas. Within these groundwater management areas, permits are required to construct an industrial or commercial well with a pumping capacity greater than 50,000 gallons per day. Groundwater use in these management areas is regulated and monitored through the use of Certificates of Groundwater Right, issued by the SWCB.

The regulations and permit programs concerning public water supply and groundwater use are detailed as follows.

### 3.3.1 Public Water Supply Construction/Operation Permit

#### INTRODUCTION

The Public Water Supply Act in Virginia establishes the State Department of Health (SDH) as the administering agency concerning water supply regulations. Waterworks regulations established by the SDH outline the general regulatory framework, operating procedures, and general design requirements for public water systems. A permit program has been established to regulate the construction, modification, and operation of all public water supply systems.

#### AUTHORIZING STATUTE(S)

I. FEDERAL:

Safe Drinking Water Act (P.L. 93-532, as amended by P.L. 95-190).

II. STATE:

Public Water Supply Act (Title 32.1, Chapter 6, Code of Virginia, as amended)

#### TITLE OF REGULATION

Waterworks Regulations

#### ADMINISTERING AGENCY

State Health Commissioner  
State Department of Health  
109 Governor Street  
Richmond, Virginia 23219  
(Bureau of Water Supply Engineering)  
804/786-3561

#### SUMMARY OF REGULATION

I. APPLICABILITY

Waterworks regulations administered by the SDH are applicable to all public waterworks throughout the Commonwealth of Virginia. Special provisions apply to non-community waterworks which operate at least 60 days per year.

II. REGULATORY REQUIREMENTS

The waterworks regulations are divided into four parts outlining the general regulatory framework, acceptable operating procedures, and general design requirements for community and non-community systems.

Part 1. General Framework for Waterwork Regulations--outlines the purpose of the regulations and establishes the general administrative procedures, including enforcement and compliance procedures, variances, exemptions, and permit requirements. Permits are required for the operation, construction, or alteration of any water system which serves the public.

Part 2. Operation Regulations for Waterworks--establishes drinking water standards (physical, chemical, bacteriological and radiological), operation and monitoring requirements, and procedures for cross-connection control and backflow prevention.

Part 3. General Design Requirements for Community Waterworks--establishes general design requirements and standards for source development and treatment, pumping, storage and distribution facilities.

Part 4. Establishes design requirements for non-community systems in the form of exceptions from certain requirements of Part 3.

### III. PERMIT REQUIREMENTS

#### Application:

Application for a permit to construct or modify a water supply system consists of a letter from the owner asking for permission to establish or operate a water system. The required letter is directed toward the appropriate regional office of the Bureau of Water Supply Engineering.

#### Information Required:

1. Extent of waterworks system;
2. Soil, groundwater conditions, foundation problems;
3. Water consumption;
4. Source of water supply;
5. Proposed treatment process
6. Waste disposal methods (point discharge requires an NPDES permit);
7. Project sites;
8. Complete plans and specifications; and
9. Design criteria.

#### Review and Processing:

Following receipt of the required letter, a preliminary engineering conference is held at the appropriate regional office of the Bureau of Water Supply Engineering. At this conference, the applicant's engineer will set forth the water supply problems and the proposed solution. Following the preliminary engineering conference, the applicant must submit a detailed engineer's report and preliminary plans. The engineer's report and plans are subject to specific information and submission requirements as outlined in the regulations.

Following review of the preliminary plans, the applicant's engineer will prepare and submit the final plans and specifications for the proposed waterworks. Plans will be approved if they demonstrate compliance with the design criteria established in Parts 3 and 4 of the regulations and if the waterworks, as constructed or modified, will be able to function in compliance with the operating regulations outlined in Part 2 of the regulations. Upon approval of the plans, the State Health Commissioner will issue a permit to the owner to construct or modify his waterworks or water supply in accordance with the approved plans.

Upon completion of the construction or modification of the waterworks, the owner shall submit to the regional office two copies of a statement, signed by a registered professional engineer, that the construction work was completed in accordance with the approved plans

and specifications. This statement is based upon inspections of the waterworks during and after construction or modification. Upon receipt of this statement, the Commissioner will issue an operating permit.

An alternative review procedure for obtaining a construction permit for well sources has been established since the quantity and quality of water from proposed wells cannot be anticipated. Generally, the procedures are the same as outlined above. However, a well site may be inspected following the preliminary conference to determine the suitability of the proposed site. Once the site has been found suitable, tentative approval in writing will be furnished to the owner authorizing him to proceed with drilling the well. Final plans and specifications are submitted according to the preceding procedures, including detailed information concerning the well site.

In addition to the above procedures, special permits are required for experimental methods, processes, and equipment. A special permit is issued only after detailed review of all engineering data and after a period of extensive monitoring of plant performance.

Fee:

None

Time Requirement:

Construction permits are usually granted within 60 days of the date the final plans and specifications are submitted. Additional time may be necessary when revisions are made.

Appeal Process:

Any applicant aggrieved by a decision of the Board of Health may request a formal hearing in writing to the regional office. The Commissioner reserves the right to require participation in an informal hearing before granting the request for a full adjudicatory hearing.

### 3.3.2 Certificate of Groundwater Right/Industrial Water Well Permit

#### INTRODUCTION

The Groundwater Control Act of 1973 establishes state policy concerning management of groundwater resources. Administration and enforcement of the provisions of the Act are the responsibilities of the State Water Control Board (SWCB), in conjunction with the State Department of Health (SDH), when appropriate. Management and conservation of groundwater resources are provided through the designation of groundwater management areas with the subsequent certification of groundwater rights and the permitting of new water wells for industrial or commercial purposes.

#### AUTHORIZING STATUTE(S)

I. FEDERAL:  
N/A

II. STATE:  
Groundwater Act of 1973 (Title 62.1, Chapter 3.4, Code of Virginia, as amended)

#### TITLE OF REGULATION

Rules of the Board and Standards for Water Wells

#### ADMINISTERING AGENCY

Executive Director  
State Water Control Board  
2111 Hamilton Street  
(P.O. Box 11143)  
Richmond, Virginia 23230  
804/257-6384

#### SUMMARY OF REGULATION

##### I. APPLICABILITY

The provisions of the Groundwater Act are applicable throughout the Commonwealth for the purpose of managing the state's groundwater resources. Rules of the Board and Standards for Water Wells apply to all groundwater areas, with special requirements applicable only to identified groundwater management areas. Rules pertaining to Certificates of Groundwater Right and Permits to Construct Water Well are applicable only to groundwater management areas.

##### II. REGULATORY REQUIREMENTS

The Rules of the Board and Standards for Water Wells contain specific provisions for all groundwater areas and groundwater management areas. Standards for Water Wells apply to all groundwater areas and require specific construction techniques and operating procedures. Data and records required include a Water Well Completion Report for new well construction (Form GW-2), Application and Report--Abandonment of Water Well (Form GW-5) and Groundwater Pumpage and Use Report (Form GW-6),



submitted quarterly for all industrial or public water supply wells. In addition, well cuttings taken at ten-foot intervals must be submitted for all water wells in the state unless previous exemption is secured from the SWCB.

A groundwater management area is defined as a geographically defined groundwater area in which the SWCB has deemed the levels, supply, or quality of groundwater to be adverse to public welfare, health and safety. To date, two areas have been designated as groundwater management areas: the Southeastern Virginia Groundwater Management Area and the Eastern Shore Groundwater Management Area. Except for exempted uses of groundwater (agricultural and livestock watering purposes, human consumption or domestic purposes, or a single industrial or commercial purpose not exceeding 50,000 gallons per day), every groundwater user in a designated management area is required either to submit a registration statement to receive a Certificate of Groundwater Right for existing groundwater use or to apply for a permit for new groundwater use.

Regulations concerning drinking water supply wells are under the jurisdiction of the SDH (see Sub-Chapter 3.3.1).

### III. PERMIT REQUIREMENTS

#### 1. Certificate of Groundwater Right

Within six months after a groundwater management area declaration by the SWCB, any person claiming the right to use groundwater in the designated area must file a registration statement with the SWCB. Failure to file a registration statement within the six-month period creates a presumption that any such claim has been abandoned (extensions of the registration period may be allowed by the SWCB). A Certificate of Groundwater Right is issued following review and acceptance of a completed registration statement.

#### Application:

Registration statements (original plus one copy) must be submitted to the Executive Secretary of the SWCB on a prescribed form.

#### Information Required:

Applicant must provide information concerning well location, depth, method and location of wastewater discharge, and water use and pumpage.

#### Review and Processing:

Since the Certificate of Groundwater Right is used as an accounting procedure for existing groundwater use, registration statements are subject to an expeditious review by the SWCB without public hearing or notification.

#### Fee:

\$5.00 - examining a registration statement  
\$5.00 - filing and recording a registration statement  
\$5.00 - filing and recording a certificate of groundwater right

#### Time Requirement:

14 days

Appeal Process:

Any party aggrieved or adversely affected by a final decision of the SWCB may appeal to the circuit court of the county or city where the well is located. Appeal must be made within 30 days of the final decision.

2. Permit to Construct a Water Well

The SWCB requires a permit to construct a water well in a groundwater management area. Only industrial or commercial users with a proposed pumping capacity of more than 50,000 gallons per day are required to obtain permits.

Application:

Applications for a permit to construct a water well must be submitted to the Executive Secretary of the SWCB on a prescribed form. Applicants should provide the original application plus one copy.

Information Required:

Applicants must provide information concerning well location, depth, method and location of wastewater discharge and water use and pumpage.

Review and Processing:

Upon receipt of a complete application for permit, the SWCB will submit a copy of the application to the SDH for review. In addition, a copy of the application will be sent to each local governing body in the groundwater management area and to each local governing body having the right to groundwater use in the area. Local governments must respond within 21 days of receipt of the application.

After notification of the local governments, the notice of application must be published at least once each week for two consecutive weeks in a newspaper of general circulation in the area where the application for permit pertains. Any person having a right to use groundwater in the groundwater management area may protest the issuance of the permit. Whenever, in the opinion of the SWCB, a hearing is necessary to determine whether the proposed use will conflict with existing rights to use groundwater, the SWCB may hold a public hearing.

The SWCB is responsible for the final decision concerning the approval or rejection of the application for permit.

Fee:

\$5.00

Time Requirement:

30 days, depending on whether a hearing is required.

Appeal Process:

Appeal may be made to the appropriate county or city circuit court within 30 days of the final decision.

### 3.4 Solid Waste Management

#### INTRODUCTION

The Virginia Solid and Hazardous Waste Management Law establishes the general provisions and permit requirements for solid waste disposal facilities. The State Department of Health (SDH) administers the permit program and has adopted regulations establishing specific procedures and requirements. Acceptable methods of solid waste disposal are detailed in the regulations. Separate regulations govern the disposal of hazardous waste in Virginia.

#### AUTHORIZING STATUTE(S)

I. FEDERAL:

Resource Conservation and Recovery Act (P.L. 94-580)

II. STATE:

Solid and Hazardous Waste Management Law (Title 32.1, Chapter 6, Code of Virginia (1950), as amended).

#### TITLE OF REGULATION

Regulations of the Virginia Department of Health, Disposal of Solid Waste

#### ADMINISTERING AGENCY

State Health Commissioner  
State Department of Health  
109 Governor Street  
Richmond, Virginia 23219  
(Division of Solid & Hazardous Waste Management)  
804/786-3561

#### SUMMARY OF REGULATION

I. APPLICABILITY

Solid waste disposal regulations administered by the State Department of Health are applicable throughout the Commonwealth of Virginia. These regulations apply to the disposal of all solid wastes, including wastes from households, commercial establishments, manufacturing, industry, agriculture, and institutions. Agricultural wastes from normal farming operations and discarded automobiles are not included in these regulations.

II. REGULATORY REQUIREMENTS

Virginia's solid waste disposal regulations establish general provisions concerning solid waste disposal facilities and permits. Each county, city and town is responsible for the proper disposal of wastes within its jurisdiction. Commercial, industrial, institutional, or agricultural sources may be required to operate their own disposal facilities, subject to the appropriate regulations and permit requirements. A permit is required by any person, county or city to construct or operate a solid waste disposal system.

The solid waste disposal regulations also outline acceptable disposal methods. Open dumping and disposal in state waters is specifically forbidden in the regulations. Specific requirements are outlined for the siting and operation of sanitary landfills. General procedures are established for planning and operating incinerators, with specific reference to the regulations of the State Air Pollution Control Board and the State Water Control Board.

Hazardous wastes must be disposed in a manner approved by the Health Commissioner and in accordance with specific regulations (Sub-Chapter 3.5).

### III. PERMIT REQUIREMENTS

#### Application:

Each person who operates or plans to operate or alter a solid waste disposal system shall apply in writing for a permit. Application for such a permit shall be made on a form approved by the Health Commissioner and submitted to the SDH.

#### Information Required:

1. Material to be disposed;
2. Site characteristics (hydrology, geology, soils, etc.);
3. Detailed construction plans;
4. Detailed operation plans; and
5. Zoning information (if applicable).

#### Review and Processing:

Once the required application and related information has been received, the SDH will coordinate and circulate the permit with other State agencies, as appropriate. The SDH will review the information and the plans, investigate the site, and reach a decision on the issuance of the permit.

#### Fee:

None

#### Time Requirement:

No mandated time frame has been established for the permit application review process. The timing depends to a large extent on the detail of the information supplied by the applicant.

#### Appeal Process:

Appeal of any decision by the SDH can be made in accordance with the Administrative Process Act. Applicants denied permits or operators who have had their permits withdrawn may request a formal hearing before the State Board of Health within 60 days of the decision. Further appeal may be made to the appropriate circuit court.

### 3.5 Hazardous/Toxic Waste Management

#### INTRODUCTION

The Solid and Hazardous Waste Management Act establishes the State Department of Health (SDH) as the administering agency concerning hazardous waste management in Virginia. To implement the requirements of the Act and of EPA, the SDH has adopted specific hazardous waste management regulations. These regulations establish requirements and standards pertaining to generators, transporters, and managers of hazardous waste in Virginia. Permits are required for the transportation of hazardous wastes and for the construction and operation of hazardous waste management facilities.

#### AUTHORIZING STATUTE(S)

##### I. FEDERAL:

Resource Conservation and Recovery Act (P.L. 94-580)

##### II. STATE:

Solid and Hazardous Waste Management Act (Title 32.1, Chapter 6, Code of Virginia (1950), as amended)

#### TITLE OF REGULATION

Hazardous Waste Management Regulations

#### ADMINISTERING AGENCY

State Health Commissioner  
State Department of Health  
109 Governor Street  
Richmond, Virginia 23219  
(Division of Solid & Hazardous Waste Management)  
804/786-3561

#### SUMMARY OF REGULATION

##### I. APPLICABILITY

The Virginia Hazardous Waste Management Regulations apply to any person in Virginia who generates, transports, stores, treats, or disposes of a hazardous waste.

##### II. REGULATORY REQUIREMENTS

The Virginia Hazardous Waste Management Regulations establish general and specific requirements concerning the identification, generation, transportation, and management of hazardous wastes. Special requirements are established for small quantity generators of hazardous wastes. Criteria are established for the identification of hazardous wastes based on characteristics of ignitability, corrosivity, reactivity, or toxicity. Virginia has recognized and accepted the list of hazardous wastes promulgated by the Administrator of EPA, and any person that manages a hazardous waste in Virginia must notify the State Health Commissioner of these activities. This notice is in conjunction with notification

required by EPA. All transportation of hazardous wastes is to be accompanied by a manifest as specified by EPA.

Generators of hazardous wastes are subject to specific requirements concerning the determination of hazardous waste, the use of the EPA identification number, packaging and labeling in preparation for transportation, and recordkeeping and reporting. Special conditions have been established for international shipments.

Additional requirements have been established for transporters of hazardous waste that originates or terminates in Virginia, including a permit requirement. Specific acceptance, shipment, and delivery procedures have been established for all transporters. Requirements and procedures have also been established to contend with spills of hazardous wastes.

Extensive regulations, requirements, and standards have been established concerning the storage, treatment, and disposal of hazardous wastes. General facility standards have been established concerning waste analysis, security, inspection requirements, personnel training, and the handling of special wastes. Contingency plans, disaster preparedness and prevention, and emergency procedures are required of all owners and operators of hazardous waste management facilities. Groundwater monitoring programs and closure and port-closure procedures and requirements have also been established for all facilities. Standards and regulations have also been established to specifically control the use and maintenance of tanks, containers, surface impoundments, waste piles, land treatment, landfills, and incinerators.

The standards and regulations established for hazardous waste management facilities are interim standards established in accordance with EPA regulations. Final standards will be established for Virginia as EPA promulgates their final regulations and standards for hazardous wastes.

### III. PERMIT REQUIREMENTS

Permit programs have been established by the State Department of Health to regulate the transportation of hazardous wastes and the storage, treatment and disposal of hazardous wastes. A transporter's permit is required by all persons transporting hazardous wastes that originate or terminate in Virginia. The permit program concerning hazardous waste management facilities is more involved and is used to insure compliance with the appropriate EPA and state regulations.

These two permit programs are discussed separately below.

#### 1. Transporter Permit

The transporter permit is only required by those transporters who transport hazardous waste shipments which originate and/or terminate in Virginia. Transporters who transport hazardous waste only through Virginia are not required to obtain a transporter permit.

Application:

An application for a permit to transport hazardous wastes must be submitted on a specified form to the State Health Commissioner.

Information Required:

- a. Appropriate corporate information;
- b. EPA hazardous waste identification number;
- c. Past history of hazardous waste transport (if appropriate);
- d. Other licensing or permit information; and
- e. Corporate financial status (ICC) report.

Review and Processing:

The Department of Health reviews the completed application. The Commissioner will promptly issue a transporter permit, provided the required information is complete and in order.

Fee:

None

Time Requirement:

Less than 30 days.

Appeal Process:

Appeal can be made in accordance with the State Administrative Process Act by requesting a formal hearing before the Board of Health. Further appeal can be made before the appropriate circuit court.

2. Hazardous Waste Management Facility Permit.

A permit is required from the SDH for the treatment, storage, or disposal of hazardous waste in Virginia. Currently, existing hazardous waste management facilities are permitted on an interim basis until EPA promulgates final standards. No new facilities can be constructed until the appropriate Final Facility Standards have been adopted. A final hazardous waste management permit shall be effective for a fixed term not to exceed ten years.

Application:

Hazardous waste management facilities in operation at the time the Interim Facility Standards were promulgated (November 21, 1980) received interim status if notification was given to the Commissioner within 90 days of the date of promulgation and if the operator was in compliance with the requirements governing submission of Part A of the permit application. Interim status was denied if, at the time Part A was submitted, the facility was in violation of any regulation so as to pose a substantial present or potential health hazard. Once the Final Facility Standards have been promulgated, existing facilities operating under interim status will be required to submit Part B of the permit application to obtain a final operating permit. Development of new facilities after the promulgation of the Final Facility Standards will require submission of both Part A and B. Application for a permit is made to the State Health Commissioner.

### Information Required:

Part A of the permit application requires general information about the facility and the company operating the facility. Specific information includes:

- a. A listing of all permits or construction approvals received or applied for under any appropriate environmental regulatory programs;
- b. A description of the processes to be used and the design capacity;
- c. Specification of the hazardous waste to be managed;
- d. An estimate of the quantity of waste to be managed annually; and
- e. A topographic map extending one mile beyond the property boundaries indicating the location of facilities, intake and discharge structures, and those wells, springs, surface water bodies and drinking water wells listed in public records.

Part B of the application for permit requires more detailed information concerning the management processes and operating procedures. Specific requirements include:

- a. Chemical and physical analyses of the hazardous waste to be managed;
- b. Description of security procedures;
- c. General inspection schedule;
- d. Contingency Plan;
- e. A description of safety procedures and disaster mitigation measures and equipment; and
- f. Traffic pattern, volume and control information.

### Review and Processing:

Once an application for permit is complete, the Commissioner shall tentatively decide whether to prepare a draft permit or deny the application. If the Commissioner decides to deny the permit application, he shall issue a notice of intent to deny. If the Commissioner decides to prepare a draft permit, he shall prepare a draft permit outlining permit conditions, compliance schedules, monitoring requirements and appropriate standards.

A fact sheet is prepared by the Commissioner for every draft permit for a major hazardous waste management facility or for every draft permit which is the subject of significant public interest. This fact sheet is mailed to the applicant and any other interested persons or agencies.

Once a draft permit has been prepared, public notice shall be given, allowing 30 days for comment. At this time a public hearing will also be scheduled, with at least a 30-day notice before the hearing. Methods of notification and the notice content is detailed in the regulations.

The final permit decision is made by the Commissioner, based on staff recommendations and public comments received during the comment period or public hearing. When the final permit decision is issued, the Commissioner will also issue a response to all comments received.



Fee:

None

Time Requirements:

Applicants should allow at least 180 days for application review and processing.

Appeal Process:

An applicant who wishes to appeal a decision of the Commissioner may request a formal hearing within 30 days after the decision. Further appeal can be made to the appropriate circuit court. All appeals shall be conducted in accordance with the procedures established in the Administrative Process Act.

### **3.6 Noise Regulations**

The Commonwealth of Virginia has not enacted any laws or regulations specifically pertaining to noise. Specific requirements concerning noise may be included in other regulations as part of established operating procedures or standards. Local noise ordinances have been enacted in several counties and cities throughout Virginia. Interested parties should contact the appropriate local government office for details.

# RESOURCE EXTRACTION

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## **4.0 Resource Extraction**

Resource extraction in Virginia is administered primarily by the Division of Mined Land Reclamation under the Department of Conservation and Economic Development. This division is responsible for permitting all mining and land reclamation activities. Separate regulations and permit requirements have been established for the mining of minerals other than coal. Coal mining regulations, particularly regulations pertaining to surface mine operating standards and reclamation requirements, are currently being reviewed and amended at the federal level. State implementation of a permanent regulatory program will follow revision and approval of the federal regulations. Until then, the state is using the interim regulations established by the federal government.

The Division of Mines and Quarries under the Department of Labor and Industry is also responsible for regulating certain resource extraction activities. All mining operations in Virginia require licensing by the Division of Mines and Quarries to insure compliance with the adopted safety and health regulations. Permitting of oil and gas wells is also a function of this Division. Regulations and requirements adopted by the Division of Mines and Quarries generally pertain to the safety and health aspects of mining operations.

## 4.1 Energy Resources Development

Energy resources development (oil, gas, and coal) in Virginia is regulated by two separate agencies: The Division of Mines and Quarries of the Department of Labor and Industry and the Division of Mined Land Reclamation of the Department of Conservation and Economic Development. Generally, regulations administered by the Division of Mines and Quarries pertain to safety and health issues whereas regulations administered by the Division of Mined Land Reclamation pertain to environmental standards.

The Division of Mines and Quarries administers regulations under two acts: The Virginia Oil and Gas Act (Title 45.1, Chapter 12) and the Virginia Mine Safety Law of 1966 (Title 45.1, Chapters 1 through 14). Permits are required for oil and gas wells and vertical mine ventilation holes, and a license is required for all mining operations.

The Division of Mined Land Reclamation administers regulations under the Surface Mining of Coal Act (Title 45.1, Chapter 17). Permits are required for any coal exploration or mining which will disturb two acres or more.

Mineral exploration and development on lands owned or leased by the Department of Conservation and Economic Development is regulated through exploration permits and development deeds.

Since a license to operate a mine is required for all mining operations, in most instances coal mining requires approval by two different agencies. Permit and license review is often simultaneous and no coordination is necessary between the two agencies. Significant delays or problems with this process have not been identified.

#### 4.1.1 Oil and Gas

##### INTRODUCTION

The Virginia Oil and Gas Act establishes the Division of Mines and Quarries as the administering agency concerning oil and gas well drilling. Rules and regulations have been adopted to elaborate the provisions of the Act. Well drilling activities in Virginia require a permit issued by the Division Chief. Specific attention is given to erosion and sedimentation control and overall site stabilization. These regulations are enforced through a bond requirement, posted by the well owner or operator.

##### AUTHORIZING STATUTE(S)

###### I. FEDERAL:

N/A

###### II. STATE:

Oil and Gas Act (Title 45.1, Chapter 12, Code of Virginia (1950), as amended)

##### TITLE OF REGULATION

Oil and Gas General Rules and Regulations

##### ADMINISTERING AGENCY

Chief Mine Inspector  
Department of Labor and Industry  
Division of Mines and Quarries  
Big Stone Gap, Virginia 24219  
703/523-0335

##### SUMMARY OF REGULATION

###### I. APPLICABILITY

The Virginia Oil and Gas Act and the rules and regulations promulgated in accordance with the Act apply to all persons, firms, partnerships, associations, or corporations drilling, owning, or operating any oil or gas wells in Virginia.

###### II. REGULATORY REQUIREMENTS

General and specific regulatory requirements are outlined in both the Oil and Gas Act and in the General Rules and Regulations established in accordance with the Act. In this case, the Rules and Regulations supplement the Act.

The Virginia Oil and Gas Act establishes the general powers and duties of the Chief Mine Inspector and requires the registration of all persons, firms and corporations involved in the drilling, ownership, or operation of oil or gas wells in Virginia. The permit program for well drilling, including specific permit requirements and review procedures, is also outlined in the Act. The Oil and Gas Act also establishes technical requirements and procedures for well drilling and the abandonment of

wells and procedures and standards for the maintenance of wells and the handling of wastes.

The Rules and Regulations elaborate certain requirements of the Oil and Gas Act and specify certain requirements and procedures not covered under the Act. Specific rules have been established concerning the notification, location, access, and identification of wells. Requirements concerning wells located in or near coal beds and working mines and special provisions concerning surface mining, construction, and other operations near pipelines have also been established. Permit requirements established in the Act have been extended in the Rules and Regulations to cover disposal and service wells and the establishment of underground gas storage facilities. General well construction and operation standards and general reporting, monitoring, and measurement procedures have also been established in the Rules and Regulations.

Information Required:

Information required for oil or gas exploration/production wells is required for all well-drilling permit applications. Information specified below for disposal wells, service wells and underground storage wells is in addition to the previously mentioned requirements.

Oil or Gas Exploration/Production Wells:

1. Map or plat indicating well location and other pertinent site information;
2. Operations plan indicating method of spoil placement and stabilization and drainage plans;
3. Title or lease information of well site;
4. Proposed depth of well; and
5. Proposed well distance from nearest property or lease line; nearest mining opening or quarry; and the nearest drilling, abandoned, producing or applied for oil or gas well (these items are located on the map if within 500 feet).

Disposal and Service Wells:

1. Map indicating all known water wells, producing and abandoned oil or gas wells, and active and abandoned disposal or service wells within a 1,000 foot radius of the proposed well location;
2. Purpose of the well;
3. Name, description and depth of the formation into which any injection is to be done;
4. Substance to be injected; and
5. Approximate depth of the known freshwater zones.

Underground Gas Storage Wells:

1. Map indicating the stratum or strata in which the existing or proposed storage reservoir is to be located;
2. All known oil or gas wells which have been drilled into the reservoir or within 3000 linear feet and pertinent well information;
3. Proposed location of all additional wells; and

4. Detailed, technical information concerning injection and storage of gas and the maintenance of existing wells in the area.

Review and Processing:

Following initial registration with the Division of Mines and Quarries, an application for drilling permit, along with the fee and required bond (see below) are submitted to the Chief. At the same time, the applicant must notify adjacent landowners and other interested parties of his intention to drill. This notice consists of a form provided by the Chief along with a copy of the map or plat submitted with the application. Notified persons must file any objections with the Chief, within ten days from receipt of the notice. Persons notified of disposal, service, or underground storage wells have 30 days to voice any objection.

The submitted application is reviewed by the Chief. This review may include a site inspection to verify the well location and operation plan. If, after adequate review, the application is found to be in order and no objection has been made, the Chief may issue the permit. When an objection is filed, a hearing is scheduled, not less than 20 nor more than 40 days after the original filing date. Changes in the application, such as the well location, may be negotiated so as to satisfy all parties. If an agreement cannot be reached on the well location, the Chief may fix a location, depending on certain conditions. The applicant can accept or reject the new well location.

The review and processing procedures are the same for all permit applications.

Fee:

Application fee of \$100. A bond is also required, payable to the Commonwealth of Virginia, to insure compliance with all laws and regulations relating to the drilling, re-drilling, deepening, casing, plugging and abandonment of wells; the stabilization of the project area; and the furnishing of all reports and information. Bond is set at \$5,000 for capping and plugging of the well plus \$1,000 times the number of acres for stabilizing the project area.

Time Requirement:

No time limit for permit review has been mandated; however, most permits are issued within 30 days, depending on the necessity for a hearing.

Appeal Process:

Judicial review of any decision of the Chief can be obtained from the circuit court of the county where the well is located. Petition for review must be submitted within ten days following the decision.



## 4.1.2 Surface Mining of Coal

### INTRODUCTION

Surface mining of coal and land reclamation activities are well-regulated at both the state and federal levels. In Virginia the Division of Mined Land Reclamation is responsible for administering the regulations pertaining to the surface mining of coal. Currently, mining and reclamation activities are regulated under the federal interim regulations. Permit programs have been established by the Virginia Surface Coal Mining Act (Chapter 17). Federal regulations are currently being reviewed and amended and will be incorporated into the state regulatory program within the next year. At that time, Chapter 19, the Virginia Coal Surface Mining Control and Reclamation Act will take effect. Certain requirements and procedures outlined in this document will change at that time. The Board of Conservation has already adopted regulations for the permanent program which will take effect as soon as the federal Office of Surface Mining approves Virginia's program.

### AUTHORIZING STATUTE(S)

#### I. FEDERAL:

Surface Mining Control and Reclamation Act of 1977 (PL 95-87)

#### II. STATE:

Surface Mining of Coal (Title 45.1, Chapter 17) and the Virginia Coal Surface Mining Control and Reclamation Act of 1979 (Title 10, Chapter 19, Code of Virginia (1950), as amended).

### TITLE OF REGULATION

Virginia Coal Surface Mining Regulations

### ADMINISTERING AGENCY

Commissioner  
Division of Mined Land Reclamation  
Department of Conservation and Economic Development  
Big Stone Gap, Virginia 24219  
703/523-2925

### SUMMARY OF REGULATION

#### I. APPLICABILITY

The provisions of the state statute and corresponding regulations apply to commercial coal mining operations where the surface disruption is greater than two acres.

#### II. REGULATORY REQUIREMENTS

Regulations, standards and requirements for surface mining operations are currently being reviewed and amended at the federal level. The specific standards and requirements are not known at this time, however, the state will most likely adopt a substantial portion of the federal regulations for use as the permanent state regulations. Details of the regulatory

requirements will be provided as they become available. Currently, federal interim regulations and standards are being enforced.

### III. PERMIT REQUIREMENTS

Two permit programs have been established by state statute: exploration (prospecting) permits and surface mining permits. These permits are required of all surface coal mining and exploration operations (if more than two acres) and are in addition to permits required for operation on Department land (see Section 4.1.) and mining licenses required by the Department of Labor and Industry.

#### 1. Exploration (prospecting) Permits

An exploration permit is required before excavating equipment is used for the purpose of removing overburden to determine the location, quantity or quality of a coal deposit, or to determine the feasibility of removing coal by surface mining methods. No permit can be issued for more than ten acres.

##### Application:

Application for an exploration permit must be made on authorized forms and submitted to the Division of Mined Land Reclamation, Big Stone Gap.

##### Information Required:

In addition to the required application forms, the applicants for exploration permits must submit the following:

- a. U.S. Geological Survey topographic map indicating by proper markings the crop line and manual of the seam.
- b. Reclamation plan for the area to be disturbed.

##### Review and Processing Procedures:

Permit application review is conducted entirely within the Division offices without public notice or hearing. The applicant is, however, responsible for notifying all utilities located within 500 feet of the proposed site.

##### Fee:

A fee of \$10/acre must accompany each application. Once the permit has been approved, the applicant must secure a bond in the amount of \$300/acre for the total estimated disturbed acreage. An anniversary fee is required each year to review the permit. Surface mining operations must pay a fee of \$6/acre each year for all undisturbed acres. Deep mine operations must pay a fee of \$6/acre for all disturbed acres.

##### Time Requirement:

A maximum review of 30 days has been mandated. Average review time for prospecting permits is 7 days.

##### Appeal Process:

Persons aggrieved by any decision may request a formal hearing in compliance with the Administrative Process Act. Further appeal can be made to the appropriate circuit court.

## 2. Surface Mining Permit

Surface mining permits are required before any mining activities are undertaken, regardless of whether or not a prospecting permit has been issued. The total acreage covered under a permit may, at the discretion of the Director, be limited to 250 acres. Permanent program permits will require ground and surface water monitoring.

### Application:

Application for a surface mining permit must be made on authorized forms and submitted to the Division of Mined Land Reclamation Big Stone Gap.

### Information Required:

- a. Description of the land to be disturbed and the coal to be extracted;
- b. Surrounding land use that might be affected;
- c. Owners of the land to be disturbed;
- d. Owners of the coal and mineral rights;
- e. Source of the applicants legal right to enter and conduct operations on the land;
- f. Operation plan, including a surface drainage plan; and
- g. Reclamation plan.

### Review and Processing:

Review of the permit application is conducted entirely within the Division offices. During the interim, blasting schedules must be published.

### Fee:

A fee of \$12/acre must accompany each application. Once the permit has been approved, the applicant must secure a bond in the amount of \$800/acre, with a minimum bond of \$2500 for three acres or more. Bond must be provided only for those acres to be disturbed within the following year. A permit must be reviewed each year with an anniversary fee of \$6/acre. Bonding requirements will change with the institution of the permanent program.

### Time Requirement:

A maximum review period of 30 days has been mandated, however, the average review period has approached 45 days due to the backlog of applications.

### Appeal Process:

Persons aggrieved by any decision may request a formal hearing in compliance with the Administrative Process Act. Further appeal can be made to the appropriate circuit court.

### 4.1.3 License for Mining Operations

#### INTRODUCTION

The Virginia Mine Safety Law of 1966 requires a license in order to operate a commercial mine. Licenses are issued annually during the first 45 days of the year after submission of the appropriate application form, annual report (for the preceeding year) and a map of the mine. This licensing program is administered by the Division of Mines and Quarries, Department of Labor and Industry.

#### AUTHORIZING STATUTE(S)

##### I. FEDERAL:

##### II. STATE:

Virginia Mine Safety Law of 1966 (Title 45.1, Chapter 1-14, Code of Virginia (1950), as amended).

#### TITLE OF REGULATION

The requirements for a license to operate a commercial mine are detailed in the Virginia Mine Safety Law (Section 45.1-22).

#### ADMINISTERING AGENCY

Chief Mine Inspector  
Division of Mines and Quarries  
Department of Labor and Industry  
Big Stone Gap, Virginia 24219  
703/523-0335

#### SUMMARY OF REGULATION

##### I. APPLICABILITY

The license requirement is applicable to all commercial open pit or underground mines throughout the Commonwealth of Virginia.

##### II. REGULATORY REQUIREMENTS

All commercial mine operators are required to have a valid license before commencing any mining operations. The license must be displayed prominently near the main entrance to the mine.

##### III. PERMIT REQUIREMENTS

###### Application:

An application for mining license must be submitted on the appropriate form to the Chief Mine Inspector, Division of Mines and Quarries. Applications must be submitted within the first 45 days of the year for license renewal. Mines commencing operations after that period will be issued a license for the remaining calendar year. Applications for license renewal must be submitted with an annual report of the preceeding year and a map of the mining area.

Information Required:

The application form requires information concerning the mining corporation, type of mine, and employees (number per shift, workmen's compensation, etc.). The annual report includes:

1. Names of mine operators and owners;
2. The quantity of coal or minerals mined during the preceding calendar year; and
3. Any other information deemed appropriate by the Chief Mine Inspector.

The required map must indicate:

1. The openings or excavations, the shafts, slopes, entries and airways indicating the directory of air currents, headings, rooms, pillars, etc;
2. Portions of mine that have been abandoned;
3. General inclination of the coal strata; and
4. Property lines and coal outcroppings located within 1000 feet of the workings of the mine.

Review and Processing:

The Division of Mines and Quarries reviews the applications and accompanying materials.

Fee:

\$75. Sand or gravel mines on five acres or less will be required to pay \$20.

Time Requirement:

Generally, less than 30 days.

Appeal Process:

Appeal can be made in accordance with the Administrative Process Act.

#### 4.1.4 Exploration Permits on State Land

##### INTRODUCTION

The Disposition of Department Lands Act establishes the procedure for mineral exploration and development on land owned or leased by the Department of Conservation and Economic Development. The Director of the Department may execute deeds or leases for mineral development through a public notice and open bidding process. Interested individuals may apply for exploration permits or development deeds or leases by submitting a proposal with a detailed environmental impact report. The Governor's approval is required for all exploration permits and development deeds or leases.

As of this date, this law has not been implemented, therefore, information pertaining to fee and time requirement is not applicable. This law, along with disposition of other state-owned land, is currently being reviewed and future amendments are likely.

##### AUTHORIZING STATUTE(S)

I. FEDERAL:

N/A

II. STATE:

Disposition of Department Lands (Title 10, Chapter 1.9, Code of Virginia (1950), as amended.)

##### TITLE OF REGULATION

Procedures and requirements pertaining to exploration permits and development deeds, contracts and leases for state-owned or leased land, are detailed in the statute. Separate regulations have not been adopted.

##### ADMINISTERING AGENCY

Director  
Department of Conservation and Economic Development  
1100 Washington Building  
Richmond, Virginia 23219  
(Division of Mineral Resources)  
804/786-2121

Director  
Commission of Game and Inland Fisheries  
4010 W. Broad St.  
P.O. Box 11104  
Richmond, Virginia 23219  
804/257-1000

##### SUMMARY OF REGULATION

I. APPLICABILITY

The provisions of this statute apply to any land owned or held by lease by the Department of Conservation and Economic Development. Minerals to be

explored or developed under this law include: petroleum, natural gas, coal, ore, rock or any other solid chemical element or compound.

## II. REGULATORY REQUIREMENTS

The provisions of this statute empower the Director of the Department to make and execute leases, contracts or deeds for the removal or mining of minerals that may be found in the forestry reservations. Leases, deeds and contracts initiated by the Department must be approved by the Governor and are awarded based on a competitive bidding process, after proper public notice.

Any person may also apply for a mineral exploration permit or a mineral development deed, contract or lease for lands owned or held by lease by the Department. Approval of these permits, deeds, leases or contracts is contingent upon the submission of a detailed environmental impact report and other requirements detailed below.

## III. PERMIT REQUIREMENTS

The following requirements pertain to exploration permits and development deeds, contracts or leases. Whether or not any person applying for a development deed, lease or contract has obtained an exploration permit, the development deed, lease or contract will not be granted until the person has submitted an environmental impact report pertaining to development operations.

### Application:

Any person seeking an exploration permit or proposing to purchase, lease or contract for mineral development upon any land owned or held by lease by the Department shall prepare and submit to the Director a detailed environmental impact report.

### Information Required:

The required environmental impact report should contain the following:

1. A general description of the proposed activities, especially including factors relating directly to the environment (i.e. polluting substances, site description and expected alterations and pertinent technical information relating to exploration or mining techniques);
2. A description of the environmental impact of the proposed activity;
3. A description of any adverse environmental consequences which cannot be avoided;
4. A description of proposed mitigative measures;
5. A description of any irreversible environmental changes; and
6. Possible alternative methods of exploration or mining.

### Review and Processing Procedures:

Once the environmental impact report has been submitted, the Director shall prepare a draft exploration permit or development deed, lease or contract. Both the report and the draft permit, deed, lease or contract then become public record and will be available for review.

A public hearing will be held by the Board of Conservation and Economic Development after 15 days public notice. The subject of the public

hearing shall be the contents of the environmental impact report and any other matter deemed appropriate.

If, after review of the report and the public hearing, the Board determines the permit or deed to be appropriate, the Board shall advise the Governor and transmit to him a copy of the report. The Governor's written approval is required before any permit or deed becomes effective.

Fee:

N/A

Time Requirement:

N/A

Appeal Process:

Appeal can be made in accordance with the Administrative Process Act.



## 4.1.5 Vertical Mine Ventilation Holes

### INTRODUCTION

In accordance with state and federal laws pertaining to mine safety, the Division of Mines and Quarries has promulgated regulations concerning vertical mine ventilation holes. These regulations establish safety standards, operating procedures, and technical specifications. A permit is required before drilling any mine ventilation hole. These regulations pertain primarily to coal mining operations.

### AUTHORIZING STATUTE(S)

I. FEDERAL:  
N/A

II. STATE:  
Virginia Mine Safety Law of 1966 (Title 45.1, Chapters 1 through 14, Code of Virginia (1950), as amended)

### TITLE OF REGULATION

Rules and Regulations Governing Vertical Mine Ventilation Holes

### ADMINISTERING AGENCY

Chief Mine Inspector  
Division of Mines and Quarries  
Department of Labor and Industry  
Big Stone Gap, Virginia 24219  
703/523-0335

### SUMMARY OF REGULATION

#### I. APPLICABILITY

These regulations are applicable throughout the Commonwealth of Virginia and pertain to the drilling of mine ventilation holes for the safety purpose of removing gas from the underlying coal seam and adjacent strata.

#### II. REGULATORY REQUIREMENTS

Before a mine ventilation hole is drilled, a permit must be obtained from the Division of Mines and Quarries. Ventilation holes must be drilled and constructed in compliance with the safety standards and technical specifications established in the regulations. The regulations establish specific requirements for ventilation holes which penetrate a workable coal bed or any other active or abandoned mines. Mining operations in the vicinity of ventilation holes are also regulated to insure mine safety.

### III. PERMIT REQUIREMENTS

#### Application:

An application for permit to drill a vertical mine ventilation hole must be submitted on the required form, along with an accurate map or plat, to the Chief Mine Inspector, Division of Mines and Quarries.

#### Information Required:

Most required information is indicated on the map or plat and includes:

1. Proposed location and surface elevation of the hole;
2. The course and distance of the hole from two permanent points on the tract;
3. Name of owner;
4. Boundaries and acreage of the tract; and
5. Names and owners of all adjoining tracts or any other tract within 500 feet of the proposed location.

#### Review and Processing:

Once the required application and map have been submitted to the Chief Mine Inspector, copies of the map and a notice of intention to drill are mailed to each adjacent landowner and to each owner, lessee, or operator of any mineral rights within 500 feet of the proposed location. Notified persons have ten days to file any objection with the Chief Mine Inspector. The Chief may allow five additional days before the issuance of any permits.

If no objection has been made within the specified time period, the Chief may issue the permit, provided all technical and safety requirements have been met. If any objection has been made, the Chief shall notify the applicant and fix a time and place for a hearing, not less than 10 nor more than 40 days after the original filing date. Five days written notice is provided to all persons notified earlier by the applicant.

At the hearing, the location of the ventilation hole may be negotiated so as to satisfy all parties involved. A permit to drill will be issued indicating the location agreed upon.

#### Fee:

None

#### Time Period:

A permit may be issued within 15 days, provided no objections are made. Otherwise, the time period will depend on the hearing schedule.

#### Appeal Process:

Any person aggrieved by any decision of the Chief Mine Inspector concerning vertical mine ventilation holes may appeal to the circuit court of the county in which the proposed hole is to be located.

## 4.2 Metalliferous Mining

### INTRODUCTION

Surface mining of minerals other than coal is controlled by a separate set of regulations, promulgated under Chapter 16 of the mining laws of Virginia (Title 45.1). The Division of Mined Land Reclamation under the Department of Conservation and Economic Development is the administering agency. A permit is required for all mining operations that disturb the surface. A bond is required to insure that reclamation is carried out in accordance with the regulations. All mining operations also require a license from the Department of Labor and Industry (see Section 4.1.3).

### AUTHORIZING STATUTE(S)

#### I. FEDERAL:

Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87)

#### II. STATE:

Permits for Certain Mining Operations; Reclamation of Land, (Title 45.1, Chapter 16, Code of Virginia (1950), as amended) (Minerals Other Than Coal Surface Mining Law)

### TITLE OF REGULATION

Minerals Other Than Coal (MOTC) Surface Mining Regulations

### ADMINISTERING AGENCY

Commissioner  
Division of Mined Land Reclamation  
Department of Conservation and Economic Development  
7707-A Timberlake Road (P.O. Box 4499)  
Lynchburg, Virginia 24502  
804/239-0602

### SUMMARY OF REGULATION

#### I. APPLICABILITY

This statute and corresponding regulations apply to the mining of minerals other than coal where significant surface disruption will occur. These regulations do not apply to the process of searching or prospecting for minerals by drilling. Any operator engaging in mining and disturbing less than one acre of land and removing less than 500 tons of minerals is exempt from all mining permit fees, renewal fees and bond requirements. Local jurisdictions have the right to adopt stricter rules and ordinances which may take precedence over the state regulations.

#### II. REGULATORY REQUIREMENTS

Permit requirements and procedures, fees, and bond requirements are outlined in the state law. The regulations pertaining to surface mining of minerals other than coal detail the application requirements and provide standards for operations and reclamation. Road construction standards are provided in the regulations, along with operating standards and procedures

concerning public protection, treatment of toxic substances, handling of spoil piles, and storage of topsoil. Drainage and sediment control and revegetation standards (including a timetable for inspection) are important issues and are detailed in the regulations and the accompanying guidelines.

Specific guidelines concerning drainage and revegetation have been prepared by the state in cooperation with Virginia Polytechnic Institute and State University, the U. S. Department of Agriculture, and representatives of the mining industry and the landscape architecture profession. Revegetative guidelines indicate soil testing, liming and fertilization procedures, suitable grass and legume mixtures, and applicable trees and acceptable planting methods. The drainage handbook outlines acceptable engineering standards and specifications.

### III. PERMIT REQUIREMENTS

#### Application/Information Required:

The required operations plan must include:

1. Statement of the planned land use to which the disturbed land is to be returned;
2. Description of the proposed method of operation;
3. Drainage plan showing the natural drainage system and proposed control structures; and
4. Utility easements on or within 500 feet of the proposed mining site.

The application must include:

1. The common name and geologic title, where applicable, of the mineral to be extracted;
2. A description of the land upon which the applicant proposes to conduct mining operations;
3. Name and address of owner or owners of the mineral or ore;
4. Source of the operator's legal right to enter and conduct mining operations on the specified land;
5. Total number of acres to be covered by the permit;
6. Reasonable estimate of the number of acres to be disturbed during the next year;
7. Any additional mining permits held by the applicant; and
8. Any information relating to revoked permits or forfeited bonds.

The required map must meet the following requirements:

1. Identify the area to correspond with the land described in the application;
2. Show adjacent deep mining and the boundaries of surface properties, with the names of owners of the affected area which lie within 100 feet of the proposed mining operation;
3. Names and locations of any natural or man-made features; and
4. Show the drainage plan.

#### Review and Processing:

Prior to submission of the application, the applicant is responsible for notifying adjacent property owners within 1,000 feet of the

proposed mining site of the applicant's intention to mine. The holder of any utility easement on the property to be disturbed or within 500 feet must also be given written notice of the intent to mine.

Once the application and additional required materials have been received, the application and operations plan will be reviewed by the Division of Mined land Reclamation. If the application and operations plan meets all requirements and no objections have been filed, the permit can be issued.

Adjacent landowners, utilities, and local administrative officials may submit objections within ten days of receipt of notification and request a hearing. A permit will be approved or denied based on the hearing and the judgement of the Director of the Department.

If the operator wishes to continue operations, the mineral surface mining permit shall be renewed each year ten days following the anniversary date of the permit. Renewal progress reports and maps must be received by the anniversary date.

Fee:

An initial application fee of \$12/acre for the total acreage must be submitted with the application. A bond is also required to insure compliance with the reclamation regulations. Bond shall be furnished in the amount of not less than \$200 or more than \$1,000 per acre estimated to be disturbed within the next year. Minimum bond for any permit is \$1,000.

An additional fee and bond is required when a permit is renewed. Permit renewal fee is \$6/acre for only the acres estimated to be affected within the next year. The rate of bond required upon renewal shall be the same as the previous year unless certain conditions necessitate a change. Partial release of the previous year's bond may be credited toward any additional bond requirement.

Time Requirement:

A minimum 15-day review period is mandated. However, most applications require a longer review time (30 days average).

Appeal Process:

An appeal from any decision can be made to the circuit court which has jurisdiction in the area to be affected. Further appeal can be made to the State Supreme Court of Appeals.

### **4.3 Construction Materials**

Virginia has not enacted any laws or adopted any regulations specifically pertaining to the mining of construction materials. Section 4.2 outlines the regulations and permit requirements pertaining to mining of minerals other than coal.

# LAND USE REGULATION

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## 5.0 LAND USE REGULATION

The regulation of land use is not specifically a function of any state agency in Virginia. However, land use is often indirectly determined by various environmental legislation and permit requirements. The Commonwealth of Virginia has enacted legislation pertaining to flood plain management and coastal protection.

The Flood Damage Reduction Act (Title 62.1, Chapter 3.5, Code of Virginia) is a general policy act which establishes a framework for cooperation and coordination between state agencies and local governments concerning issues of flood plain management and flood protection. The Impoundment of Surface Waters Act (Title 62.1, Chapter 8) provides standards and guidelines for the location and development of impounding structures and indirectly influences the use of flood plains.

Land use in the coastal areas of Virginia is directly influenced by two state laws. The Wetlands Act (Title 62.1, Chapter 2.1) establishes regulations governing development and certain other activities in tidal wetland areas. The Coastal Primary Sand Dune Protection Act (Title 62.1, Chapter 2.2) establishes state policy concerning oceanfront development and other activities that may impair or encroach upon the primary dune system along the Virginia coast. Both of these state laws are administered at the local level through specific state authorization (Chapters 5.4.1 and 5.4.3).



## **5.1 Major Facility Siting**

The Commonwealth of Virginia has not enacted any laws or regulations specifically pertaining to the siting of major industrial, commercial or institutional facilities. The siting of major facilities may be influenced by other statutes and regulations pertaining to air quality (See Chapter 3.1) water quality (Chapter 3.2), public water supply (Chapter 3.3) or coastal protection (Chapter 5.4).

## **5.2 Land Use**

The Commonwealth of Virginia has not enacted any laws or regulations specifically pertaining to the state regulation of land use. Land use is indirectly influenced by most environmental management legislation. Development is specifically controlled in wetlands and in coastal dune areas (Chapter 5.4, Coastal Protection Regulations).

## 5.3 Flood Plain Management

### INTRODUCTION

Flood plain management in Virginia is associated with two state statutes: the Flood Damage Reduction Act (Title 62.1, Chapter 3.5, Code of Virginia) and the Impoundment of Surface Waters Act (Title 62.1, Chapter 8). Both statutes and the corresponding regulations are administered by the State Water Control Board.

The Flood Damage Reduction Act generally establishes the state policy as it relates to flood plain management and intergovernmental coordination. The policy is established to coordinate and assist local governments with flood plain management and to coordinate federal, state, and local flood plain management activities to permit eligible communities to participate in the National Flood Insurance Program. State agencies and authorities are also mandated to comply with local flood plain management ordinances when planning for facilities in flood plains.

The Impoundment of Surface Waters Act establishes the requirement of judicial review of riparian rights before floodwaters can be stored and used. Regulations adopted under this Act establish a construction permit program for certain impounding structures and outline general engineering and design guidelines and requirements.

### AUTHORIZING STATUTE(S)

#### I. FEDERAL:

N/A

#### II. STATE:

Flood Damage Reduction Act (Title 62.1, Chapter 3.5), and Impoundment of Surface Waters Act (Title 62.1, Chapter 8, Code of Virginia (1950), as amended).

### TITLE OF REGULATION

Impounding Structure Regulations

### ADMINISTERING AGENCY

Executive Director  
State Water Control Board  
2111 Hamilton Street  
P.O. Box 11143  
Richmond, Virginia 23230  
804/257-6384

### SUMMARY OF REGULATION

#### I. APPLICABILITY

Impounding structure regulations are applicable throughout the state and apply to any artificial barrier intended to impound water, and which is not exempt from the law. Exempted structures include:

1. Dams owned or licensed by the State Corporation Commission or U.S. Government;
2. Dams constructed or operated primarily for agricultural purposes;
3. Water or silt retaining dams in association with mining operations;
4. Obstructions in a canal used to raise or lower the water; and
5. Dams creating impoundments of not more than 100 acre-feet capacity and not more than 25 feet in depth.

## II. REGULATORY REQUIREMENTS

Regulations pertaining to impounding structures establish a construction permit program for applicable structures and outline the application procedures and requirements. Size and hazard potential classifications are established along with general engineering and design standards. Report requirements, inspection schedules, and operation and maintenance standards are outlined in order to insure compliance with acceptable design and safety standards.

## III. PERMIT REQUIREMENTS

A construction permit is required before construction can begin on any proposed impounding structure. Generally, if construction does not commence within two years after the permit is issued, the permit shall expire. Construction permits are revocable in the event that any of the terms of the permit are violated or in the event that hazardous conditions develop downstream due to construction.

### Application:

Any owner who proposes to construct an impounding structure must submit an application to the State Water Control Board on prescribed forms supplied by the Board. Applications must be accompanied by the required reports and supporting documents.

### Information Required:

The applicant for a construction permit for an impounding structure must submit a preliminary report and, after approval of the preliminary report, a final design report. The preliminary report must include, as a minimum:

1. A general description of the impoundment and a proposed classification;
2. Statement of purpose;
3. Description of properties located downstream;
4. A statement from the governing body of the local political subdivision describing the zoning ordinances and land use classifications applicable to the floodplain downstream
5. Map indicating the general location of the proposed structure and other important features
6. Preliminary drawings; and
7. Preliminary design criteria, including ground cover conditions, development in the watershed, and geologic and geotechnical engineering assumptions.

The final design report must include:

1. A report of geotechnical investigations;

2. Design assumptions and analyses to indicate structural stability;
3. Environmental and design analyses to indicate stability of the reservoir rim, seepage through the structure and spillway design
4. Proposed construction, operation, and maintenance and inspection schedules.

Review and Processing:

After the application and preliminary reports have been submitted, the Board must respond within 60 days indicating either approval or disapproval. The Board or the applicant may request a conference to facilitate approval of the applicant's proposal.

Following approval of the preliminary report, the applicant shall prepare and submit the final design report. The Board shall issue a construction permit within 60 days following receipt of an acceptable final design report and acceptable plans and specifications. If the final design report is not acceptable, the Board shall so state within 60 days and explain what changes are required.

The storage of floodwater also requires judicial review of the riparian rights. Any riparian owner proposing an impounding structure to store floodwater may apply to the circuit court of the county or city where the impounding structure is proposed to be built. Application should be made by filing a petition in the clerk's office of the court. The petition must indicate the riparian owner's name and address, the purpose of the proposed impoundment, the desired storage capacity and the stream and location of the impounding structure. The petition must be accompanied by a plat or sketch of the riparian property indicating the site of the impounding structure and the property to be flooded.

All interested persons must be given notice by publication. A copy of the petition, together with a copy of the map or plat must be sent by registered mail to the State Water Control Board.

After a petition has been filed, the court will set a hearing date, which is included in the published notice. The Board must report on the petition to the court. A decision is made based on the submitted documents, the evidence supplied at the hearing and the statement from the State Water Control Board. Appeal may be made to the State Supreme Court of Appeals.

Fee:

None

Time Requirement:

Review of an application for construction permit may require up to 120 days.

Appeal Process:

Appeal of any decision of the Board begins with a request for a formal hearing. Further appeal may be made to the appropriate circuit court or the State Supreme Court of Appeals.

#### 5.4 Coastal Protection Regulations

Even though the Commonwealth of Virginia does not participate in the federal Coastal Zone Management Program, the Commonwealth has been progressive in terms of recognizing the importance of coastal resources and enacting laws and regulations to protect those resources. The Virginia Wetlands Act (Title 62.1, Chapter 2.1, Code of Virginia) was enacted in 1972 to establish the state policy concerning development and protection of wetlands. The Virginia Coastal Primary Sand Dune Protection Act (Title 62.1, Chapter 2.2) was enacted in 1980 in order to recognize and protect the vital dunes along portions of the Virginia coast. Ownership and regulation of subaqueous lands has long been recognized as a legitimate state right.

The Virginia Marine Resources Commission (VMRC) has been established as the administering agency for coastal permitting decision processes. However, a portion of the authority for permitting decisions has been transferred to local jurisdictions through the creation of Local Wetlands Boards. Wetlands Boards, where established, are responsible for administering the wetlands and coastal dunes permitting programs. The VMRC administers the permit program concerning subaqueous lands, reviews all decisions of local boards and serves as the appeals forum for parties aggrieved by a local decision.

In order to coordinate and facilitate the various coastal permitting programs, the VMRC, in cooperation with other state and federal agencies, has developed a Local/State/Federal Joint Permit Application. The VMRC coordinates the permit application and review process when other permits or agencies are involved. Depending on the particular project or activity, applications may be reviewed by the State Water Control Board, the State Department of Health, and the Virginia Institute of Marine Sciences. Additional permits may be required by the State Water Control Board (see Section 3.2).

Certain activities and projects in the coastal area are also regulated by the U.S. Army Corps of Engineers and require federal review and permits. Under Section 10 of the Rivers and Harbors Act of 1899, the Corps is authorized to regulate certain activities that occur in the "navigable waters of the United States." Under Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500), the Corps also administers a permit program which regulates discharges of dredged or fill material into "waters of the United States." Both of these mandates have been interpreted in Corps regulations to apply not only to open navigable waters but to wetlands as well. In instances where a Corps permit or review is required, VMRC will coordinate the application processing. The Norfolk and Baltimore district offices of the Corps utilizes the Joint Permit Application. Since only about 5% of all permit activity occurs in the Huntington, West Virginia, Nashville, Tennessee, and Wilmington, North Carolina Districts, no attempt has been made to coordinate this limited activity. Furthermore, that area in Virginia currently in the Wilmington District is soon to be transferred to the Norfolk District. In fact, Virginia has officially requested that the entire state be incorporated into the Norfolk District for permit purposes and officials remain optimistic that this request will ultimately be approved.

### 5.4.1 Tidal Wetlands

The Virginia Wetlands Act (Title 62.1, Chapter 2.1, Code of Virginia) establishes state policy on tidal wetlands development and authorizes the Virginia Marine Resources Commission (VMRC) to administer the act. The act establishes a permit requirement for projects that encroach upon tidal wetlands. A major portion of the permitting decision is offered by the statute to localities. Local jurisdictions are authorized to adopt a model wetlands ordinance and create a local wetlands board to administer the permit program locally. Decisions and actions of the local wetlands boards are routinely reviewed by the VMRC.

Projects which affect the "navigable waters of the United States" are subject to a federal permitting program administered by the U. S. Army Corps of Engineers. Permit application and review by the Corps is coordinated by the VMRC through a Joint Permit Application developed in conjunction with other state agencies.

#### AUTHORIZING STATUTE(S)

##### I. FEDERAL:

N/A

##### II. STATE:

Virginia Wetlands Act (Title 62.1, Chapter 2.1, Code of Virginia, (1950), as amended)

#### TITLE OF REGULATION

Wetlands Guidelines  
Wetlands Zoning Ordinances (established by local governments)

#### ADMINISTERING AGENCY

Assistant Commissioner  
Environmental Affairs Division  
Virginia Marine Resources Commission  
P. O. Box 756  
Newport News, Virginia 23607  
804/245-2811

#### SUMMARY OF REGULATION (Local Wetlands Boards)

##### I. APPLICABILITY

The Virginia Wetlands Act provides for the regulation of all but certain specifically exempted activities taking place in the vegetated wetlands of the Commonwealth. For the purposes of this act, vegetated wetlands are defined as all lands lying contiguous to mean low water and extending inland to an elevation above mean low water equal to 1.5 times the mean tidal range at that location, and upon which are growing certain species of wetland plants identified in the guidelines prepared by the VMRC. Jurisdiction of this act is limited to "Tidewater Virginia," a statutory list of Virginia counties and cities generally corresponding to that area of Virginia east of the "fall line."

## II. REGULATORY REQUIREMENTS

The Virginia Wetlands Act requires the granting of a permit by either a local wetlands board or VMRC for most uses or development in vegetated wetlands. Some uses such as private non-commercial piers and catwalks constructed on open piles are exempted from the permit requirement.

Developments in wetlands are required to be judged according to established standards. These standards state that wetlands of primary ecological significance shall not be altered so that the ecological systems in the wetlands are disturbed. In addition, development to the maximum extent possible, shall be concentrated in wetlands of lesser ecological significance, in wetlands that have been irreversibly disturbed, and in areas apart from the wetlands.

## III. PERMIT REQUIREMENTS

### Application:

The Virginia Marine Resources Commission and the State Water Control Board have developed a single application form which covers wetlands permits in addition to other coastal-related permits. The Joint Permit Application must be submitted to the VMRC, who will forward the application to other appropriate agencies, including the local wetlands board. The required application form must be submitted along with a detailed map of the affected site.

### Information Required:

The required application must indicate:

1. Name and address;
2. Detailed project description;
3. Names and addresses of adjacent landowners and known claimants of water rights;
4. Cost estimate;
5. Purpose of the project including any public benefit;
6. Initiative measures to reduce environmental degradation; and
7. Estimated completion data.

The required map must indicate:

1. The area of wetland directly affected and the location of the proposed project;
2. The area of existing and proposed fill and excavation;
3. Location and dimensions of any proposed channel and the disposal area
4. All existing and proposed structures;
5. Sewage collection and treatment facilities;
6. Utility installations, roadways, and other related facilities; and
7. Type of equipment to be used and the means of equipment access to the activity site.

### Review and Processing:

Once the completed application and necessary drawings are received by the VMRC, copies are made and circulated to the appropriate state and federal agencies, including the local wetlands board. Not later than



60 days after receipt of the application, the wetlands board shall hold a public hearing. Notice of the hearing is mailed to appropriate agencies and individuals, and a notice is published at least once a week for two weeks prior to the hearing in a newspaper having a general circulation in the affected locality. The applicant is responsible for the cost of the notice. The Board must make its decision within 30 days after the hearing. If the Board fails to act within that time, the application is deemed approved.

The Commissioner of VMRC reviews all decisions of the local wetlands boards and notifies the Commission of any decision which should be further reviewed. Under certain circumstances, the Commission must review the local decisions. The Commission may modify, remand or reverse the decision of the wetlands board.

Fee:

A non-refundable processing fee submitted along with the application is required by the local wetlands board as indicated in the local ordinance. The VMRC requires a fee of \$25 for projects costing \$10,000 or less, and a fee of \$100 for projects costing more than \$10,000. If the project requires a permit from the U. S. Army Corps of Engineers, an additional fee of \$100 (commercial) or \$10 (non-commercial) is required. The local wetlands board may also require a modest bond. Fees for VMRC and the Corps permits are not required until after the application has been processed.

Time Requirements:

Applications for wetland permits are usually processed within 90 days.

Appeal Process:

The decision of a local wetlands board may be appealed by petitioning the VMRC within 10 days from the date of the decision. The Commission will review the appeal using the information transmitted by the local wetlands board and any other additional information that may be requested. Further appeal can be made to the appropriate circuit court within 30 days of the Commission's decision.

## 5.4.2 Subaqueous Lands

State law provides for state jurisdiction over subaqueous coastal land and authorizes the Virginia Marine Resources Commission to administer the mandated permit program for certain activities. Subaqueous permits are included in the coordinated Joint Permit Application process.

Many dredge and fill activities or other projects involving navigable waters will require one or more permits from the U. S. Army Corps of Engineers. The Virginia Marine Resources Commission will coordinate all permit applications with the Corps through use of the Joint Permit Application.

### AUTHORIZING STATUTE(S)

I. FEDERAL:  
N/A

II. STATE:  
Waters of the State, Port, and Harbors Act (Title 62.1, Chapter 1);  
Authority Required for use of subaqueous beds (Section 62.1-3, Code of Virginia (1950), as amended).

### TITLE OF REGULATION

Subaqueous Guidelines (Guidelines for the permitting of activities which encroach in, on or over the submerged lands of the Commonwealth of Virginia)

### ADMINISTERING AGENCY

Assistant Commissioner  
Environmental Affairs Division  
Virginia Marine Resources Commission  
P. O. Box 756  
Newport News, Virginia 23607  
804/245-2811

### SUMMARY OF REGULATION

#### I. APPLICABILITY

The provisions of this statute apply to all subaqueous land lying below mean low water, not including land granted according to compact or special grant.

#### II. REGULATORY REQUIREMENTS

Provisions of state law pertaining to subaqueous lands limits the extent of private property rights on Virginia's bays, rivers, creeks, and shores of the sea to mean low water. Proper authority is necessary for any trespass or encroachment upon state bottoms. Permits are required for all reasonable activities on state bottoms including: dredging and mining, the placement of wharves and bulkheads, and the dredging and filling by owners of riparian lands in the waters opposite such riparian lands. Activities exempted from the permit requirements include: erection of

properly authorized dams, uses of subaqueous beds for commercial fishing purposes, uses incident to the construction and maintenance of congressionally approved navigation and flood control projects, and the construction of certain private piers for non-commercial purposes.

### III. PERMIT REQUIREMENTS

#### Application:

Applicants for permits for the construction on or alteration of state-owned subaqueous lands must file a Joint Permit Application with the Virginia Marine Resources Commission.

#### Information Required:

Information necessary to complete the Joint Permit Application must be provided (see Section 5.4.1).

#### Review and Processing:

Once a completed application is received by the VMRC, copies of the application are sent to other appropriate state agencies for review and comment. Property owners listed by the applicant as adjacent to the project location will be notified of the permit application and provided a copy of the application drawings. A joint state/federal public notice will be prepared by the Corps and distributed to a computerized distribution list monitored by the Corps. A field inspection may be conducted by a Commission engineer. Upon receipt of comments by state agencies, adjacent property owners and other interested parties, the application is acted upon by the Commission at its regular monthly meeting.

The Commissioner of Marine Resources may approve permits without extensive review when such proposals are not protested by any citizen or objected to by any state agency, when the project's value does not exceed \$50,000, and when the project does not require another Virginia Marine Resources permit.

All permits shall contain an expiration date for authorized construction and dredging. The expiration date for construction is normally three years from the date of issue. Certain maintenance dredging permits may be granted for five years.

#### Fee:

The following fees and royalties are applicable to all subaqueous permits. Fees are due only after the proposed project is approved.

Projects \$10,000 or less:	\$25 application fee
Projects more than \$10,000:	\$100 application fee
New Dredging:	\$.10-.30 per cubic yard
Submerged/overhead crossing:	\$1.00 per linear foot
Filling:	based on appraisal or negotiated
Borrow material:	generally assessed near the \$.30 maximum per cubic yard.

#### Time Requirement:

No mandated review period has been established, however, most permits are processed within 60 days.

Appeal Process:

Appeal of any decision by the Commissioner can be made by petitioning for a formal hearing before the full Commission at one of the regular monthly meetings. Further appeal can be made to the appropriate circuit court.

### 5.4.3 Coastal Primary Sand Dunes

#### INTRODUCTION

The Virginia Coastal Primary Sand Dune Protection Act (Title 62.1, Chapter 2.2, Code of Virginia) establishes the state policy concerning coastal dune protection and authorizes local governments to adopt a model ordinance and administer the Act. Permits are required for certain activities that will alter or encroach upon the coastal primary sand dunes. This permit program uses the institutional framework established in the Wetlands Act.

#### AUTHORIZING STATUTE(S)

I. FEDERAL:  
N/A

II. STATE:  
Coastal Primary Sand Dune Protection Act (Title 62.1, Chapter 2.2, Code of Virginia (1950), as amended)

#### TITLE OF REGULATION

Guidelines for the Permitting of Activities Which Encroach Into Coastal Primary Sand Dunes

#### ADMINISTERING AGENCY

Assistant Commissioner  
Environmental Affairs Division  
Virginia Marine Resources Commission  
P. O. Box 756  
Newport News, Virginia 23607  
804/245-2811

#### SUMMARY OF REGULATION

##### I. APPLICABILITY

The provisions of this act and the corresponding guidelines apply to coastal primary sand dunes located in the cities of Hampton, Norfolk, and Virginia Beach, and the counties of Accomack, Lancaster, Mathews, Northampton, and Northumberland.

##### II. REGULATORY REQUIREMENTS

The Virginia Coastal Primary Sand Dune Protection Act requires the granting of a permit by either the local wetlands board or VMRC for certain activities that may significantly alter the primary sand dunes. Sand dunes are identified according to their location, shape, and vegetative covering. A model ordinance has been established for local adoption which outlines specific permitted or exempted uses.

Standards and guidelines have been established to aid in the permitting process. Generally, no permanent alteration or construction should take place upon any coastal primary sand dune which would impair the natural

functions of the dune, physically alter the contour of the dune, or destroy the natural vegetative cover.

### III. PERMIT REQUIREMENTS

A permit program has been established which makes use of the local wetlands board authorized under the Wetlands Act (see Section 5.4.1). Generally, the application and review procedures are similar to the wetlands permit program. The Virginia Marine Resources Commission administers the permit program in the event that a local wetlands board has not been established. Refer to Section 5.4.1 concerning tidal wetlands for details about the application and processing procedures.

# ECOLOGICAL/SOCIAL PRESERVATION

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## 6.0 ECOLOGICAL/SOCIAL PRESERVATION

Unique ecological and cultural features enhance the quality of life and are often the focus of special legislation. The federal government and many states have enacted laws specifically to protect special features and resources such as threatened and endangered species, wetlands, and archaeological and historical resources. The commonwealth of Virginia has also recognized the importance of these special resources and has enacted several laws specifically to preserve these resources.

Wetlands legislation in Virginia pertains only to tidal wetlands along the Virginia coast and is detailed in Section 5.4.1. Archaeological and historical resources are recognized as important cultural and educational resources in Virginia and are the specific concern of several state laws and agencies (see Section 6.3). The Virginia Erosion and Sedimentation Control Law recognizes the importance of erosion control in preserving terrestrial as well as aquatic environments and is detailed in Section 6.4.



## **6.1 Rare and Endangered Species**

The Commonwealth of Virginia has not enacted any legislation or regulations specifically pertaining to rare and endangered species. A separate state listing is not maintained. However, the state does recognize the federal list of threatened and endangered species and considers these species when reviewing environmental impact statements and reports.

Review comments from the Virginia Commission of Game and Inland Fisheries are advisory only and do not have any state legislative authority. Any projects receiving federal funding would have to comply with the Federal Endangered Species Act of 1973 (P.L. 93-205), as amended 1978.

## **6.2 Wetlands**

The Virginia Wetlands Act (Title 62.1, Chapter 2.1, Code of Virginia (1950), as amended) is applicable only to tidal wetlands. Details of this act and the established state regulatory program are discussed in Chapter 5.4, Coastal Protection Regulations.

Certain activities which impact inland wetlands may be subject to regulation by the U.S. Army Corps of Engineers under Section 404 of the Federal Water Pollution Control Act Amendments of 1972.

### 6.3 Archaeological and Historical Resources

Historical and archaeological resources in Virginia are the subject of several laws and an executive order of the governor. The Virginia Historic Landmarks Commission has been established as the administering agency for these laws and has specific powers and duties outlined in the law.

The Virginia Historic Landmarks Act (Title 10, Chapter 11, Code of Virginia (1950), as amended) establishes the Virginia Historic Landmarks Commission and outlines the powers and duties of the Commission. The Commission is responsible for conducting a survey of historically significant sites and structures and maintaining a state list of these designated properties. The Commission may also establish historic districts in cooperation with local governments. The Commission is also authorized to solicit and accept gifts and appropriations and spend these funds on the purchase, lease, or maintenance of historic properties or easements.

The Virginia Historic Landmarks Commission is also responsible for carrying out the provisions of the Virginia Antiquities Act (Title 10, Chapter 12.1, Code of Virginia (1950), as amended). The Commission is authorized to carry out its duties only with respect to antiquities located on state-controlled property or designated state archaeological sites. A state archaeological site is an area designated by the Commission from which it is reasonable to expect to find objects of antiquity. State archaeological sites may be designated on private property or on property owned by any city, county, town, or board of authority in the Commonwealth, provided that expressed prior written consent of the owner is obtained. A permit must be obtained from the Virginia Historic Landmarks Commission before any field investigation or excavation is conducted on a state archaeological site (see Section 6.3.2 for permit requirements).

In 1976 an executive order was issued from the governor's office which provides for official review of plans concerning state-owned properties listed on the Virginia Landmarks Register. Executive Order No. 47 requires the heads of agencies in charge of state-owned historic properties to submit all plans for significant alteration, landscaping, or demolition to the Virginia Historic Landmarks Commission. Comments received from the Commission will be considered when reviewing authorization for such plans. Through this review, the integrity of state-owned historic properties will be maintained and protected.

In addition to these state powers and duties, local governments have been given the power to enact local ordinances pertaining to historic districts, and properties. Most local ordinances establish a review board to administer the local programs. Most local ordinances control construction, alteration or demolition in historic districts. Local governments also have the power to acquire, by any legal method, an interest in property to insure proper maintenance and management of the historic property. The right of condemnation may not be used, however, unless the historic value of the property is about to be destroyed.

### 6.3.1 Underwater Historic Property

#### INTRODUCTION

The Virginia Historic Landmarks Act establishes a permit program which regulates exploration and recovery of underwater historic property. This section of the Code relates to all submerged cultural resources lying on state-owned bottomlands. Permits are issued by the Virginia Marine Resources Commission, and concurrence of the Virginia Historic Landmarks Commission is required. Permit activities are carried out under VHLC supervision.

#### AUTHORIZING STATUTE(S)

I. FEDERAL:

N/A

II. STATE:

Virginia Historic Landmarks Act: Section 10-145.9, Underwater Historic Property (Title 10, Chapter 11, Code of Virginia (1950), as amended)

#### ADMINISTERING AGENCY

Virginia Historic Landmarks Commission  
221 Governor Street  
Richmond, Virginia 23219  
804/786-3143

Virginia Marine Resources Commission  
P.O. Box 756  
Newport News, Virginia 23607  
804/245-2811

#### SUMMARY OF REGULATION

I. APPLICABILITY

This section of the Virginia Historic Landmarks Act applies to any submerged shipwreck, vessel, cargo, or underwater archaeological specimen that has remained unclaimed on the state-owned subaqueous bottom and has historic value as determined by the Virginia Historic Landmarks Commission.

II. REGULATORY REQUIREMENTS

The Virginia Historic Landmarks Act recognizes the unique and valuable nature of underwater historic property and declares that this property, if located on state-owned subaqueous land and unclaimed, shall be the exclusive property of the Commonwealth. A permit is required before any salvage or recovery operations are conducted involving underwater historic property.

III. PERMIT REQUIREMENTS

Before undertaking any type of recovery operations involving the removal, destruction or disturbance of underwater historic property,

person or corporation involved must obtain a permit from the Virginia Marine Resources Commission. The permit will be granted if the Virginia Marine Resources Commission, with the concurrence of the Virginia Historic Landmarks Commission and the Virginia Institute of Marine Science, finds that granting the permit is in the best interest of the state.

All objects recovered from any salvage operation shall remain the exclusive property of the Commonwealth. The permit shall provide the applicant with a fair share of the objects recovered or a reasonable per centum of the cash value of the objects recovered.

All recovery and salvage operations must be carried out under the general supervision of the Virginia Historic Landmarks Commission.

## 6.3.2 Cave Protection: Archaeology Permits

### INTRODUCTION

The Virginia Cave Protection Act was enacted recently to recognize and protect the state's cave resources, particularly archaeological resources not covered by the Virginia Antiquities Act. Under this act, the Virginia Historic Landmarks Commission is authorized to issue permits to excavate or remove artifacts from caves not designated as Commonwealth archaeological sites.

### AUTHORIZING STATUTE

#### I. FEDERAL:

N/A

#### II. STATE:

Virginia Cave Protection Act (Title 10, Chapter 12.2, Code of Virginia (1950), as amended)

### ADMINISTERING AGENCIES

Virginia Historic Landmarks Commission  
221 Governor Street  
Richmond, Virginia 23219  
804/786-3143

Virginia Research Center for Archaeology  
College of William and Mary  
Williamsburg, Virginia  
804/253-4000

### SUMMARY OF REGULATION

#### I. APPLICABILITY

This statute applies to all exploration and excavation activities involving scientific and archaeological research in caves not owned by the Commonwealth or designated as Commonwealth archaeological sites.

#### II. REGULATORY REQUIREMENTS

The Virginia Cave Protection Act makes it unlawful to remove, kill or otherwise disturb any naturally occurring organisms within any cave, except for safety or health reasons. It is also unlawful to excavate, remove, destroy, injure, deface, or in any manner disturb any burial grounds, historic or prehistoric resources, archaeological or paleontological site, or any other such features which may be found in any cave. Vandalism of any natural cave features is also prohibited.

#### III. PERMIT REQUIREMENTS

To excavate or remove any archaeological, paleontological, prehistoric, and historic features found in caves, a permit is required from the Virginia Historic Landmarks Commission. The applicant must be an historic, scientific, or educational institution, or a professional or amateur archaeologist, who is qualified and recognized in the areas of field investigations or archaeology. Permits are valid for two years and are renewable.

Application:

Application must be made to the Virginia Historic Landmarks Commission. Standard application forms have not been developed and are not necessary.

Information Required:

The applicant must provide a detailed statement to the Commission giving the reasons and objectives for excavation or removal and the benefits expected to be obtained from the contemplated work. Written permission of the owner must be provided if the site of the proposed excavation is on privately owned property.

Review and Processing:

Applications for excavation permits are reviewed by the Virginia Historic Landmarks Commission and the Virginia Research Center for Archaeology.

Fee:

None

Time Requirement:

A mandatory review period has not been established.

Appeal Process:

Appeal can be made in accordance with the Administrative Process Act by requesting a formal hearing. Further appeal can be made to the appropriate circuit court.

## 6.4 Erosion and Sediment Control

### INTRODUCTION

The Virginia Erosion and Sediment Control Law establishes a statewide program to require soil conservation planning and practice on construction related land-disturbing activities. The program is implemented primarily through 171 locally administered erosion and sediment control programs. Persons undertaking land-disturbing activities must submit plans and implement conservation measures in accordance with local requirements. The Virginia Soil and Water Conservation Commission establishes minimum statewide conservation standards and monitors the effectiveness of local programs.

### AUTHORIZING STATUTE(S)

#### I. FEDERAL:

N/A

#### II. STATE:

Erosion and Sediment Control Law (Title 21, Chapter 1, Code of Virginia (1950), as amended)

### TITLE OF REGULATION

Virginia Erosion and Sediment Control Handbook

### ADMINISTERING AGENCY

Chief Engineer  
Virginia Soil and Water Conservation Commission  
830 East Main Street, Suite 800  
Richmond, Virginia 23219  
804/786-2064

### SUMMARY OF REGULATION

#### I. APPLICABILITY

The standards and specifications outlined in the Virginia Erosion and Sediment Control Handbook are applicable to all persons (corporations, agencies, etc.) who intend to disturb more than 10,000 square feet of land for most types of commercial, industrial, or residential construction.

#### II. REGULATORY REQUIREMENTS

In accordance with the Erosion and Sediment Control Law, the Virginia Soil and Water Conservation Commission maintains minimum state standards and specifications for erosion control practices. Before certain land-disturbing activities can commence, a plan to control erosion and sedimentation must be prepared and approved in accordance with the state guidelines. The state law specifically exempts a wide range of minor land-disturbing activities as well as mining, forestry and farming. Under the state law, local review agencies have been established and authorized to approve local erosion control plans. Local review agencies can be a city or county agency or a soil and water conservation district which has



been designated by the locality.

### III. PERMIT REQUIREMENTS

An approved Erosion and Sedimentation Control Plan serves as a permit for certain construction activities. An approved plan does not exempt the applicant from other local building license and permit requirements.

#### Application:

Erosion and Sedimentation Control Plans must be submitted to the local review agency. Plans involving construction projects undertaken by a state agency or on state-owned land must be submitted to the Virginia Soil and Water Conservation Commission. To determine the responsible authority, interested persons can either contact the appropriate local government or the Soil and Water Conservation Commission.

#### Information Required:

The required Erosion and Sedimentation Control Plan is composed of two parts, a narrative and a map. The narrative should include:

1. Project description;
2. Existing site conditions;
3. Description of adjacent areas;
4. Soils information;
5. Description of potential erosion problem areas;
6. Erosion and sediment control measures;
7. Stabilization plans following construction;
8. Stormwater management considerations;
9. Maintenance schedule; and
10. Calculations used in the design of certain facilities.

The required map should indicate:

1. Location of site in relation to surrounding areas;
2. Existing contours;
3. Existing vegetation;
4. Boundaries of soil types;
5. Critical erosion areas;
6. Existing drainage patterns;
7. Final contours;
8. Limits of clearing and grading; and
9. Location of erosion and sediment control practices.

#### Review and Processing:

Most erosion and sediment plans are reviewed by a local plan-approving authority (except state-sponsored and interjurisdictional projects which are reviewed by the Commission). The number of copies required for submittal differs among the localities. The Commission requires three copies. When a plan is found inadequate, the plan-approving authority shall specify the modifications, terms or conditions necessary for approval. Public notification hearings or comments are not mandated.

Fee:

Local plan approving authorities may charge an applicant up to a maximum of \$150 to cover the costs of processing a control plan. The Commission does not charge a fee.

Time Requirement:

Local review agencies must approve or disapprove a control plan within 45 days from the date of receipt. The Commission has a 60-day review period. In either case, if no action is taken by the agency within the mandated time period, the control plan shall be deemed approved.

Appeal Process:

The final decisions of the localities, conservation districts, and the Commission are subject to review by the appropriate circuit court. Appeals must be filed within 30 days of the written decision of a given authority. Final decisions of established conservation districts are subject to administrative review by the Commission before a judicial review is conducted.

# LOCAL REGULATORY POLICY

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## 7.0 LOCAL REGULATORY POLICY

Local governments in Virginia have been given a considerable degree of latitude concerning traditionally local regulatory authority. However, local governments are often hindered in their efforts to enact innovative or individual legislation. Land use control and zoning are traditionally local concerns and have been specifically supported through state enabling legislation. Several state environmental regulatory programs have been implemented and are administered through local authorities. Other state laws, such as the Virginia Air Pollution Control Law, enable local governments to adopt more stringent standards and enforce local ordinances.

Local regulatory powers are limited, however, by the state's continued adherence to the "Dillion Rule". The Dillion Rule, put forth by Judge John F. Dillion in Commentaries on the Law of Municipal Corporations (1873), holds that the powers of local governments are limited to those expressly granted by the state. Under this rule, whenever doubt exists as to whether a locality has a certain power, the courts will rule against the locality. Because of this rule, local governments in Virginia are often hindered in their efforts to enact special legislation or regulatory programs.

## **7.1 Local Government Land Use Enabling Laws**

Land use planning in Virginia has traditionally been a local responsibility authorized by specific state statutes. The Virginia Planning, Subdivision of Land, and Zoning Act (Title 15.1, Chapter 11, Code of Virginia (1950), as amended) requires local governments to create planning commissions, adopt comprehensive plans and regulate the subdivision of land. Under state law, local governments may also enact zoning ordinances to implement their comprehensive plans. However, zoning is a voluntary function. Local flexibility concerning zoning decisions has recently been increased through state legislation which enables localities to enact conditional zoning (also known as contract zoning).

Several other state laws grant local governments the authority to implement and administer state regulatory programs which may directly and indirectly affect land use. The Virginia Wetlands Act (Title 62.1, Chapter 2.1) provides local governments with the option of establishing a local wetlands board to administer the mandated permit program (see Section 5.4). The Virginia Coastal Primary Sand Dune Act (Title 62.1, Chapter 2.2), using the institutional framework established under the Wetlands Act, enables local governments to regulate development which may encroach upon the coastal primary dunes. In both cases above, model ordinances have been prepared for local adoption with the understanding that the state will administer the regulatory programs if the local governments choose not to do so. The Virginia Erosion and Sediment Control Law is another state law which establishes a state regulatory program (concerning certain land disturbing activities) and allows for local review and administration.

## **7.2 Substate Management Districts**

The Commonwealth of Virginia does not have any substate management districts with specific legislated authority. The Virginia Area Development Act (Title 15.1, Chapter 34, Code of Virginia) established 22 District Planning Commissions to carry out regional planning in Virginia. However, the Commissions are primarily advisory and do not have any specific regulatory powers. Similarly, in some areas Soil and Water Conservation Districts have been established. However, these district offices only administer the established state program.

Several state regulatory agencies have established regional offices with specific geographical areas of jurisdiction. Regional offices have been established to administer state-wide programs more efficiently. Regulatory duties and procedures do not differ among regional offices.

APPENDIX A  
Regional Offices

State Air Pollution Control Board

1. Southwest Virginia  
121 Russell Road  
Abingdon, Virginia 24210
2. Valley of Virginia  
Suite A, 5338 Peters Creek Road  
Roanoke, Virginia 24019
3. Central Region  
7701-03 Timberlake Road  
Lynchburg, Virginia 24502
4. Northeastern Virginia  
107-B Butler Road  
Fredericksburg, Virginia 22401
5. State Capital  
2112 Spencer Road  
Richmond, Virginia 23230
6. Hampton Roads  
Pembroke Office Park  
Pembroke IV - Suite 409  
Virginia Beach, Virginia 23462
7. Northern Virginia  
American Building, Suite 130  
7535 Little River Turnpike  
Annandale, Virginia 22003

State Water Control Board

1. Piedmont Regional Office  
4010 W. Broad Street  
(P.O. Box 6616)  
Richmond, Virginia 23230
2. Northern Regional Office  
5515 Cherokee Avenue  
Suite 404  
Alexandria, Virginia 22312
3. Southwest Regional Office  
408 East Main Street  
(P.O. Box 976)  
Abingdon, Virginia 24210
4. Tidewater Regional Office  
287 Pembroke Office Park  
Pembroke No. 2, Suite 310  
Virginia Beach, Virginia 23462

5. Valley Regional Office  
116 North Main Street  
(P.O. Box 268)  
Bridgewater, Virginia 22812

6. West Central Regional Office  
Executive Park  
5312 Peters Creek Road  
(P.O. Box 7017)  
Roanoke, Virginia 24019