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TENTATIVE AGENDA

STATE WATER CONTROL BOARD MEETING
MONDAY, MARCH 30, 2015

General Assembly Building
9th & Broad Streets,
Richmond, VA 23219

10:00 A.M.

		TAB
I. Minutes (December 11, 2014)		A
II. Regulations - Proposed		
General VPDES Permit Regulation for Seafood Processing Facilities (9VAC25-115)	Daub	B
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III. Significant Noncompliers Report	O'Connell	I
IV. Consent Special Order - Blue Ridge Regional Office CSX Transportation, Inc.	Reynolds	J
V. Public Forum		
VI. Other Business Future Meetings (June 25-26, October 1-2 and December 10-11)		

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to the staff contact listed below.

PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during

the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is an additional comment period, usually 45 days, during which the public hearing is held.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

CASE DECISIONS: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented during the public comment period (i.e., those who commented at the public hearing or during the public comment period) up to 3 minutes to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a **FORMAL HEARING** is being held.

POOLING MINUTES: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

NEW INFORMATION will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances, new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378; fax (804) 698-4346; e-mail: cindy.berndt@deq.virginia.gov.

General VPDES Permit Regulation for Seafood Processing Facilities VAG 52 Amendments to 9VAC25-115 and Reissuance of General Permit: The current VPDES Seafood Processing General Permit will expire on July 23, 2016, and the regulation establishing this general permit is being amended to reissue another five-year permit. The staff is

bringing this proposed regulation amendment before the Board to request authorization to hold a public comment period and a public hearing. A summary of the draft amendments follows. The proposed regulation takes into consideration the recommendations of a technical advisory committee formed for this regulatory action. The technical advisory committee consisted of industry representatives, a consultant and DEQ staff.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
Section 10	NA	Definition of stormwater not deleted.	Definition for stormwater was deleted as it is repetitive of the same definition in the VPDES Permit Regulation and the words and terms used in Chapter 115 have the meaning defined in the VPDES Permit Regulation (9VAC25-31). No impact.
NA	Section 15	Applicability of incorporated references based on the dates that they became effective not in the regulation.	Applicability of incorporated references based on the dates that they became effective. This section was added to update all Title 40 Code of Federal Regulations (CFR) within the document to be those published as of July 1, 2014. This is a recommendation from the DEQ Office of Policy so dates do not need to be added for each CFR reference. No impact.
Section 20 and 50	NA	Purpose and Part I - Effective and expiration dates reflect 2011 -2016 term.	Purpose and Part I - Effective and expiration dates were updated to reflect this reissuance. Impact – allows permit to be used for another 5-year term (2016-2021).
Section 30 A, B	NA	Same requirement.	Authorization – Reformatted to match structure of other general permits being issued at this time. The requirement that the discharge must meet the assumptions and requirements of a total maximum daily load (TMDL) was reworded to match other general permits. No impact.
Section 30 C	NA	Same requirement.	Authorization –Clarified that <i>"Compliance with this general permit constitutes compliance for purposes of enforcement with the federal Clean Water Act §§ 301, 302, 306, 307, 318, 403 and 405 (a) through (b), the State Water Control Law, and applicable regulations under either, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation"</i> which better mirrors the language in the permit regulation at 9VAC25-31-60. No impact as this is a clarification.
Section 30 D	NA	Continuation of Permit Coverage – dates are updated to continue to allow coverage under the 2006 expired general permit until the new permit is reissued and coverage is granted or coverage is denied; provided the permittee has submitted a timely registration and is in compliance with the existing permit..	Continuation of Permit Coverage – dates are updated to continue to allow coverage under the 2011 expired general permit until the new permit is reissued and coverage is granted or coverage is denied; provided the permittee has submitted a timely registration and is in compliance with the existing permit. Impact - these dates are updated with each reissued general permit so permittees can discharge legally and safely if the permit reissuance process is delayed.
Section 40	NA	Registration Statement – Clarification does not exist although statement that late registration statements will be	Registration Statement – clarified that existing owners are allowed to miss the June 23, 2016 deadline for registration submittal, but as long as they submit a complete statement before the expiration date of the

		accepted but not retroactive is present. Registration deadline for existing individual permit owners that wish to be covered under this general permit is 210 days prior to the expiration date of the individual permit. The allowance to submit registrations by electronic mail is not mentioned.	permit (July 23, 2016), DEQ will grant a continuance under the old 2011 permit until such time as the board reissues the permit or determines that they are not eligible for continued coverage. This is language that is going into all general permits as they are reissued. Registration deadline for existing individual permit owners that wish to be covered under this general permit was changed from 210 to 240 days prior to the expiration date of the individual permit. This extra 30 days gives DEQ time to review the registration and if coverage is not appropriate, the permittee still has another 30 days to submit an individual permit application and still meeting their "180 day prior to" permit deadline for individual permit application submittal. Several clarifications were also added to the required registration information to ensure DEQ receives the needed information to make a determination about coverage. Finally, the allowance to submit registrations by electronic mail was added. No likely impact.
Section 50 Part I A	NA	General Permit Limits – effective and expiration dates reflect the current 2011-2016 permit term. Clarifications do not exist.	General Permit Limits – effective and expiration dates changed to reflect the upcoming permit term. Annual monitoring clarified to reflect it is based on a calendar year. Hand-shucked oyster processing for existing sources which process more than 1,000 lbs of raw material per day (Limit page I A 18) added a definition of raw material which for hand-shucked oyster processing means the weight of the shucked product. This is different from raw material in the traditional food processing industry which means the product as it comes to the plant (e.g., whole fish or whole clams). This interpretation reflects the existing federal effluent guidelines for the seafood processing industry and is not a new interpretation. No impact.
Section 50 Part I B		General Permit Special Conditions – clarifications do not exist.	General Permit Special Conditions – In special condition 6 clarified that the permittee shall notify the department if they exceed 100 µg/l or 500 µg/l <i>of the toxic pollutant</i> not limited in the permit. This is not a new condition, rather a clarification referring back to what is actually being measured (the toxic pollutant). The quantification level for biological oxygen demand (BOD) was corrected to one significant digit and not two significant digits (2 rather than 2.0). This accurately reflects the BOD analytical test methodology. New special condition 10 contains termination procedures that describe what the permittee does if they wish to terminate their coverage under this permit. It is standard language that applies to all general permits. No impact.
Section 50 Part II	NA	Stormwater Pollution Prevention Plans (SWPPP) – deadlines reflect the current 2011 - 2016 permit term. Clarifications do not exist. Preparation or updates and	Stormwater Pollution Prevention Plans (SWPPP) – deadlines changed to reflect the upcoming permit term. Preparation (or update) and implementation of SWPPP changed to within 60 days of permit coverage. This made all SWPPP preparation (or update) and implementation deadlines the same for all existing and

		implementation of SWPPP for existing facilities were not later than December 30, 2011 and new facilities were required to prepare and implement the SWPPP prior to submitting the registration statement.	new permittees. Deleted paragraph at B 5 which required the SWPPP to include a summary of sampling data collected because there is no stormwater sampling associated with this permit. Deleted wording that is difficult to enforce such as a requirement to do something <i>to the maximum extent possible</i> or <i>as soon as practicable</i> or <i>if possible</i> . New paragraph G was added that lists allowable non-stormwater discharges. These allowable discharges are standard language for stormwater permits that was inadvertently left out of these stormwater requirements. No impact – clarifications of existing practices.
Section 50 Part III	NA	Conditions Applicable to All VPDES Permits – Requirement in A 4 that samples must be taken in accordance with 1VAC30-45 , Certification for Noncommercial Environmental Laboratories, or 1VAC30-46 , Accreditation for Commercial Environmental Laboratories not in permit but is an existing regulatory requirement. Part III B 2 – Requirement for records retention requirements for sewage sludge use and disposal since sewage discharges was in permit. In Part III I 3, online allowance for immediate (24-hour) noncompliance reporting was not mentioned. In Part III L requirement to meet sewage sludge standards was in the regulation. In Part III Y, waiving the automatic transfer timing (30 days in advance of proposed transfer) was not mentioned. References to modifications and revocations and reissuances were in the regulation.	Conditions Applicable to All VPDES Permits – Added a requirement in A 4 that samples must be taken in accordance with 1VAC30-45 , Certification for Noncommercial Environmental Laboratories, or 1VAC30-46 , Accreditation for Commercial Environmental Laboratories. This is a new regulatory requirement effective January 1, 2012, and is being added to all general permits as they are reissued. Part III B 2 - Removed records retention requirements for sewage sludge use and disposal since sewage discharges are not covered by this permit. In Part III I 3, added online allowance for immediate (24-hour) noncompliance reporting. In Part III L deleted requirement to meet sewage sludge standards as sewage discharges are not covered by this permit. In Part III Y, revised so that the board may waive the automatic transfer timing (30 days in advance of proposed transfer). Permittees are rarely able to meet this requirement and the staff thinks they need some flexibility with this. Also references to modifications and revocations and reissuances have been removed as these events are not appropriate for coverage under general permits. No impact as these are clarifications of existing practices or removal of requirements that do not apply to this permit.

Request to Proceed to Notice of Public Comment and Hearing on Proposed Regulatory Amendments to:
Virginia Water Protection Permit Program Regulation (9VAC25-210-10 et seq.);
Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (9VAC-25-660-10 et seq.);
Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (9VAC25-670-10 et seq.);

**Virginia Water Protection General Permit for Linear Transportation Projects (9VAC25-680-10 et seq.);
and
Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities
(9VAC25-690-10 et seq.)**

At the March 30, 2015 State Water Control Board meeting, the Department of Environmental Quality (Department or DEQ) intends to bring before the Board a request to proceed to notice of public comment and hearing on the proposed amendments to the five regulations listed above.

These changes are being proposed to address desired and needed changes in the implementation of the VWP permit program after approximately 10 years of implementing the current regulations. 9VAC25-210 was last revised in 2006 for general wetland activities and in 2007 for surface water withdrawal activity provisions, but also serves as the base regulation for the four VWP general permit regulations. The four general permit regulations were last reissued in 2006 and expire in August 2016.

Note: The Virginia Registrar maintains the rules for developing regulatory documents, including the way in which proposed revisions are shown in a document (requires use of track-change tool in Microsoft Word software). In the track-change versions of the regulation texts provided to the Board, all revisions show as red font underline, and all deletions show as red font strike-through. The Department encountered problems with the consistency of the track-change tool in Microsoft Word when attempting to move existing text to a new location. At times, moves showed as green font double underline, and at other times, red font underline. For consistency, the Department chose to show all edits as red font underline. The Department found at least one internet source that recognizes this problem with the track-change tool at <https://cybertext.wordpress.com/2014/04/03/word-track-changes-moves/>.

Statutory Authority

The legal basis for all regulations noted herein is the State Water Control Law (Chapter 3.1 of Title 62.1 of the Code of Virginia). Virginia Code § 62.1-44.15 authorizes the State Water Control Board to promulgate regulations necessary to carry out its powers and duties. Specifically, §62.1-44.15:20 through §62.1-44.15:23.1 serves as the basis for protecting state waters, including wetlands.

Background

In October 2013, the Virginia Department of Environmental Quality (DEQ) began the process necessary to reissue the four Virginia Water Protection (VWP) general permit regulations prior to their expiration on August 1, 2016 and to revise the underlying base regulation, Virginia Water Protection Permit Program Regulation 9VAC25-210-10 et seq., which provides much of the overarching authority in administering the VWP general permits. Program staff across all regions identified internal practices described in guidance but not regulation; gathered staff comments and concerns based on experiences over time; held conference calls to discuss priority issues; reviewed program policies and guidance; developed internal work groups to research topics; and prepared a list of topics to serve as the basis for five Notices of Intended Regulatory Action (NOIRA).

In April 2014, the NOIRA for 9VAC25-210-10 et seq. was circulated for Executive Branch review; comments were received; and revisions made to the content. The remaining NOIRAs were exempt from Executive Review at that time. DEQ then submitted all five NOIRAs on May 13, 2014 to the Virginia Registrar for publication.

Notice of Intended Regulatory Action and Technical Advisory Committee

Five Notices of Intended Regulatory Intent (NOIRA) were published in the Virginia Register of Regulations for a 30-day comment period, beginning on June 2, 2014 and ending on July 2, 2014. DEQ utilized the participatory approach by forming an ad hoc Citizens Advisory Group (CAG) that held nine (9) public noticed meetings (August 7, 2014; August 25, 2014; September 9, 2014; September 22, 2014; *October 6, 2014*; October 15, 2014; *November 3, 2014*; December 8, 2014; and January 8, 2015).

The Department developed a list of topics for the CAG to review and prioritize before staff made extensive efforts to draft proposed revisions to the regulatory language. No proposed language was presented to the CAG prior to the first CAG meeting so that the Department could obtain ideas and comments from CAG members early in the process. At the first CAG meeting, the members were provided with the guidelines for the process, including the roles and responsibilities of the members, an explanation of the participatory process, and the meaning of “consensus”.

As the CAG meetings progressed, proposed language was introduced, and the Department requested comments from the CAG members. Many topics were addressed in more than one CAG meeting, particularly where comments were received on the topic or proposed language. Due to the nature of the activities regulated under the Virginia Water Protection Permit Program, the interests of the CAG members were divided into the broad categories of ‘wetlands’ and ‘water supply’, and thus, certain members of the CAG requested a separate advisory process be convened to focus on the water supply provisions being proposed for revision. DEQ held two additional CAG meetings, noted by italics above, where only the provisions related to surface water withdrawals were discussed.

CAG representatives from the Home Builders Association of Virginia (HBAV), the Virginia Association for Commercial Real Estate (VACRE), EEE Consulting, Inc. (EEE), and Virginia Manufacturers Association (VMA)/Mission H2O expressed concern about timeline for the CAG meetings. DEQ adhered initially to the timeline under Executive Order 17, as revised and reissued on July 1, 2014, but then added two additional meetings noted above to address the concerns.

The CAG came to consensus on most of the revisions proposed by the Department and/or CAG members, with the exceptions of general permit transition and term length applicable to each general permit regulation, and revisions to certain surface water withdrawal activity provisions in 9VAC25-210. Each of these issues are discussed in further detail in this memorandum.

The remaining proposed revisions fell into three categories: those achieving consensus, as defined in the advisory group guidelines; those achieving consensus but not achieving unanimity among the CAG members; and those achieving consensus with one or two dissenting opinions among the CAG members. The Department considered all suggestions and made decisions on further revisions to the regulation language accordingly. Additionally, revision efforts continued after the CAG process concluded to: 1) further address several CAG member comments submitted too late to review as a group, but which were posted online, and 2) to further edit language found to later be incorrect or inconsistent based on Department review. Not all of these additional revisions were distributed to the CAG members but will be made available online as part of the proposed regulation texts.

This memorandum summarizes the key issues discussed, the varying opinions and suggestions of the CAG, and how the issue was resolved in the draft regulation before you.

Key Issues Addressed by the Proposed Regulatory Changes – 9VAC25-210

A. Reorganization of Chapter 210:

The Department identified a lack of clarity in the existing regulation, particularly for provisions for surface water withdrawal activities, that stems from the current structure of Chapter 210. To address this, the Department proposed to the CAG members the option of revising the entire structure of Chapter 210 or the option of a smaller scale effort focused on consolidating surface water withdrawal provisions into its own part under Chapter 210. The CAG members requested that the Department pursue the latter proposal due to the opinion this provides greater clarity to the regulated public regarding provisions applicable to ‘water supply’ versus for ‘wetlands.’ The Department presented the proposed surface water withdrawal part to CAG members that showed existing sections relocated in whole or in part. Some CAG members voiced concern the reorganization would appear as a substantive change. However, the benefits of the proposal were discussed and majority felt those outweighed discomfort associated with moving sections of regulation. The CAG members reached consensus on consolidating the surface water withdrawal provisions within its own part under Chapter 210.

B. Surface water withdrawal revisions proposed under new part:

Significant portions of the surface water withdrawal provisions were incorporated into Chapter 210 in 2007. During that regulatory process, it was anticipated that the regulation would be revisited to evaluate the need for any further revisions based upon implementation of the surface water withdrawal provisions in the regulation. Since 2007, the Department has identified provisions in the regulation that are unclear based upon current application of the regulation. The revisions proposed by the Department, which received the most discussion by the CAG members and resulted in various degrees of nonconsensus, are discussed below.

Definition of Public Water Supply Safe Yield:

DEQ and the Virginia Department of Health (VDH) staffs have worked closely together over the past year on the topic of safe yield and concluded it desirable for the definition to reside in DEQ's, not VDH's, regulation. Recently, the Technical Advisory Committee reviewing VDH's water works regulations reached consensus on removing the definition from VDH's regulation and supports the inclusion of the definition into DEQ's regulation. Through these discussions, the agencies have also come to agreement on the definition currently proposed through this regulatory process.

The Department's proposal to add a definition for public water supply safe yield defines the term based upon its current implementation. Mission H2O/Virginia Manufacturers Association (VMA), Dominion and Fairfax Water voiced the following concerns with the Department's proposal: the potential implication associated with moving the term from VDH water works regulation (12VAC5-590-830.A.2) to DEQ's regulation, viewed the proposed definition as a substantive change from the current VDH definition and one that would present uncertainty as to its application in VDH permits, and questioned how the change affects grandfathered users (surface water withdrawals initiated prior to July 1, 1989). The City of Norfolk also provided comment and proposed revisions to the definition for DEQ's consideration.

DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate quantity and quality of water, otherwise known as the safe yield of the system. This responsibility is assigned to DEQ as this is the agency with sole authority over water quantity and the volumes that may be withdrawn from a water source. DEQ is also responsible for protecting existing beneficial uses of state waters, as defined in Section 62.1-44.3 of the Code of Virginia that may be impacted by such activities. The Department believes the proposal is prospective in nature, applying only to new withdrawals or excluded withdrawals that need a new 401 certificate to increase the withdrawal beyond what it was in July 1, 1989. Locating the term within DEQ's regulation more accurately reflects the responsibilities of both agencies. Therefore, DEQ and VDH staffs agree that the placement of the definition should be within DEQ regulation as the agency authorized to determine the water withdrawal availability.

The definition for safe yield currently located in 12VAC5-590-830.A.2 of the VDH regulation has been unchanged since 1993 and therefore does not reflect the evolution of the term. Originally, safe yield was simple statistical calculation based on the probability of a given flow being available in a waterbody. The calculation did not take into consideration what additional water may be needed to ensure water users downstream also received the water to which they are entitled. In today's practice, the determination of available water has evolved to identify that other factors need to be considered, such as other existing beneficial uses and facility operations to provide a more adequate understanding of water source's safe yield. This information is considered to be critical by VDH to determine if the water source is the factor limiting a particular waterworks.

The Department considered the concerns raised during the CAG meetings and proposed a number of revisions in attempts to address those concerns. The term was revised from "safe yield" to "public water supply safe yield" to address the concern voiced by Dominion that the relocation of the definition would broaden its application to withdrawals other than water works. The Department also accepted the revisions provided by City of Norfolk. The Department met separately with Mission H2O/VMA and proposed additional alternative revisions to the definition that included adding the existing definition for safe yield as a separate definition and revising the term of the proposed definition, but the proposal failed in reaching a compromise. The Department understands that their fundamental concern is any change to the existing VDH definition and its inclusion in the VWP regulation.

The Department appreciates the discomfort that arises when change such as that proposed with this definition is considered. Although the Department made efforts to reach a compromise regarding the proposal, the effort failed. The Department believes the proposed definition and location of safe yield under the DEQ regulation offers clarity on the roles

and responsibility of DEQ and VDH and acknowledges the evolution of the term over the last 20 years. This definition was developed through coordination with VDH and both agencies concur with the proposal to this regulation. Despite the outstanding concerns voiced by a few CAG members, staff from both agencies feels that this change is in the best interest of the agencies, effective resource management, and provides greater certainty of water availability to the regulated waterworks.

Definition of Public Water Supply:

The Department originally proposed revisions to this definition to provide clarity that the definition for “public water supply” characterizes the water use type and not a withdrawal type. The revisions proposed to the members of the CAG were to remove the word “withdrawal” from the definition to provide that clarity and included text revisions to improve readability.

The Department received comments from the City of Norfolk, an interested party during the CAG meetings, voicing concern that the definition of public water supply does not adequately define a system such as theirs. The City’s system sells water to domestic users as well as industrial and commercial customers, who use the water in their processes. The City is concerned that the definition may sometime in the future limit a system like theirs from being considered a public water supply. Fairfax Water, a member of the CAG, agreed with the concerns raised by the City.

The focus of this definition is on domestic use because this is a primary component of a public water supply has typically been drinking water. The Department believes diverse systems that include other uses such as those described by the City are not excluded from being considered part of a “public water supply” due to the phrase “but not limited to” that is found in the following part of the definition “...for the production of drinking water, distributed to the general public for the purpose of, but not limited to, domestic use.” The Department believes revising the term as proposed by the City may result in an unintentional substantive change, particularly when prioritizing water usage during times of drought. Public water supply has enjoyed the highest priority in those cases when reductions are necessary because of the large volume of drinking water use. By adding other uses explicitly, the priority, as stated in § 62.1-44.15:22 and § 62.1-243 of the Code of Virginia, becomes confused and exposes the agency to potential unnecessary legal risk in implementation.

Upon consideration of the City’s comments, the revisions proposed are limited to revising the term from “public surface water supply withdrawal” to “public water supply” to clarify the term applies to the use type of a withdrawal, leaving the rest of the definition intact

Tidal surface water withdrawal exclusion:

Through discussions with CAG members regarding revisions proposed to the surface water withdrawal exclusion to improve readability, a misunderstanding was identified regarding the intent of the tidal surface water exclusion of 2 million gallons per day (mgd) for consumptive uses. It appears some of the confusion stems from the current structure and wording used for a set of the exclusions in the existing regulation, 9VAC25-210-60.B.4 through 15. Mission H2O/VMA believed the exclusion of 2 mgd pertained only to the consumptive portion of the cumulative volume withdrawn from tidal waters because there was a separate exclusion that states withdrawals from tidal waters for nonconsumptive uses were excluded.

The current and historical practice by the Department in applying thresholds for exclusions and permits is based upon the total volume of water proposed to be withdrawn. The distinction between consumptive and nonconsumptive components of that volume is distinguished to enable the Department to gain a better understanding of the water budget to facilitate project review. It would be a departure of practice to apply the 2 mgd limit to only the consumptive portion of the total withdrawal for this one exclusion and that was not intended when the language was added in 2007. The Department agrees the current structure of this set of exclusions causes confusion and proposed revisions to address the issue. Consensus was reached regarding restructuring this set of exclusions; however, Mission H2O/VMA did not concur with the intent of the 2 mgd tidal exclusion as discussed by staff.

Application informational requirements for surface water withdrawals:

Since the 2007 regulation revisions to expand surface water withdrawal provisions, the Department has become aware that the current permit application requirements lack clarity and are confusing to both staff and the regulated public. The reorganization of the provisions addresses a portion of this issue through clearly identifying and grouping together informational requirements necessary for staff to review an application for a surface water withdrawal. However, further clarification is necessary to address the specific information to be submitted.

Currently, the regulation identifies two categories of surface water withdrawal projects, minor surface water withdrawal and major surface water withdrawal. The distinction between the two categories is based upon a threshold of a maximum monthly withdrawal of 90 million gallons. This distinction was created during the 2007 regulation revisions in an attempt to identify a reasonable threshold for which withdrawals could be considered “minor.” It was assumed that smaller withdrawal volumes result in less impact and thus, less information is needed to assess those impacts, providing a more streamlined process. The exception provided in the regulation pertained to any surface water withdrawal that involves instream flow requirements, which would then need to submit all the information requested for a major surface water withdrawal. However, the application section in the regulation does not identify the potential for this additional requirement to pertain to minor surface water withdrawal applications.

The regulations lack clarity in the information needed for water withdrawal applications as the information requirements are located in several different locations and clear linkages between those locations are not provided. As a result, applications are often incomplete because it is unclear as to the information needed. Therefore, the Department proposes to revise the regulation to reflect the current application of the regulation through removal of the distinction between “minor” and “major” surface water withdrawals and establish one comprehensive set of informational requirements for all withdrawals.

Based upon the Department’s experience from implementing the regulation and reviewing surface water withdrawal projects, it became apparent that the regulatory presumption that a smaller withdrawal resulted in smaller impacts and therefore less review was needed was flawed. The Department has found the size of the withdrawal volume is not always indicative of the impact to the surface water. Rather, it’s the relative size of the withdrawal volume to the size of the waterbody and the presence of other existing beneficial uses. For example a relatively small withdrawal in a small watershed can have significant impacts. Therefore, staff conducts the same review and cumulative impact analysis for all surface water withdrawals to evaluate potential impacts to surface waters and other existing beneficial uses. To facilitate this review, the same set of information is necessary for all withdrawals. Additionally, the Department has found all withdrawals involve instream flow requirements as such limits are necessary to ensure sufficient downstream flows are provided to downstream beneficial uses.

While there was consensus among the CAG members regarding consolidating the informational requirements, there was concern of removing the appearance of a streamlined process for minor surface water withdrawals. While some members appreciated that the regulations currently require more information for such withdrawals than it appears, it was felt that while it lacked clarity, the proposal would appear to be a substantive change. The concern was voiced particularly by Virginia Agribusiness as the majority of their members would be considered minor surface water withdrawals. Mission H2O/VMA commented that small withdrawal projects should be subject to streamlined reviews and fewer informational requirements. While the Department appreciates the revisions appear to be a substantive change in practice, the Department does not agree the lack of clarity in the regulation is desirable as it does a disservice to applicants and results in incomplete applications and need for additional information requests. Based upon staff’s experience in reviewing such projects, it appears to be very rare for surface water withdrawals to have a common set of project and environmental conditions that result in minimal impacts that would necessitate a streamlined review. The Department believes the proposed revisions are those necessary to review a surface water withdrawal and provides applicants with accurate portrayal of the information needed to assess their project.

Modification criteria for surface water withdrawals:

Permit modifications following issuance, through either a major or minor modification of the permit, are necessary if a permittee proposes changes that result in differences to the project than what was permitted. The major modification process differs from a minor modification process in that the former mimics a permit issuance process and includes a public notification, public comment period, coordination with state agencies, and more informational needs and thus is more costly to permittee and results in more staff time. Minor modifications are used to address project changes that

propose minimal additional impacts or that do not result in addition impacts. Because most permittees want the certainty of a permitted withdrawal volume before they incur the expense of final project design, the majority of water withdrawal permits require modifications as final engineering is completed.

VWP Permit Program Regulation currently establishes in 9VAC25-210-180.D and F the project changes that may be considered under either major or minor modification of the permit. Only one of these, under the major modification subsection, addresses surface water withdrawals. This results in uncertainty for permittees, the public, and staff as to the type of changes specific to withdrawals that may be appropriate under a minor modification versus a major modification of the permit. As part of the reorganization of the regulation, the Department proposes to add a section under the new Part V that establishes criteria, which is consistent with DEQ's other permitting programs, for when minor and major modifications of the permit may occur that are specific to surface water withdrawal activities. The proposed criteria are based upon staff's experience of changes that have been requested following permit issuance.

All of the CAG members concurred with the addition of the new section to provide clarity and certainty to modifications for surface water withdrawals. Discussions on the section resulted in revisions to clarify the intent of the proposal. The majority of the CAG members agreed on the new section, with the exception of Chesapeake Bay Foundation (CBF). CBF agreed with the concept of a new section for clarity, but also commented that major modifications should be required whenever an increase in impacts are proposed through a modification.

C. Consistency between VWP and federal rules governing compensatory mitigation:

While the Commonwealth has an independent nontidal wetlands regulatory program, it works closely with the U.S. Army Corps of Engineers (Corps) in its management of that program, including the required compensatory mitigation for impacts to surface waters, including wetlands. In 2008, the Corps adopted revised regulation 33 CFR 332, referred to as the '2008 Mitigation Rule', regarding compensatory mitigation. Adoption of the 2008 Mitigation Rule essentially reversed the hierarchy of acceptable mitigation practices, causing the VWP permit regulations to be opposite that of the Corps' regarding the hierarchy. The VWP permit program accepts the scientific literature supporting the revisions made by the Corps to federal regulations, and thus, the Department proposes to revise the VWP regulation revisions to reflect the 2008 Mitigation Rule. Details are proposed to be revised in 9VAC25-210-10 et seq. regarding acceptable compensation options for impacts under the authority of the Commonwealth. Each of the four VWP general permit regulations will include a reference those applicable portions of 9VAC25-210, rather than repeat the entire detail in each of the four regulations.

While there was consensus among the CAG members that the VWP regulations should be in line with the 2008 Mitigation Rule, there were differing opinions on how to word the hierarchy and provide similar decision discretion as that which is afforded the Corps. Based on CAG and stakeholder input, the Department prepared two versions of revised language over the course of the CAG meetings. The Nature Conservancy and Chesapeake Bay Foundation representatives support language that reflects released credits from an in-lieu fee program being the equivalent to mitigation bank credits, since both are agency-approved following the federal standards. The Home Builders Association of Virginia (HBAV) and Mr. T. J. Mascia (general public) with interest in mitigation banks expressed the desire to have the VWP regulation language match the 2008 Mitigation Rule to the maximum extent possible. Virginia Agribusiness Council commented that DEQ should confer with the Corps about the versions to ensure both met the intent of the Rule. Representatives of the Virginia Association for Commercial Real Estate (VACRE) and EEE Consulting, Inc. (EEE) noted the VWP regulation should address enhancement as an option.

The Department proposed two versions of hierarchy language, both of which meet the intent of the 2008 Federal Mitigation Rule according to conversations with Corps management. The Department proposes to align its regulatory language as close as possible to the 2008 Mitigation Rule considering the existing State Water Control Law and regulatory framework in which the program must operate. The Department incorporated additional language at the request of the Nature Conservancy regarding the likelihood of project success when staff considers mitigation proposals. The Department also clarified the existing language regarding enhancement based on the State Water Control Law. The existing language already provides for program discretion in making decisions on compensatory mitigation options.

A provision for compensatory mitigation options that is related to the 2008 Mitigation Rule is the existing VWP regulatory language regarding multi-project mitigation sites. A multi-project mitigation site allows a permittee to

essentially create more compensation capacity than that which would be required by a single permit action. This option was historically accepted in certain cases by the VWP permit program and the Corps, particularly for the Virginia Department of Transportation (VDOT) projects. Since the implementation of the hierarchy required by the 2008 Mitigation Rule, however, this option is curtailed due to the priority of other mitigation options. The Rule does not require existing multi-project mitigation sites to come into compliance with Rule, as no instrument for their operation exists. The sites that remain today would not likely be approved by either state or federal permitting agencies under today's standards, unless all other options were exhausted, and then by agency-discretion only. VDOT commented that the existing VWP regulation language should remain as is, while the HBAV, VACRE, and EEE commented that all language related to multi-project mitigation sites and use of credits should be stricken. The Department does not intend to require VDOT, and what few other sponsors of such sites remain, to retroactively change the requirements for existing multi-project sites. The Department also notes that any future multi-project mitigation sites proposed would be considered as permittee-responsible compensation and be subject to the 2008 Mitigation Rule requirements. The Department intends to address any special needs of VDOT in the Memorandum of Understanding between the agencies.

D. Compensation for open water impacts:

During the advisory group meetings, a suggestion was made that there be a section added to section 116 of 9VAC25-210 to address compensation for open water impacts. It was suggested that this should be discretionary. There was disagreement regarding the inclusion of language related to open waters. The Department noted that -116 C 4 allows for discretionary open water compensation as appropriate. The CAG also discussed the concept of having a limit for any required "compensation for open water impacts", as there have been experiences where differing compensation requirements were applied by different permitting agencies.

Home Builders Association of Virginia (HBAV) advocated for a cap on the amount of compensation required for open water impacts, and/or eliminating the need for compensation when impacts occurred in certain small ponds. The VWP regulations recognize that compensation is warranted in certain circumstances, and specifies a 1:1 ratio in each general permit regulation. Verbal comments were made by the HBAV representative at the last CAG meeting but additional written comments did not get distributed to the remaining CAG members due to timing. HBAV cited studies that show too much open water is being created with little environmental benefit as compensation for impacts. The Department worked with HBAV to identify the specific open water areas that were not typically of significant environmental value, and those areas that the Department has historically had concern over in past permitting experience. Proposed language is included in each regulation that attempts to parse out those small open water areas where compensation may not be warranted and to limit the maximum compensation ratio, when required, to a 1:1 ratio. While the CAG did not have benefit of fully vetting the topic during the CAG process, no objections were heard when the topic was raised. However, the Department cannot determine consensus on the full scope of proposed revisions at this time.

E. Conditional requirement for assessment of wetland functions:

9VAC25-210 currently requires that applicants who propose to impact one acre or more of wetlands provide an assessment of functions being lost. Historically, such analysis was used at the state and federal to support impact-to-loss ratios calculated for required compensatory mitigation for wetland impacts.

CAG members representing VDOT and Home Builders Association of Virginia (HBAV) commented that no assessments should be required since standard mitigation ratios are widely expected and understood, and are in line with state and federal agency guidance and policy. Members of the Virginia Association for Commercial Real Estate (VACRE) and EEE Consulting, Inc. (EEE) supported assessments only when permittee-responsible mitigation is proposed. The Chesapeake Bay Foundation (CBF) commented that assessments should be required for all wetland impacts in order to ensure reduced loss of functions in determining mitigation requirements.

The Department originally desired, and still prefers, to delete the provision due to the change in most-commonly proposed compensation moving away from on the ground projects done by the permittee to the purchase of mitigation bank or in-lieu fee program credits, which are only available after a separate approval process at the state and federal levels. However, the Department proposes to revise the provision to only require as assessment of functions for certain situations, particularly when permittees desire, and can justify, conducting on the ground permittee-responsible compensation instead of purchasing bank or fee program credits.

F. Permit application requirements:

The Department identified a need to receive project location information in a geographic information system (GIS) format to support agency data tracking initiatives and better evaluate compensatory mitigation proposals. The CAG discussed the issues surrounding the use of GIS shapefiles and expressed concerns about the ability of certain applicants to provide them, the cost of producing them, and the accuracy necessary for permitting purposes. The majority of the CAG agreed to the inclusion of GIS shapefiles as part of the requirements for a complete application provided that the VWP permit program would develop guidance related to the expected accuracy of measurements included in such files, and provided that discretion was included for DEQ to waive the requirement. VDOT remains objectionable to the inclusion of GIS shapefiles as unattainable for certain projects and expensive. The Department maintained the proposed language as agreed to by the majority of CAG members and intends to address any special needs of VDOT in the Memorandum of Understanding between the agencies.

Revisions are proposed to the regulatory requirements in 9VAC25-210-45 for delineating surface waters to be impacted in order to update the manuals and methods used in the process as a result of changes in federal regulations governing activities in waters of the United States. As part of this, the Department determined the need to be able to rely on information provided in an application to make permitting decisions and potentially save having to reverse or change those decisions after permit coverage or issuance. A jurisdictional determination, or JD, made by the Corps and typically accepted by DEQ for application purposes, has always been a requirement for VWP applications, but the Corps implemented a process in 2008 whereby a preliminary JD may be provided instead of, or in advance of, an approved JD. The Department proposes to revise the VWP complete application requirements to reflect the need for the approved JD when one is available in order to make sound permit decisions. The majority of CAG members agreed to the requirement, except for VDOT. VDOT commented that a preliminary JD should be acceptable for purposes of a complete application, rather than an approved JD and suggested revised language, and also noted that the Corps does not always issue or provide a “final approved jurisdictional determination”. Instead, most of the JDs that VDOT receives are “preliminary” only. The Department believes that the preliminary JD may not provide confirmation of the true amount of impacts being proposed, potentially causing additional staff time to evaluate revisions to those amounts, either later in the application review phase or after the authorization is granted, and that compensation decisions are delayed without benefit of an approved JD on the type and amount of waters being impacted. However, the Department does propose the caveat ‘if available’ as part of the provision regarding the need for the approved JD to achieve a complete application. DEQ also intends to address any special needs of VDOT in the Memorandum of Understanding between the agencies.

Another informational requirement for a complete application is any applicable permit application fee. Fees are located in 9VAC25-20-10 et seq. (“fee regulation”). However, the fee regulation is not clear regarding VWP permit fees, and in one case there is a fee listed for a non-existent permit type. These discrepancies are not proposed for revision at this time. A related issue is the language in section 50 of the four VWP general permit regulations regarding notification procedures that staff finds unclear regarding what the VWP permit programs expects when determining fees, particularly for stream bed impacts, and what information requirements apply to which applicants. Therefore, the Department proposes to delete references to the fee regulation in the VWP permit regulations. There is no intent by DEQ at this time to apply fees differently to VWP permit actions as it has done in the past. The majority of the CAG members did not object to the revision in regulatory language, but VDOT commented that the regulations should state “in accordance with the fee schedule in 9VAC 25-20”. The Department proposes to delete the reference in the VWP regulations, at least until the fee regulation can be revised to clarify the calculation of fees and correct other errors. The VWP permit program intends to continue its current practices regarding the way in which fees are calculated.

The Department also proposes to: 1) reorganize the requirements for a complete application listed in regulation section 80; 2) revise the provisions regarding complete applications to reduce the timeline that these applications may linger; and 3) make the application provisions consistent across all VWP regulations. The CAG came to consensus on these aspects of the proposed revisions and assisted the Department with developing new and revised language.

G. Adding provisions for administrative continuance:

The Department introduced the concept of administrative continuance of individual permits, as allowed by § 62.1-44.15(5a) of the Code of Virginia, but previously not included in VWP regulations. This provision allows the extension

of an individual permit past its expiration date, due to no fault of a permittee applying for reissuance or modification, when the agency cannot process a new permit or modification before the existing permit expires. This may be a case where agency personnel experience an administrative hardship, such as furlough, a natural disaster, or human resource issues. This provision appears in other water program regulations under DEQ. The Chesapeake Bay Foundation (CBF) expressed concern with the addition of the provision without including some kind of end point. The Department does not agree that an end point is necessary due to the difficulty in predicting a reasonable time frame. No such end points exist in these provisions in other program regulations.

H. Permit modification procedures:

While the existing VWP Permit Program Regulation 9VAC25-210-10 et seq. already allows increases in impacts under a major modification of an individual permit, the Department proposes to allow such modification, when compliant with the specified criteria, to be accomplished under a minor modification. The minor modification process would greatly reduce the amount of staff time needed to process what staff has found to be largely insignificant additional impacts. In the existing VWP regulation, additional impacts of up to one-quarter acre of wetlands/open water or 100 linear feet of stream bed are allowable. The proposed revision allows these limits to be extended as a percentage of original impacts, or the existing limits, not to exceed 1 acre or 1,500 linear feet. The Department finds that the majority of requested additional impacts are of such low amount that no additional value is added by processing a request as a major modification, which includes a public comment process, and potential hearing. As originally proposed, a two-acre maximum was included, but upon objection from the Chesapeake Bay Foundation (CBF), the Department reduced the limit to one-acre. CBF remains concerned about any additional impacts being allowed without an opportunity for public comment, and that the sliding scale allows too high of additional impacts. The remaining CAG members did not express opposition to the proposed revisions.

The Department also proposes to clarify language related to the modification of permits for increases, or decreases, in the amount of temporary impacts incurred by a permittee once the project begins. Provisions for notifying DEQ prior to taking additional temporary impacts are proposed, as well as allowing such a permit revision to be processed as a minor modification if certain criteria are met. The CAG came to consensus on these revisions.

In addition, the Department proposes to: 1) reorganize many of the provisions in section 180 for better readability and to clarify program intent, such as for the transfer of a VWP individual permit from one permittee to another; 2) updating the allowable substitution of compensatory mitigation options based on the 2008 Mitigation Rule; 3) moving and clarifying an existing provision for extending a VWP individual permit term if originally set at less than 15 years; and 4) to add a provision for the termination of an individual permit without cause when there is a substantial change to the nature or existence of the permittee. The CAG came to consensus on these revisions.

I. Revise, move, add, and delete definitions:

The Department reviewed 9VAC25-210-10 et seq., the VWP general permit regulations, the Code of Virginia, the 2008 Mitigation Rule, and other literature to determine if the definitions that exist in the VWP Permit Program Regulation are current, still in use, or in need of clarifications. Because 9VAC25-210 is the over-arching program regulation, the Department determined that many definitions are unnecessarily duplicated in the VWP general permit regulations, while others may be duplicated for ease of reference or emphasis. Several such definitions are proposed to be moved, or moved and revised, between the various regulations. Other definitions needed to be revised based on current practices, the Rule, or the literature. Still other definitions have become obsolete over the last ten years, or reflect widely accepted concepts in environmental science and engineering and are no longer needed – the Department proposes to delete these.

The CAG members were in general agreement on the revisions, movements, and deletions proposed in 9VAC25-210 and the VWP general permit regulations. Discussion during the CAG meetings resulted in several revisions before resting on those in the proposed regulations.

J. Miscellaneous issues:

1. Informational requirements:

The Department proposes to streamline the regulation language in places where additional information is requested or required by DEQ, and instead, add a new section entitled “Statewide information requirements”. This provision is based in the Code of Virginia and appears in other regulations, such as those in Virginia Pollutant Discharge Elimination System permit program. While concerns were expressed during the CAG meetings that the provision is expanding the Department’s discretion in asking for information beyond that which is reasonable, the CAG did achieve consensus on this revision. The Department believes the provision is already implemented under different wording in multiple places within the VWP regulations, and that the Code clearly provides the authority for requesting additional information when necessary to make permitting decisions. The intent of the provision is to clearly state that there is an expectation of the applicant or permittee to provide the information needed to issue permits or grant authorizations, and so that there is lower risk of unintentionally affecting human health and the environment through permit actions.

2. Permitting exclusions:

Based on staff experiences reviewing and processing applications for small impacts to open waters in the Commonwealth, the Department determined that certain impacts to open waters should be excluded from the need to obtain a VWP permit if they do not have a detrimental effect on public health, animal or aquatic life, or beneficial uses, such as ponds in upland areas. The Department has spent considerable time, and applicants have incurred expenses, to process permits for these projects. Language is proposed to allow this exclusion, as well as language requiring the applicant to demonstrate that any of the exclusions contained in 9VAC25-210-60 apply to his or her project. Other proposed revisions include reorganizing the order of some exclusions; clarifying language in some exclusions; consolidating some exclusions; and moving and revising the exclusions related to surface water withdrawal activities to a new Part in the regulation. The CAG came to consensus on the proposed revisions.

3. Reapplication:

The Department proposes to add a provision that does not currently exist to specifically state that a VWP individual permit holder must reapply for a new VWP individual permit if he or she desires to continue an authorized activity beyond the permit expiration date. There was consensus among the CAG on this proposed provision.

4. Finalizing compensation plans:

The Department proposes to clarify what is required for a complete application regarding compensatory wetland and stream mitigation plans. Contained in the existing section 80 is the requirement for a conceptual compensation plan and the information necessary to include in the plan, including a draft of the intended protective mechanism to be placed over any permittee-responsible compensation site(s). The mechanism remains in draft form until the final compensation plan is submitted, after permit issuance, which staff reviews, comments upon if necessary, and approves as final. The original regulation language then gave the permittee 120 days to record the mechanism, which usually entails a survey of compensation site boundaries at a minimum. The Department proposes to delete the 120 day requirement and replace the deadline to be prior to initiating impacts in surface waters that are authorized by the permit. The Department finds that the 120 day period is often too short for permittees to conduct this step of the compensation process, especially when the permittee-responsible compensation involves actual on-the-ground creation, restoration, or enhancement activities. Also, the original language is confusing to interpret relative to when the final compensation plan, detailed in section 116, is required to be submitted and what information it must contain compared to the conceptual compensation plan phase.

During the CAG process, the Chesapeake Bay Foundation (CBF) objected to the deletion of the 120-day timeline unless language setting a deadline is included elsewhere. The Department believes that by setting the deadline to ‘prior to commencing impacts’, flexibility is provided in-lieu of a hard date while maintaining a precise moment in which to expect the submittal of required information. Failing to do so may result in the permittee having to request a permit modification, and/or delay the beginning of work in surface waters.

5. Approval of in-lieu fee programs as compensatory mitigation option:

9VAC25-210-116 D sets forth the provisions for approval of the use of in-lieu fee programs as a means to provide compensatory mitigation. The section was revised to update the use of the term ‘program’ instead of ‘fund’ to be consistent with the 2008 Federal Mitigation Rule choice of language. Other revisions brought before the Citizens Advisory Group (CAG) were changing the sequencing of options noted in the original text to mimic the same revisions in subsection C of section 116, and to change the amount of time for which an approval was valid from the existing five years to a proposal of 10 years. The majority of the CAG was in agreement with the proposed revisions presented, except the Chesapeake Bay Foundation objected to the approval period of every 10 years as too long for staff review of in-lieu fee program operations and performance. The Home Builder’s Association of Virginia suggested a 20-year period. The Department has found the approval process every five years to be unproductive and unnecessary, and thus, propose 10 years as a possible compromise between five and 20.

In addition to the proposed changes brought before the CAG, the Department determined that other revisions to the original language were necessary to address the new Wetland and Stream Replacement Fund that was mandated by the Virginia General Assembly in 2012. DEQ is an approving agency to all in-lieu fee programs, but has waived its approval to the Corps for this program due to the potential conflict of interest. Therefore, a new provision was added to 9VAC25-210-116 D allowing the use of this program, and any future state-sponsored programs, when such is mandated by the Code of Virginia. Additionally, subsection D was further edited for wording choice, to remove duplicative language, and reorganize the language. The need for these revisions was not recognized prior to the conclusion of the CAG process and thus have not yet been reviewed or commented upon by the CAG. The CAG will have an opportunity to comment during the proposed regulation comment period.

6. General permits:

The Department proposes to revise language in section 130 of the VWP Permit Program Regulation to clarify the discussion of general permit terms and streamline provisions regarding compensation by replacing language with references to section 116 of the same regulation. The CAG came to consensus on these proposed revisions.

7. Forms and documents:

The Department proposes to update, correct, and revise the forms and documents incorporated by reference at the end of the VWP Permit Program Regulation to reflect the 2008 Mitigation Rule, changes in the Joint Application process, changes in program guidance and policy, and overall consistency between VWP regulations. The CAG came to consensus on these proposed revisions.

Key Issues Addressed by the Proposed Regulatory Changes – 9VAC25-660; 9VAC25-670; 9VAC25-680; 9VAC25-690

A. Provisions for the expiration of general permits, transitioning permit authorizations between general permit cycles, and administratively continuing general permits:

The four VWP general permit regulations were initially issued in 2001 for a five-year term, and then reissued in 2006 for a 10-year term. The four VWP general permit regulations expire on August 1, 2016, and thus, this regulatory action before you has been initiated to revise and reissue the regulations and the four VWP general permits contained therein.

The VWP general permit regulations are authorized by the Virginia Water Protection Permit Regulation 9VAC25-210-10 et seq., as well as the Code of Virginia. Thus, the Department has implemented the revision of that regulation simultaneously with the four general permit regulations.

As the four VWP general permit regulations exist today, each contains a regulation expiration date, a general permit expiration date, and a term for the authorization of coverage. The Department believes that the current provisions contained in the four regulations were negotiated between the Department and stakeholders in good faith to allow a framework in which the authorization for coverage may expire but could be continued in certain cases beyond that

expiration, such as when monitoring needed to continue. This may have meant that an authorization existed for seven years plus up to seven more years, during which time the general permit would have expired.

Some members of the stakeholder's advisory group expressed their desire to keep the current framework as is, such that an applicant may receive a permit authorization and be able to rely on its terms and conditions for a specified amount of time through project completion. While the Department understands this argument, the Code does not support this type of framework for general permits. Based on the Department's current interpretation, the Code of Virginia allows a maximum of 15 years for any kind of VWP permit, after which, a new permit must be applied for.

Currently, the general permit terms are 10 years, but the provisions within each regulation allow a general permit authorization length of 3 years for WP1 and 7 years for general permits WP2, WP3, and WP4. The Department proposes to revise all four general permit terms to 15 years, making the general permits before the Board effective on August 2, 2016 and expire on August 1, 2031, and to eliminate the separate authorization period. If permittees cannot complete the authorized impacts within the allotted time, reapplication must occur for either new general permit coverage or an individual permit. The Department believes that the general permit authorization and the general permit term should expire simultaneously in order to simplify the permitting process and be consistent with the Code limit of 15 years (§62.1-44.15(5a)).

Regulation language proposed to address the situation did not gain consensus in the CAG, primarily because of differing opinions about the length of the general permit term and the best way in which existing permittees could extend coverage in order to continue unfinished projects under the same terms and conditions as originally authorized. The Chesapeake Bay Foundation (CBF) suggested that a 10-year general permit term was too long but that seven years may be reasonable, and that organization has historically been opposed to a term longer than 10 years. CBF further expressed concern that projects would drag on with no incentive for completion if an authorization was allowed to continue unchanged up to the maximum 15-year limit. The Home Builders Association of Virginia (HBAV) and Virginia Department of Transportation (VDOT) supported a five-year term, provided that the authorization rolled over to the next general permit cycle in order to complete the project under the same conditions. HBAV expressed the desire to be able to receive an authorization, begin work, and complete a project under the same set of conditions and requirements regardless of when a general permit term ends and a new one begins. HBAV, the Virginia Association for Commercial Real Estate (VACRE), and EEE Consulting, Inc. (EEE), the three representatives of the regulated community on the advisory group, agreed that the proposal to change the framework would jeopardize project planning and development and increase the costs of development.

The Department reminded CAG members of the public's ability to apply for an individual permit at any time. This would remove uncertainty because individual permits may be issued for up to 15 years from the date of issuance, which varies, unlike that of the general permits, which are issued through regulation at a defined beginning point. The Department is concerned that a 5-year term would create a significant administrative burden, given that the necessary regulation reissuance process could require 9 months to well over one year each time, expending valuable staff resources more frequently than the typical rate of significant changes to program guidance, policy, regulation, or law. The Department also believes that there are existing provisions that allow the general permits to be reopened, revoked, or modified should the need arise during their term due to a change in state or federal policy or law regarding activities in surface waters. The Department feels confident that if any such change or shift in law or policy were to occur, there is an established process by which to address it.

The Department continued to work internally and with the Attorney General's office to revise the proposed language in order to address the comments and suggestions made by the CAG, within the constraints of the Code of Virginia. The Department believes the language currently proposed allows transition between general permit cycles with as little disruption as is possible, while being consistent with the intent of the Code.

In addition to the change from the current general permit framework, the Department introduced the concept of administrative continuance of general permits, as allowed by § 62.1-44.15(5a) of the Code of Virginia, but previously not included in VWP regulations. This provision allows the extension of a general permit past its expiration date, due to no fault of a permittee reapplying for coverage, when the agency cannot process a new general permit before the existing one expires. This may be a case where agency personnel experience an administrative hardship, such as furlough, a natural disaster, or human resource issues. This provision appears in other water program regulations under DEQ. The

Chesapeake Bay Foundation (CBF) expressed concern with the addition of the provision without including some kind of end point. The Department does not agree that an end point is necessary due to the difficulty in predicting a reasonable time frame. No such end points exist in these provisions in other Water Program regulations, and these provisions have worked well without them.

In summary, the CAG did not reach consensus on the various provisions contained in the four general permit regulations regarding the general permit term, transitioning between general permit cycles, and the details on how to manage each possible application scenario. The Department developed the proposed language based on the Department's current interpretation of the Code and the advice provided by the Attorney General's office, which includes provisions to bring existing permittees into the new framework; provisions that provide a method for completing projects during general permit transition periods; and provisions to provide staff the necessary mechanism of administrative continuance in the case of unforeseen events.

B. Permit application requirements:

The Department included in each VWP general permit regulation the same proposed revisions regarding the informational requirements needed to achieve a complete application as that which is proposed for the base regulation 9VAC25-210-80. The same discussion regarding application requirements as noted in the individual permit section F applies to the VWP general permit regulations.

In addition, the Department proposed revising the requirements for notification in section 50 of each VWP general permit regulation, where such requirements are dependent upon the amount of impacts the applicant proposes. The majority of CAG members were in agreement with the proposed revisions. The Virginia Department of Transportation (VDOT), however, noted that the revised list of application information now contains items that are not currently required in 9VAC25-680-50, particularly for its linear transportations projects incurring less than one-tenth acre of wetland/open water impacts or up to 300 linear feet of stream impacts. The items include: property owner names/addresses; proposed project schedule; the physical address, location map, and GIS shapefile of project boundary; project need rather than just the project purpose; jurisdictional determination; delineation map and GIS shapefile; and alternatives analysis.

Upon review of the applicable regulation sections, the Department determined that while there are several informational items that are not currently required of VDOT, these items should be readily available, and where unavailable and not already excused by DEQ discretion, such exceptions or special needs may be addressed in the Memorandum of Understanding between the agencies. The Department believes that the inclusion of these exceptions in the regulatory language makes the regulation harder to understand what information is required to be provided to DEQ. The Department proposes to remove VDOT-specific language in 9VAC25-680-50 and 9VAC25-660-50.

The Department also proposes to: 1) reorganize the requirements for a complete application listed in regulation section 60; 2) revise the provisions regarding complete applications to reduce the timeline that these applications may linger; and 3) make the application provisions consistent across all VWP regulations. The CAG came to consensus on these aspects of the proposed revisions and assisted the Department with developing new and revised language.

C. Allowable changes to a general permit authorization for coverage:

In each VWP general permit regulation, provisions exist for handling changes in a project after an authorization is granted. One of the existing allowable changes is an increase of impacts within the limits of one-quarter acre of wetland/open water or 100 linear feet of stream bed. The Home Builders Association of Virginia (HBAV) commented that changing the maximum allowable increase to stream impacts under a Notice of Planned Change from 100 to 300 linear feet would benefit applicants. Some examples were discussed in the last CAG meeting such as pipe or culvert adjustments that regularly require just over the 100-foot limit, thus causing costly design alternatives or require additional permits. Representatives of the Virginia Association for Commercial Real Estate (VACRE) and EEE Consulting, Inc. (EEE) noted the change would be consistent with the 'minor' impact limits of one-tenth acre and 300 linear feet. The Department notes that these limits are notification limits, used for determining which informational items should be submitted, rather than limits used to identify potential adverse effects on the environment. The Chesapeake Bay Foundation (CBF) commented that no change to the 100-foot limit should occur.

The Department did not originally propose a revision to the linear foot limit and doing so may have ramifications in the need for compensatory mitigation, and/or revising other provisions in the regulations which have not been fully considered at this time.

In addition, the Department proposes to: 1) clarify language related to increases or decreases in the amount of temporary impacts incurred by a permittee once the project begins; 2) add provisions for notifying DEQ prior to taking additional temporary impacts and for DEQ approval of such; 3) reorganize many of the provisions in section 80 for better readability and to clarify program intent, such as for the transfer of a VWP general permit authorization for coverage from one permittee to another; 4) updating the allowable substitution of compensatory mitigation options based on the 2008 Mitigation Rule; and 5) to add a provision to section 90 for the termination of a general permit authorization without cause when there is a substantial change to the nature or existence of the permittee. The CAG came to consensus on these revisions.

D. Monitoring and reporting requirements:

In October 2013, the VWP permit program implemented a new Construction Monitoring and Reporting (CMR) initiative that changed how project construction and compensation site monitoring are to be conducted by holders of VWP individual permits. After more than one year after implementation, the Department has made adjustments to the monitoring requirements and forms to address comments from the regulated community. The Department proposes to revise the existing monitoring conditions contained in the VWP general permits to make these consistent with the implemented requirements for individual permits. The CAG reached consensus on the proposed revisions for the VWP general permits.

E. Revise, move, add, and delete definitions:

The Department reviewed the existing VWP permit regulations, the Code of Virginia, the 2008 Mitigation Rule, and other literature to determine if the definitions that exist in the VWP general permit regulations are current, still in use, or in need of clarifications. Because 9VAC25-210 is the over-arching program regulation, the Department determined that many definitions are unnecessarily duplicated in the VWP general permit regulations, while others may be duplicated for ease of reference or emphasis. Several such definitions are proposed to be moved, or moved and revised, between the various regulations. Other definitions needed to be revised based on current practices, the Rule, or the literature. Still other definitions have become obsolete over the last ten years, or reflect widely accepted concepts in environmental science and engineering and are no longer needed – the Department proposes to delete these.

The CAG members were in general agreement on the revisions, movements, and deletions proposed in 9VAC25-210 and the VWP general permit regulations. Discussion during the CAG meetings resulted in several revisions before resting on those in the proposed regulations.

F. Consistency between VWP and federal rules governing compensatory mitigation:

The discussion provided above in this memorandum regarding compensatory mitigation, including the consensus results, also applies to each VWP general permit regulation, except that instead of repeating the specific revisions proposed in 9VAC25-116, section 70 of each regulation refers back to 9VAC25-116. The Department believes this provides an opportunity to simplify the language in the general permit regulations.

In addition, section 100 Part II A of each VWP general permit is proposed to be revised to reorganize and clarify existing provisions and to delete provisions regarding specific compensation site monitoring criteria. The later is proposed due to uncertainty in the scientific community on any criteria as an alternative to that which is typically applied by DEQ and Corps. HBAV noted during the last CAG meeting that criteria for hydrology, for example, is being debated in scientific circles but no clear, alternative direction can be decided upon. The VWP Permit Program intends to continue applying the same requirements for successful permittee-responsible mitigation as it has applied while developing program guidance to address the latest research. The CAG reached consensus on these revisions.

In order to be consistent with the 2008 Mitigation Rule regarding financial assurances and long-term management, the Department also proposes to revise the applicable VWP general permit conditions to allow a third party to hold easement

or protection in perpetuity over permittee-responsible compensation sites and thus assume these responsibilities. Public comment at the last CAG meeting indicated that state law may be changed regarding easements and tax credits, and thus, the program may want to consider flexible language in its regulations. The Department has not been made aware of any state law changes to date that would affect the proposed revisions. The CAG reached consensus on the proposed revisions as they were proposed during the CAG meeting process.

G. Conditional requirement for assessment of wetland functions:

The discussion provided above in this memorandum regarding assessment of wetland functions, including the consensus results, also applies to each VWP general permit regulation, except 9VAC25-660. The proposed revisions do not apply to -660 because the allowable general permit threshold is only up to one-half acre of wetland impacts, and thus, the proposed revisions do not apply.

H. Miscellaneous issues:

1. Authorized activities:

The VWP general permit regulation 9VAC25-690 allows stormwater management activities and the maintenance of structures thereof. Currently the regulation limits excavation to the facility's 'original contours'. The Department proposes to revise the language to 'original design' to match a similar revision proposed in 9VAC25-210-60. The majority of CAG members agree with the revision. The Virginia Department of Transportation (VDOT) commented that 'contours' should be kept, as the facility may not have been constructed as designed, and because the concept of design includes more than just contouring. The Department proposes to use 'original design' for consistency purposes and is proposing another provision clarifying what is acceptable when original designs are not available.

2. Prohibited activities:

Revisions are proposed to reorder the list of prohibited activities under each VWP general permit (section 40) and include the prohibition of activities in tidal waters, as is stated in 9VAC25-660-40 but not in the remaining three VWP general permit regulations. The VWP Permit Program purposefully does not authorize coverage under a general permit for projects in tidal waters, as a result of Technical Advisory Group negotiations and discussion that occurred when the general permits were first developed. The Home Builders Association of Virginia (HBAV) asked DEQ to reconsider this long-standing regulatory prohibition at the last CAG meeting for the current intended regulatory action; however, upon review, the Department concluded that the issue had far-reaching implications that could not be fully considered at this time. Other revisions being proposed include clarifying language in some prohibitions and consolidating some exclusions. The CAG came to consensus on the proposed revisions.

The Department also received comment to revise the VWP general permit regulations to delete the prohibition of heavy equipment in streams or for working in streams with use of stone or similar material. HBAV and VDOT requested consideration of allowing road crossings to be completed in the wet using surge stone or other materials of low silt or clay content. HBAV also noted that DEQ has already allowed work in the wet in certain circumstances. The Department proposes to allow DEQ discretion in the general permit conditions as to when equipment use may be allowable in streams for restoration purposes without revising those existing conditions prohibiting such in wetlands, and without contradicting prohibitions for in-stream mining in 9VAC25-690. Research sources have shown that there is a temporal component to the effects on water quality from the use of in-stream equipment in certain circumstances. The Department does not propose to allow surge stone or other materials as temporary or permanent fill in surface waters due to concerns for water quality.

3. Monitoring and compliance:

The Department received comment from the Home Builders Association of Virginia (HBAV) to allow permittees to end inspections once an authorized surface water impact has occurred. While this comment was discussed during the last CAG meeting, the Department is not proposing any revisions at this time. Based on a past legal

challenge, the Department believes that allowing inspections to cease in an impact area once the impact has occurred is inconsistent with compliance policy, and inconsistent with the Department's jurisdiction over certain activities. Also, the Department believes that this is contrary to the purpose of the inspections to catch subsequent problems that may affect water quality, such as paving, curb and gutter installation, landscaping, etc.

4. Informational requirements:

The Department proposes to streamline the regulation language in places where additional information is requested or required by DEQ, and instead, add a new section entitled "Statewide information requirements". This provision is based in the Code of Virginia and appears in other regulations, such as those in Virginia Pollutant Discharge Elimination System permit program. While concerns were expressed during the CAG meetings that the provision is expanding the Department's discretion in asking for information beyond that which is reasonable, the CAG did achieve consensus on this revision. The Department believes the provision is already implemented under different wording in multiple places within the VWP regulations, and that the Code clearly provides the authority for requesting additional information when necessary to make permitting decisions. The intent of the provision is to clearly state that there is an expectation of the applicant or permittee to provide the information needed to issue permits or grant authorizations, and so that there is lower risk of unintentionally affecting human health and the environment through permit actions.

5. Forms and documents: The Department proposes to update, correct, and revise the forms and documents incorporated by reference at the end of each VWP general permit regulation to reflect the 2008 Mitigation Rule, changes in the Joint Application process, changes in program guidance and policy, and overall consistency between VWP regulations. The CAG came to consensus on these proposed revisions.

Report on Facilities in Significant Noncompliance: One new permittee was reported to EPA on the Quarterly Noncompliance Report (QNCR) as being in significant noncompliance (SNC) for the quarter ending September 30, 2014. The permittee, the facility and the reported instances of noncompliance are as follows:

Permittee/Facility:	Invista S.a.r.l., Waynesboro Wastewater Treatment Plant
Type of Noncompliance:	Failure to Meet Permit Effluent Limit (Total Residual Chlorine)
City/County	Waynesboro, Virginia
Receiving Water:	South River
Impaired Water:	The South River is listed as impaired based on benthic-macroinvertebrate bioassessments, fecal coliform levels and mercury in fish tissue. The source of the macroinvertebrate impairment is listed as municipal/urban discharges; the sources of the fecal impairment are listed as agriculture, wildlife other than waterfowl and non-point sources; the source of the mercury impairment is listed as contaminated sediments.
River Basin:	Potomac River Basin, Shenandoah River SubBasin
Dates of Noncompliance:	April and September, 2014
Requirements Contained In:	VPDES Permit
DEQ Region:	Valley Regional Office

The violations reported were apparently the result of "false positive" test results. Invista had demolished a building on-site. Material used on certain structural components of the building was washed into the Facility outfall. Invista was not chlorinating the wastewater discharging from the outfall and questioned the residual chlorine results. Further analysis indicated that the fire material might be causing false positive lab results. Invista addressed the issue by jet cleaning the outfall. There have been no further chlorine violations reported and the permittee is shown as having returned to compliance on EPA's QNCR for the quarter ending December 31, 2014.

CSX Transportation, Inc., Consent Order w/Civil Charge: On April 30, 2014, sixteen railcars that were part of a train operated by CSX Transportation, Inc. ("CSX") derailed near downtown Lynchburg, Virginia. Three of the derailed railcars went into the James River. One of those ruptured and discharged approximately 29,730 gallons of oil into the James River. Approximately 98% of the discharge was consumed in a fire that occurred immediately after the derailment. At the time of the incident, the James River was at flood stage, causing strong currents and difficult river conditions for response and capture of the oil. CSX contractors placed booms and oil snare on ropes at downstream locations. However, there was little evidence of recoverable crude oil found during the initial response efforts. Later containment efforts were more successful at or near the incident site, as river conditions returned to normal. An assessment of vegetation and

wildlife in the vicinity and downstream of the spill did not provide evidence of significant impacts. There was no documented fish kill or other documented injury to animal life. Shoreline vegetative assessments were performed on right and left descending banks, and on midstream islands for approximately three miles downstream. Approximately ten cubic yards of oiled vegetation and surface soils was located and subsequently removed from the right descending bank approximately 300 yards downstream. No impacts were observed on the left descending bank. In-stream water sampling was performed on four transects with three sample locations each (left, center and right) located 0.2 miles upstream of the incident, 0.2 miles downstream, 28 miles downstream, and 130 miles downstream. Through May 2014, over 250 in-stream water samples were collected and analyzed. In-stream water sampling did not document any significant impacts. Water intakes, including the intakes for the City of Richmond, the County of Henrico, and the James River Correction Center were closed downstream in response to the discharge, as a precautionary measure. Confirmatory samples taken at each of the above intakes during the incident documented that no impacts on water supplies occurred. An estimated 245 gallons of oil entered the embankment soils at the site of the derailment. Approximately 509 feet of shoreline was impacted by the spill and fire. Clean-up of the embankment involved removal of approximately 260 tons of soil and ballast. On May 22, 2014, DEQ issued NOV No. 14-05-BRRO-003 to CSX for the discharge. On August 4, 2014, CSX submitted a Site Characterization Report (“SCR”) dated August 1, 2014. The SCR indicates that “all planned boom inspections and maintenance, surface water monitoring and sampling, and supplemental soil/sediment sampling have been completed . . . [present] human health and ecological risks at the Site are negligible based upon the results of abatement and monitoring activities.” On August 26, 2014, CSX submitted a revised *Restoration Work Plan* prepared for CSX by EnviroScience, an environmental consulting firm. This work plan provides a plan and schedule for river bank restoration. On September 29, 2014, CSX submitted a letter to DEQ describing ongoing post site characterization monitoring activities. This letter was prepared for CSX by Arcadis, an environmental consulting firm. Planned work includes monthly site inspections for petroleum sheens from the discharge area, quarterly surface water sampling, quarterly soil sampling along the base of the discharge area, and quarterly reporting of results. These activities are scheduled to be completed by September 2015. The consent order before the Board includes a civil charge, recovery of investigative costs, and injunctive relief consisting of requirements to complete the August 26, 2014 *Restoration Work Plan* and the September 29, 2014 ongoing post characterization site monitoring plan. The National Transportation Safety Board investigated the accident but has yet to release their report. CIVIL CHARGES: \$361,000 civil charge and \$18,574.85 in investigative costs.

Summary of Revisions

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
10		Definitions	Revised introductory paragraph to add sentence referring reader to additional definitions in proposed section 300 for surface water withdrawal activities. Added additional citation to the Statutory Authority footnote.
10		Definitions	Deleted definition for “Act” and used full title/name in regulation text instead.
	10	Definitions	Added definition for “Administratively withdrawn” to clarify provisions about processing incomplete applications.
10		Definitions	Replaced ‘authorization’ with ‘coverage’ in “Applicant”.
10		Definitions	Revised “Beneficial use” for better consistency with language in Code of Virginia § 62.1-44.3. This definition is applicable to the VWP permit program and is referenced in relative code provisions § 62.1-44.15:5.01, § 62.1-44.15:20, § 62.1-44.15:22. There is a second definition of the same term in § 62.1-10, but that is specifically linked to the VPDES program lake level contingency code provisions in § 62.1-44.15:1.2.
10		Definitions	Revised “Board” to include noncapitalized version of word.
10		Definitions	Revised “Channelization” for better consistency with program guidance.
10		Definitions	Revised “Compensation” or “compensatory mitigation” for better consistency with 2008 Federal Mitigation Rule and address suggestions made by Citizen Advisory Group.
10		Definitions	Revised “Compensation” or “compensatory mitigation” for better consistency with 2008 Federal Mitigation Rule and address suggestions made by Citizen Advisory Group.
60	10	Definitions	Relocated and revised the definition of “Construction site” from section 60 for better consistency with existing VPDES program definitions.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	10	Definitions	Added “Coverage” as a result of changes made to the VWP general permit term and transition provisions.
60	10	Definitions	Moved “Conversion” from section 60 and revised to insert ‘permanently change’ to address Citizens Advisory Group suggestion.
10		Definitions	Revised “Cross-sectional” to replace ‘sketch’ with ‘drawing’ and replace ‘waterbody’ with ‘water body’.
10		Definitions	Revised “Discharge” to remove last part of definition because definition of state waters includes the concept of all state jurisdictional waters.
10		Definitions	Revised “Ecologically preferable” to use phrases ‘wetland acreage or functions’ and ‘functions and values ’ more consistently and for better consistency with language in Code § 62.1-44.15:20.
9VAC25-690-10; 9VAC25-680-10; 9VAC25-670-10; 9VAC25-660-10	10	Definitions	Moved “Emergent wetland” from VWP general permit regulations and revised for better consistency with Corps wetland delineation supplements.
10		Definitions	Revised “Enhancement” to delete ‘or values’ for better consistency with language in Code § 62.1-44.15:20.
9VAC25-690-10; 9VAC25-680-10; 9VAC25-670-10; 9VAC25-660-10	10	Definitions	Moved “Forested wetland” from VWP general permit regulations and revised for better consistency with Corps wetland delineation supplements. Replaced 6m/20 ft with ‘approximately 20 feet (6 meters) tall or taller and 3 inch (7.6 centimeter) or larger diameter breast height (DBH)’ and ‘characterized’ with ‘dominated’.
10		Definitions	Deleted “General permit” and combined with “VWP general permit” definition.
10		Definitions	Deleted “Geographic area of delineated wetland”, obsolete.
	10	Definitions	Added “Hydrologic regime” to clarify use of term in sections 60 and 370.
10		Definitions	Revised “Impacts” for simplification purposes.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
10		Definitions	Revised “Impairment” to use phrases ‘acreage or functions of wetlands’ and ‘functions of state waters’ for better consistency with language in Code § 62.1-44.15:20.
	10	Definitions	Added “Independent utility” as copied from VWP general permit regulations.
10		Definitions	Revised “In-lieu fee fund” to “In-lieu fee program” for better consistency with 2008 Federal Mitigation Rule.
	10	Definitions	Added “Legal name” to clarify who the permittee is.
10		Definitions	Deleted “Major surface water withdrawal”, “Minor surface water withdrawal”, and “surface water supply project” – obsolete in conjunction with other revisions.
10		Definitions	Revised “Mitigation banking” to delete reference to use of credits, obsolete.
10		Definitions	Deleted “Multi-project mitigation site”, obsolete for majority of regulated public, already considered a type of permittee-responsible mitigation by DEQ.
10		Definitions	Corrected citation in “Nationwide permit” and “Regional permit”.
10		Definitions	Added “Nontidal wetland” to clarify which provisions apply to which regulated aquatic resources.
	10	Definitions	Added “Notice of project completion” as a result of changes made to the VWP general permit term and transition provisions.
9VAC25-690-10; 9VAC25-680-10; 9VAC25-670-10; 9VAC25-660-10	10	Definitions	Moved “Open water” from VWP general permit regulations.
	10	Definitions	Added “Ordinary high water” or “ordinary high water mark” for better consistency with Corps’ definition and to clarify delineation provisions in section 45.
10		Definitions	Revised “Out-of-kind mitigation to “Out-of-kind compensatory mitigation” or “out-of-kind mitigation” to clarify provisions in sections 80 and 116.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	10	Definitions	Moved “Perennial stream” from VWP general permit regulations.
10		Definitions	Revised “Permanent impacts” to use phrases ‘acreage or functions of a wetland’ and ‘functions and values ’ for better consistency with language in Code § 62.1-44.15:20.
	10	Definitions	Added “Permittee-responsible compensatory mitigation” or “permittee-responsible mitigation” for better consistency with 2008 Federal Mitigation Rule; to clarify sections 80 and 116; and to address Citizens Advisory Group suggestions.
10		Definitions	Revised “Person” for simplification purposes.
9VAC25-690-10	10	Definitions	Added “Phased development” as copied from VWP general permit regulations as companion definition to ‘independent utility’ and ‘single and complete’.
10		Definitions	Revised “Pollution” to match Code § 62.1-44.3.
10		Definitions	Revised “Profile sketch” to replace ‘waterbody’ with ‘water body’.
10		Definitions	Revised “Public hearing” to correct Code citation.
10		Definitions	Deleted “Schedule of compliance”, obsolete.
9VAC25-690-10; 9VAC25-680-10; 9VAC25-670-10; 9VAC25-660-10	10	Definitions	Moved “Scrub-shrub wetland” from VWP general permit regulations and revised for better consistency with Corps wetland delineation supplements. Replaced 6m/20 ft with ‘excluding woody vines, approximately 3 to 20 feet (1 to 6 m)’. Replaced ‘characterized’ with ‘dominated’.
	10	Definitions	Added “Single and complete” as copied from VWP general permit regulations as companion definition to ‘independent utility’.
9VAC25-690-10; 9VAC25-680-10; 9VAC25-670-10; 9VAC25-660-10	10	Definitions	Moved “Stream bed” or “stream channel” from VWP general permit regulations and revised to add ‘along each side of a stream’ referring to ordinary high water mark location.
10		Definitions	Revised “Surface water” to replace ‘ground water’ with ‘groundwater’.

9VAC25-210

Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	10	Definitions	Added “Suspend” or “suspension” to clarify provisions about processing applications. As used in the context of the regulation, it applies to a decision made by the board.
10		Definitions	Revised “Temporary impacts” to delete ‘cumulatively’ and add ‘permanent’ in front of alteration; revised functions and values to ‘acreage and functions’; added ‘with topsoil from the impact area where practicable’ based on Citizen Advisory Group suggestions.
	10	Definitions	Added “Tidal wetland” to clarify which provisions apply to which regulated aquatic resources.
10		Definitions	Revised “Toxic pollutant” to clarify the Act citation.
10		Definitions	Revised “Undesirable plant species” for clarification based on suggestions made by Citizen Advisory Group and to associate the term with restoration of temporary impacts.
10		Definitions	Deleted “USACE”, spelled out acronym in regulation text.
10		Definitions	Deleted “VMRC”, spelled out acronym in regulation text.
10		Definitions	Revised “VWP general permit” to combine with deleted “general permit” definition.
10		Definitions	Revised “Water quality standards”, spelled out acronym in regulation text and clarified the Act citation.
	10	Definitions	Added “Watershed approach” to clarify compensation provisions; derived from Corp’s definition.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
10	300	Definitions	Moved definitions specific to surface water withdrawals to a new Part (V) to provide greater clarity as to the provisions specific to this activity. Terms moved and revised for clarity and consistency within the regulation or with other DEQ programs: “Consumptive Use”, “Drought”, “Intake structure”, “Public surface water supply withdrawal”, “Surface water withdrawal”, “Withdrawal System”. Terms moved but not revised: “Affected stream reach”, “Agriculture surface water withdrawal”, “Emergency Virginia Water Protection Permit”, “Potomac River Low Flow Allocation Agreement”, “Public water supply emergency”, “Section for Cooperative Water Supply Operations on the Potomac (CO-OP) Coordination Agreement”, “Water supply coordination agreement”.
45		Delineation of surface waters	Revised the section title to “surface water delineations” to address clarification suggestions from Citizens Advisory Group.
45	45 A	Delineation of surface waters	Revised original, single paragraph to update reference to federal manuals, to clarify which aquatic resources apply, to allow use of additional technical resources.
	45 B	Delineation of surface waters	Added subsection B to address delineation of waters under state jurisdiction.
50 A		Delineation of surface waters	Revised ‘surface waters’ to ‘state waters’ and made grammatical revisions.
	55	Statewide information	Added new section to explicitly state authority of board to request information as needed to make permitting decisions or for other reasons in carrying out authority under Chapter 3.1; derived from Code 62.1-44.15:21 and -44.21. Replaces a similar statement in subsection 80 E.
60		Permit exclusions	Reorganized the order of some subdivisions in this section.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
60 A	60	Permit exclusions	Deleted subsection A letter designation and added provision that applicant must demonstrate the project qualifies for an exclusion.
60 A 2	60 9	Permit exclusions	Existing text in subdivision 2 moved to subdivision 9.
60 A 3; 60 A 4	60 2	Permit exclusions	Existing text in subdivision 3 revised and combined with some of the existing text in subdivision 4; combined text was moved and renumbered as subdivision 2 for clarity.
60 A 4		Permit exclusions	Existing text in subdivision 4 deleted.
60 A 5		Permit exclusions	Existing text in subdivision 5 deleted, as portions of activities are not excluded from VWP permitting or section 401 certification.
60 A 6	60 3	Permit exclusions	Existing text in subdivision 6 revised to clarify Code citation and subdivision renumbered as 3.
60 A 7	60 4	Permit exclusions	Existing text in subdivision 7 revised for better consistency with Code .15:21.G and subdivision renumbered as 4.
60 A 9	60 5	Permit exclusions	Existing text in subdivision 9 revised to clarify intent of maintenance and moved to new subdivision 5.
	60 6	Permit exclusions	Added new subdivision 6 to exclude impacts to open waters that do not have a detrimental effect on uses.
60 A 11	60 7	Permit exclusions	Existing text in subdivision 11 revised to clarify which structures and associated activities are excluded, moved, and renumbered as new subdivision 7.
60 A 12	60 11	Permit exclusions	Subdivision 12 renumbered to 11. Moved and revised “construction site” to section 10 definitions- derived from DEQ stormwater regulations.
60 B; 60 C	310	Permit exclusions	Moved to new section 310 and revised to provide greater clarity as to the provisions for surface water withdrawals.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	65	Administrative continuance of a permit	Added new section to address provision in Code allowing staff to continue the terms and conditions of an issued permit when circumstances occur that prevent staff from processing a new or modified permit. Included time frames at suggestion of Citizens Advisory Group.
75	320	Preapplication for surface water withdrawal projects	Section repealed. Existing text in section moved to new section 320 and revised to organize provisions specific to surface water withdrawals.
80 A		Application requirements	Reference to minor surface water withdrawal deleted from subsection A. Acronym 'DEQ' was spelled out. Reference to public water supply emergency inserted. 'Authorization' revised to 'coverage'.
80 B		Application requirements	Reference to minor surface water withdrawal deleted from introductory paragraph in subsection B. Existing text in introductory paragraph clarified to identify where to find requirements for each type of application and incorporate existing language from subdivision B 2. Reorganized order of some subdivisions in subsection B. Revised 'board shall' to 'board may'.
80 B 1 a		Application requirements	Revised 'name' to 'legal name'.
80 B 1 b		Application requirements	Revised 'name' to 'legal name'. Added email address.
80 B 1 d; 80 B 1 e	80 B 1 e (2)	Application requirements	Existing text in B 1 d moved to B 1 e (2). Existing text in B 1 e moved to B 1 e (1) and revised to clarify that subdivision applies to permittee-responsible mitigation, as the info requested would not be necessary for a credit purchase.
	80 B 1 e (6)	Application requirements	Added to require GIS shape files of project boundary unless otherwise waived by DEQ.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
80 B 1 f; 80 B 1 g	80 B 1 h; 80 B 1 h (1) through (3)	Application requirements	Revised existing text in B 1 f to move the requirement for description of surface water alterations to B 1 h and combine with existing text requesting the amount of impacts in B 1 g; and to move 'conversion' to definitions section 10. Existing text in B 1 g requiring description of wetland, stream, and open water impacts was combined with B 1 f, surface water alteration and moved to B 1 h (1), (2), and (3), respectively.
80 B 1 h	80 B 1 k	Application requirements	Moved existing text in B 1 h regarding materials assessment requirements to B 1 k.
	80 B 1 h (5)	Application requirements	Added B 1 h (5) to require GIS shape files of delineated surface waters unless otherwise waived by DEQ.
80 B 1 i	80 B 1 d	Application requirements	Moved existing text from B 1 i regarding proposed construction schedule to B 1 d.
	80 B 1 i	Application requirements	Added as B 1 i the map requirement for submitting any existing protected areas that may be located on the project site.
80 B 1 j	80 B 1 p	Application requirements	Moved existing text in B 1 j regarding required signature(s) to B 1 p and revised to clarify who can sign.
80 B 1 k	80 B 1 e (3) and (4)	Application requirements	Existing text in B 1 k introductory paragraph regarding lat/long and hydrologic unit moved to B 1 e (3) and (4). Hydrologic code was revised from USGS 8-digit to 4 th order as defined in the National Watershed Boundary Dataset.
80 B 1 k (1)	80 C	Application requirements	Existing text in B 1 k (1) requiring a functional assessment was moved to - 80 C and revised to clarify when the assessment is necessary, and to separate requirements for less than one acre from those for greater than one acre. Intent was to require the assessment for non-standard and out-of-kind compensation proposals of where greater than minimal impacts occurring to wetlands.
80 B 1 k (2)	340 B 5	Application requirements	Existing text in B 1 k (2) requiring information on beneficial uses was moved to new subdivision 340 B 5 and reworded for clarity.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
80 B 1 k (3)	80 B 1 l	Application requirements	Existing text in B 1 k (3) requiring information on threatened and endangered species moved to B 1 l.
80 B 1 k (4)	80 B 1 i (4) and (5); 80 B 1 h (4) and (5)	Application requirements	Existing text in B 1 k (4) regarding surface water delineation confirmations and maps was moved to B 1 i (4) as part of the required plan view map information, to B 1 h (4) as part of the description of impacts, and to B 1 h (5) based on edits proposed to section 45. Existing text in B 1 k (4) regarding location of preservation areas was moved to B 1 i (5) and revised to clarify the requirements and applicability of the requested information.
80 B 1 k (5) (a); 115 C 1	80 B 1 g	Application requirements	Existing text in B 1 k (5) (a) regarding avoidance and minimization was combined with existing language in subdivision 115 C 1 and moved to 80 B 1 g.
80 B 1 k (5) (b) and (c)	80 B 1 m (3)	Application requirements	Existing text in B 1 k (5) (b) and (c) regarding protective mechanism for compensation was moved to and revised to contain all the info necessary for the protective mechanism, including the plan and assurance language, and to allow an option for government agencies.
80 B 1 k (5) (b), (c), and (e) through (h)	80 B 1 m	Application requirements	Existing text regarding compensation plans was moved to B 1 m and revised to clarify which provisions apply to which type of proposed compensation; to clarify what is required for a complete application regarding compensation plans; and what is required for the protective instrument over compensation sites.
80 B 1 k (5) (d)	116 C 4	Application requirements	Compensation for open water was moved to section 116 for clarity.
80 B 1 l	80 B 1 e (5)	Application requirements	Existing text in B 1 l regarding the project location moved to B 1 e (5) and revised to expand on the information required.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
80 B 1 m	80 B 1 i and j	Application requirements	Moved B 1 m regarding plan view, cross-sectional view, and profile view drawings to B 1 i and j, respectively and revised to clarify requirements for each. Same language proposed in general permit regulations as condition of the general permit.
80 B 1 n	80 B 1 q	Application requirements	Existing text in B 1 n regarding permit application fee moved to B 1 q and revised to remove reference to 9VAC25-20.
	80 B 1 n	Application requirements	Added as new B 1 n the narrative requirement for submitting any existing protected areas that may be located on the project site or on a permittee-responsible compensation site for consistency with the VWP general permit regulations, and in order to inform the application review.
	80 B 1 o	Application requirements	Added requirement for applicant to provide riparian owner information in B 1 o and to add DEQ's ability to waive requirement, per recent revisions to the Code of Virginia.
80 B 2 a through i	340 B	Application requirements	Moved B 2 a through i to new subsection 340 B and revised to reorganize and consolidate provisions specific to surface water withdrawals.
80 C 1 through 10		Application requirements	Existing text in C 1 through 10 deleted to remove distinction between minor surface water withdrawal and major surface water withdrawal, which was found only to be a regulatory distinction and does not reflect a difference in the level of permit review.
80 D 1 and 2	340 C	Application requirements	Existing text in D 1 and 2 moved to new subsection 340 C and revised to reorganize and consolidate provisions specific to surface water withdrawals.
80 E	80 D	Application requirements	Existing text in E revised from 'shall' to 'may' and subsection renumbered to D.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
80 F	80 E	Application requirements	Existing text in F revised to clarify the circumstances under which an administrative withdrawal of an application may occur; to change number of days from 180 to 60 after which an incomplete application may be administratively withdrawn; to clarify that an applicant may also request the withdrawal; to add existing language as copied from 9VAC25-690; and to renumber subsection to E.
90 A		Conditions applicable to all VWP permits	Revised for better consistency with 9VAC25-690-100.
90 C		Conditions applicable to all VWP permits	Subsection C was revised to insert 'VWP' in front of 'permit'.
90 E 1 and 2		Conditions applicable to all VWP permits	Existing text in E 1 deleted, obsolete. Deleted numbering of E 2.
90 F 3		Conditions applicable to all VWP permits	Subdivision F 3 was revised to reword 'permit expiration'.
	90 G	Conditions applicable to all VWP permits	Added new provision stating requirement to reapply at the end of a permit term if permittee desires to continue authorized activities.
110		Standards, limitations, and permit conditions	Introductory paragraph was revised to add citation for the section where additional permit conditions pertaining to surface water withdrawals can be found (9VAC25-210-370)
110 A	370	Standards, limitations, and permit conditions	Subsection A pertaining to surface water withdrawals moved to new section 370 and revised.
110 B through G	110 A through F	Standards, limitations, and permit conditions	Subsections were renumbered.
115	80 B 1 g; 360	Project alternatives	Section repealed. 115 A, B, C 2, and 3 regarding evaluation of project alternatives for surface water withdrawals moved to section 360. Existing text in 115 C 1 regarding avoidance and minimization was combined with existing language in subdivision B 1 k (5) (a) and moved to B 1 g.
116		Compensation	Throughout section, 'in-lieu fee fund' was replaced with 'in-lieu fee program' for better consistency with the 2008 Federal Mitigation Rule.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
116 B 1		Compensation	Subdivision B 1 was clarified to incorporate and revise text from original B 2 and better describe the requirements for analysis to demonstrate permittee-responsible mitigation.
116 B 2		Compensation	Existing text in B 2 regarding the requirements of analysis for off-site our out-of-kind compensation was moved to B 1 and revised to clarify acceptable means my which to conduct the analysis. Text added for requirement to provide a protective mechanism(s) for all permittee-responsible compensation.
116 C 1		Compensation	Existing text in C 1 was revised to state the preferred type of compensatory mitigation by the program but that other options may apply.
116 C 2		Compensation	Existing text in C 2 was revised to list wetland mitigation options in a preferred sequence that is consistent with the 2008 Federal Mitigation Rule, but that states staff evaluation may determine the ultimate options.
116 C 2 a		Compensation	C 2 a was revised from wetland creation to mitigation bank credits.
116 C 2 b		Compensation	C 2 b was revised from wetland restoration to in-lieu fee program credits.
116 C 2 c		Compensation	C 2 c was revised from bank credits to permittee-responsible mitigation, watershed approach.
116 C 2 d		Compensation	C 2 d was revised from in-lieu fee contribution to permittee-responsible mitigation, onsite/in-kind.
116 C 2 e		Compensation	C 2 e was revised from in-lieu fee contribution to permittee-responsible mitigation, off-site/out-of-kind.
116 C 2 f		Compensation	C 2 f was revised to insert ' or preservation' after restoration to match Code 62.1-44.15:21, change state waters to wetlands, and correct a citation.
116 C 2 g		Compensation	C 2 g was revised to add consistency with subsection 116 A and correct a citation.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
116 C 3		Compensation	Existing text in C 3 was revised to list stream mitigation options in a preferred sequence that is consistent with the 2008 Federal Mitigation Rule, but that states staff evaluation may determine the ultimate options.
116 C 3 a		Compensation	C 3 a was revised from stream channel restoration or enhancement to mitigation bank stream credits.
116 C 3 b		Compensation	C 3 b was revised from riparian buffer restoration or enhancement to in-lieu fee program credits.
116 C 3 c		Compensation	C 3 c was revised from riparian buffer preservation to permittee-responsible mitigation, watershed approach.
116 C 3 d		Compensation	C 3 d was revised from in-lieu fee contribution to permittee-responsible mitigation, onsite/in-kind.
116 C 3 e		Compensation	C 3 e was revised from bank credits to permittee-responsible mitigation, off-site/out-of-kind.
116 C 3 f		Compensation	C 3 f for restoration or preservation of upland buffers adjacent to streams was added per Code 62.1-44.15:21.
116 C 3 g		Compensation	C 3 g for preservation of stream channels and adjacent riparian buffers was added.
116 C 4; 80 B 1 k (5) (d)	116 C 4	Compensation	Existing language in C 4 was deleted as obsolete due to proposed revisions to C 1 through 3. Compensation for open water was moved here from 9VAC25-210-80 B 1 k (5) (d) and a condition was added regarding compensation for open waters in karst regions of VA.
116 D 1		Compensation	Original text in D 1 was deleted as repetitive of text in D 3 and 4. New text was added that combined original text from D 2, and D 5.
116 D 2 a and b	116 D 1	Compensation	Original text D 2 was revised and moved to D 1 to clarify how DEQ approves a program, and combined with a portion of revised text from D 5 to include requirement for public comment.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	116 D 2	Compensation	New provision added to allow use of a program in permitting or enforcement cases where the program is state-sponsored, mandated by the Code of Virginia, and approved by the US Army Corps of Engineers.
116 D 3		Compensation	D 3 was revised for wording choice.
116 D 3 a		Compensation	Original text was revised to use phrase 'wetland acreage or functions' for better consistency with language in Code and match preferred sequencing in 116 C.
116 D 3 b		Compensation	D 3 b was revised to clarify agency approves a program site.
116 D 3 c		Compensation	Inserted modifier 'compensatory' before 'mitigation'.
116 D 3 d		Compensation	D 3 d was revised to use phrase 'wetland acreage or functions' for better consistency with language in Code.
116 D 3 e		Compensation	D 3 e was revised to use phrase 'wetland acreage or functions' for better consistency with language in Code and delete reference to fund contributions, obsolete.
116 D 4		Compensation	D 4 was revised to change the years from 5 to 10 that DEQ may approve a bank or in-lieu fee program. This value was the mid-point between two suggestions of 'leave at 5' and 'change to 20' made by Citizens Advisory Group participants. Original text regarding mitigation options deleted as duplicative of original text in D 3, and instead, new text added directing reader to D 3.
116 D 5	116 D 1	Compensation	Portion of original text revised and moved to D 1 and portion was deleted due to inconsistency with publication procedures for VA Register.
116 E		Compensation	The introductory paragraph in subsection E was revised for wording choice.
116 E 3		Compensation	E 2 was deleted, obsolete and duplicative of C 1.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
116 E 3 through 5	116 E 2 through 4	Compensation	Renumbered. Timeline for purchase was clarified in E 3. E 4 was revised to include an applicability date for the provisions; to add a requirement for long-term management; and to add a caveat that staff would not be required to reopen and revise older permits.
116 F		Compensation	F was revised to clarify the applicability to permittee-responsible mitigation and revise a citation.
116 F 1 and 2		Compensation	Text regarding informational requirements for developing protective mechanisms was revised and moved to 80 B 1 m. Text regarding recording protective mechanisms was revised to delete the 120-day timeline for recordation of a final protective instrument and require such prior to implementing project impacts in surface waters, as is consistent with when a final compensation plan must be submitted and approved, and for consistency with existing provisions in the VWP general permit conditions.
130 B 2		VWP general permits	Replaced 'authorization' with 'coverage'.
130 B 3		VWP general permits	Deleted 'regulation or authorization', obsolete.
130 B 4		VWP general permits	Revised for wording choice and replaced 'authorization' with 'coverage'.
130 C		VWP general permits	Replaced 'authorization' with 'coverage'.
130 E		VWP general permits	Replaced 'authorization' with 'coverage'.
130 F		VWP general permits	Subsection F was revised to change 'notice of termination' to 'notice of project completion'.
130 G		VWP general permits	G was revised to refer the reader to each general permit regulation to determine the valid term of the general permit and to delete provisions pertaining to the extension of coverage.
130 H 3		VWP general permits	H 3 was revised to use phrase 'wetland acreage or functions' for better consistency with language in Code.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
130 H 4 and 5		VWP general permits	Text detailing mitigation options was deleted from H 4 and H 5 and replaced with the citation to section 116 – was duplicative of 116.
140		Public notice, permits	The title of section 140 was revised to clarify applicability of the section to individual permit actions.
140 A	330	Public notice, permits	Subsection A was moved to new section 330 and clarified to organize provisions specific to surface water withdrawals.
140 B through F	140 A through E	Public notice, permits	Renumbered. Subsection B was clarified for applicability to individual permits. ‘will’ was changed to ‘shall’ in renumbered E.
150		Public access to information	Paragraph revised to include vwp general permit authorizations in addition to individual permits and strike incorrect reference to trade secrets.
160 A through C		Public comments, hearing	Subsections were clarified for applicability to individual permits and revised to correct Code citation.
170 C 8		Public notice, hearing	Subdivision C 8 was revised to spell out the acronym ‘DEQ’.
170 D		Public notice, hearing	Subsection D was revised for clarity and to correct Code citation.
175	390	Variance	Section repealed, moved to new section 390 and revised for applicability to surface water withdrawal activities and to revise citations.
180		Permit modification, revocation and reissuance, extension, transfer, termination	Title of the section was revised to clarify applicability to individual permits.
180 A		Permit modification, revocation and reissuance, extension, transfer, termination	Subsection A was revised to clarify applicability to individual permits; change ‘shall’ to ‘may’; add ‘extended’; and clarify the whole or just part of the permit may be acted upon.
180 B	180 A	Permit modification, revocation and reissuance, extension, transfer, termination	Subsection B was deleted and moved to be combined with A.
180 C		Permit modification, revocation and reissuance, extension, transfer, termination	Text from existing -180 C was deleted as duplicative of section 185.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
180 D	180 B	Permit modification, revocation and reissuance, extension, transfer, termination	D was renumbered to B and revised to clarify language and circumstances under which permits may be modified.
180 D 1		Permit modification, revocation and reissuance, extension, transfer, termination	D 1 deleted, obsolete and duplicative of reopener provision.
180 D 2, 3, 5 and 6	180 B 1 through 4; 380	Permit modification, revocation and reissuance, extension, transfer, termination	Renumered. D 2 revised to include project additions and alterations as part of new information, incorporating original D 1 concept here. Existing text moved from D 6 to new section 380 and new text added directing reader to that section.
180 D 4		Permit modification, revocation and reissuance, extension, transfer, termination	Deleted, obsolete to VWP process.
	180 C	Permit modification, revocation and reissuance, extension, transfer, termination	Added to address modifications as a result of changes to the project; to request additional information if necessary; and indicate the process if the board decides to modify a permit.
	180 D	Permit modification, revocation and reissuance, extension, transfer, termination	Added to clarify that only portions pertaining to the request will be modified versus re-evaluating the entire project.
180 E and E 1 through 4	180 F 4	Permit modification, revocation and reissuance, extension, transfer, termination	Existing text regarding permit transfer in subsection E and subdivisions E 1 through 4 was moved to the existing subdivision F 4 and clarified as to the criteria for such a transfer to occur under a minor modification action.
180 E 1, 2, and 4	180 E 4 a	Permit modification, revocation and reissuance, extension, transfer, termination	Relocated and combined text from the existing E 1, E 2, and E 4 – deleted 30 days.
180 E 3	180 E 4 b	Permit modification, revocation and reissuance, extension, transfer, termination	Relocated and revised text from the existing E 3 – 30 days changed to 15 days.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
180 F 1 through 10	180 E 1 through 10	Permit modification, revocation and reissuance, extension, transfer, termination	Existing F was renumbered as E, and the introductory paragraph regarding minor modifications was revised to add citations for the public participation sections of the regulation. New text was added requiring requests for minor modification to be in writing and allow board to request additional information as necessary. Clarifications were made to the existing text regarding when a modification subject to public comment may be warranted.
180 F 3	180 E 3	Permit modification, revocation and reissuance, extension, transfer, termination	Existing F 3 was revised to clarify that if the reason for modification is a change in a compliance date that it cannot result in a no net loss of wetland acreage or functions.
180 F 4	180 E 4	Permit modification, revocation and reissuance, extension, transfer, termination	Existing F 4 was revised to clarify change in permittee rather than ownership; and revised to add the original text at E.
180 F 5	180 E 5	Permit modification, revocation and reissuance, extension, transfer, termination	Existing F 5 was revised to correct citations.
180 F 6 and 9	180 E 6	Permit modification, revocation and reissuance, extension, transfer, termination	Existing text in F 6 deleted, obsolete. Text from existing F 9 relocated to F 6 and revised for clarity.
180 F 7 and 8	180 E 7	Permit modification, revocation and reissuance, extension, transfer, termination	Existing text in F 7 deleted, obsolete. Text from existing F 8 relocated in part.
	180 E 7 a	Permit modification, revocation and reissuance, extension, transfer, termination	E 7 a was added to clarify where additional impacts must be located.
	180 E 7 b	Permit modification, revocation and reissuance, extension, transfer, termination	E 7 b was added to specify the quantity of additional wetland impacts that are allowed under a minor modification.
	180 E 7 c	Permit modification, revocation and reissuance, extension, transfer, termination	E 7 c was added to specify the quantity of additional stream impacts that are allowed under a minor modification.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	180 E 7 d	Permit modification, revocation and reissuance, extension, transfer, termination	E 7 d was added to require documentation on avoidance and minimization of additional impacts.
180 F 8	180 E 7 e	Permit modification, revocation and reissuance, extension, transfer, termination	Existing text regarding compensation for additional impacts in F 8 was moved to E 7 e.
	180 E 7 f	Permit modification, revocation and reissuance, extension, transfer, termination	E 7 f was added to require additional temporary impacts to be restored and include a timeframe for DEQ review and response to request for minor modification for additional temporary impacts.
180 F 10	180 E 8	Permit modification, revocation and reissuance, extension, transfer, termination	Existing text in F 10 was moved to E 8 and revised to allow substitution of a portion of the prior authorized permittee-responsible mitigation with a purchase or use of mitigation credits that meet the same mitigation requirement.
	180 E 9	Permit modification, revocation and reissuance, extension, transfer, termination	New text was added to allow a minor modification for an extension of an individual permit term where that term was originally issued for less than 15 years.
	180 E 10	Permit modification, revocation and reissuance, extension, transfer, termination	Text added to direct the reader to the new section 380 for situations that may warrant a modification related to surface water withdrawal activities.
180 G		Permit modification, revocation and reissuance, extension, transfer, termination	Subsection G revised to correct Code citation.
180 H	180 I	Permit modification, revocation and reissuance, extension, transfer, termination	Revised to better match language in VWP general permit regulations.
	180 H	Permit modification, revocation and reissuance, extension, transfer, termination	New subsection H was added to authorize board may terminate the permit without cause when the permittee is no longer a legal entity due to death, dissolution, or when a company is no longer authorized to conduct business in the Commonwealth.
180 I	65	Permit modification, revocation and reissuance, extension, transfer, termination	Existing text at I was deleted and moved to the new section 65 on administrative continuance.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
180 I 3		Permit modification, revocation and reissuance, extension, transfer, termination	Revised to delete 'authorization' as this section applies to individual permits.
180 I 4 a		Permit modification, revocation and reissuance, extension, transfer, termination	Revised to change 'requested' to 'required' and to add caveat 'unless otherwise excluded from permitting'.
180 I 4 b and c		Permit modification, revocation and reissuance, extension, transfer, termination	Revised to add caveat 'unless otherwise excluded from permitting'.
185 and 185 A	185	Duration of individual permits	Revised the section title to clarify applicability to individual permits; eliminate subsection A subtitle; for wording choice; to delete a reference to conditions that contain the permit term.
185 B		Duration of individual permits	Existing text at subsection B deleted as obsolete.
220 A and C		Waiver of permit or certification	Revised for word choice purposes.
230 A 4		Denial of permit or variance	Revised to use phrase 'wetland acreage or functions' for better consistency with language in Code.
230 A 8		Denial of permit or variance	Revised to correct citation.
230 D		Denial of permit or variance	Revised to correct Code citation.
240	500	Enforcement	Repealed and moved in whole to new section 500.
250	600	Delegation of authority	Repealed and moved in whole to new section 600.
260	610	Transition	Repealed. Existing text moved in part to new section.
260 A and B	610 A and B	Transition	Revised to insert placeholder for new regulation effective date.
260 C		Transition	Deleted, obsolete as provided for in 610 A.
260 D	610 C	Transition	Renumbered existing text.

9VAC25-210

Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	300	Definitions for surface water withdrawals	Added new section. Definitions were added to provide clarity in the regulations as to the meaning of the terms or consistency with other DEQ programs: “Drought of Record”, “Human consumption”, “Instream flow”, “Major river basin”, “Nonconsumptive use”, “Public water supply safe yield”, “Variance”, and “Water supply plan”.
	310	Exclusions for surface water withdrawals	Added new section. Moved requirements specific to surface water withdrawals to provide greater clarity as to the provisions for surface water withdrawals. Section revised, where applicable, to update citations and provide consistency with revised definitions. Amendments made to the requirements for surface water withdrawals initiated between July 1, 1989, and July 25, 2007 to provide clarity and to remove sunset provisions that have passed. Additional amendments proposed to consolidate and reorganize requirements that exclude withdrawals from permitting based upon volume and use to address confusion expressed regarding this set of exclusions.
	320	Preapplication for surface water withdrawals	Added new section to provide greater clarity as to the provisions specific to surface water withdrawals. Section revised, where applicable, to update citations and provide consistency with revised definitions.
	330	Coordinated review with VMRC for surface water withdrawals	Added new section to provide greater clarity as to the provisions specific to surface water withdrawals. This section has been amended to include reference to the section of Code that directs coordinated reviews between DEQ and VMRC and clarifies the joint public notice requirement. Section revised, where applicable, to update citations and provide consistency with revised definitions.

9VAC25-210

Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	340	Application requirements for surface water withdrawals	Added new section. Informational requirements for a complete application that are necessary to conduct a review of any withdrawal, other than those for an emergency Virginia Water Protection Permit, are organized into one detailed list. This approach removes the distinction between minor surface water withdrawal and major surface water withdrawal, which was found only to be a regulatory distinction and does not reflect a difference in the level of permit review. Additionally, while the regulations require the same information for both types of withdrawals, this is not clear and has lead to confusion and longer processing timeframes to request the information. Other amendments include adding informational requirements addressing recent statutory changes and to the Joint Permit Application.
	350	Duty to reapply for a permit for the continuation of a surface water withdrawal	Added new section to address the reissuance of permits for the continuation of a surface water withdrawal. Identifies the informational requirements needed to apply for reissuance, including allowing for information submitted as part of a previous application that continues to be accurate to be referenced in the new application. This section includes a reference for allowance for an administrative continuance of a permit if a complete application is filed in a timely manner.
	360	Evaluation of project alternatives for surface water withdrawals	Added new section to consolidate provisions specific to surface water withdrawals under its own part (Part V) to provide greater clarity as to the provisions specific to this activity. Section revised, where applicable, to update citations and provide consistency with revised definitions.

9VAC25-210			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	370	Permit conditions applicable to surface water withdrawals	Added new section to consolidate provisions specific to surface water withdrawals under its own part (Part V) to provide greater clarity as to the provisions specific to this activity. Section amended to provide clarity as to the conditions that may be part of a permit and the criteria for which a permit may be issued. Section revised, where applicable, to update citations and provide consistency with revised definitions.
	380	Modifications to permit for surface water withdrawals	Added new section to identify the types of developments for which a permit for a surface water withdrawal may be modified. The existing regulation has one general provision (180 D 6) that addresses surface water withdrawals; however, nothing more specific is provided as to the types of changes that may occur under a permit modification for a permitted surface water withdrawal. These amendments provide more specificity and clarity as to changes that may occur under both a major modification and a minor modification.
	390	Variance from surface water withdrawal permit conditions	Added new section to consolidate provisions specific to surface water withdrawals to provide greater clarity as to the provisions specific to this activity. Section revised, where applicable, to update citations and provide consistency with revised definitions.
FORMS			Alphabetized list of forms. Revised the title and effective date of permit application fee form. Revised the effective date of the Tidewater application. Revised the title of monthly reporting of impacts form. Revised the effective date of the standard joint permit application. Revised the title of the VDOT inter-agency meeting application. Deleted the DEQ application for minor withdrawals, obsolete.

9VAC25-210

Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
DOCUMENTS			Alphabetized list of documents. Added Corps regional supplement for eastern mountains and piedmont. Added Corps regional supplement for Atlantic and coastal plain. Added hydric soils of the United States. Added Virginia drought assessment and response plan.

Summary of Revisions

9VAC25-660			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
10		Definitions	Clarified introductory paragraph for consistency with 9VAC25-210-10.
10		Definitions	Deleted “Channelization, “Cross-sectional drawing”, “Impacts”, “Isolated Wetland of Minimal Ecological Value”, “Surface waters”, “Temporary impacts” - already included under the over-arching program regulation 9VAC25-210-10.
	10	Definitions	Added “Coverage” as a result of changes made to the VWP general permit term and transition provisions.
10		Definitions	Deleted “Emergent wetland”, “Forested wetland”, “Open water”, “Ordinary high water”, “Perennial stream”, “Permanent impacts”, “Person”, “Riprap”, “Stream bed” - moved to 9VAC25-210-10 and revised.
10		Definitions	Deleted “FEMA”, used full spelling in text rather than the acronym.
10		Definitions	Revised “Less than one-half of an acre” for clarity.
10		Definitions	Revised “Independent utility” to add modifiers of ‘public and economic’ in last sentence for consistency with “Single and complete project”.
	10	Definitions	Added “Notice of project completion” as a result of revising the VWP general permit term and transition provisions. This provision was already a requirement in the regulation but referred to as a notice of termination.
10		Definitions	Revised “Single and complete project” to change ‘waterbody’ to ‘water body and deleted ‘public and economic’ as modifiers of utility for better consistency with Corps’ definition.
10		Definitions	Revised “State program general permit” to correct citations.
10		Definitions	Revised “Up to 300 linear feet” for consistency.
10		Definitions	Revised “Up to one-tenth of an acre” to “up to one-tenth acre”.
10		Definitions	Added “VWP general permit” as a result of revising the VWP general permit term and transition provisions to clarify what is intended by section 100 of the general permit regulation and to combine it with the existing ‘general permit’ and ‘VWP permit’ definitions in 9VAC25-210-10.

9VAC25-660			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
10		Definitions	Citations were corrected in the Statutory Authority footnote.
	15	Statewide information	Added new section 'Statewide information' to explicitly state authority of board to request information as needed to make permitting decisions or for other reasons in carrying out authority under Chapter 3.1; derived from Code 62.1-44.15:21 and -44.21.
20		Purpose; delegation of authority	Revised title of section to remove 'effective date of the general permit', which is now in section 27.
20 A		Purpose; delegation of authority	Revised to change 'authorization' to 'coverage'; text added for consistency with other VWP general permit regulations.
20 C	27 A; 100 preamble	Purpose; delegation of authority	Deleted and moved to new section 27 and to section 100 in the general permit text.
20 D	27 B	Purpose; delegation of authority	The first sentence of subsection D was moved to the new section 27. The second sentence of subsection D was deleted to reflect change to fixed general permit term.
	25	Authorization for coverage under VWP general permit effective August 1, 2006	Added new section to specify how applications will be processed by DEQ prior to August 2, 2016 and to address the transition of existing permit authorization holders into a new general permit regulation having a set term.
	25 A	Authorization for coverage under VWP general permit effective August 1, 2006	Specifies how applications through 2016 will be processed.
	25 B	Authorization for coverage under VWP general permit effective August 1, 2006	Specifies that existing authorizations for coverage remain effective until the date specified on the authorization cover page unless otherwise terminated or revoked.
	27	VWP general permit coverage; transition; continuation	Added new section to specify how applications will be processed by DEQ after August 2, 2016 and to address how future transitions will occur.
	27 A	VWP general permit coverage; transition; continuation	Specifies how applications after 2016 will be processed.
	27 B	VWP general permit coverage; transition; continuation	Sets forth the criteria for those applicants who receive coverage under a general permit but who cannot begin or complete the project before the general permit term expires.

9VAC25-660			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	27 C	VWP general permit coverage; transition; continuation	States that application may be made at any time for a VWP individual permit.
30 A		Authorization to impact surface waters	Revised for wording choice and to clarify that no coverage is being granted in the regulation.
30 A 2		Authorization to impact surface waters	Revised for wording choice and to remove the reference to the permit fee regulation, as that regulation is contrary to historic and current program practices for determining certain fees, and in some cases contains erroneous or misleading information. Revision of the permit fee regulation is not included as part of this VWP regulatory action.
30 A 3		Authorization to impact surface waters	Revised to clarify that applicant may utilize the general permit if comply with the limits and requirements that exist in the general permit, the coverage, the Clean Water Act, State Water Control Law, and regulations pursuant to it.
30 A 4		Authorization to impact surface waters	Deleted and combined with revised A 3.
30 A 5	30 A 4	Authorization to impact surface waters	Renumbered and citation was corrected.
30 A 6 and 7	30 A 5 and 6	Authorization to impact surface waters	Renumbered.
30 A 8	30 A 7	Authorization to impact surface waters	Revised to add an additional citation and to clarify the applicability of the compensation requirement.
30 B	40 F 13	Authorization to impact surface waters	Moved and combined with existing list of prohibitions.
30 C	30 B	Authorization to impact surface waters	Renumbered as B. Citation was corrected and subsection revised for consistency.
30 D	30 C	Authorization to impact surface waters	Revised for wording choice.
30 E	100 preamble	Authorization to impact surface waters	Stricken, moved to section 100, and revised for wording choice.
30 F	30 D	Authorization to impact surface waters	Renumbered and clarified to reference the correct regulatory citation and new general permit effective date, as well as being revised for wording choice. The last sentence of the subsection was stricken as duplicative of the preceding text.
30 G	30 E	Authorization to impact surface waters	Subsection renumbered and revised for wording choice; citation added.
	35	Administrative continuance	New section added to specify how coverage will carry forth if agency fails to reissue a new general permit before a previous one expires.

9VAC25-660			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
40 A		Exceptions to coverage	Revised to state coverage is not required if otherwise excluded by 9VAC25-210-60.
40 A 1 through 5; F 9 through 13	40 F 9 through 13	Exceptions to coverage	Original text moved to subsection 40 F and revised for consistency. A 1 is F 11; A 2 is F 12; A 3 is F 13 as combined with relocated text from 9VAC25-660-30 B; A 4 is now F 10; and A 5 combined with F 9 regarding threatened and endangered species.
40 B, D, F, F 1		Exceptions to coverage	Revised for wording choice. Replaced 'authorization' with 'coverage'.
40 F 5		Exceptions to coverage	Revised to clarify types of concrete rather than the method of concrete installation as a prohibited activity.
50 A 1		Notification	Revised for wording choice and remove duplication; to replace 'authorization' with 'coverage'; to delete a portion of the second sentence as an out-of-place permit condition; and to delete the last sentence as a duplicative provision and out-of-place permit condition.
50 A 2		Notification	Revised for wording choice and to replace 'authorization' with 'coverage'.
50 A 2 a		Notification	Revised for wording choice; to move former c up to a and revise for wording choice; and to add the citation to refer to if compensation is required.
50 A 2 b		Notification	Revised for wording choice; to revise the citations for informational items; to add the citation to refer to if compensation is required; and to delete the last sentence as an out-of-place permit condition.
50 A 2 c	50 A 2 a	Notification	Deleted and moved to 2 a.
50 B		Notification	Revised to clarify that the acceptable application forms are listed at the end of the regulation rather than listing these out by title, duplicative of FORMS section.
50 C		Notification	Revised to clarify denial is associated with the application for coverage and to spell out 'DEQ'.
60 A 1	60 A	Application	Revised for wording choice and to remove duplicated text; to delete A 2, reference to VDOT IACM process; and delete enumeration under A.
60 B		Application	Entire subsection renumbered and revised for consistency with 9VAC25-210-80 B; revised for wording choice and reorganization.
60 B 1		Application	Revised 'name' to 'legal name'.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	60 B 2	Application	Added requirement for property owner information.
60 B 2	60 B 3	Application	Renumbered; punctuation revised.
60 B 3	60 B 4	Application	Renumbered and revised for wording choice.
60 B 4	60 B 5 and 7	Application	Renumbered and revised to retain requirement for the project name; move requirement for project description to renumbered B 7; added project schedule.
60 B 5 through 9	60 B 6	Application	Renumbered and revised to expand on the required information about surface waters; to incorporate information required by original B 6 through 9.
60 B 10		Application	Deleted, obsolete.
60 B 11	60 B 8 and 9	Application	Revised to clarify the information requirements necessary in a plan-view drawing; to add informational requirements necessary for a cross-sectional, and profile drawing if applicable, as originally located in B 11.
60 B 12		Application	Deleted, obsolete.
60 B 13	60 B 10	Application	Renumbered and revised to clarify the information necessary in a dredged materials assessment.
60 B 13	60 B 10	Application	Renumbered and revised to clarify the information required about surface water impacts.
60 B 14		Application	Deleted, obsolete.
60 B 15	60 B 11	Application	Renumbered and revised for wording choice and consistency with 9VAC25-210-115 C regarding alternatives analysis.
60 B 16	60 B 12	Application	Renumbered and revised regarding compensation plans. Existing text was clarified regarding what is required for a complete application regarding compensation plans.
60 B 17	60 B 10 e	Application	Relocated information required for delineation map to 11 e and revised to add GIS shapefile.
60 B 18	60 B 13	Application	Revised FEMA information for consistency with prohibitions and to remove text duplicative of B 10 b.
60 B 19	60 B 14	Application	Renumbered and revised to remove reference to the permit fee regulation.
60 B 20	60 B 15	Application	Renumbered and revised to clarify the required information about already protected areas on the project site.
60 B 21	60 B 16	Application	Renumbered and revised to clarify the application signature requirements.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
60 C	60 B 16	Application	Original text moved to subdivision B 16 and combined with moved language from B 21.
60 D, D 1, and D 2	60 C, C 1, and C 2	Application	Revised for wording choice; to move citations; and replace 'authorization' with 'coverage'.
60 E	60 D	Application	Revised for consistency with 9VAC25-210-80 E; to clarify the circumstances under which an administrative withdrawal of an application may occur; to change number of days from 180 to 60 after which an incomplete application may be administratively withdrawn; to clarify that an applicant may also request the withdrawal.
70 A		Compensation	Revised to relocate existing text; added citation.
70 B through D	100 Part II A 4	Compensation	Deleted as duplicative of 9VAC25-210-116. Sentence was added that compensatory mitigation will be in accordance with section 70 and applicable portions of 9VAC25-210-116. Last sentences of subsection C and D were moved to section 100.
70 E and F	70 C and D	Compensation	Revised for wording choice, consistency, and to spell out the acronym 'DEQ'.
70 G	70 E	Compensation	Renumbered and clarified that open water does not include streams in this provision; for consistency with other VWP general permit regulations; revise the maximum mitigation ratio; to add when open water compensation not required; to correct grammatical error.
70 H	70 F	Compensation	Renumbered and revised to rearrange existing text and correct a grammatical error.
80		Notice of planned changes; modifications to coverage	Title of section revised to include modifications of coverage. Throughout section, 'in-lieu fee fund' was replaced with 'in-lieu fee program' for better consistency with the 2008 Federal Mitigation Rule.
80 A		Notice of planned changes; modifications to coverage	Revised to clarify applications or requests may be accepted that request a change to an existing general permit coverage and to specify under what circumstances a request is not applicable. The subsection states the applicant may apply for a VWP individual permit instead.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
80 B		Notice of planned changes; modifications to coverage	Revised to clarify the circumstances in which a modification may apply. Replaced 'authorization' with 'coverage'.
80 B 1	80 B 1 and 1 g	Notice of planned changes; modifications to coverage	Revised to clarify how additional impacts may be authorized and the criteria that must be met, consistent with the text in 9VAC25-210-180 except for the sliding percentage scale of additional impact amounts. The last sentence was moved to 80 B 1 g.
80 C	80 B 2	Notice of planned changes; modifications to coverage	Renumbered and revised to reflect the requirements for a reduction in impacts, consistent with the text in 9VAC25-210-180.
80 D and F	80 B 3 and 5	Notice of planned changes; modifications to coverage	Renumbered and revised for wording choice and clarify references.
80 E	80 B 4	Notice of planned changes; modifications to coverage	Renumbered and revised to allow substitution of bank or in-lieu fee program credits with any combination of the same, consistent with text in 9VAC25-210-180 except that permittee-responsible compensation does not apply in 660.
80 G	80 B 1 h	Notice of planned changes; modifications to coverage	Moved.
80 H and I	80 A	Notice of planned changes; modifications to coverage	Moved and combined with existing text except deletion of denial if fish and wildlife resources impacted because impacts to resources are prohibited under section 40.
90		Termination of coverage	Title of section revised. Opening paragraph revised to relocate existing text within the same paragraph, correct citations, replace 'authorization' with 'coverage', and renumber the existing language as subsection A.
90 3	90 A 3	Termination of coverage	Revised for wording choice.
90 4 a through c	90 A 4 a through c	Termination of coverage	Revised for wording choice and consistency; to spell out the acronym 'DEQ'; to replace 'authorization' with 'coverage'; and to clarify activities may be unlawful if not otherwise excluded from coverage.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	90 B	Termination of coverage	Subsection added to reference two additional types of termination. One type is existing and one is new. Both are also located in section 100 Part III of this regulation and in 9VAC25-210-180 G and H.
95	25	Transition	Subsection was repealed; existing text regarding application processing in times of general permit transitions replaced by text in section 27.
100		VWP general permit	Applicable to the entire section: The acronym 'DEQ' was spelled out throughout section 100. Introductory paragraph deleted and the section was revised to display the general permit as proposed.
100		VWP general permit	Applicable to the preamble: Title was revised to include the permit number – deleted 'VWP General Permit No. WP1'. 'Authorization expiration' revised to 'Effective date: August 2, 2016'; 'Expiration date: August 1, 2031' added to reflect the specific general permit term, coinciding to time of year when construction activities typically slow. 'Authorization notes' was deleted - requirements appear in the coverage letter provided by DEQ to the permittee. First paragraph under the VWP general permit title was revised to clarify that no coverage is being granted in the regulation or in the general permit text and that no specific project is basis of coverage. Second paragraph under the VWP general permit title was revised to clarify connection of authorities. 'Permittee', 'Address', 'Activity Location', 'Activity Description', the authorization statement, signature and date blank lines, 'Director, Department of Environmental Quality', and 'Date' were stricken - this information appears in the coverage letter that is provided by DEQ to the permittee.
100, Part I A 1		VWP general permit	Subdivision Part I A 1 was revised to clarify that no specific project or application was considered in the adoption of the general permit.
100, Part I A 2		VWP general permit	Subdivision Part I A 2 was revised for wording choice and to clarify how changes to coverage may be processed.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part I A 3		VWP general permit	Subdivision Part I A 3 was revised for wording choice; to clarify that no specific project or application was considered in the adoption of the general permit; and for consistency with revisions in 9VAC25-210-180 regarding temporary impacts.
100, Part I A 5		VWP general permit	Subdivision Part I A 5 was deleted to remove reference to a specific length of authorization.
100, Part I B	25	VWP general permit	Subdivision Part I B was stricken to correct the options of how coverage may continue, as described in the text of proposed section 25.
100, Part I C	100, Part I B	VWP general permit	Subdivision Part I C was retitled, renumbered as B.
100, Part I C 2	100, Part I B 2	VWP general permit	Existing language in the renumbered Part I B 2 was clarified regarding the requirements for culvert and pipe placement in streams and to relocate existing text within the same subdivision.
100, Part I C 3	100, Part I B 3	VWP general permit	Renumbered Part I B 3 was revised for consistency with the other VWP general permit regulations and to allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part I C 8	100, Part I B 8	VWP general permit	Renumbered Part I B 8 was revised to allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part I C 10	100, Part I B 10	VWP general permit	Revised to replace 'permitted' with 'authorized'.
100, Part I C 11 and 12	100, Part I B 11 and 12	VWP general permit	Renumbered Part I B 11 and B 12 were revised for wording choice and to include the use of existing topsoil in restoration activities where practicable, per a suggestion from the Citizen Advisory Group and consistency with federal nationwide (general) permit conditions. Acronym 'DCR' was spelled out. Title of plant list updated and allowance inserted for DEQ approval if invasives exist in original or reused soil.
100, Part I C 15	100, Part I B 15	VWP general permit	Renumbered Part I B 15 was revised to clarify the results of coordination between agencies and DEQ's related requirements will appear in the coverage granted by DEQ.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part I C 16	100, Part I B 16	VWP general permit	Renumbered Part I B 16 was revised to clarify that no coverage is being granted in the regulation or in the general permit text.
100, Part I C 17	100, Part I B 17	VWP general permit	Renumbered Part I B 17 was revised for wording choice and to allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part I D and D 1	100, Part I C and C 1	VWP general permit	Subdivision Part I D was renumbered to C, and C 1 was revised for wording choice.
100, Part I E and E 1	100, Part I D and D 1	VWP general permit	Subdivision Part I E was renumbered to D. Subdivision D 1 was revised for wording choice and to include the use of existing topsoil in restoration activities where practicable, per a suggestion from the Citizen Advisory Group and consistency with federal nationwide (general) permit conditions. The acronym 'DCR' was spelled out. Title of plant list updated.
100, Part I F and F 7	100, Part I E and E 7	VWP general permit	Subdivision Part I F was renumbered to E. Subdivision E 7 was revised for wording choice.
100, Part I G and G 3	100, Part I F and F 3	VWP general permit	Subdivision Part I G was renumbered to G. Subdivision F 3 was revised to replace 'authorization' with 'coverage' and to clarify alternative when plans not available.
100, Part II A 1		VWP general permit	Subdivision Part II A 1 was revised for wording choice and to clarify that no specific project or application was considered in the adoption of the general permit.
100, Part II A 2		VWP general permit	Subdivision Part II A 2 was revised for consistency; to clarify in-lieu fee program credits rather and contributions are a compensatory mitigation option; and to add a citation.
100, Part II A 3		VWP general permit	Subdivision Part II A 3 was revised for wording choice and consistency; to clarify the final compensation plan is an enforceable part of the coverage; and to clarify the applicability of the condition to final compensation plan.
100, Part II A 4		VWP general permit	Deleted as duplicative of Part II A 3.
100, Part II B		VWP general permit	Subdivision Part II B 1 was revised for simplicity.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II B 1 a		VWP general permit	Subdivision Part II B 1 a was revised to clarify when, where, and how preconstruction photos must be taken.
100, Part II B 1 b	100, Part II B 1 a	VWP general permit	Subdivision Part II B 1 b was revised to delete ortho-rectified photography and combine with the requirements of II B 1 a. New text was added describing the requirements for when, where, and how to conduct site inspections.
100, Part II B 1 c, 2, and 3	100, Part II B 1 a and b	VWP general permit	Subdivisions Part II B 1 c, B 2, and B 3 were stricken. These requirements were simplified in B 1 a and b.
100, Part II B 4	100, Part II B 2	VWP general permit	Subdivision Part II B 4 was renumbered to 2 and revised to correct a citation.
100, Part II C 1		VWP general permit	Revised to change authorization number to tracking number.
100, Part II C 2		VWP general permit	Subdivision Part II C 2 was revised to delete the 10-day requirement for notification and contents of the notification.
100, Part II C 3 and 3 a through d		VWP general permit	Subdivision Part II C 3 was revised to replace the existing conditions related to the schedule of construction monitoring reports with new requirements for twice per year. C 3 a through d were simplified regarding construction status and subdivisions C 3 e and f were stricken, obsolete.
100, Part II C 4		VWP general permit	Revised for wording choice.
100, Part II C 7		VWP general permit	Subdivision Part II C 9 was revised to clarify the timeline for notifying DEQ about water quality violations.
	100, Part II C 8	VWP general permit	A new subdivision Part II C 8 was added to specify requirements for notifying DEQ about unauthorized impacts to surface waters.
100, Part II C 8	100, Part II C 9	VWP general permit	Original Part II C 8 was renumbered to 9.
100, Part III A		VWP general permit	Subdivision Part III A was revised for wording choice and to clarify the authorities that apply.
100, Part III C		VWP general permit	Subdivision Part III C was revised for wording choice and to clarify the actions taken on an application.
100, Part III E, F and H		VWP general permit	Subdivisions Part III E, F and H were revised for wording choice and consistency.
100, Part III G		VWP general permit	Subdivision Part III G was revised for wording choice and to relocate existing text within the same subdivision.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part III H		VWP general permit	Revised for consistency with 9VAC25-210-180.
100, Part III I 1 through 5		VWP general permit	Subdivisions Part III I 1 through 5 were deleted as duplicative of detailed requirements for a notice of planned change and instead, a reference was added to section 80 for those details. Replaced 'authorization' with 'coverage'.
100, Part III J		VWP general permit	Subdivision Part III J 1 was revised to clarify that noncompliance may be associated with the coverage or the general permit. Subdivisions J, J 2, and 4 were revised for wording choice. J 5 and 6 were added for consistency with 9VAC25-210-10 et seq. Replaced 'authorization' with 'coverage' in all.
	100, Part III K	VWP general permit	A new subdivision Part III K was added to specify the conditions that apply to a termination without cause. This text is consistent with the proposed language in 9VAC25-210-180 H.
100, Part III K	100, Part III L, L 1, L 3, and L 4 a through c	VWP general permit	Subdivision Part III K was renumbered to L and revised for wording choice. Replaced 'authorization' with 'coverage'. Existing text was relocated within the same subdivision. Renumbered subdivisions Part III L 1 and 3 were revised for wording choice. Certification statements in renumbered subdivisions L 4 a through c were revised for wording choice and to clarify activities may be unlawful if not otherwise excluded from permit or coverage.
100, Part III L and M	100, Part III M and N	VWP general permit	Subdivisions Part III L and M were renumbered.
100, Part III N through Q	100, Part III O through R	VWP general permit	Subdivisions Part III N through Q were renumbered to O through R and revised for wording choice. Replaced 'authorization' with 'coverage'.
	100, Part III S	VWP general permit	A new subdivision Part III S was added to specify the requirement to reapply in order to continue authorized activities after the expiration date of a general permit.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
FORMS		Forms	Alphabetized list of forms. Revised the effective date of permit application fee form. Revised the title and effective date of the standard joint permit application. Revised the effective date of the Tidewater application. Added the VDOT monthly reporting application. Revised the effective date of the VDOT inter-agency meeting application. Deleted VDOT quarterly reporting form.
DOCUMENTS		Documents	Added classification of wetlands, guideline for disposal sites, and invasive plant list.

Summary of Revisions

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
10		Definitions	Clarified introductory paragraph for consistency with 9VAC25-210-10.
10		Definitions	Deleted “Channelization, “Cross-sectional drawing”, “Impacts”, “Isolated Wetland of Minimal Ecological Value”, “Surface waters”, “Temporary impacts” - already included under the over-arching program regulation 9VAC25-210-10.
	10	Definitions	Added “Coverage” as a result of changes made to the VWP general permit term and transition provisions.
10		Definitions	Deleted “Emergent wetland”, “Forested wetland”, “Open water”, “Ordinary high water”, “Perennial stream”, “Permanent impacts”, “Person”, “Riprap”, “Scrub-shrub”, “Stream bed” - moved to 9VAC25-210-10 and revised.
10		Definitions	Deleted “FEMA”, used full spelling in text rather than the acronym.
10		Definitions	Deleted “Forebay” since the definition is not needed to understand the regulation and multiple definitions may exist in the engineering field.
10		Definitions	Deleted “Greater than one acre” and “Less than one-half of an acre”, not used in regulation text.
10		Definitions	Revised “Independent utility” to add modifiers of ‘public and economic’ in last sentence for consistency with “Single and complete project”.
	10	Definitions	Added “Notice of project completion” as a result of revising the VWP general permit term and transition provisions. This provision was already a requirement in the regulation but referred to as a notice of termination.
10		Definitions	Revised “Single and complete project” to change ‘waterbody’ to ‘water body and deleted ‘public and economic’ as modifiers of utility for better consistency with Corps’ definition.
10		Definitions	Revised “State program general permit” to correct citations.
10		Definitions	Revised “Up to 300 linear feet” and “Up to 1500 linear feet” for consistency.
10		Definitions	Revised “Up to one-tenth of an acre” to “up to one-tenth acre”.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
10		Definitions	Revised “Up to two acres” to “Up to one acre” as two acres not used for a limit in this regulation.
10		Definitions	Added “VWP general permit” as a result of revising the VWP general permit term and transition provisions to clarify what is intended by section 100 of the general permit regulation and to combine it with the existing ‘general permit’ and ‘VWP permit’ definitions in 9VAC25-210-10.
10		Definitions	Citations were corrected in the Statutory Authority footnote.
	15	Statewide information	Added new section ‘Statewide information’ to explicitly state authority of board to request information as needed to make permitting decisions or for other reasons in carrying out authority under Chapter 3.1; derived from Code 62.1-44.15:21 and -44.21.
20		Purpose; delegation of authority	Revised title of section to remove ‘effective date of the general permit’, which is now in section 27.
20 A		Purpose; delegation of authority	Revised to change ‘authorization’ to ‘coverage’; text added for consistency with other VWP general permit regulations.
20 C	27 A; 100 preamble	Purpose; delegation of authority	Deleted and moved to new section 27 and to section 100 in the general permit text.
20 D	27 B	Purpose; delegation of authority	The first sentence of subsection D was moved to the new section 27. The second sentence of subsection D was deleted to reflect change to fixed general permit term.
	25	Authorization for coverage under VWP general permit effective August 1, 2006	Added new section to specify how applications will be processed by DEQ prior to August 2, 2016 and to address the transition of existing permit authorization holders into a new general permit regulation having a set term.
	25 A	Authorization for coverage under VWP general permit effective August 1, 2006	Specifies how applications through 2016 will be processed.
	25 B	Authorization for coverage under VWP general permit effective August 1, 2006	Specifies that existing authorizations for coverage remain effective until the date specified on the authorization cover page unless otherwise terminated or revoked.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	27	VWP general permit coverage; transition; continuation	Added new section to specify how applications will be processed by DEQ after August 2, 2016 and to address how future transitions will occur.
	27 A	VWP general permit coverage; transition; continuation	Specifies how applications after 2016 will be processed.
	27 B	VWP general permit coverage; transition; continuation	Sets forth the criteria for those applicants who receive coverage under a general permit but who cannot begin or complete the project before the general permit term expires.
	27 C	VWP general permit coverage; transition; continuation	States that application may be made at any time for a VWP individual permit.
30 A		Authorization to impact surface waters	Revised for wording choice and to clarify that no coverage is being granted in the regulation.
30 A 2		Authorization to impact surface waters	Revised for wording choice and to remove the reference to the permit fee regulation, as that regulation is contrary to historic and current program practices for determining certain fees, and in some cases contains erroneous or misleading information. Revision of the permit fee regulation is not included as part of this VWP regulatory action.
30 A 3		Authorization to impact surface waters	Revised to clarify that applicant may utilize the general permit if comply with the limits and requirements that exist in the general permit, the coverage, the Clean Water Act, State Water Control Law, and regulations pursuant to it.
30 A 4		Authorization to impact surface waters	Deleted and combined with revised A 3.
30 A 5	30 A 4	Authorization to impact surface waters	Renumbered and citation was corrected.
30 A 6 and 7	30 A 5 and 6	Authorization to impact surface waters	Renumbered.
30 A 8	30 A 7	Authorization to impact surface waters	Renumbered and revised to delete 'and values' for consistency with other VWP regulations.
30 A 9	30 A 8	Authorization to impact surface waters	Renumbered and revised to add an additional citation and to clarify the applicability of the compensation requirement.
30 C		Authorization to impact surface waters	Citation was corrected and subsection revised for consistency.
30 D		Authorization to impact surface waters	Revised for wording choice.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
30 E	100 preamble	Authorization to impact surface waters	Stricken, moved to section 100, and revised for wording choice.
30 F	30 E	Authorization to impact surface waters	Renumbered and clarified to reference the correct regulatory citation and new general permit effective date, as well as being revised for wording choice. The last sentence of the subsection was stricken as duplicative of the preceding text.
30 G	30 F	Authorization to impact surface waters	Subsection renumbered and revised for wording choice; citation added.
	35	Administrative continuance	New section added to specify how coverage will carry forth if agency fails to reissue a new general permit before a previous one expires.
40 A		Exceptions to coverage	Revised to state coverage is not required if otherwise excluded by 9VAC25-210-60.
40 A 1 and 2; F 6 and 5	40 F 6 and 5	Exceptions to coverage	Original text moved to subsection 40 F; A 2 combined with F 6 regarding threatened and endangered species and revised for wording choice.
40 B		Exceptions to coverage	Replaced 'authorization' with 'coverage' and revised for wording choice.
40 D		Exceptions to coverage	Revised for wording choice.
40 F, F 1 and F 3		Exceptions to coverage	Revised for wording choice and consistency with 9VAC25-680. Replaced 'authorization' with 'coverage'.
	40 F 7	Exceptions to coverage	Added to clarify VWP general permits are only for activities in nontidal surface waters, consistent with 9VAC25-660-30 B.
50 A		Notification	Deleted as inconsistent with revisions proposed in section 80 and 9VAC25-210 regarding timing of notification.
50 B 1	50 A	Notification	Renumbered and revised for wording choice and remove duplication; to replace 'authorization' with 'coverage'; to delete a portion of the second sentence as an out-of-place permit condition; and to delete the last sentence as a duplicative provision and out-of-place permit condition.
50 B 2	50 A 2	Notification	Renumbered, revised for wording choice, and to replace 'authorization' with 'coverage'.
50 B 2 a	50 A 2 a	Notification	Revised for wording choice; to move former c up to a and revise for wording choice; and to add the citation to refer to if compensation is required.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
50 B 2 b	50 A 2 b	Notification	Revised for wording choice; to revise the citations for informational items; to add the citation to refer to if compensation is required; and to delete the last sentence as an out-of-place permit condition.
50 B 2 c	50 A 2 a	Notification	Deleted and moved to 2 a.
50 C	50 B	Notification	Renumbered and revised to clarify that the acceptable application forms are listed at the end of the regulation rather than listing these out by title, duplicative of FORMS section.
50 D	50 C	Notification	Revised to clarify denial is associated with the application for coverage and to spell out 'DEQ'.
60 A 1	60 A	Application	Revised for wording choice and to remove duplicated text; to delete A 2, reference to VDOT IACM process; and delete enumeration under A.
60 B		Application	Entire subsection renumbered and revised for consistency with 9VAC25-210-80 B; revised for wording choice and reorganization.
60 B 1		Application	Revised 'name' to 'legal name'.
	60 B 2	Application	Added requirement for property owner information.
60 B 2	60 B 3	Application	Renumbered; punctuation revised.
60 B 3	60 B 4	Application	Renumbered and revised for wording choice.
60 B 4	60 B 5 and 7	Application	Renumbered and revised to retain requirement for the project name; move requirement for project description to renumbered B 7; add project schedule.
60 B 5 through 9	60 B 6	Application	Renumbered and revised to expand on the required information about surface waters; to incorporate information required by original B 6 through 9.
60 B 10		Application	Deleted, obsolete.
60 B 11	60 B 8 and 9	Application	Revised to clarify the information requirements necessary in a plan-view drawing; to add informational requirements necessary for a cross-sectional, and profile drawings if applicable, as originally located in B 11.
60 B 12		Application	Deleted, obsolete.
60 B 13	60 B 10	Application	Renumbered and revised to clarify the information required about surface water impacts.
60 B 14	60 C	Application	Relocated text and revised for consistency with 9VAC25-210-80 C on assessment of wetland functions.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
60 B 15	60 B 11	Application	Renumbered and revised for wording choice and consistency with 9VAC25-210-115 C regarding alternatives analysis.
60 B 16	60 B 12	Application	Renumbered and revised regarding compensation plans. Existing text was clarified regarding what is required for a complete application regarding compensation plans and what is required for the protective instrument over compensation sites.
60 B 17	60 B 10 e	Application	Relocated information required for delineation map to 10 e and revised to add GIS shapefile.
60 B 18		Application	Deleted FEMA information, obsolete and to address suggestions made by Citizens Advisory Group.
60 B 19	60 B 13	Application	Renumbered and revised to remove reference to the permit fee regulation.
60 B 20	60 B 14	Application	Renumbered and revised to clarify the required information about already protected areas on the project site.
60 B 21	60 B 15	Application	Renumbered and revised to clarify the application signature requirements.
60 C	60 B 15	Application	Original text moved to subdivision B 15; new text was added describing the requirements for an assessment of wetland functions, consistent with the text in 9VAC25-210-80 C.
60 D, D 1, and D 2		Application	Revised for wording choice and replace 'authorization' with 'coverage'.
60 E		Application	Revised for consistency with 9VAC25-210-80 E; to clarify the circumstances under which an administrative withdrawal of an application may occur; to change number of days from 180 to 60 after which an incomplete application may be administratively withdrawn; to clarify that an applicant may also request the withdrawal.
70 A		Compensation	Revised and relocated existing text; added citation.
70 B through D		Compensation	Deleted as duplicative of 9VAC25-210-116. Sentence was added that compensatory mitigation will be in accordance with section 70 and 9VAC25-210-116.
70 E and F	100 Part II A 4	Compensation	Deleted as duplicative of 9VAC25-210-116 except last sentences of subsection E and F were moved.

9VAC25-670			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
70 G	70 C	Compensation	Renumbered and revised for wording choice.
70 H	70 D	Compensation	Renumbered and revised for wording choice and to spell out the acronym 'DEQ'.
70 I	70 E	Compensation	Renumbered and clarified that open water does not include streams in this provision; for consistency with other VWP general permit regulations; revise the maximum mitigation ratio; to add when open water compensation not required; to correct grammatical error.
70 J	70 F	Compensation	Renumbered and revised to rearrange existing text and correct a grammatical error.
80		Notice of planned changes; modifications to coverage	Title of section revised to include modifications to coverage. Throughout section, 'in-lieu fee fund' was replaced with 'in-lieu fee program' for better consistency with the 2008 Federal Mitigation Rule.
80 A		Notice of planned changes; modifications to coverage	Revised to clarify applications or requests may be accepted that request a change to existing general permit coverage and to specify under what circumstances a request is not applicable. The subsection states the applicant may apply for a VWP individual permit instead.
80 B		Notice of planned changes; modifications to coverage	Revised to remove additional impacts language and make B an introductory statement. Replaced 'authorization' with 'coverage'.
80 B 1	80 B 1 and 1 g	Notice of planned changes; modifications to coverage	Revised to clarify how additional impacts may be authorized and the criteria that must be met, consistent with the text in 9VAC25-210-180 except for the sliding percentage scale of additional impact amounts. The last sentence was moved to 80 B 1 g.
80 C	80 B 2	Notice of planned changes; modifications to coverage	Renumbered and revised to reflect the requirements for a reduction in impacts, consistent with the text in 9VAC25-210-180.
80 D and F	80 B 3 and 5	Notice of planned changes; modifications to coverage	Renumbered and revised for wording choice and clarify references.
80 E	80 B 4	Notice of planned changes; modifications to coverage	Renumbered and revised to allow substitution of bank or in-lieu fee program credits with any combination of the same, consistent with text in 9VAC25-210-180.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
80 G	80 B 1 h	Notice of planned changes; modifications to coverage	Moved.
80 H and I	80 A	Notice of planned changes; modifications to coverage	Moved and combined with existing text except deletion of denial if fish and wildlife resources impacted because impacts to resources are prohibited under section 40.
90		Termination of coverage	Title of section revised. Opening paragraph revised to relocate existing text within the same paragraph, correct citations, replace 'authorization' with 'coverage', and renumber the existing language as subsection A.
90 3	90 A 3	Termination of coverage	Revised for wording choice.
90 4 a through c	90 A 4 a through c	Termination of coverage	Revised for wording choice and consistency; to spell out the acronym 'DEQ'; to replace 'authorization' with 'coverage'; and to clarify activities may be unlawful if not otherwise excluded from coverage.
	90 B	Termination of coverage	Subsection added to reference two additional types of termination. One type is existing and one is new. Both are also located in section 100 Part III of this regulation and in 9VAC25-210-180 G and H.
95	27	Transition	Subsection was repealed; existing text regarding application processing in times of general permit transitions replaced by text in section 27.
100		VWP general permit	Applicable to the entire section: The acronym 'DEQ' was spelled out throughout section 100. Introductory paragraph deleted and the section was revised to display the general permit as proposed.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100		VWP general permit	Applicable to the preamble: Title was revised to include the permit number – deleted ‘VWP General Permit No. WP2’. ‘Authorization expiration’ revised to ‘Effective date: August 2, 2016’; ‘Expiration date: August 1, 2031’ added to reflect the specific general permit term, coinciding to time of year when construction activities typically slow. ‘Authorization notes’ was deleted - requirements appear in the coverage letter provided by DEQ to the permittee. First paragraph under the VWP general permit title was revised to clarify that no coverage is being granted in the regulation or in the general permit text and that no specific project is basis of coverage. Second paragraph under the VWP general permit title was revised to clarify connection of authorities. ‘Permittee’, ‘Address’, ‘Activity Location’, ‘Activity Description’, the authorization statement, signature and date blank lines, ‘Director, Department of Environmental Quality’, and ‘Date’ were stricken - this information appears in the coverage letter that is provided by DEQ to the permittee.
100, Part I A 1		VWP general permit	Subdivision Part I A 1 was revised to clarify that no specific project or application was considered in the adoption of the general permit.
100, Part I A 2		VWP general permit	Subdivision Part I A 2 was revised for wording choice and to clarify how changes to coverage may be processed.
100, Part I A 3		VWP general permit	Subdivision Part I A 3 was revised for wording choice; to clarify that no specific project or application was considered in the adoption of the general permit; and for consistency with revisions in 9VAC25-210-180 regarding temporary impacts.
100, Part I A 4		VWP general permit	Deleted ‘authorization’ modifying compensation.
100, Part I A 5		VWP general permit	Subdivision Part I A 5 was deleted to remove reference to a specific length of authorization.
100, Part I B		VWP general permit	Subdivision Part I B was stricken to correct the options of how coverage may continue, as described in the text of proposed section 27.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part I C	100, Part I B	VWP general permit	Subdivision Part I C was retitled, renumbered as B.
100, Part I C 2	100, Part I B 2	VWP general permit	Existing language in the renumbered Part I B 2 was clarified regarding the requirements for culvert and pipe placement in streams and to relocate existing text within the same subdivision.
100, Part I C 3	100, Part I B 3	VWP general permit	Renumbered Part I B 3 was revised for consistency with the other VWP general permit regulations and to allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part I C 8	100, Part I B 8	VWP general permit	Renumbered Part I B 8 was revised to allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part I C 10	100, Part I B 10	VWP general permit	Revised to replace 'permitted' with 'authorized'.
100, Part I C 11 and 12	100, Part I B 11 and 12	VWP general permit	Renumbered Part I B 11 and B 12 were revised for wording choice and to include the use of existing topsoil in restoration activities where practicable, per a suggestion from the Citizen Advisory Group and consistency with federal nationwide (general) permit conditions. Acronym 'DCR' was spelled out. Title of plant list updated and allowance inserted for DEQ approval if invasives exist in original or reused soil.
100, Part I C 15	100, Part I B 15	VWP general permit	Renumbered Part I B 15 was revised to clarify the results of coordination between agencies and DEQ's related requirements will appear in the coverage granted by DEQ.
100, Part I C 16	100, Part I B 16	VWP general permit	Renumbered Part I B 16 was revised to clarify that no coverage is being granted in the regulation or in the general permit text.
100, Part I C 17	100, Part I B 17	VWP general permit	Renumbered Part I B 17 was revised for wording choice and to allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part I D and D 1	100, Part I C and C 1	VWP general permit	Subdivision Part I D was renumbered to C, and C 1 was revised for wording choice.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part I E and E 1	100, Part I D and D 1	VWP general permit	Subdivision Part I E was renumbered to D. Subdivision D 1 was revised for wording choice and to include the use of existing topsoil in restoration activities where practicable, per a suggestion from the Citizen Advisory Group and consistency with federal nationwide (general) permit conditions. The acronym 'DCR' was spelled out. Title of plant list updated and allowance inserted for DEQ approval if invasives exist in original or reused soil.
100, Part I F and F 7	100, Part I E and E 7	VWP general permit	Subdivision Part I F was renumbered to E. Subdivision E 7 was revised for wording choice.
100, Part I G and G 10	100, Part I F and F 10	VWP general permit	Subdivision Part I G was renumbered to F. Subdivision F 10 was revised to expand devices allowed for dredge material dewatering.
100, Part I H and H 3	100, Part I G and G 3	VWP general permit	Subdivision Part I H was renumbered to G. Subdivision G 3 was revised to replace 'authorization' with 'coverage' and to clarify alternative when plans not available.
100, Part II A 1 and 5		VWP general permit	Subdivisions Part II A 1, A 5 were revised for wording choice.
100, Part II A 2		VWP general permit	Subdivision Part II A 2 was revised to add a citation.
100, Part II A 3		VWP general permit	Subdivision Part II A 3 was revised for wording choice and to clarify that no specific project or application was considered in the adoption of the general permit.
100, Part II A 4		VWP general permit	Subdivision Part II A 4 was revised for wording choice; to clarify in-lieu fee program credits rather and contributions are a compensatory mitigation option; and to emphasize need for recording protective mechanism prior to taking impacts.
100, Part II A 5		VWP general permit	Part II A 5 was revised to clarify the applicability of the condition to final compensation plans.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II A 6	100, Part II A 5 a	VWP general permit	Subdivision Part II A 6 was incorporated into A 5 as “a” and revised to renumber the required information items for providing permittee-responsible wetlands mitigation; and to delete the 120-day timeline for recordation of a final protective instrument and require such prior to implementing project impacts in surface waters, as is consistent with when a final compensation plan must be submitted and approved. Proposed language is consistent with 9VAC25-210-80 and -116.
100, Part II A 7	100, Part II A 5 b	VWP general permit	Subdivision Part II A 7 was incorporated into A 5 as “b” and revised to renumber the required information items for providing permittee-responsible stream mitigation; and to delete the 120-day timeline for recordation of a final protective instrument and require such prior to implementing project impacts in surface waters, as is consistent with when a final compensation plan must be submitted and approved. Proposed language is consistent with 9VAC25-210-80 and -116.
100, Part II A 8 and 9 through 20	100, Part II A 8 and 8 a through k	VWP general permit	Subdivision Part II A 8 was revised to subdivide it into a through k, using the text in existing subdivisions A 9 through 20. The introductory paragraph of A 8 was revised to clarify the list of conditions apply to permittee-responsible mitigation. A portion of the original A 8 sentence was moved to proposed A 8 a and revised to spell out the acronyms USDA and NRCS, and to incorporate the original text from A 12.
100, Part II A 9	100, Part II A 6 and 7	VWP general permit	The original text at Part II A 9 was moved to Part II A 6 and 7.
100, Part II A 10	100, Part II A 8 b	VWP general permit	Subdivision Part II A 10 was renumbered.
100, Part II A 11	100, Part II A 8 c	VWP general permit	Subdivision Part II A 11 was renumbered and revised to delete notification requirement of 10 days.
100, Part II A 12	100, Part II A 8 a	VWP general permit	Subdivision Part II A 12 moved to A 8 a.
100, Part II A 13	100, Part II A 8 d	VWP general permit	Subdivision Part II A 13 renumbered.
100, Part II A 14	100, Part II A 8 e	VWP general permit	Subdivision Part II A 14 was renumbered.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II A 15, 16, and 17		VWP general permit	Subdivisions Part II A 15, 16, and 17 deleted due to inaccuracies and disagreement in scientific community as to proper criteria. Criteria will be contained in project-specific compensation plans.
100, Part II A 18, 19, and 20	100, Part II A 8 f, g, and h	VWP general permit	Subdivision Part II A 18, 19, and 20 were renumbered.
100, Part II B 1		VWP general permit	Subdivision Part II B 1 was revised for simplicity.
100, Part II B 1 a		VWP general permit	Subdivision Part II B 1 a was revised to clarify when, where, and how preconstruction photos must be taken.
100, Part II B 1 b	100, Part II B 1 a	VWP general permit	Subdivision Part II B 1 b was revised to delete ortho-rectified photography and combine with the requirements of II B 1 a. New text was added describing the requirements for when, where, and how to conduct site inspections.
100, Part II B 1 c, 2, and 3	100, Part II B 1 a and b	VWP general permit	Subdivisions Part II B 1 c, B 2, and B 3 were stricken. These requirements were simplified in B 1 a and b.
100, Part II B 4	100, Part II B 2	VWP general permit	Subdivision Part II B 4 was renumbered to 2 and revised to correct a citation.
100, Part II C		VWP general permit	Title revised for wording choice.
100, Part II D 4		VWP general permit	Subdivision Part II D 4 was revised allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part II D 7 and 8		VWP general permit	Subdivisions Part II D 7 and 8 were revised for wording choice.
100, Part II E 1		VWP general permit	Revised to change authorization number to tracking number.
100, Part II E 2		VWP general permit	Subdivision Part II E 2 was revised to delete the 10-day requirement for notification and contents of the notification.
100, Part II E 3 and 3 a through d		VWP general permit	Subdivision Part II E 3 was revised to replace the existing conditions related to the schedule of construction monitoring reports with new requirements for twice per year. E 3 a through d were simplified regarding construction status and subdivisions E 3 e and f were stricken, obsolete.
100, Part II E 4		VWP general permit	Revised for wording choice.
100, Part II E 5		VWP general permit	Subdivision Part II E 5 was revised for wording choice and to delete the 10-day requirement for notification.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II E 6		VWP general permit	Subdivision Part II E 6 was revised to add a provision for submittal of monitoring reports other than by the date stated and subdivisions E 6 a and b were revised for wording choice.
100, Part II E 9		VWP general permit	Subdivision Part II E 9 was revised to clarify the timeline for notifying DEQ about water quality violations.
	100, Part II E 10	VWP general permit	A new subdivision Part II E 10 was added to specify requirements for notifying DEQ about unauthorized impacts to surface waters.
100, Part II E 10	100, Part II E 11	VWP general permit	Original Part II E 10 was renumbered to 11.
100, Part III A		VWP general permit	Subdivision Part III A was revised for wording choice and to clarify the authorities that apply.
100, Part III C		VWP general permit	Subdivision Part III C was revised for wording choice and to clarify the actions taken on an application.
100, Part III E, F and H		VWP general permit	Subdivisions Part III E, F and H were revised for wording choice.
100, Part III G		VWP general permit	Subdivision Part III G was revised for wording choice and to relocate existing text within the same subdivision.
100, Part III H		VWP general permit	Revised for consistency with 9VAC25-210-180.
100, Part III I 1 through 5		VWP general permit	Subdivisions Part III I 1 through 5 were deleted as duplicative of detailed requirements for a notice of planned change and instead, a reference was added to section 80 for those details. Replaced 'authorization' with 'coverage'.
100, Part III J and J 1, 2 and 4		VWP general permit	Subdivision Part III J 1 was revised to clarify that noncompliance may be associated with the coverage or the general permit. Subdivisions J, J 2, and 4 were revised for wording choice. J 5 and 6 were added for consistency with 9VAC25-210-10 et seq. Replaced 'authorization' with 'coverage' in all.
	100, Part III K	VWP general permit	A new subdivision Part III K was added to specify the conditions that apply to a termination without cause. This text is consistent with the proposed language in 9VAC25-210-180 H.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part III K	100, Part III L, L 1, L 3, and L 4 a through c	VWP general permit	Subdivision Part III K was renumbered to L and revised for wording choice. Existing text was relocated within the same subdivision. Renumbered subdivisions Part III L 1 and 3 were revised for wording choice. Certification statements in renumbered subdivisions L 4 a through c were revised for wording choice and to clarify activities may be unlawful if not otherwise excluded from coverage.
100, Part III L and M	100, Part III M and N	VWP general permit	Subdivisions Part III L and M were renumbered.
100, Part III N through Q	100, Part III O through R	VWP general permit	Subdivisions Part III N through Q were renumbered to O through R and revised for wording choice. Replaced 'authorization' with 'coverage'.
	100, Part III S	VWP general permit	A new subdivision Part III S was added to specify the requirement to reapply in order to continue authorized activities after the expiration date of a general permit.
FORMS		Forms	Alphabetized list of forms. Revised the effective date of permit application fee form. Revised the title and effective date of the standard joint permit application. Revised the effective date of the Tidewater application. Added the VDOT monthly reporting application. Revised the effective date of the VDOT inter-agency meeting application.
DOCUMENTS		Documents	Added classification of wetlands, guideline for disposal sites, and invasive plant list.

Summary of Revisions

9VAC25-680			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
10		Definitions	Clarified introductory paragraph for consistency with 9VAC25-210-10.
10		Definitions	Deleted “Channelization, “Cross-sectional drawing”, “Impacts”, “Isolated Wetland of Minimal Ecological Value”, “Surface waters”, “Temporary impacts” - already included under the over-arching program regulation 9VAC25-210-10.
	10	Definitions	Added “Coverage” as a result of changes made to the VWP general permit term and transition provisions.
10		Definitions	Deleted “Emergent wetland”, “Forested wetland”, “Open water”, “Ordinary high water”, “Perennial stream”, “Permanent impacts”, “Person”, “Riprap”, “Scrub-shrub”, “Stream bed” - moved to 9VAC25-210-10 and revised.
10		Definitions	Deleted “FEMA”, used full spelling in text rather than the acronym.
10		Definitions	Deleted “Forebay” since the definition is not needed to understand the regulation and multiple definitions may exist in the engineering field.
10		Definitions	Deleted “Greater than one acre” and “Less than one-half of an acre”, not used in regulation text.
10		Definitions	Revised “Independent utility” to add modifiers of ‘public and economic’ in last sentence for consistency with “Single and complete project”.
	10	Definitions	Added “Notice of project completion” as a result of revising the VWP general permit term and transition provisions. This provision was already a requirement in the regulation but referred to as a notice of termination.
10		Definitions	Revised “Single and complete project” to change ‘waterbody’ to ‘water body and deleted ‘public and economic’ as modifiers of utility for better consistency with Corps’ definition.
10		Definitions	Revised “State program general permit” to correct citations.
10		Definitions	Revised “Up to 300 linear feet” and “Up to 1500 linear feet” for consistency.
10		Definitions	Revised “Up to one-tenth of an acre” to “up to one-tenth acre”.

9VAC25-680			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
10		Definitions	Added "VWP general permit" as a result of revising the VWP general permit term and transition provisions to clarify what is intended by section 100 of the general permit regulation and to combine it with the existing 'general permit' and 'VWP permit' definitions in 9VAC25-210-10.
10		Definitions	Citations were corrected in the Statutory Authority footnote.
	15	Statewide information	Added new section 'Statewide information' to explicitly state authority of board to request information as needed to make permitting decisions or for other reasons in carrying out authority under Chapter 3.1; derived from Code 62.1-44.15:21 and -44.21.
20		Purpose; delegation of authority	Revised title of section to remove 'effective date of the general permit', which is now in section 27.
20 A		Purpose; delegation of authority	Revised to change 'authorization' to 'coverage'; text added for consistency with other VWP general permit regulations.
20 C	27 A; 100 preamble	Purpose; delegation of authority	Deleted and moved to sections 27 and 100 in the general permit text.
20 D	27 B	Purpose; delegation of authority	The first sentence of subsection D was moved to the new section 27. The second sentence of subsection D was deleted to reflect change to fixed general permit term.
	25	Authorization for coverage under VWP general permit effective August 1, 2006	Added new section to specify how applications will be processed by DEQ prior to August 2, 2016 and to address the transition of existing permit authorization holders into a new general permit regulation having a set term.
	25 A	Authorization for coverage under VWP general permit effective August 1, 2006	Specifies how applications through 2016 will be processed.
	25 B	Authorization for coverage under VWP general permit effective August 1, 2006	Specifies that existing authorizations for coverage remain effective until the date specified on the authorization cover page unless otherwise terminated or revoked.
	27	VWP general permit coverage; transition; continuation	Added new section to specify how applications will be processed by DEQ after August 2, 2016 and to address how future transitions will occur.

9VAC25-680			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	27 A	VWP general permit coverage; transition; continuation	Specifies how applications after 2016 will be processed.
	27 B	VWP general permit coverage; transition; continuation	Sets forth the criteria for those applicants who receive coverage under a general permit but who cannot begin or complete the project before the general permit term expires.
	27 C	VWP general permit coverage; transition; continuation	States that application may be made at any time for a VWP individual permit.
30 A		Authorization to impact surface waters	Revised for wording choice and to clarify that no coverage is being granted in the regulation.
30 A 2		Authorization to impact surface waters	Revised for wording choice and to remove the reference to the permit fee regulation, as that regulation is contrary to historic and current program practices for determining certain fees, and in some cases contains erroneous or misleading information. Revision of the permit fee regulation is not included as part of this VWP regulatory action.
30 A 3		Authorization to impact surface waters	Revised to clarify that applicant may utilize the general permit if comply with the limits and requirements that exist in the general permit, the coverage, the Clean Water Act, State Water Control Law, and regulations pursuant to it.
30 A 4		Authorization to impact surface waters	Deleted and combined with revised A 3.
30 A 5	30 A 4	Authorization to impact surface waters	Renumbered and citation was corrected.
30 A 6 through 8	30 A 5 through 7	Authorization to impact surface waters	Renumbered.
30 A 9	30 A 8	Authorization to impact surface waters	Renumbered and revised to add an additional citation and to clarify the applicability of the compensation requirement.
30 C		Authorization to impact surface waters	Citation was corrected and subsection revised for consistency.
30 D		Authorization to impact surface waters	Revised for wording choice.
30 E	100 preamble	Authorization to impact surface waters	Stricken, moved to section 100, and revised for wording choice.

9VAC25-680			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
30 F	30 E	Authorization to impact surface waters	Renumbered and clarified to reference the correct regulatory citation and new general permit effective date, as well as being revised for wording choice. The last sentence of the subsection was stricken as duplicative of the preceding text.
30 G	30 F	Authorization to impact surface waters	Subsection renumbered.
30 H	30 G	Authorization to impact surface waters	Subsection renumbered and revised for wording choice; citation added.
	35	Administrative continuance	New section added to specify how coverage will carry forth if agency fails to reissue a new general permit before a previous one expires.
40 A		Exceptions to coverage	Revised to state coverage is not required if otherwise excluded by 9VAC25-210-60.
40 B		Exceptions to coverage	Replaced 'authorization' with 'coverage' and revised for wording choice.
40 A 1 and 2; G 11 and 12	40 G 11 and 12	Exceptions to coverage	Original text moved to subsection 40 G; A 2 combined with G 11 regarding threatened and endangered species and revised for wording choice; G 11 a revised for consistency.
40 C, E, G, G 1		Exceptions to coverage	Revised for wording choice. Replaced 'authorization' with 'coverage'.
40 G 5		Exceptions to coverage	Revised to clarify types of concrete rather than the method of concrete installation as a prohibited activity.
	40 G 13	Exceptions to coverage	Added to clarify VWP general permits are only for activities in nontidal surface waters, consistent with 9VAC25-660-30 B.
	50 A 1	Notification	Added to clarify what is required from VDOT regarding notification and informational requirements for a complete application. An existing Memorandum of Understanding will be revised to specify any informational requirements different from those listed in the regulation and to reflect current application processing practices between DEQ and VDOT.

9VAC25-680			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
50 A 1	50 A 2	Notification	Revised for wording choice and to remove duplication; to replace ‘authorization’ with ‘coverage’; to delete a portion of the second sentence as proposed to be addressed by new provision in 50 A 1; to delete a portion of the third sentence as an out-of-place permit condition; and to delete the last sentence as a duplicative provision and out-of-place permit condition.
50 A 2	50 A 3	Notification	Former 50 A 2 renumbered to A 3 and revised for wording choice. to replace ‘authorization’ with ‘coverage’;
50 A 2 a	50 A 3 a	Notification	Revised for wording choice; to move former c up to a and revise for wording choice; and to add the citation to refer to if compensation is required.
50 A 2 b	50 A 3 b	Notification	Revised for wording choice; to revise the citations for informational items; to add the citation to refer to if compensation is required; and to delete the last sentence as an out-of-place permit condition.
50 A 2 c	50 A 3 a	Notification	Deleted and moved to 3 a.
50 B		Notification	Revised to clarify that the acceptable application forms are listed at the end of the regulation.
50 C		Notification	Revised to clarify denial is associated with the application for coverage and to spell out ‘DEQ’.
60 A 1		Application	Revised for wording choice and to remove duplicated text.
60 B		Application	Entire subsection renumbered and revised for consistency with 9VAC25-210-80 B; revised for wording choice and reorganization.
60 B 1		Application	Revised ‘name’ to ‘legal name’.
	60 B 2	Application	Added requirement for property owner information.
60 B 2	60 B 3	Application	Renumbered; punctuation revised.
60 B 3	60 B 4	Application	Renumbered and revised for wording choice.
60 B 4	60 B 5 and 7	Application	Renumbered and revised to retain requirement for the project name; move requirement for project description to renumbered B 7; add project schedule.
60 B 5 through 9	60 B 6	Application	Renumbered and revised to expand on the required information about surface waters; to incorporate information required by original B 6 through 9.
60 B 10		Application	Deleted, obsolete.

9VAC25-680			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
60 B 11	60 B 8 and 9	Application	Revised to clarify the information requirements necessary in a plan-view drawing; to add informational requirements necessary for a cross-sectional, and profile drawing if applicable, as originally located in B 11.
60 B 12	60 B 10	Application	Renumbered and revised to clarify the information necessary in a dredged materials assessment.
60 B 13	60 B 11	Application	Renumbered and revised to clarify the information required about surface water impacts.
60 B 14	60 C	Application	Relocated text from complete application and revised for consistency with 9VAC25-210-80 C on assessment of wetland functions.
60 B 15	60 B 12	Application	Renumbered and revised for wording choice and consistency with 9VAC25-210-115 C regarding alternatives analysis.
60 B 16	60 B 13	Application	Renumbered and revised regarding compensation plans. Existing text was clarified regarding what is required for a complete application regarding compensation plans and what is required for the protective instrument over compensation sites.
60 B 17	60 B 11 e	Application	Relocated information required for delineation map to 11 e and revised to add GIS shapefile.
60 B 18		Application	Deleted FEMA information, obsolete and to address suggestions made by Citizens Advisory Group.
60 B 19	60 B 14	Application	Renumbered and revised to remove reference to the permit fee regulation.
60 B 20	60 B 15	Application	Renumbered and revised to clarify the required information about already protected areas on the project site.
60 B 21	60 B 16	Application	Renumbered and revised to clarify the application signature requirements.
60 C	60 B 16	Application	Original text moved to subdivision B 16; new text was added describing the requirements for an assessment of wetland functions, consistent with the text in 9VAC25-210-80 C.
60 D, D 1, and D 2		Application	Revised for wording choice and replace 'authorization' with 'coverage'.

9VAC25-680			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
60 E		Application	Revised for consistency with 9VAC25-210-80 E; to clarify the circumstances under which an administrative withdrawal of an application may occur; to change number of days from 180 to 60 after which an incomplete application may be administratively withdrawn; to clarify that an applicant may also request the withdrawal.
70 A		Compensation	Revised to relocate existing text; added citation.
70 B through D		Compensation	Deleted as duplicative of 9VAC25-210-116. Sentence was added that compensatory mitigation will be in accordance with section 70 and 9VAC25-210-116.
70 E and F	100 Part II A 4	Compensation	Deleted as duplicative of 9VAC25-210-116 except last sentences of subsection E and F were moved.
70 G	70 C	Compensation	Renumbered and revised for wording choice.
70 H	70 D	Compensation	Renumbered and revised for wording choice and to spell out the acronym 'DEQ'.
70 I	70 E	Compensation	Renumbered and clarified that open water does not include streams in this provision; for consistency with other VWP general permit regulations; revise the maximum mitigation ratio; to add when open water compensation not required; to correct grammatical error.
70 J	70 F	Compensation	Renumbered and revised to rearrange existing text and correct a grammatical error.
80		Notice of planned changes; modifications to coverage	Title of section revised to include modifications to coverage. Throughout section, 'in-lieu fee fund' was replaced with 'in-lieu fee program' for better consistency with the 2008 Federal Mitigation Rule.
80 A		Notice of planned changes; modifications to coverage	Revised to clarify applications or requests may be accepted that request a change to existing general permit coverage and to specify under what circumstances a request is not applicable. The subsection states the applicant may apply for a VWP individual permit instead.

9VAC25-680			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
80 B		Notice of planned changes; modifications to coverage	Revised to remove additional impacts language and make B an introductory statement. Replaced 'authorization' with 'coverage'.
80 B 1	80 B 1 and 1 g	Notice of planned changes; modifications to coverage	Revised to clarify how additional impacts may be authorized and the criteria that must be met, consistent with the text in 9VAC25-210-180 except for the sliding percentage scale of additional impact amounts. The last sentence was moved to -80 B 1 g.
80 C	80 B 2	Notice of planned changes; modifications to coverage	Renumbered and revised to reflect the requirements for a reduction in impacts, consistent with the text in 9VAC25-210-180.
80 D and F	80 B 3 and 5	Notice of planned changes; modifications to coverage	Renumbered and revised for wording choice and clarify references.
80 E	80 B 4	Notice of planned changes; modifications to coverage	Renumbered and revised to allow substitution of bank or in-lieu fee program credits with any combination of the same, consistent with text in 9VAC25-210-180.
80 G	80 B 1 h	Notice of planned changes; modifications to coverage	Moved.
80 H and I	80 A	Notice of planned changes; modifications to coverage	Moved and combined with existing text except deletion of denial if fish and wildlife resources impacted because impacts to resources are prohibited under section 40.
90		Termination of coverage	Title of section revised. Opening paragraph revised to relocate existing text within the same paragraph, correct citations, replace 'authorization' with 'coverage', and renumber the existing language as subsection A.
90 3	90 A 3	Termination of coverage	Revised for wording choice.
90 4 a through c	90 A 4 a through c	Termination of coverage	Revised for wording choice and consistency; to spell out the acronym 'DEQ'; to replace 'authorization' with 'coverage'; and to clarify activities may be unlawful if not otherwise excluded from coverage.
	90 B	Termination of coverage	Subsection added to reference two additional types of termination. One type is existing and one is new. Both are also located in section 100 Part III of this regulation and in 9VAC25-210-180 G and H.

9VAC25-680			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
95	27	Transition	Subsection was repealed; existing text regarding application processing in times of general permit transitions replaced by text in section 27.
100		VWP general permit	Applicable to the entire section: The acronym 'DEQ' was spelled out throughout section 100. Introductory paragraph deleted and the section was revised to display the general permit as proposed.
100		VWP general permit	Applicable to the preamble: Title was revised to include the permit number – deleted 'VWP General Permit No. WP3'. 'Authorization expiration' revised to 'Effective date: August 2, 2016'; 'Expiration date: August 1, 2031' added to reflect the specific general permit term, coinciding to time of year when construction activities typically slow. 'Authorization notes' was deleted - requirements appear in the coverage letter provided by DEQ to the permittee. First paragraph under the VWP general permit title was revised to clarify that no coverage is being granted in the regulation or in the general permit text and that no specific project is basis of coverage. Second paragraph under the VWP general permit title was revised to clarify connection of authorities. 'Permittee', 'Address', 'Activity Location', 'Activity Description', the authorization statement, signature and date blank lines, 'Director, Department of Environmental Quality', and 'Date' were stricken - this information appears in the coverage letter that is provided by DEQ to the permittee.
100, Part I A 1		VWP general permit	Subdivision Part I A 1 was revised to clarify that no specific project or application was considered in the adoption of the general permit.
100, Part I A 2		VWP general permit	Subdivision Part I A 2 was revised for wording choice and to clarify how changes to coverage may be processed.
100, Part I A 3		VWP general permit	Subdivision Part I A 3 was revised for wording choice; to clarify that no specific project or application was considered in the adoption of the general permit; and for consistency with revisions in 9VAC25-210-180 regarding temporary impacts.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part I A 4		VWP general permit	Deleted 'authorization' modifying compensation.
100, Part I A 5		VWP general permit	Subdivision Part I A 5 was deleted to remove reference to a specific length of authorization.
100, Part I B	25	VWP general permit	Subdivision Part I B was stricken to correct the options of how coverage may continue, as described in the text of proposed section 27.
100, Part I C	100, Part I B	VWP general permit	Subdivision Part I C was retitled, renumbered as B.
100, Part I C 2	100, Part I B 2	VWP general permit	Existing language in the renumbered Part I B 2 was clarified regarding the requirements for culvert and pipe placement in streams and to relocate existing text within the same subdivision.
100, Part I C 3	100, Part I B 3	VWP general permit	Renumbered Part I B 3 was revised for consistency with the other VWP general permit regulations and to allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part I C 8	100, Part I B 8	VWP general permit	Renumbered Part I B 8 was revised to allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part I C 10	100, Part I B 10	VWP general permit	Revised to replace 'permitted' with 'authorized'.
100, Part I C 11 and 12	100, Part I B 11 and 12	VWP general permit	Renumbered Part I B 11 and B 12 were revised for wording choice and to include the use of existing topsoil in restoration activities where practicable, per a suggestion from the Citizen Advisory Group and consistency with federal nationwide (general) permit conditions. Acronym 'DCR' was spelled out. Title of plant list updated and allowance inserted for DEQ approval if invasives exist in original or reused soil.
100, Part I C 15	100, Part I B 15	VWP general permit	Renumbered Part I B 15 was revised to clarify the results of coordination between agencies and DEQ's related requirements will appear in the coverage granted by DEQ.
100, Part I C 16	100, Part I B 16	VWP general permit	Renumbered Part I B 16 was revised to clarify that no coverage is being granted in the regulation or in the general permit text.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part I C 17	100, Part I B 17	VWP general permit	Renumbered Part I B 17 was revised for wording choice and to allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part I D and D 1	100, Part I C and C 1	VWP general permit	Subdivision Part I D was renumbered to C, and C 1 was revised for wording choice.
100, Part I E and E 1	100, Part I D and D 1	VWP general permit	Subdivision Part I E was renumbered to D. Subdivision D 1 was revised for wording choice and to include the use of existing topsoil in restoration activities where practicable, per a suggestion from the Citizen Advisory Group and consistency with federal nationwide (general) permit conditions. The acronym 'DCR' was spelled out. Title of plant list updated and allowance inserted for DEQ approval if invasives exist in original or reused soil.
100, Part I F and F 7	100, Part I E and E 7	VWP general permit	Subdivision Part I F was renumbered to E. Subdivision E 7 was revised for wording choice.
100, Part I G and G 10	100, Part I F and F 10	VWP general permit	Subdivision Part I G was renumbered to F. Subdivision F 10 was revised to expand devices allowed for dredge material dewatering.
100, Part I H and H 3	100, Part I G and G 3	VWP general permit	Subdivision Part I H was renumbered to G. Subdivision G 3 was revised to replace 'authorization' with 'coverage' and to clarify alternative when plans not available.
100, Part II A 1 and 5		VWP general permit	Subdivision Part II A 1, A 5 were revised for wording choice.
100, Part II A 2		VWP general permit	Subdivision Part II A 2 was revised to add a citation.
100, Part II A 3		VWP general permit	Subdivision Part II A 3 was revised for wording choice and to clarify that no specific project or application was considered in the adoption of the general permit.
100, Part II A 4		VWP general permit	Subdivision Part II A 4 was revised for wording choice; to clarify in-lieu fee program credits rather and contributions are a compensatory mitigation option; and to emphasize need for recording protective mechanism prior to taking impacts.
100, Part II A 5		VWP general permit	Part II A 5 was revised to clarify the applicability of the condition to final compensation plans.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II A 6	100, Part II A 5 a	VWP general permit	Subdivision Part II A 6 was incorporated into A 5 as “a” and revised to renumber the required information items for providing permittee-responsible wetlands mitigation; and to delete the 120-day timeline for recordation of a final protective instrument and require such prior to implementing project impacts in surface waters, as is consistent with when a final compensation plan must be submitted and approved. Proposed language is consistent with 9VAC25-210-80 and -116.
100, Part II A 7	100, Part II A 5 b	VWP general permit	Subdivision Part II A 7 was incorporated into A 5 as “b” and revised to renumber the required information items for providing permittee-responsible stream mitigation; and to delete the 120-day timeline for recordation of a final protective instrument and require such prior to implementing project impacts in surface waters, as is consistent with when a final compensation plan must be submitted and approved. Proposed language is consistent with 9VAC25-210-80 and -116.
100, Part II A 8 and 9 through 20	100, Part II A 8 and 8 a through k	VWP general permit	Subdivision Part II A 8 was revised to subdivide it into a through k, using the text in existing subdivisions A 9 through 20. The introductory paragraph of A 8 was revised to clarify the list of conditions apply to permittee-responsible mitigation. A portion of the original A 8 sentence was moved to proposed A 8 a and revised to spell out the acronyms USDA and NRCS, and to incorporate the original text from A 12.
100, Part II A 9	100, Part II A 6 and 7	VWP general permit	The original text at Part II A 9 was moved to Part II A 6 and 7.
100, Part II A 10	100, Part II A 8 b	VWP general permit	Subdivision Part II A 10 was renumbered.
100, Part II A 11	100, Part II A 8 c	VWP general permit	Subdivision Part II A 11 was renumbered and revised to delete notification requirement of 10 days.
100, Part II A 12	100, Part II A 8 a	VWP general permit	Subdivision Part II A 12 moved to A 8 a.
100, Part II A 13	100, Part II A 8 d	VWP general permit	Subdivision Part II A 13 renumbered.
100, Part II A 14	100, Part II A 8 e	VWP general permit	Subdivision Part II A 14 was renumbered.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II A 15, 16, and 17		VWP general permit	Subdivisions Part II A 15, 16, and 17 deleted due to inaccuracies and disagreement in scientific community as to proper criteria. Criteria will be contained in project-specific compensation plans.
100, Part II A 18, 19, and 20	100, Part II A 8 f, g, and h	VWP general permit	Subdivision Part II A 18, 19, and 20 were renumbered.
100, Part II B		VWP general permit	Subdivision Part II B 1 was revised for simplicity.
100, Part II B 1 a		VWP general permit	Subdivision Part II B 1 a was revised to clarify when, where, and how preconstruction photos must be taken.
100, Part II B 1 b	100, Part II B 1 a	VWP general permit	Subdivision Part II B 1 b was revised to delete ortho-rectified photography and combine with the requirements of II B 1 a. New text was added describing the requirements for when, where, and how to conduct site inspections.
100, Part II B 1 c, 2, and 3	100, Part II B 1 a and b	VWP general permit	Subdivisions Part II B 1 c, B 2, and B 3 were stricken. These requirements were simplified in B 1 a and b.
100, Part II B 4	100, Part II B 2	VWP general permit	Subdivision Part II B 4 was renumbered to 2 and revised to correct a citation.
100, Part II C		VWP general permit	Title revised for wording choice.
100, Part II D 4		VWP general permit	Subdivision Part II D 4 was revised allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part II D 7 and 8		VWP general permit	Subdivisions Part II D 7 and 8 were revised for wording choice.
100, Part II E 1		VWP general permit	Revised to change authorization number to tracking number.
100, Part II E 2		VWP general permit	Subdivision Part II E 2 was revised to delete the 10-day requirement for notification and contents of the notification.
100, Part II E 3 and 3 a through d		VWP general permit	Subdivision Part II E 3 was revised to replace the existing conditions related to the schedule of construction monitoring reports with new requirements for twice per year. E 3 a through d were simplified regarding construction status and subdivisions E 3 e and f were stricken, obsolete.
100, Part II E 4		VWP general permit	Revised for wording choice.
100, Part II E 5		VWP general permit	Subdivision Part II E 5 was revised for wording choice and to delete the 10-day requirement for notification.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II E 6		VWP general permit	Subdivision Part II E 6 was revised to add a provision for submittal of monitoring reports other than by the date stated and subdivisions E 6 a and b were revised for wording choice.
100, Part II E 9		VWP general permit	Subdivision Part II E 9 was revised to clarify the timeline for notifying DEQ about water quality violations.
	100, Part II E 10	VWP general permit	A new subdivision Part II E 10 was added to specify requirements for notifying DEQ about unauthorized impacts to surface waters.
100, Part II E 10	100, Part II E 11	VWP general permit	Original Part II E 10 was renumbered to 11.
100, Part III A		VWP general permit	Subdivision Part III A was revised for wording choice and to clarify the authorities that apply.
100, Part III C		VWP general permit	Subdivision Part III C was revised for wording choice and to clarify the actions taken on an application.
100, Part III E, F and H		VWP general permit	Subdivisions Part III E, F and H were revised for wording choice.
100, Part III G		VWP general permit	Subdivision Part III G was revised for wording choice and to relocate existing text within the same subdivision.
100, Part III H		VWP general permit	Revised for consistency with 9VAC25-210-180.
100, Part III I 1 through 5		VWP general permit	Subdivisions Part III I 1 through 5 were deleted as duplicative of detailed requirements for a notice of planned change and instead, a reference was added to section 80 for those details. Replaced 'authorization' with 'coverage'.
100, Part III J		VWP general permit	Subdivision Part III J 1 was revised to clarify that noncompliance may be associated with the coverage or the general permit. Subdivisions J, J 2, and 4 were revised for wording choice. J 5 and 6 were added for consistency with 9VAC25-210-10 et seq. Replaced 'authorization' with 'coverage' in all.
	100, Part III K	VWP general permit	A new subdivision Part III K was added to specify the conditions that apply to a termination without cause. This text is consistent with the proposed language in 9VAC25-210-180 H.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part III K	100, Part III L, L 1, L 3, and L 4 a through c	VWP general permit	Subdivision Part III K was renumbered to L and revised for wording choice. Replaced 'authorization' with 'coverage'. Existing text was relocated within the same subdivision. Renumbered subdivisions Part III L 1 and 3 were revised for wording choice. Certification statements in renumbered subdivisions L 4 a through c were revised for wording choice and to clarify activities may be unlawful if not otherwise excluded from permit or coverage.
100, Part III L and M	100, Part III M and N	VWP general permit	Subdivisions Part III L and M were renumbered.
100, Part III N through Q	100, Part III O through R	VWP general permit	Subdivisions Part III N through Q were renumbered to O through R and revised for wording choice. Replaced 'authorization' with 'coverage'.
	100, Part III S	VWP general permit	A new subdivision Part III S was added to specify the requirement to reapply in order to continue authorized activities after the expiration date of a general permit.
FORMS		Forms	Alphabetized list of forms. Revised the effective date of permit application fee form. Revised the title and effective date of the standard joint permit application. Revised the effective date of the Tidewater application. Added the VDOT monthly reporting application. Revised the effective date of the VDOT inter-agency meeting application.
DOCUMENTS		Documents	Added classification of wetlands, guideline for disposal sites, and invasive plant list.

Summary of Revisions

9VAC25-690			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
10		Definitions	Clarified introductory paragraph for consistency with 9VAC25-210-10.
10		Definitions	Deleted “Channelization, “Cross-sectional drawing”, “Impacts”, “Isolated Wetland of Minimal Ecological Value”, “Surface waters”, “Temporary impacts” - already included under the over-arching program regulation 9VAC25-210-10.
	10	Definitions	Added “Coverage” as a result of changes made to the VWP general permit term and transition provisions.
10		Definitions	Deleted “Emergent wetland”, “Forested wetland”, “Open water”, “Ordinary high water”, “Perennial stream”, “Permanent impacts”, “Person”, “Riprap”, “Scrub-shrub”, “Stream bed” - moved to 9VAC25-210-10 and revised.
10		Definitions	Deleted “FEMA”, used full spelling in text rather than the acronym.
10		Definitions	Deleted “Forebay” since the definition is not needed to understand the regulation and multiple definitions may exist in the engineering field.
10		Definitions	Deleted “Greater than one acre” and “Less than one-half of an acre”, not used in regulation text.
10		Definitions	Revised “Histosols” to correct reference to hydric soils list.
10		Definitions	Revised “Independent utility” to add modifiers of ‘public and economic’ in last sentence for consistency with “Single and complete project”.
10		Definitions	Revised “In-stream mining” for consistency with section 40
	10	Definitions	Added “Notice of project completion” as a result of revising the VWP general permit term and transition provisions. This provision was already a requirement in the regulation but referred to as a notice of termination.
10		Definitions	Revised “Single and complete project” to change ‘waterbody’ to ‘water body and deleted ‘public and economic’ as modifiers of utility for better consistency with Corps’ definition.
10		Definitions	Revised “State program general permit” to correct citations.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
10		Definitions	Revised “Up to 300 linear feet” and “Up to 1500 linear feet” for consistency.
10		Definitions	Revised “Up to one-tenth of an acre” to “up to one-tenth acre”.
10		Definitions	Added “VWP general permit” as a result of revising the VWP general permit term and transition provisions to clarify what is intended by section 100 of the general permit regulation and to combine it with the existing ‘general permit’ and ‘VWP permit’ definitions in 9VAC25-210-10.
10		Definitions	Citations were corrected in the Statutory Authority footnote.
	15	Statewide information	Added new section ‘Statewide information’ to explicitly state authority of board to request information as needed to make permitting decisions or for other reasons in carrying out authority under Chapter 3.1; derived from Code 62.1-44.15:21 and -44.21.
20		Purpose; delegation of authority	Revised title of section to remove ‘effective date of the general permit’, which is now in section 27.
20 A		Purpose; delegation of authority	Revised to change ‘authorization’ to ‘coverage’; text added for consistency with other VWP general permit regulations.
20 C	27 A; 100 preamble	Purpose; delegation of authority	Deleted and moved to new section 27 and to section 100 in the general permit text.
20 D	27 B	Purpose; delegation of authority	The first sentence of subsection D was moved to the new section 27. The second sentence of subsection D was deleted to reflect change to fixed general permit term.
	25	Authorization for coverage under VWP general permit effective August 1, 2006	Added new section to specify how applications will be processed by DEQ prior to August 2, 2016 and to address the transition of existing permit authorization holders into a new general permit regulation having a set term.
	25 A	Authorization for coverage under VWP general permit effective August 1, 2006	Specifies how applications through 2016 will be processed.
	25 B	Authorization for coverage under VWP general permit effective August 1, 2006	Specifies that existing authorizations for coverage remain effective until the date specified on the authorization cover page unless otherwise terminated or revoked.

9VAC25-690			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	27	VWP general permit coverage; transition; continuation	Added new section to specify how applications will be processed by DEQ after August 2, 2016 and to address how future transitions will occur.
	27 A	VWP general permit coverage; transition; continuation	Specifies how applications after 2016 will be processed.
	27 B	VWP general permit coverage; transition; continuation	Sets forth the criteria for those applicants who receive coverage under a general permit but who cannot begin or complete the project before the general permit term expires.
	27 C	VWP general permit coverage; transition; continuation	States that application may be made at any time for a VWP individual permit.
30 A		Authorization to impact surface waters	Revised for wording choice and to clarify that no coverage is being granted in the regulation.
30 A 2		Authorization to impact surface waters	Revised for wording choice and to remove the reference to the permit fee regulation, as that regulation is contrary to historic and current program practices for determining certain fees, and in some cases contains erroneous or misleading information. Revision of the permit fee regulation is not included as part of this VWP regulatory action.
30 A 3		Authorization to impact surface waters	Revised to clarify that applicant may utilize the general permit if comply with the limits and requirements that exist in the general permit, the coverage, the Clean Water Act, State Water Control Law, and regulations pursuant to it.
30 A 4		Authorization to impact surface waters	Deleted and combined with revised A 3.
30 A 5	30 A 4	Authorization to impact surface waters	Renumbered and citation was corrected.
30 A 6 through 8	30 A 5 through 7	Authorization to impact surface waters	Renumbered.
30 A 9	30 A 8	Authorization to impact surface waters	Renumbered and revised to add an additional citation and to clarify the applicability of the compensation requirement.
30 B 3 a		Authorization to impact surface waters	'Traps' were added as an included stormwater feature.
30 B 3 c		Authorization to impact surface waters	Revised to better match proposed revisions to 9VAC25-210-60 5 and allow for alternative when original plans are not available.

9VAC25-690			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
30 B 4		Authorization to impact surface waters	Revised for consistency with definition of in-stream mining. Replaced 'authorization' with 'coverage'.
30 C		Authorization to impact surface waters	Citation was corrected and subsection revised for consistency.
30 D		Authorization to impact surface waters	Revised for wording choice.
30 E	100 preamble	Authorization to impact surface waters	Stricken, moved to section 100, and revised for wording choice.
30 F	30 E	Authorization to impact surface waters	Renumbered and clarified to reference the correct regulatory citation and new general permit effective date, as well as being revised for wording choice. The last sentence of the subsection was stricken as duplicative of the preceding text.
30 G	30 F	Authorization to impact surface waters	Subsection renumbered.
30 H	30 G	Authorization to impact surface waters	Subsection renumbered and revised for wording choice; citation added.
	35	Administrative continuance	New section added to specify how coverage will carry forth if agency fails to reissue a new general permit before a previous one expires.
40 A		Exceptions to coverage	Revised to state coverage is not required if otherwise excluded by 9VAC25-210-60.
40 A 1 and 2; G 13 and 14	40 G 13 and 14	Exceptions to coverage	Original text moved to subsection 40 G and revised for wording choice.
40 A 3; G 12	40 G 12	Exceptions to coverage	Original text moved to subsection 40 G and revised to combine with the existing text there regarding threatened and endangered species.
40 B		Exceptions to coverage	Replaced 'authorization' with 'coverage' and revised for wording choice.
40 E		Exceptions to coverage	Revised for wording choice.
40 G and G 5		Exceptions to coverage	Revised for wording choice and consistency with 9VAC25-680. Replaced 'authorization' with 'coverage'.
	40 G 15	Exceptions to coverage	Added to clarify VWP general permits are only for activities in nontidal surface waters, consistent with 9VAC25-660-30 B.
50 A 1		Notification	Revised for wording choice and remove duplication; to replace 'authorization' with 'coverage'; to delete a portion of the second sentence as an out-of-place permit condition; and to delete the last sentence as a duplicative provision and out-of-place permit condition.
50 A 2		Notification	Revised for wording choice and to replace 'authorization' with 'coverage'.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
50 A 2 a		Notification	Revised for wording choice; to move former c up to a and revise for wording choice; and to add the citation to refer to if compensation is required.
50 A 2 b		Notification	Revised for wording choice; to revise the citations for informational items; to add the citation to refer to if compensation is required; and to delete the last sentence as an out-of-place permit condition.
50 A 2 c	50 A 2 a	Notification	Deleted and moved to 2 a.
50 B		Notification	Revised to clarify that the acceptable application forms are listed at the end of the regulation rather than listing these out by title, duplicative of FORMS section.
50 C		Notification	Revised to clarify denial is associated with the application for coverage and to spell out 'DEQ'.
60 A		Application	Entire section renumbered and revised for consistency with 9VAC25-210-80 B.
60 A 1	60 A	Application	Revised for wording choice and to remove duplicated text; to delete A 2, reference to VDOT IACM process; and delete enumeration under A.
60 B		Application	Revised for wording choice and reorganization.
60 B 1		Application	Revised 'name' to 'legal name'.
	60 B 2	Application	Added requirement for property owner information.
60 B 2	60 B 3	Application	Renumbered; punctuation revised.
60 B 3	60 B 4	Application	Renumbered and revised for wording choice.
60 B 4	60 B 5 and 7	Application	Renumbered and revised to retain requirement for the project name; move requirement for project description to renumbered B 7; add project schedule.
60 B 5 through 9	60 B 6	Application	Renumbered and revised to expand on the required information about surface waters; to incorporate information required by original B 6 through 9.
60 B 10		Application	Deleted, obsolete.
60 B 11	60 B 8 and 9	Application	Revised to clarify the information requirements necessary in a plan-view drawing; to add informational requirements necessary for a cross-sectional, and profile drawings if applicable, as originally located in B 11.
60 B 12	60 B 10	Application	Renumbered and revised to clarify the information necessary in a dredged materials assessment.

9VAC25-690			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
60 B 13	60 B 11	Application	Renumbered and revised to clarify the information required about surface water impacts.
60 B 14	60 C	Application	Relocated text and revised for consistency with 9VAC25-210-80 C on assessment of wetland functions.
60 B 15	60 B 12	Application	Renumbered and revised for wording choice and consistency with 9VAC25-210-115 C regarding alternatives analysis.
60 B 16	60 B 13	Application	Renumbered and revised regarding compensation plans. Existing text was clarified regarding what is required for a complete application regarding compensation plans and what is required for the protective instrument over compensation sites.
60 B 17	60 B 11 e	Application	Relocated information required for delineation map to 11 e and revised to add GIS shapefile.
60 B 18		Application	Deleted FEMA information, obsolete and to address suggestions made by Citizens Advisory Group.
60 B 19	60 B 14	Application	Renumbered and revised to remove reference to the permit fee regulation.
60 B 20	60 B 15	Application	Renumbered and revised to clarify the required information about already protected areas on the project site.
60 B 21	60 B 16	Application	Renumbered and revised to clarify the application signature requirements.
60 C	60 B 16	Application	Original text moved to subdivision B 16; new text was added describing the requirements for an assessment of wetland functions, consistent with the text in 9VAC25-210-80 C.
60 D, D 1, and D 2		Application	Revised for wording choice and replace 'authorization' with 'coverage'.
60 E		Application	Revised for consistency with 9VAC25-210-80 E; to clarify the circumstances under which an administrative withdrawal of an application may occur; to change number of days from 180 to 60 after which an incomplete application may be administratively withdrawn; to clarify that an applicant may also request the withdrawal.
70		Compensation	The Statutory Authority footnote was revised to delete an obsolete citation.
70 A		Compensation	Revised and relocated existing text; added citation.

9VAC25-690			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
70 B through D		Compensation	Deleted as duplicative of 9VAC25-210-116. Sentence was added that compensatory mitigation will be in accordance with section 70 and 9VAC25-210-116.
70 E and F	100 Part II A 4	Compensation	Deleted as duplicative of 9VAC25-210-116 except last sentences of subsection E and F were moved.
70 G	70 C	Compensation	Renumbered and revised for wording choice.
70 H	70 D	Compensation	Renumbered and revised for wording choice and to spell out the acronym 'DEQ'.
70 I	70 E	Compensation	Renumbered and clarified that open water does not include streams in this provision; for consistency with other VWP general permit regulations; revise the maximum mitigation ratio; to add when open water compensation not required; to correct grammatical error.
70 J	70 F	Compensation	Renumbered and revised to rearrange existing text and correct a grammatical error.
80		Notice of planned changes; modifications to coverage	Title of section revised to include modifications to coverage. Throughout section, 'in-lieu fee fund' was replaced with 'in-lieu fee program' for better consistency with the 2008 Federal Mitigation Rule. Statutory Authority footnote was revised to delete an obsolete citation.
80 A		Notice of planned changes; modifications to coverage	Revised to clarify applications or requests may be accepted that request a change to existing general permit coverage and to specify under what circumstances a request is not applicable. The subsection states the applicant may apply for a VWP individual permit instead.
80 B		Notice of planned changes; modifications to coverage	Revised to remove additional impacts language and make B an introductory statement. Replaced 'authorization' with 'coverage'.
80 B 1	80 B 1 and 1 g	Notice of planned changes; modifications to coverage	Revised to clarify how additional impacts may be authorized and the criteria that must be met, consistent with the text in 9VAC25-210-180 except for the sliding percentage scale of additional impact amounts. The last sentence was moved to -80 B 1 g.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
80 C	80 B 2	Notice of planned changes; modifications to coverage	Renumbered and revised to reflect the requirements for a reduction in impacts, consistent with the text in 9VAC25-210-180.
80 D and F	80 B 3 and 5	Notice of planned changes; modifications to coverage	Renumbered and revised for wording choice and clarify references.
80 E	80 B 4	Notice of planned changes; modifications to coverage	Renumbered and revised to allow substitution of bank or in-lieu fee program credits with any combination of the same, consistent with text in 9VAC25-210-180.
80 G	80 B 1 h	Notice of planned changes; modifications to coverage	Moved.
80 H and I	80 A	Notice of planned changes; modifications to coverage	Moved and combined with existing text except deletion of denial if fish and wildlife resources impacted because impacts to resources are prohibited under section 40.
90		Termination of coverage	Title of section revised. Opening paragraph revised to relocate existing text within the same paragraph, correct citations, replace 'authorization' with 'coverage', and renumber the existing language as subsection A.
90 3	90 A 3	Termination of coverage	Revised for wording choice.
90 4 a through c	90 A 4 a through c	Termination of coverage	Revised for wording choice and consistency; to spell out the acronym 'DEQ'; to replace 'authorization' with 'coverage'; and to clarify activities may be unlawful if not otherwise excluded from coverage.
	90 B	Termination of coverage	Subsection added to reference two additional types of termination. One type is existing and one is new. Both are also located in section 100 Part III of this regulation and in 9VAC25-210-180 G and H.
95	27	Transition	Subsection was repealed; existing text regarding application processing in times of general permit transitions replaced by text in section 27.
100		VWP general permit	Applicable to the entire section: The acronym 'DEQ' was spelled out throughout section 100. Introductory paragraph deleted and the section was revised to display the general permit as proposed. Statutory Authority footnote was revised to delete an obsolete citation.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100		VWP general permit	Applicable to the preamble: Title was revised to include the permit number – deleted ‘VWP General Permit No. WP4’. ‘Authorization effective’ revised to ‘Effective date: August 2, 2016’; ‘Authorization expiration’ revised to ‘Expiration date: August 1, 2031’ to reflect the specific general permit term, coinciding to time of year when construction activities typically slow. ‘Authorization notes’ was deleted - requirements appear in the coverage letter provided by DEQ to the permittee. First paragraph under the VWP general permit title was revised to clarify that no coverage is being granted in the regulation or in the general permit text and that no specific project is basis of coverage. Second paragraph under the VWP general permit title was revised to clarify connection of authorities. ‘Permittee’, ‘Address’, ‘Activity Location’, ‘Activity Description’, the authorization statement, signature and date blank lines, ‘Director, Department of Environmental Quality’, and ‘Date’ were stricken - this information appears in the coverage letter that is provided by DEQ to the permittee.
100, Part I A 1		VWP general permit	Subdivision Part I A 1 was revised to clarify that no specific project or application was considered in the adoption of the general permit.
100, Part I A 2		VWP general permit	Subdivision Part I A 2 was revised for wording choice and to clarify how changes to coverage may be processed.
100, Part I A 3		VWP general permit	Subdivision Part I A 3 was revised for wording choice; to clarify that no specific project or application was considered in the adoption of the general permit; and for consistency with revisions in 9VAC25-210-180 regarding temporary impacts.
100, Part I A 4		VWP general permit	Deleted ‘authorization’ modifying compensation.
100, Part I A 5		VWP general permit	Subdivision Part I A 5 was deleted to remove reference to a specific length of authorization.
100, Part I B		VWP general permit	Subdivision Part I B was stricken to correct the options of how coverage may continue, as described in the text of proposed section 27.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part I C	100, Part I B	VWP general permit	Subdivision Part I C was retitled, renumbered as B.
100, Part I C 2	100, Part I B 2	VWP general permit	Existing language in the renumbered Part I B 2 was clarified regarding the requirements for culvert and pipe placement in streams and to relocate existing text within the same subdivision.
100, Part I C 3	100, Part I B 3	VWP general permit	Renumbered Part I B 3 was revised for consistency with the other VWP general permit regulations and to allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part I C 8	100, Part I B 8	VWP general permit	Renumbered Part I B 8 was revised to allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part I C 10	100, Part I B 10	VWP general permit	Revised to replace 'permitted' with 'authorized'.
100, Part I C 11 and 12	100, Part I B 11 and 12	VWP general permit	Renumbered Part I B 11 and B 12 were revised for wording choice and to include the use of existing topsoil in restoration activities where practicable, per a suggestion from the Citizen Advisory Group and consistency with federal nationwide (general) permit conditions. Acronym 'DCR' was spelled out. Title of plant list updated and allowance inserted for DEQ approval if invasives exist in original or reused soil.
100, Part I C 15	100, Part I B 15	VWP general permit	Renumbered Part I B 15 was revised to clarify the results of coordination between agencies and DEQ's related requirements will appear in the coverage granted by DEQ.
100, Part I C 16	100, Part I B 16	VWP general permit	Renumbered Part I B 16 was revised to clarify that no coverage is being granted in the regulation or in the general permit text.
100, Part I C 17	100, Part I B 17	VWP general permit	Renumbered Part I B 17 was revised for wording choice and to allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part I D and D 1	100, Part I C and C 1	VWP general permit	Subdivision Part I D was renumbered to C, and C 1 was revised for wording choice.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part I E and E 1	100, Part I D and D 1	VWP general permit	Subdivision Part I E was renumbered to D. Subdivision D 1 was revised for wording choice and to include the use of existing topsoil in restoration activities where practicable, per a suggestion from the Citizen Advisory Group and consistency with federal nationwide (general) permit conditions. The acronym 'DCR' was spelled out. Title of plant list updated and allowance inserted for DEQ approval if invasives exist in original or reused soil.
100, Part I F and F 7	100, Part I E and E 7	VWP general permit	Subdivision Part I F was renumbered to E. Subdivision E 7 was revised for wording choice.
100, Part I G and G 10	100, Part I F and F 10	VWP general permit	Subdivision Part I G was renumbered to F. Subdivision F 10 was revised to expand devices allowed for dredge material dewatering.
100, Part I H and H 3	100, Part I G and G 3	VWP general permit	Subdivision Part I H was renumbered to G. Subdivision G 3 was revised to replace 'authorization' with 'coverage' and to clarify alternative when plans not available.
100, Part II A 1 and 5		VWP general permit	Subdivision Part II A 1, A 5 were revised for wording choice.
100, Part II A 2		VWP general permit	Subdivision Part II A 2 was revised to add a citation.
100, Part II A 3		VWP general permit	Subdivision Part II A 3 was revised for wording choice and to clarify that no specific project or application was considered in the adoption of the general permit.
100, Part II A 4		VWP general permit	Subdivision Part II A 4 was revised for wording choice; to clarify in-lieu fee program credits rather and contributions are a compensatory mitigation option; and to emphasize need for recording protective mechanism prior to taking impacts.
100, Part II A 5		VWP general permit	Part II A 5 was revised to clarify the applicability of the condition to final compensation plans.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II A 6	100, Part II A 5 a	VWP general permit	Subdivision Part II A 6 was incorporated into A 5 as “a” and revised to renumber the required information items for providing permittee-responsible wetlands mitigation; and to delete the 120-day timeline for recordation of a final protective instrument and require such prior to implementing project impacts in surface waters, as is consistent with when a final compensation plan must be submitted and approved. Proposed language is consistent with 9VAC25-210-80 and -116.
100, Part II A 7	100, Part II A 5 b	VWP general permit	Subdivision Part II A 7 was incorporated into A 5 as “b” and revised to renumber the required information items for providing permittee-responsible stream mitigation; and to delete the 120-day timeline for recordation of a final protective instrument and require such prior to implementing project impacts in surface waters, as is consistent with when a final compensation plan must be submitted and approved. Proposed language is consistent with 9VAC25-210-80 and -116.
100, Part II A 8 and 9 through 20	100, Part II A 8 and 8 a through k	VWP general permit	Subdivision Part II A 8 was revised to subdivide it into a through k, using the text in existing subdivisions A 9 through 20. The introductory paragraph of A 8 was revised to clarify the list of conditions apply to permittee-responsible mitigation. A portion of the original A 8 sentence was moved to proposed A 8 a and revised to spell out the acronyms USDA and NRCS, and to incorporate the original text from A 12.
100, Part II A 9	100, Part II A 6 and 7	VWP general permit	The original text at Part II A 9 was moved to Part II A 6 and 7.
100, Part II A 10	100, Part II A 8 b	VWP general permit	Subdivision Part II A 10 was renumbered.
100, Part II A 11	100, Part II A 8 c	VWP general permit	Subdivision Part II A 11 was renumbered and revised to delete notification requirement of 10 days.
100, Part II A 12	100, Part II A 8 a	VWP general permit	Subdivision Part II A 12 moved to A 8 a.
100, Part II A 13	100, Part II A 8 d	VWP general permit	Subdivision Part II A 13 renumbered.
100, Part II A 14	100, Part II A 8 e	VWP general permit	Subdivision Part II A 14 was renumbered.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II A 15, 16, and 17		VWP general permit	Subdivisions Part II A 15, 16, and 17 deleted due to inaccuracies and disagreement in scientific community as to proper criteria. Criteria will be contained in project-specific compensation plans.
100, Part II A 18, 19, and 20	100, Part II A 8 f, g, and h	VWP general permit	Subdivision Part II A 18, 19, and 20 were renumbered.
100, Part II B 1		VWP general permit	Subdivision Part II B 1 was revised for simplicity.
100, Part II B 1 a		VWP general permit	Subdivision Part II B 1 a was revised to clarify when, where, and how preconstruction photos must be taken.
100, Part II B 1 b	100, Part II B 1 a	VWP general permit	Subdivision Part II B 1 b was revised to delete ortho-rectified photography and combine with the requirements of II B 1 a. New text was added describing the requirements for when, where, and how to conduct site inspections.
100, Part II B 1 c, 2, and 3	100, Part II B 1 a and b	VWP general permit	Subdivisions Part II B 1 c, B 2, and B 3 were stricken. These requirements were simplified in B 1 a and b.
100, Part II B 4	100, Part II B 2	VWP general permit	Subdivision Part II B 4 was renumbered to 2 and revised to correct a citation.
100, Part II C		VWP general permit	Title revised for wording choice.
100, Part II D 4		VWP general permit	Subdivision Part II D 4 was revised allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part II D 7 and 8		VWP general permit	Subdivisions Part II D 7 and 8 were revised for wording choice.
100, Part II E 1		VWP general permit	Revised to change authorization number to tracking number.
100, Part II E 2		VWP general permit	Subdivision Part II E 2 was revised to delete the 10-day requirement for notification and contents of the notification.
100, Part II E 3 and 3 a through d		VWP general permit	Subdivision Part II E 3 was revised to replace the existing conditions related to the schedule of construction monitoring reports with new requirements for twice per year. E 3 a through d were simplified regarding construction status and subdivisions E 3 e and f were stricken, obsolete.
100, Part II E 4		VWP general permit	Revised for wording choice.
100, Part II E 5		VWP general permit	Subdivision Part II E 5 was revised for wording choice and to delete the 10-day requirement for notification.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II E 6		VWP general permit	Subdivision Part II E 6 was revised to add a provision for submittal of monitoring reports other than by the date stated and subdivisions E 6 a and b were revised for wording choice.
100, Part II E 9		VWP general permit	Subdivision Part II E 9 was revised to clarify the timeline for notifying DEQ about water quality violations.
	100, Part II E 10	VWP general permit	A new subdivision Part II E 10 was added to specify requirements for notifying DEQ about impacts to surface waters not previously identified at time of application.
100, Part II E 10	100, Part II E 11	VWP general permit	Original Part II E 10 was renumbered to 11.
100, Part III A		VWP general permit	Subdivision Part III A was revised for wording choice and to clarify the authorities that apply.
100, Part III C		VWP general permit	Subdivision Part III C was revised for wording choice and to clarify the actions taken on an application.
100, Part III E, F and H		VWP general permit	Subdivisions Part III E, F and H were revised for wording choice.
100, Part III G		VWP general permit	Subdivision Part III G was revised for wording choice and to relocate existing text within the same subdivision.
100, Part III H		VWP general permit	Revised for consistency with 9VAC25-210-180.
100, Part III I 1 through 5		VWP general permit	Subdivisions Part III I 1 through 5 were deleted as duplicative of detailed requirements for a notice of planned change and instead, a reference was added to section 80 for those details. Replaced 'authorization' with 'coverage'.
100, Part III J and J 1, 2 and 4		VWP general permit	Subdivision Part III J 1 was revised to clarify that noncompliance may be associated with the coverage or the general permit. Subdivisions J, J 2, and 4 were revised for wording choice. J 5 and 6 were added for consistency with 9VAC25-210-10 et seq. Replaced 'authorization' with 'coverage' in all.
	100, Part III K	VWP general permit	A new subdivision Part III K was added to specify the conditions that apply to a termination without cause. This text is consistent with the proposed language in 9VAC25-210-180 H.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part III K	100, Part III L, L 1, L 3, and L 4 a through c	VWP general permit	Subdivision Part III K was renumbered to L and revised for wording choice. Replaced 'authorization' with 'coverage'. Existing text was relocated within the same subdivision. Renumbered subdivisions Part III L 1 and 3 were revised for wording choice. Certification statements in renumbered subdivisions L 4 a through c were revised for wording choice and to clarify activities may be unlawful if not otherwise excluded from permit or coverage.
100, Part III L and M	100, Part III M and N	VWP general permit	Subdivisions Part III L and M were renumbered.
100, Part III N through Q	100, Part III O through R	VWP general permit	Subdivisions Part III N through Q were renumbered to O through R and revised for wording choice. Replaced 'authorization' with 'coverage'.
	100, Part III S	VWP general permit	A new subdivision Part III S was added to specify the requirement to reapply in order to continue authorized activities after the expiration date of a general permit.
FORMS		Forms	Alphabetized list of forms. Revised title and the effective date of permit application fee form. Revised the title and effective date of the standard joint permit application. Revised the effective date of the Tidewater application. Added the VDOT monthly reporting application. Revised the effective date of the VDOT inter-agency meeting application.
DOCUMENTS		Documents	Added classification of wetlands, guideline for disposal sites, and invasive plant list.