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Proposed Regulation
Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-210
Regulation title(s)	VIRGINIA WATER PROTECTION PERMIT PROGRAM REGULATION
Action title	Incorporation of policies, guidance, regulations, and clarifications specific to the Virginia Water Protection Permit Program
Date this document prepared	March 20, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

In support of the purpose of this regulatory action, the regulation has sustained numerous, minor revisions and at least one detailed revision to incorporate new provisions that resulted from General Assembly actions over the last decade or more, including those related to surface water withdrawals. The last comprehensive revision of this regulation was in 2001. The Virginia Water Protection Permit Program has since implemented many policy and guidance decisions that should be incorporated into the regulation. Portions of overarching federal regulations also need to be incorporated. There are also places that sentence structure and grammar make the agency's intent difficult to interpret. Therefore, a re-organization of the regulation format, as well as making the necessary revisions for clarity and accuracy, is being proposed. Concurrently, the associated Virginia Water Protection general permit regulations are also being proposed for revisions to match any revisions made to this regulation, as necessary, and because the general permit regulations are due to expire in 2016. Separate Notices of Intended Regulatory Action (NOIRAs) have been prepared for the applicable general permit regulations. The amendments will protect public health, safety and welfare of citizens as they are designed to clarify, update and streamline the regulation to protect the Commonwealth's wetland and surface water

resources, which are important for maintaining water quality, flood control and providing fish and wildlife habitat.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

401 certification: the process by which a state or tribe grants, grants with conditions, denies, or waives certification of the issuance of a permit or license by a federal agency under §401 of the Clean Water Act for an activity that may result in a discharge to waters of the U.S. in that state or tribal jurisdiction.

Compensatory Mitigation: sequentially avoiding and minimizing surface water impacts to the extent practicable, and then compensating for remaining unavoidable impacts of a proposed action.

State waters: all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Section 62.1-44.15(10) of the Code of Virginia sets forth the Board's authority for the adoption of regulations deemed necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth. The basis for this regulatory action is the State Water Control Law (Chapter 3.1 of Title 62.1) with specific provisions in law (§§ 62.1-44.15:20 - 62.1-44.15:23.1) mandating certain actions and allowing discretionary authority over certain matters to the promulgating agency.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this proposed regulatory action is to change the overall organization of the regulation such that it may be more reader-friendly; to incorporate policies and guidance developed in recent years; to incorporate certain federal regulatory provisions relative to the program; and to clarify and correct grammar, spelling, references, and errors. Other amendments to the regulation may be considered by the Board based on comments received in response to the public comment and participation process.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

The following proposed revisions, clarifications, and additions to this regulation are being considered and include, but may not be limited to, language, information, and provisions pertaining to surface water withdrawals, as regulated under the program, as well as program policy and guidance developed in recent years:

1. Change the organization of the regulation to consolidate all surface water specific provisions under a new Part V. Other reorganization of the regulation includes: revising the order in which information is provided; moving existing information to new locations, in whole or in part; adding new sections to expand or clarify existing provisions or incorporate new provisions; deleting sections, in whole or in part, to remove obsolete information and duplication; revising references and/or citations made in the regulation; and correcting sentence structure, grammar, spelling, and typographical errors.
2. Revise, clarify, move, add, and/or delete definitions.
3. Revise, clarify, add, and/or delete the activities that require application for a permit and those activities that are excluded from the need to obtain a permit, including activities in specific water sources.
4. Revise and/or clarify the application process: the list of administrative and technical information required to achieve a complete permit application, such as applicant contact information, information specific to certain types of activities or to certain types of state waters, compensation plans including avoidance and minimization efforts, monitoring and reporting; the provisions for application review suspension and application withdrawal; and required drawings, diagrams, and maps.
5. Revise and/or clarify the compensatory mitigation requirements, such as the sequencing of acceptable compensatory mitigation actions and compensatory mitigation provisions; the requirements necessary for mitigation banks and in-lieu fee funds to become operational; the requirements for compensating impacts to open waters; and/or compensation necessary for temporary impacts.
6. Revise and/or clarify the process, informational requirements, and/or provisions for permit actions that occur after initial permit issuance, such as modification of permits and permit authorizations, continuation of coverage for general permit authorizations, reissuance of permits, permit and permit authorization revocation, termination, and/or permit transitioning.
7. Revise, clarify, add, and/or delete VWP general permit authorization provisions as necessary to accommodate those revisions made to each of the existing VWP general permit regulations.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1. 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 proposes to consolidate the surface water withdrawal provisions in a new Part V of the regulation and reorder provisions within other sections of the regulation, such as for application complete and modifications. Advantages for the regulated community and general public are improved clarity and ease of reading. The disadvantage, for some, may be temporary difficulty in finding familiar language that has been relocated.

2. 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 was desirable

as a matter of public policy for the definition to reside in DEQ's, not VDH's, regulation. At its core, safe yield is a measure of the maximum quantity of water that can be removed from a given source of supply. 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, acknowledging DEQ's role and long-term practice of the agencies in determining the limits of a water source. Through these discussions, the agencies have also agreed on the definition currently proposed through this regulatory process. 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. DEQ is the agency with sole statutory authority over water quantity and the rates and volumes that may be withdrawn from a water source. An advantage of locating the term within DEQ's regulation is that it more accurately reflects the responsibilities of DEQ as the agency authorized to determine the availability for a given water withdrawal. One disadvantage is the perception by the regulated community that the proposal results in a change in how safe yield is determined and causes uncertainty in what is authorized by their VDH waterworks permits. 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 before July 1, 1989.

3. Term "Public Water Supply": The Department proposes to revise the term "public surface water supply withdrawal" to "public water supply" without changing the definition to clarify the term applies to the use type of a withdrawal. The advantages are improved clarity and readability. One disadvantage may be the perception that the definition may, sometime in the future, limit a public water supply system that includes other uses from being considered a public water supply. While the emphasis of this definition is on domestic use, the Department disagrees that such limitations could occur as the existing definition is not limited solely to domestic use and does not preclude other uses that may comprise a diverse public water supply system.

4. Tidal surface water withdrawal exclusion: The Department proposes to revise the surface water withdrawal exclusions pertaining to tidal resources to address confusion identified as to the intent of tidal surface water exclusion of 2 million gallons per day (mgd) for consumptive tidal withdrawals. 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 advantage is improved readability and reduced confusion regarding the Department's intent. No disadvantage is expected.

5. Application informational requirements for surface water withdrawals: The Department proposes to clarify and reduce confusion as to the permit application requirements for surface water withdrawals by consolidating all requirements into one comprehensive set and removing a distinction between a minor surface water withdrawal and a major surface water withdrawal. This distinction was created during the 2007 regulation revisions in an attempt to identify a reasonable threshold for which withdrawals could be considered "minor," that is to not have an impact on beneficial uses. 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. Based upon the Department's experience implementing the regulation and reviewing "minor" surface water withdrawal projects, the Department found that this presumption was flawed because the size of the withdrawal volume is not always indicative of the impact. Rather, it's the relative size of the withdrawal volume to the size of the waterbody and the presence of other existing beneficial uses. Therefore, the same set of information is necessary for all withdrawals for staff to conduct a review of the proposed impacts to instream flow and associated downstream beneficial users. Additionally, it is unclear that an alternatives analysis is currently required for any surface water withdrawal, regardless of withdrawal size, due this set of requirements being located in a separate section of the regulation. Grouping together informational requirements necessary for staff to review an application for a surface water withdrawal is advantageous because it will provide clarity; reduce confusion to both staff and the regulated public; facilitate application review; and ensure statutory intent

can be met in the protection of downstream beneficial uses. One disadvantage may be the perception that the Department is removing a streamlined application process for smaller surface water withdrawals. The Department believes the proposed revisions are the minimum necessary to review a surface water withdrawal and provides applicants with accurate portrayal of the information needed to assess their project.

6. Modification criteria for surface water withdrawals: The existing regulation lists what project changes may be considered under either major or minor modification of the permit, but only one of these pertains to 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 allowable 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 the criteria, which is consistent with the Department's other permitting programs, for when minor and major modifications of the permit may occur that are specific to surface water withdrawal activities. The advantage is clarity to the regulated public. No disadvantage was identified.

7. 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 ('2008 Mitigation Rule') regarding compensatory mitigation that essentially reversed the hierarchy of acceptable mitigation practices, thus causing the VWP permit regulations to be opposite that of the Corps' regarding the hierarchy. 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 advantage is consistency in what the public may reasonably expect regarding compensation requirements when obtaining permits from both the federal and state agencies. Both agencies retain discretion to approve proposals that do not follow the rule verbatim, which may be a disadvantage when federal and state permits are issued and the permit programs do not concur as to the best course of action regarding compensation.

8. Compensation for open water impacts: During the advisory group meetings, a suggestion was made that compensation for open water impacts be made discretionary and having a limit for any required compensation for open water impacts. The Department noted that -116 C 4 allows for discretionary open water compensation as appropriate. Studies were noted to suggest that too much open water is being created with little environmental benefit as compensation for impacts. The Department proposes to parse out those small open water areas where compensation may not be warranted. Coordination with sister natural resource agencies on project proposals is expected to continue. An advantage may be reduced costs of compensation to those seeking permits for impacts to surface waters. A disadvantage may be unintentional impacts to aquatic-dependent fauna.

9. 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. 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. The advantages include less cost for applicants impacting wetlands and less review time by agency staff. A disadvantage may be the perception that adequate compensation is not being required to meet no-net-loss of wetland acreage and functions.

10. 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. Thus the Department added the need to provide certain information via GIS shapefiles, unless waived by the agency. 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; 3)

make the application provisions consistent across all VWP regulations; 4) update the manuals and methods used in the process of delineating surface waters as a result of changes in federal regulations governing activities in waters of the United States; and 5) to revise the VWP complete application requirements to reflect the need for the approved jurisdictional determination when one is available. An advantage of the proposed revisions is clarity in what the agency expects for a complete application, potentially reducing the amount of time for staff to review an application and make a permitting decision. A disadvantage may be the availability of some information for some types of projects where minimal engineering takes place, or the cost of obtaining the information to some project proponents.

11. Adding provisions for administrative continuance: The Department proposes to add the provision for administrative continuance, as allowed by § 62.1-44.15(5a) of the Code of Virginia, but which has not been previously included in the VWP regulations. While the provision exists in other Department regulations, no timeframe exists for agency action. The advantage is that the regulated public is not penalized by the inability of the state to take a permit action. A disadvantage may be that the provision does not include a timeframe for the state to take action.

12. Permit modification procedures: The Department proposes to: 1) revise the existing additional impacts limits to be a percentage of original impacts, not to exceed 1 acre or 1,500 linear feet, under a minor modification process; 2) 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; 3) update the allowable substitution of compensatory mitigation options based on the 2008 Mitigation Rule; 4) move and clarify an existing provision for extending a VWP individual permit term if originally set at less than 15 years; 5) 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; and 6) 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. One advantage is that 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. Other advantages include earlier identification of temporary impacts for staff review; better clarity of what the agency may approve as a project modification; better consistency with the 2008 federal mitigation rule; and better tracking and management of permits. Disadvantages may be that slightly more additional impacts are approved after permit issuance without an opportunity for public comment.

13. Revise, move, add, and delete definitions: 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. Other definitions needed to be revised based on current practices, the federal Mitigation 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 move, revise, and delete various definitions. The advantage is improved clarity and understanding of the agency's intentions. No disadvantage was identified.

14. Informational requirements: The Department proposes to streamline the regulation language in some 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. The advantage is one location summarizing the responsibility of the VWP applicant or permittee to provide the information required to process an application or permit in a timely manner. No disadvantage was identified.

15. Permitting exclusions: Language is proposed to require applicants to demonstrate that any of the exclusions contained in 9VAC25-210-60 apply to his or her project. Also, 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 not only may be excluded from the need to obtain a VWP permit, but also from the need for compensation. The Department proposes to revise the regulation language to reflect this. 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. Advantages include improved clarity and readability; time and resource savings for the Department; and savings on project expenses for applicants. A disadvantage may be the perception that the agency is excluding less than was excluded from permitting previously.

16. Finalizing compensation plans: The Department proposes to clarify what is required for a complete application regarding compensatory wetland and stream mitigation plans, including a draft of the intended protective mechanism to be placed over any permittee-responsible compensation site(s). The original regulation language gives 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 make the deadline to be prior to initiating impacts in surface waters that are authorized by the permit. Advantages identified are: more time to record for some compensation options, where 120 days have proven inadequate; less confusion on the timeline in which to record in those cases where local planning and permitting requirements overlap the Department's; and clarity regarding what information is required to be submitted and when. A disadvantage may be a delay in project commencement due to availability of surveying professionals at the required time.

17. Approval of in-lieu fee programs as compensatory mitigation option: The Department proposes to update the regulation to use of the term 'program' instead of 'fund' in reference to in-lieu fee funds, to be consistent with the 2008 Federal Mitigation Rule choice of language. Other proposed revisions include changing the language to mimic the Rule; change the amount of time for which an approval is valid from the existing five years to 10 years; revise the language to address the new Wetland and Stream Replacement Fund that was mandated by the Virginia General Assembly in 2012; and revisions for wording choice, to remove duplicative language, and reorganize the language. The advantages include better clarity and understanding for the regulated ~~pubic~~public; bringing the regulation more in line with the Rule; and saving time and staff resources. No disadvantages were identified.

18. 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, both advantages of the proposed revisions. No disadvantage was identified.

19. 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 for clarity and to improve readability. No disadvantage was identified.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The Department did not find any proposed revisions or new proposed provisions to be more restrictive than applicable federal requirements, where such federal requirements exist.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected as the proposed regulation amendments apply to all areas of Virginia.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the impacts of the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the State Water Control Board (SWCB) is seeking comments on the costs and benefits of the proposal; the potential impacts of this regulatory proposal; and any impacts of the regulation on farm and forest land preservation. The Board specifically requests comments on the areas where no consensus was reached by the citizens advisory group, including the additional impacts that may be approved under an individual permit minor modification process and the length of time allowed for administrative continuances.

Also, the SWCB is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to William K. Norris, Regulatory Analyst, Office of Regulatory Affairs, Virginia Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218 – (804) 698-4022 – FAX: (804) 698-4347. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: http://www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (**http://www.townhall.virginia.gov**) and on the Commonwealth Calendar website (https://www.virginia.gov/connect/commonwealth-calendar). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: **a) fund source / fund detail; and** **b) a delineation of one-time versus on-going expenditures**	DEQ anticipates absorbing any costs associated with implementing and enforcing the proposed amendments.
Projected cost of the new regulations or changes to existing regulations on localities.	Some expense may be incurred on specific projects to prepare mapping and/or survey-based drawings using GIS technology. However, many localities already have this ability, and a locality

	may request that DEQ waive the requirement per the proposed regulation language. No specific software or tool is mandated. Based on one internet source, a basic GIS software package typically costs less than $600; advanced versions are considerably more at $10-20,000, and incur annual maintenance fees of approximately $2-3,000. Based on the Department's inquiries, out-sourcing the mapping task could incur professional service fees ranging from approximately $150 to $500, depending upon specific project characteristics. The proposed amendments reflect significant changes in the policy and scientific bases on which stream compensation is determined and include revisions to the acceptable mitigation options to mimic the U.S. Army Corps of Engineers' 2008 Mitigation Rule. This rule has changed the sequence of preferable mitigation options, thus a previous proposal to compensate stream impacts may no longer be among the acceptable options, or may not be in line with the preferred sequence. Permittees with expiring VWP permits and incomplete projects may need to reapply for another individual permit or general permit coverage, subject to today's standards and policies. There is also a potential for additional costs associated with wetland compensation but because changes to policy and science have not been as significant, the likelihood is less.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Any applicant who requires a Virginia Water Protection permit for impacts to surface waters, including surface water withdrawals.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: **a) is independently owned and operated and;** **b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.**	The proposed amendments may impact any small business in the Commonwealth that proposes to incur impacts to surface waters, including the withdrawal of surface water. Regulated activities may include physical expansion of facilities or associated appurtenances, new construction, or changes to operational practices.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: **a) the projected reporting, recordkeeping, and**	The proposed amendments primarily clarify existing requirements (i.e., analysis of alternatives, jurisdictional determinations, assessment of wetland functions, compensatory mitigation options, monitoring/reporting, mapping/drawings) in greater detail and should not add significant new costs.

other administrative costs required for compliance by small businesses; and **b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.**	As noted above, smaller businesses may incur an expense for GIS software or professional service fees to produce mapping or drawings. However, no specific software is mandated by the proposed amendments, and several free mapping/drawing tools exist. Because the VWP general permits have a pre-defined effective and expiration date, as mandated by the Code of Virginia and as determined through the regulation adoption process, some applicants may not have enough time to apply for coverage, receive coverage, and complete work before the expiration of the general permit. In these cases, additional fees may apply should the applicant choose to apply for a VWP individual permit instead, which would allow the work to commence on or after the date of individual permit issuance. Application fees for VWP general permit coverage ranges from $0 to $2,400 based on acreage or linear feet of impacts, and VWP individual permits range from $2,400 to $35,000 based on acreage or linear feet of impacts, and/or project type. Based on the current pool of active VWP permits, approximately 1,300 are identified as associated with commercial or residential activities. If the project impacts stream bed, there is a potential for increased compensatory mitigation costs, depending upon the status of construction and the expiration date of any applicable VWP individual permit. The proposed amendments reflect significant changes in the scientific basis on which stream compensation is determined and include revisions to the acceptable mitigation options to mimic the U.S. Army Corps of Engineers' 2008 Mitigation Rule. This rule has changed the sequence of preferable mitigation options. Thus, a previous proposal to compensate stream impacts may no longer be among the acceptable options, or may not be in line with the preferred sequence. Permittees with expiring VWP individual permits and incomplete projects may need to reapply for another individual permit or general permit coverage, either being subject to today's standards and policies. There is also a potential for additional costs associated with wetland compensation but because changes to science and policy have not been as significant, the likelihood is less.
Beneficial impact the regulation is designed to produce.	DEQ intends that the proposed amendments offer clarity to many requirements that have not been readily understood by the regulated public, and thus, have expended time and money to resolve

	over the past 10 to 15 years. Time and money savings is expected for the public who will have a better understanding of the requirements and expectations before applying and receiving VWP permits. Time savings is also expected for DEQ permitting staff and managers. DEQ expects a cost savings to applicants impacting certain open waters, as no permit may be required. Likewise, permittees impacting certain, specified open waters may realize cost savings due to the potential for no compensatory mitigation to be required. DEQ expects a cost saving for certain applicants who previously would be required to conduct functional assessments of wetland impact areas but that through the proposed amendments would no longer be required to perform such assessments. By requiring a different timeline in which to record a protective mechanism on land to be conserved, such as permittee-responsible compensatory mitigation sites, permittees may realize a cost savings in professional survey and recordation fees. By adjusting the threshold for additional impacts to be processed under a minor modification of a VWP permit, there is a potential cost savings to permittees who may otherwise be subject to a major modification, and thus additional application fees and public notice fees.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The no-action alternative to revising this regulation would allow the non-clarity issues to continue. In addition, some regulatory provisions are in direct conflict with federal mandates that are applicable to permits, and to permit authorizations issued by the agency on the behalf of the U.S. Army Corps of Engineers' under the State Program General Permit (SPGP-01) program as currently delegated to the Commonwealth. Other state regulatory provisions are in direct opposition to closely-related federal regulatory provisions that, if left as is would continue to create uncertainty regarding similarly-regulated activities in surface waters.

A partial regulation revision is one alternative that may allow incorporation of some provisions that currently exist in regulation, policy, or guidance. However, such an action would not address the clarity issues that the full revision would provide.

Because the regulation is the over-arching document for the existing Virginia Water Protection general permit regulations that will expire in 2016, it will likely be necessary to revise this regulation based on any adopted revisions to Virginia Water Protection general permit regulations.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The proposed amendments apply to existing regulations that apply to businesses across the state who incur impacts to surface waters, including the withdrawal of surface water. The proposed amendments will improve permit application and processing for all projects through improved clarity and understanding of DEQ's expectations. Of the proposed amendments, DEQ does not anticipate any to have an adverse impact on small business, but may incur additional effort or expense as noted in the Economic Impact section of this form. DEQ has attempted to provide additional flexibility for certain requirements, as the agency recognizes that some applicants or permittees may be burdened to provide information or information in a certain format or on a certain timeline. An additional permitting exclusion for open waters is proposed to be added to the existing exclusions and would be applicable to all applicants under a VWP permit.

Related to this regulatory action is the reissuance of the four, expiring VWP general permits, by separate regulatory actions, which are given authority under 9VAC25-210. General permit coverage may be an alternative to applying for a VWP individual permit under 9VAC25-210 if the project meets the criteria specified in the applicable general permit regulation. An application fee for coverage under a VWP general permit costs less, and general permit coverage typically can be processed in a shorter timeframe than a VWP individual permit.

The numerous proposed amendments of an editorial nature (e.g., grammar, word choice, corrected citations, etc.) provide improved readability and understanding, and the reorganization of several provisions lends to better understanding of those provisions applicable to surface water withdrawal activities.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Charles M. Murray, Fairfax Water	"Thank you for the opportunity to comment on the Notice of Intended Regulatory Action for the Virginia Water Protection Permit Regulation (9VAC25-210), published June 2,	A representative of Fairfax Water was invited to participate on the Advisory Group.

Commenter	Comment	Agency response
	2014. Fairfax Water is interested and available to assist in the development of revised regulations through participation in the associated Regulatory Advisory Panel…"	
Philip Abraham – VECTRE Corp.	"I am writing on behalf of the Virginia Association for Commercial Real Estate (VACRE) to let you know of VACRE's strong interest in these wetland regulations and any impact any changes might have on the commercial and industrial development industry in Virginia…VACRE was heavily involved and represented on the Regulatory Advisory Panel created by the Department to provide advice on the major revisions that were adopted in 2001 to these regulations and general permits and would very much like to participate in the upcoming regulatory process as well…Given the importance of these regulations to VACRE members, I am requesting that VACRE be represented on any Regulatory Advisory Panel (RAP) or Technical Advisory Committee (TAC) that is created to consider proposed revisions to these regulations…"	A representative of the Virginia Association for Commercial Real Estate (VACRE) was invited to participate on the Advisory Group.
Stephen E. Begg - VDOT	"The Virginia Department of Transportation (VDOT) is responding to the Notice of Intended Regulatory Action (NOIRA) for upcoming revisions to the Virginia Department of Environmental Quality (DEQ) Virginia Water Protection (VWP) Permit Regulation (9 VAC 25-210), as published in the Virginia Register of Regulations on June 2, 2014. VDOT is requesting to be part of the Regulatory Advisory Panel to assist with development of a proposal for the revised VWP Permit Regulation… We request to be part of the Technical Advisory Committee to assist with the incorporation of recent policy and guidance specific to the VWP Permit Program within the General Permits…"	A representative of the Virginia Department of Transportation was invited to participate on the Advisory Group.
Beth Silverman	"I am interesting in participating in	A representative of EEE Consulting, Inc. was

Commenter	Comment	Agency response
Sprenkle – EEE Consulting, Inc.	the VWPP revision process as a member of the Technical Advisory Committee. I am a trained ecologist who has worked with the VWPP regulations over the last decade, both as a VWP Permit Writer and as a consultant…I would very much like to be part of the process of integrating guidance and clarifying the text in these sections of the Virginia Administrative Code…"	invited to participate on the Advisory Group.
Andrea W. Wortzel – Troutman Sanders/Virginia Manufacturers Association (VMA)	"…The VWP regulation establishes permitting requirements for both wetland impacts and surface water withdrawals. The NOIRA indicates that the amendments will involve the incorporation of policies and guidance, as well as clarifications to the regulatory language. VMA agrees that clarification of the regulatory language would be helpful, particularly where those clarifications are aimed at more clearly differentiating between the requirements that apply to wetland impacts and those that apply to surface water withdrawals…"	DEQ proposes to differentiate between portions of the regulation that pertain to surface water impacts versus those for surface water withdrawals through revisions to VWP regulation 9VAC25-210 et. seq., to consolidate all withdrawal related regulatory language into its own part. DEQ believes this restructuring will clarify the provisions specific to withdrawals from that of the rest of the VWP Permit Program. As part of this restructuring, new regulatory language is proposed to provide additional clarity.
Andrea W. Wortzel – Troutman Sanders/Virginia Manufacturers Association (VMA)	"The NOIRA does not identify the policy and guidance that DEQ is proposing to incorporate into the regulation. VMA looks forward to learning more about the changes that DEQ is considering."	Policy and guidance are both formal and informal. As such, specific titles and/or reference numbers do not always apply. Not all policy and guidance is proposed to be incorporated into regulation. DEQ believes the regulated community benefits from regulations that reflect current policy. For example, the mitigation hierarchy in the regulations does not reflect recent changes to compensation requirements as a result of the 2008 USACE and USEPA Mitigation Rule. As part of DEQ's consideration to open the VWP Permit Program regulations for revisions, current policy and guidance was reviewed. Revising the regulations to reflect current policy will provide greater transparency and clarity as to current requirements and widely accepted practices.
Andrea W. Wortzel – Troutman Sanders/Virginia Manufacturers Association (VMA)	"…VMA requests representation on the Regulatory Advisory Panel ("RAP") DEQ will be forming to review DEQ's proposed revisions. VMA nominates Cassidy Rasnick to serve as its representative."	A representative of the Virginia Manufacturers Association (VMA) was invited to participate on the Advisory Group.
Andrea W. Wortzel – Mission H2O	"…The VWP regulations govern both surface withdrawals and impacts on wetlands. Virginia's	DEQ believes restructuring the regulation to consolidate regulatory language pertaining to surface water withdrawals into its own part will

Commenter	Comment	Agency response
	water withdrawal permitting program is of significant interest to our members, many of whom rely upon surface water withdrawals as their water source. The NOIRA indicates that changes under consideration include separation of the provisions relating to water withdrawals from those relating to wetlands. Mission H2O supports such changes, as they would bring clarity to the respective programs and help alleviate confusion…"	clarify provisions specific to withdrawals from those specific to other activities regulated under the VWP Permit Program.
Andrea W. Wortzel – Mission H2O	"…The NOIRA also notes that additional changes may be proposed in order to "incorporate guidance." No explanation is provided as to which guidance documents will be incorporated into the regulation. Guidance is not regulation – it is not subject to the Administrative Process Act and is often developed without public input. Mission H2O has reservations about the assumption that guidance will be incorporated into the regulation without some consideration of the input from affected parties."	Policy and guidance are both formal and informal. As such, specific titles and/or reference numbers do not always apply. DEQ believes the regulated community benefits from regulations that reflect current policy. As part of DEQ's consideration to open the VWP Permit Program regulations for revisions, current policy and guidance was reviewed to learn if any incorporation may be warranted to provide greater transparency in the regulations as to current requirements and widely accepted practices. Proposed regulations will be the result of the cooperative effort of Advisory Group, composed of representatives from interested parties. The public will be provided an opportunity to comment on any draft regulation, including any revisions proposed based upon existing policy and/or guidance.
Andrea W. Wortzel – Mission H2O	"…First, many of our members rely upon grandfathered water withdrawals. Accordingly, changes to the VWP regulations with the potential to impact the interpretation or application of the grandfathering provision would be of significant interest…"	DEQ does not propose any revisions to 9VAC25-210-60.B.1 or 2, which pertains to the set of excluded surface water withdrawals commonly referred to as "grandfathered."
Andrea W. Wortzel – Mission H2O	"…Second, our members may have a need to add an additional intake or increase the capacity of their intake structure in the future. Such expansions are often linked to business and job development or other economic benefits to the community. Thus, any changes to the permitting requirements are also of great interest to our members and the local jurisdictions in which they reside…"	DEQ does not propose any revisions to 9VAC25-210-60.B.1 or 2, which pertains to the set of excluded surface water withdrawals commonly referred to as "grandfathered."
Andrea W. Wortzel – Mission H2O	"…Mission H2O requests the opportunity to be represented on the Regulatory Advisory Panel	A requested substitution was made and a representative of Mission H2O is participating on the Advisory Group.

Commenter	Comment	Agency response
	("RAP") for the proposed amendments to the VWP regulation. MH2O nominates Nina Butler, with RockTenn, to serve as its representative, with 'Andrea Wortzel' as her alternate…"	
Pamela F. Faggert – Dominion Resources Services, Inc.	"Dominion appreciates the opportunity to submit comments on the Notice of Intended Regulatory Action (NOIRA) for the Virginia Water Protection (VWP) Permit Program Regulation. We also ask that you consider our request to participate on the Department of Environmental Quality (DEQ) regulatory advisory panel…"	A representative of Dominion Resources Services, Inc. was invited to participate on the Advisory Group.
Pamela F. Faggert – Dominion Resources Services, Inc.	"…The agency background document associated with the NOIRA outlines seven general categories of the potential changes to the regulation that will be considered. While specific details of the changes to be considered are not provided in the NOIRA, some of the revisions under consideration appear to be focused on the water withdrawal portions of the regulation. We hold VWP permit for water withdrawals at six of our electric generating stations and operates water withdrawals under the grandfathering provisions of the VWP regulation (9VAC25-210-60 B 1) at another seven of our electric generating stations."	DEQ believes restructuring the regulation to consolidate regulatory language pertaining to surface water withdrawals into its own part will clarify provisions specific to withdrawals from those specific to other activities regulated under the VWP Permit Program. As part of this restructuring, new regulatory language is proposed to provide additional clarity to those provisions. DEQ does not propose any revisions to 9VAC25-210-60.B.1 or 2, which pertains to the set of excluded surface water withdrawals commonly referred to as "grandfathered." Proposed regulations will be the result of the cooperative effort of Advisory Group and in light of any public comments received on the proposed regulation.
Pamela F. Faggert – Dominion Resources Services, Inc.	"The agency background document identifies potential changes to the overall organization of the regulation as a type of revisions under consideration. We are supportive of organizational changes to the regulations to clarify and differentiate the water withdrawal permit requirements from those for wetland and stream impact activities."	DEQ proposes to differentiate between portions of the regulation that pertain to surface water impacts versus those for surface water withdrawals through revisions to VWP regulation 9VAC25-210 et.seq. to consolidate all withdrawal related regulatory language into its own part. DEQ believes this restructuring will clarify the provisions specific to withdrawals from that of the rest of the VWP Permit Program. As part of this restructuring, new regulatory language is proposed to provide additional clarity.
Pamela F. Faggert – Dominion Resources Services, Inc.	"The agency background document also identifies potential changes to the activities that are excluded from permit requirements. We have grave concerns about the potential for revisions to the language associated with the water withdrawal grandfathering provision	DEQ is not proposing any revisions to 9VAC25-210-60.B.1 or 2, which pertains to the set of excluded surface water withdrawals commonly referred to as "grandfathered."

Commenter	Comment	Agency response
	that are inconsistent with the grandfathering language in Virginia Code (62.1-44.15:20). It is important that the regulations remain consistent with the grandfathering language in Virginia Code which specifies that a permit is only required if a new §401 water quality certification is needed to increase the water withdrawal."	
Pamela F. Faggert – Dominion Resources Services, Inc.	"The NOIRA also indicates the regulatory advisory panel may be asked to consider revisions to the requirements for compensating for impacts to open water and temporary impacts. Currently the regulations allow DEQ to require mitigation for open water impacts and temporary impacts but they do not mandate mitigation for these impacts. We recommend that any revisions to the mitigation requirements maintain the flexibility to allow DEQ to determine if mitigation is necessary for these impacts on a site by site basis."	The comments received will be taken into consideration through the Advisory Group participation process.
Pamela F. Faggert – Dominion Resources Services, Inc.	"We request participation as a member on the regulatory advisory panel because revisions to the VWP Permit Program Regulation have the potential to impact a range of our activities in Virginia including water withdrawals for our electric generating stations, construction of new electric generating stations, construction activities at existing electric generating stations, construction and maintenance of electric transmission and distribution facilities and construction and maintenance of gas transmission facilities. We fell it is necessary to have energy industry representation in the development of revisions to the regulation. Please accept Jason Ericson for consideration to serve on the regulatory advisory panel…"	A representative of Dominion Resources Services, Inc. was invited to participate on the Advisory Group.
Margaret L. (Peggy) Sanner – Chesapeake Bay Foundation (CBF)	"I write to request the opportunity to participate, on behalf of the Chesapeake Bay Foundation (CBF), in the Technical Advisory Committee(s) formed by the Department of Environmental Quality (DEQ) to assist in	A representative of the Chesapeake Bay Foundation (CBF) was invited to participate on the Advisory Group.

Commenter	Comment	Agency response
	connection with possible amendments to several regulations governing the Virginia Water Protection program: 9VAC25-210 (Virginia Water Protection Permit Regulation); 9VAC25-660 (Virginia Water Protection General Permit for Impacts Less Than One-Half Acre); 9VAC25-670 (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 or Other Utility Line Activities); 9VAC25-680 (Virginia Water Protection General Permit for Linear Transportation Projects); and 9VAC25-690 (Virginia Water Protection General Permit for Impacts from Development Activities)."	
Margaret L. (Peggy) Sanner – Chesapeake Bay Foundation (CBF)	"CBF has a longstanding interest in, and commitment to, the preservation of wetlands throughout the Chesapeake Bay watershed and elsewhere in the Commonwealth. Healthy wetlands are crucial to protecting our waterways, including the Chesapeake Bay, from nutrient and sediment pollution. CBF has long supported robust programs through, among other tools, effective permitting and regulatory processes, and its long engagement in these programs (through its scientists, lawyers and others) may be of assistance to the TAC."	
William T. (Tom) Walker – U.S. Army Corps of Engineers	"I would be happy to represent the Corps and provide assistance. Much like the assumption workgroup, our role would be limited to providing information and clarification on the Corps administered federal regulatory program and guidance on how the federal and state programs compliment/contrast one another. It would not be appropriate for me to participate in drafting specific language or to endorse or rebuff any viewpoint. In essence, I would	A representative of the U.S. Army Corps of Engineers was invited to participate on the Advisory Group.

Commenter	Comment	Agency response
	be more of an advisor to the group than an active participant."	
Andrea Wortzel – Mission H2O/Virginia Manufacturers Association	"Cassidy Rasnick would like to substitute Nina Butler as the VMA representative on the VWP RAP…Nina will serve as a representative of both VMA and Mission H2O…	Substitute accepted – A representative of the VMA and Mission H20 was invited to participate on the Advisory Group.
Charles M. Murray, Fairfax Water	"Thank you for the opportunity to comment on the Notice of Intended Regulatory Action for the Virginia Water Protection Permit Regulation (9VAC25-210), published June 2, 2014. Fairfax Water is interested and available to assist in the development of revised regulations through participation in the associated Regulatory Advisory Panel…"	A representative of Fairfax Water was invited to participate on the Advisory Group.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This proposed regulatory action is unlikely to increase or decrease the disposable income available to a family-run business that is subject to the provisions of the Virginia Water Protection Permit Program regulation because the law on which the regulation is based in not being revised, but rather, only the implementation and interpretation of the law is being considered for revision.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the ***pre****-emergency regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

9VAC25-210

Current Section Number	Proposed New Section Number (if applicable)	Current Requirement	Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements
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.

9VAC25-210			
Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
60	10	Definitions	Relocated and revised the definition of "Construction site" from section 60 for better consistency with existing VPDES program definitions.
	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'.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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.
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.

9VAC25-210			
Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
	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.
	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'.

9VAC25-210			
Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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'.
	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.

9VAC25-210			
Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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.
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", "Surface water 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".

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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.
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.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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.
	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.

9VAC25-210			
Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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.
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.

9VAC25-210			
Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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 4th 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.
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.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
80 E	80 D	Application requirements	Existing text in E revised from 'shall' to 'may' and subsection renumbered to D.
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.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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.
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.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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.
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.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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.
	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.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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 and to delete reference to multi-project sites, obsolete.
116 E ~~2~~ 1 through 4		Compensation	~~E 2 was deleted, obsolete and duplicative of C 1.~~ Revised for wording choice and to delete reference to multi-project sites, obsolete.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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.~~ Deleted obsolete provision.
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'.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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.
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.

9VAC25-210			
Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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.
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	Renumbered. 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.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
	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.
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.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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.
	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~~ g	Permit modification, revocation and reissuance, extension, transfer, termination	~~E 7 f was added~~ 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.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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.
180 I 3		Permit modification, revocation and reissuance, extension, transfer, termination	Revised to delete 'authorization' as this section applies to individual permits.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
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.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
	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.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
	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 was 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.
	340	Application requirements for surface water withdrawals	Added new section. Informational requirements for a complete application necessary to conduct a review of any withdrawal, other than those for an emergency Virginia Water Protection Permit, are consolidated into one comprehensive list. This approach removes the distinction between minor surface water withdrawal and major surface water withdrawal, which was found to be a regulatory distinction and does not reflect potential impact on beneficial uses. This proposal provides greater clarity because, while the regulations require the same information for a “minor” and “major” withdrawal, it is unclear and has caused confusion to both staff and the regulated public. Other amendments include adding informational requirements addressing recent statutory changes and to the Joint Permit Application.

9VAC25-210			
Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
	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.
	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.

9VAC25-210			
Current Section Number	**Proposed New Section Number (if applicable)**	**Current Requirement**	**Proposed Change, Intent, Rationale, and likely Impact of proposed Requirements**
	380	Modifications to permit for surface water withdrawals	Added new section that establishes the criteria, which is consistent with the Department's other permitting programs, for when minor and major modifications of the permit may occur that are specific to surface water withdrawal activities. The existing regulation has one general provision (180 D 6) that addresses surface water withdrawals; however, nothing more specific is provided. These amendments provide clarity as to changes that may occur under both a major modification and a minor modification specific to surface water withdrawal activities.
	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 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.
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.