

TENTATIVE AGENDA  
STATE WATER CONTROL BOARD MEETING

THURSDAY, SEPTEMBER 24, 2020

ELECTRONIC COMMUNICATION MEETING

To attend and/or speak at the Board meeting you must register at:  
<https://attendee.gotowebinar.com/register/2182579367789601291>

See Page 3 for Additional Information

Persons Wishing To Speak During The Meeting Must Register By September 21, 2020

Any Updates To The Details/Final Arrangements Or The Addition Of An In-Person Location  
To Be Announced At Least 3 Days In Advance Of Meeting

Convene – 10:00 a.m.

Agenda Item	Presenter	Tab
Minutes (June 29, 2020)		A pg. 5
<b>Regulations</b>		
• Construction General Permit Regulation (9VAC25-880) Amendments as a Result of 2020 General Assembly Actions	Davenport	B pg. 23
• Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870) Amendments as a Result of 2020 General Assembly Actions	Davenport	C pg. 35
• Virginia Water Protection Permit Program Regulation (9VAC25-210) Amendments as a Result of 2020 General Assembly Actions	Davenport	D pg. 77
<b>Significant Noncompliance Report and Chesapeake Bay Preservation Act Program Notices of Violations</b>	Sadtler	E pg. 180
<b>Consent Special Orders - VPDES</b>	Sadtler	F pg. 182
• City of Covington		
<b>Other Business</b>		
• FY2021 Virginia Clean Water Revolving Loan Fund Final Authorizations - Southwest Virginia Pilot Program Projects	Doran	G pg. 214
• Turbidity Water Quality Standard Development Briefing	Schneider/Davenport	
• Future Meetings (December 9, 2020)		
• Division Director's Report	Davenport/Schneider	
• Public Forum (time not to exceed 45 minutes)		

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

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

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

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may be an additional comment period during which a public hearing is held. In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

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

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

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

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

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

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

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378, fax (804) 698-4178, e-mail: [cindy.berndt@deq.virginia.gov](mailto:cindy.berndt@deq.virginia.gov).

**Additional Information on Virtual Meeting**

Mode of Participation	Ability to make public comment if authorized by public comment policy?	Instructions
Watch and Speak Mode - GoToWebinar	YES	<ul style="list-style-type: none"> <li>• Prior to hearing, register at <a href="https://attendee.gotowebinar.com/register/2182579367789601291">https://attendee.gotowebinar.com/register/2182579367789601291</a></li> <li>• Participants can join the meeting starting at 9:30 a.m. on September 24, 2020.</li> <li>• To join the meeting access the website by using the link, telephone number, access code and audio pin provided with the meeting confirmation.</li> <li>• For audio, it is recommended that you call-in to the webinar. Join the webinar first, select phone audio then dial the phone number and enter the access number and PIN.</li> <li>• If joining from a mobile device, it is recommended you download the app prior to the meeting.</li> <li>• All participants will be automatically muted upon joining the meeting.</li> <li>• If authorized to speak under the public comment policy, when you are called on, you will be un-muted and will be able to provide comments.</li> </ul>
Watch Only Mode - GoToWebinar	NO	<ul style="list-style-type: none"> <li>• Register at: <a href="https://www.gotomeeting.com/webinar">https://www.gotomeeting.com/webinar</a> Participants can join the meeting starting at 9:30 a.m. on September 24, 2020.</li> <li>• To join the meeting access the website by using the link, telephone number, access code and audio pin provided with the meeting confirmation Or Access the website <a href="https://www.gotomeeting.com/webinar">https://www.gotomeeting.com/webinar</a>, click "Join" and then enter Webinar ID 531-321-123.</li> <li>• If joining from a mobile device, it is recommended you download the app prior to the meeting.</li> </ul>

Listen Only Mode	NO	If you prefer to attend the meeting by telephone and do not plan to speak, contact Debra Harris at 804-698-4209 or <a href="mailto:debra.harris@deq.virginia.gov">debra.harris@deq.virginia.gov</a> to obtain a telephone number.
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**Additional Meeting Information:**

- Attendees are not entitled to be disorderly or disrupt the meeting from proceeding in an orderly, efficient, and effective fashion. Disruptive behavior may result in a recess or removal from the meeting.
- Possession or use of any device that may disrupt the conduct of business is prohibited, including but not limited to: voice-amplification equipment; bullhorns; blow horns; sirens, or other noise-producing devices; as well as signs on sticks, poles or stakes; or helium-filled balloons.
- Attendees shall not block or gather in exits, doors, or aisles.
- All attendees are asked to be respectful of all speakers.
- Rules will be enforced fairly and impartially not only to ensure the efficient and effective conduct of business, but also to ensure no interference with the business of the hotel, its employees and guests.
- All violators are subject to removal.



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

David K. Paylor  
Director  
(804) 698-4020  
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### MEMORANDUM

TO: Members of the State Water Control Board

FROM: David K. Paylor 

DATE: July 27, 2020

SUBJECT: Minutes

Attached are the minutes from your meeting on June 29, 2020. Staff will seek your approval of the minutes at your next regular meeting.

If you have any questions, please contact Cindy M. Berndt at (804) 698-4378 or [cindy.berndt@deq.virginia.gov](mailto:cindy.berndt@deq.virginia.gov).

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### STATE WATER CONTROL BOARD MEETING

MONDAY, JUNE 29, 2020

### ELECTRONIC COMMUNICATION MEETING

#### Board Members Present:

Heather L. Wood, Chair  
Lou Ann Jessee-Wallace, Vice-Chair  
Robert H. Wayland, III  
Timothy G. Hayes (arrived at 10:13 a.m.)  
Paula H. Jasinski  
Jillian Cohen

#### Board Members Absent:

James A. Lofton

#### Department of Environmental Quality:

David K. Paylor, Director  
Cindy M. Berndt  
Debra A. Harris

#### Attorney General's Office:

David C. Grandis, Assistant Attorney General

- 1) The attached minutes summarize activities that took place at this Board Meeting.
- 2) The meeting was convened at 10:01 a.m., recessed at 10:12 a.m., reconvened at 10:23 a.m., recessed at 12:10 p.m., reconvened at 12:43 p.m., recessed at 3:25 p.m., reconvened at 3:35 p.m., and adjourned at 4:00 p.m.
- 3) The Board convened the meeting electronically, consistent with Governor Ralph Northam's Executive Order No. 51 (2020), Item 4-0.01 g of Chapter 1283 of the 2020 Acts of Assembly and the applicable provisions of § 2.2-3708.2 of the Freedom of Information Act. The meeting was necessary for the Board to discharge its lawful purposes, duties, and responsibility; but it is impracticable or unsafe for the Board to assemble in a single location due to the declaration of a state of emergency for COVID-19.



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 29, 2020

#### MINUTE NO. 1 - Minutes

The Board approved the minutes of the meeting on December 13, 2019. (Vote was 5 - 0 - 0 and was taken by roll call: Mr. Wayland, Ms. Jasinski, Ms. Cohen, Ms. Wallace and Ms. Wood voted aye, no nays and no abstentions.)

  
Cindy M. Berndt





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**EXCERPT FROM THE PROCEEDINGS OF THE STATE  
WATER CONTROL BOARD AT ITS MEETING ON JUNE 29, 2020**

**MINUTE NO. 2 – Virginia Pollutant Discharge Elimination System Permit Regulation  
(VPDES) 9VAC25-31 Final Exempt Amendments**

Prior to the meeting the Board was provided materials including a briefing memo, the regulation showing final exempt amendments and the town hall agency background document. Elleanore Daub, from the Office of VPDES Permits, presented a summary of the significant changes to the regulation. The Board was advised that the Environmental Protection Agency had not approved the amendments and the regulation would not be filed with the Register until such letter had been received.

**Board Decision**

The Board approved the staff recommendation to adopt the amendments to the Virginia Pollutant Discharge Elimination System (9VAC25-31) as amended and presented and affirmed that the Board will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of this regulation, as provided by the Administrative Process Act, by a roll call vote of six to zero.

  
\_\_\_\_\_  
Melanie D. Davenport  
Director, Water Permitting Division



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD  
AT ITS MEETING OF JUNE 29, 2020**

**MINUTE NO. 3 - Occoquan Policy (9VAC25-410) Amendments - Adoption**

Melissa Porterfield presented the State Water Control Board (Board) with a final exempt amendment to the Occoquan Policy (9VAC25-410) regulation. This regulation is being modified to correct citations in §§ 10 and 20, correct the name of a regulation in §20, and correct the name of the UOSA, formerly known as the Upper Occoquan Sewage Authority, to the current name of Upper Occoquan Service Authority.

**Board Decision**

Based on the briefing materials and the staff presentation, the Board voted by a roll call vote of 6 (Wayland, Hayes, Jasinski, Cohen, Wallace, Wood) to 0 to approve the staff recommendation to:

- Adopt the amendment to the Occoquan Policy (9VAC25-410) regulation as presented and directed the agency to make the regulation effective as soon as possible; and
- Affirm that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

A handwritten signature in black ink that reads "Melanie D. Davenport". The signature is written over a horizontal line.

**Melanie D. Davenport**  
Director, Water Permitting Division



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE  
WATER CONTROL BOARD AT ITS MEETING ON JUNE 29, 2020**

**MINUTE NO. 4 – Virginia Pollutant Discharge Elimination System General Permit  
Regulation for Discharges of Domestic Sewage of Less Than or Equal to 1,000 Gallons Per  
Day (9VAC25-110)**

Prior to the meeting the Board was provided materials including a briefing memo, which included a list of the technical advisory committee membership, the regulation showing proposed amendments, and the town hall agency background document. Peter Sherman, from the Office of VPDES Permits, presented a summary of the significant proposed changes to the regulation.

**Board Decision**

Based on the briefing material and the staff presentation, a vote was taken by roll call and the Board unanimously approved the staff recommendations to authorize a public comment period and public hearing for amendment and reissuance of the VPDES Domestic Sewage General Permit (9VAC25-110), and to authorize the staff to serve as hearing officer for the public hearing, by a vote of six to zero.

  
Melanie D. Davenport  
Director, Water Permitting Division



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE  
WATER CONTROL BOARD AT ITS MEETING ON JUNE 29, 2020**

**MINUTE NO. 5 – General Virginia Pollutant Discharge Elimination System (VPDES)  
Permit for Seafood Processing Facilities (9VAC25-115)**

Prior to the meeting the Board was provided materials including a briefing memo, which included a list of the technical advisory committee membership, the town hall agency background document, the regulation showing proposed amendments, and the permit fact sheet. Eleanore Daub, from the Office of VPDES Permits, presented a summary of the significant proposed changes to the regulation.

**Board Decision**

Based on the briefing material and the staff presentation, a vote was taken by roll call and the Board approved the staff recommendations to authorize a public comment period and public hearing for amendment and reissuance of the General VPDES Permit for Seafood Processing Facilities (9VAC25-115), and to authorize the staff to serve as hearing officer for the public hearing, by a vote of six to zero.

A handwritten signature in cursive script that reads "Melanie D. Davenport".

**Melanie D. Davenport**  
Director, Water Permitting Division



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD  
AT ITS MEETING ON June 29, 2020**

**MINUTE NO. 6 – Actions on the proposed amendments to the Virginia Pollution  
Abatement Regulation and General Permit for Poultry Waste Management**

Betsy Bowles, the State Animal Feeding Operations Program Coordinator with the Office of Land Application Programs presented the proposed amendments to the Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management, 9VAC25-630 et seq. Ms. Bowles explained that this amendment would allow the existing Regulation and General Permit for Poultry Waste Management to be reissued for another 10 year term. The VPA Regulation and General Permit governs the management of poultry feeding operations which confine 200 or more animal units (20,000 chickens or 11,000 turkeys), and establishes utilization, storage, tracking and accounting requirements related to poultry waste, including that transferred from poultry feeding operations.

Mr. Robert Wayland asked if there are setback requirements when land applying poultry waste. Staff responded that yes, there are numerous setbacks but the distance depends upon the environmentally sensitive site.

**Board Decision**

The subsequent vote was taken by a roll call of the members of the Board. Ms. Jasinski recused herself from the discussion and vote.

Based upon the Board book briefing material and information provided by staff, the Board, on the motion by Mr. Timothy Hayes and seconded by Ms. Lou Ann Jessee-Wallace, voted 5-0, with Ms. Paula Hill Jasinski recusing herself, to accept the staff recommendation to:

1. Approve for public comment and hearing the proposed amendments to the Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management as presented, and
2. Authorize staff to act as the hearing officer.

  
Melanie D. Davenport  
Director, Water Permitting Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 29, 2020

#### MINUTE 7 – TOTAL MAXIMUM DAILY LOAD REPORTS AND WASTE LOAD ALLOCATIONS

Kelly Meadows, Watershed Programs, presented two Total Maximum Daily Load (TMDL) reports with eleven new waste load allocations for Board approval and amendment to the Water Quality Management Planning Regulation.

The proposed actions pertain to water bodies in the Potomac-Shenandoah River Basin and the James River Basin. The TMDL reports included the following:

1. A TMDL and Watershed Management Plan to Address Sediment in North Fork Catoclin Creek Located in Loudoun County, Virginia
2. Benthic TMDL Development for the North Fork Rivanna River Watershed and Tributaries Located in Albemarle, Greene, and Orange Counties

#### Board Decision:

Based on the briefing material and the staff presentation, the Board voted unanimously (6-0 by roll call; Wayland, Hayes, Jasinski, Cohen, Wallace, and Wood in favor, none opposed) to:

1. Approve the two TMDL reports for inclusion into the Water Quality Management Plan, and
2. Adopt the corresponding eleven new TMDL waste load allocations into the Water Quality Management Planning Regulation and affirm that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

---

Jutta Schneider  
Director, Water Planning Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 29, 2020

#### MINUTE NO. 8 – Significant Noncompliance Report

Kristen Sadtler, Water Enforcement Program Manager, informed the Board that one new permittee was reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance for the quarter ending September 30, 2019. The permittee reported was:

1. Westrock CP LLC for the West Point Paper Plant.

Additionally, Kristen reported that there were no new facilities reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance for the quarter ending December 31, 2019.

The Board accepted the report with no comment.

A handwritten signature in cursive script that reads "Kristen Sadtler".

Kristen Sadtler  
Water Enforcement Program Manager  
Division of Enforcement



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 29, 2020

#### MINUTE NO. 9 – VPDES Program Consent Special Order

Kristen Sadtler, Water Enforcement Program Manager, presented to the Board the Consent Order for the City of Richmond. The Board took a vote by roll call and unanimously approved the Order by a vote of 6-0 (Wayland, Hayes, Jasinski, Cohen, Wallace, and Wood) and further authorized the Department's Director to execute the Order on the Board's behalf and refer violations of the Order to the Office of the Attorney General for appropriate legal action.

A handwritten signature in cursive script that reads "Kristen Sadtler".

Kristen Sadtler

Water Enforcement Program Manager  
Division of Enforcement





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**EXCERPT FROM THE PROCEEDINGS OF THE  
STATE WATER CONTROL BOARD AT ITS MEETING ON  
June 29, 2020**

**MINUTE NO. 10: CHICKAHOMINY POWER GROUNDWATER  
WITHDRAWAL PERMIT**

Scott Kudlas, Office of Water Supply, presented information to the Board regarding the groundwater withdrawal for the Chickahominy Power Plant located in Charles City County within the Eastern Virginia Groundwater Management Area. Mr. Kudlas referenced his December 13, 2019 presentation regarding the history of groundwater management in Virginia and some common geologic concepts and terms used within the groundwater management program. He reviewed the basic information associated with the proposed groundwater withdrawal including the limit of 7 years. Mr. Kudlas reviewed technical modeling conducted to evaluate the impact to the aquifer of the proposed withdrawal and the extent to which other existing wells may potentially be impacted. Mr. Kudlas identified the key questions evaluated during the application review process and the difference between a Withdrawal Permit and a Special Exception, including that the withdrawal was originally taken to public notice as a Special Exception. He reviewed key regulatory requirements of the evaluation criteria for permits in 9VAC25-610-110. Mr. Kudlas identified important permit conditions including a special condition that limits the withdrawal for a term not to exceed 7 years or completion of an interconnection to the New Kent County Public Water System, whichever comes first. Mr. Kudlas also noted that notwithstanding § 62.1-266 C of the Code of Virginia, or any provision of the Board's regulations, including 9VAC25-610-96, the permit will not be administratively continued under any circumstance. Mr. Kudlas reviewed the public involvement process, including several pre-public hearing public information sessions and the public hearing held for the proposed withdrawal. The public comment period was held from December 26, 2019 through February 14, 2020. There were 1,366 written comments received from 1,199 individuals/organizations during the comment period and 36 speakers commented during the public hearing held January 28, 2020 in Charles City County. Mr. Kudlas reviewed a summary of the comments received and the staff responses provided. The Board asked a number of





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CONTROL BOARD AT ITS MEETING ON JUNE 29, 2020**

**MINUTE NO. 11- Chesapeake Bay Act Report**

Mr. Justin Williams provided an overview of the Chesapeake Bay Preservation Act. He provided an overview of the statutory and regulatory requirements for the Tidewater Virginia localities subject to the requirements as well as Department compliance efforts on program reviews and addressing non-compliance.

A handwritten signature in cursive script that reads "Jutta Schneider".

Jutta Schneider  
Director, Water Planning Division



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### EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 29, 2020

#### MINUTE NO. 12 - Future Meetings

The Board confirmed September 24 and December 9, 2020, as the dates of their next meetings.

  
Cindy M. Berndt  
Cindy M. Berndt



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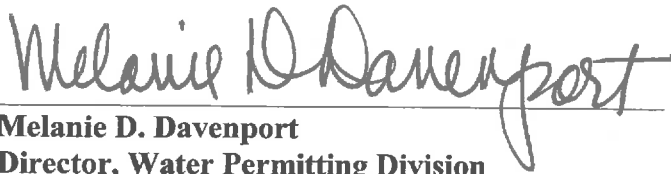
Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director  
(804) 698-4000

**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER  
CONTROL BOARD AT ITS MEETING ON JUNE 29, 2020**

**MINUTE NO. 13 – Water Permitting Division Director’s Report**

Ms. Melanie D. Davenport provided an update on the Mountain Valley Pipeline project. She (i) provided an update on the construction status of the project, (ii) reviewed the results of inspections conducted at the Sinking Creek Mountain area and Yellow Finch Lane, (iii) reviewed significant events that occurred during the current period including DEQ’s demand for stipulated penalties, (iv) provided compliance monitoring statistics, (v) reported common areas of concern observed by the inspectors, and (vi) provided complaint statistics.

  
Melanie D. Davenport  
Director, Water Permitting Division





*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

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Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director  
(804) 698-4000

Memorandum

To: Members of the Virginia State Water Control Board

Through: Melanie D. Davenport, Director  
Water Permitting Division

From: Erin Ervin Belt, Manager  
Office of Stormwater Management

Date: August 24, 2020

Subject: Construction General Permit Regulation (9VAC25-880) Amendments as a Result of 2020 General Assembly Actions

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The attached regulatory amendments are presented to the Board for your consideration for adoption. The final exempt action amends the General VPDES Permit for Discharges of Stormwater from Construction Activities or Construction General Permit Regulation (9VAC25-880).

This proposed Final Exempt regulatory action contains amendments to the existing Construction General Permit Regulation resulting from actions of the 2020 General Assembly. HB1310 (Chapter 565 of the Virginia Acts of Assembly – 2020 Session) resulted in amendments to the registration statement section of the regulations relating to “a process for notice of disposal of certain materials.”

Section 2.2-4006 A 4 (a) of the Code of Virginia allows the Board to adopt these regulatory amendments as the changes are necessary to conform to changes in Virginia Statutory Law. This regulatory amendment will be effective 30 days after publication in the *Virginia Register*. A draft Virginia Regulatory Town Hall document and the proposed regulatory amendments are attached for your information.

At your Board meeting on September 24, 2020, the DEQ will request that the Board adopt the proposed amendments to the Construction General Permit Regulation, authorize their publication, and affirm that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

cc: Cindy Berndt, DEQ - Office of Regulatory Affairs

**ATTACHMENTS:**

- Construction General Permit Regulation Amendments as a Result of 2020 General Assembly Actions - Draft Virginia Regulatory Town Hall Document (TH-09)
- Construction General Permit Regulation Amendments - Regulatory Text
- Virginia Acts of Assembly – 2020 Session – Chapter 565 (HB1310)





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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC 25-880
<b>VAC Chapter title(s)</b>	General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities
<b>Action title</b>	<b>Amendment to the Construction General Permit Regulation (9VAC25-880) to meet changes made during the 2020 General Assembly session.</b>
<b>Final agency action date</b>	September 24, 2020
<b>Date this document prepared</b>	August 17, 2020

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The intent of this final regulatory action is to amend language in the Construction General Permit Regulation (9VAC25-880) to reflect changes made to the Code of Virginia (State Water Control Law) by the 2020 General Assembly through HB1310 (Chapter 565 of the 2020 Acts of Assembly).

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

Chapter 565 (House Bill 1310) of the 2020 Acts of Assembly directs the Department of Environmental Quality (Department) to establish a process whereby any person that receives coverage under the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities and that will be transporting fill from a project site for disposal as part of its land-disturbing activities shall disclose to the Department the following information, which the Department shall disclose to every locality where such fill will be disposed of: (i) the source of the fill to be disposed of, (ii) the contents of the fill, and (iii) the location of the disposal.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

---

- Board – State Water Control Board
- Department – Department of Environmental Quality
- VPDES – Virginia Pollutant Discharge Elimination System
- VSMP – Virginia Stormwater Management Program

### Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

---

The State Water Control Board (Board) adopted amendments at its meeting on September 24, 2020. In accordance with § 2.2-4006 B of the Code of Virginia (Administrative Process Act), the Board will receive, consider and respond to petitions by any person at any time with respect to reconsideration of this regulation.

### Legal Basis

*Identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

---

The Board is authorized to adopt regulations under § 62.1-44.15:25 of the Code of Virginia (Stormwater Management Act) and to promulgate general permits under Va. Code § 62.1-44.15.25.1. This regulatory amendment is being processed as a final exempt action under § 2.2-4006 A.4.a of the Code of Virginia (Administrative Process Act) as this regulatory action is necessary to conform to the changes in Virginia statutory law where no agency discretion is involved.

### Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

---

The regulatory amendments are necessary to conform the Construction General Permit Regulation (9VAC25-880) to changes made to the Code of Virginia (State Water Control Law) by the 2020 General Assembly through Chapter 565 of the 2020 Acts of Assembly.

### Substance

*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 substance of the proposed amendments is to clarify the process, whereby any person that receives coverage under the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities and that will be transporting fill from a project site for disposal as part of its land-disturbing activities, for disclosing to the Department the following information: (i) the source of the fill to be disposed of, (ii) the contents of the fill, and (iii) the location of the disposal.

### Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \*Please put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-880-50 B 4		Registration Statement - offsite support activities	Grammatical – change “offsite” to “off-site” and clarify language of requirement: “4. If <del>offsite</del> <u>off-site</u> support activities will be used, the name and physical location address, when available, of <del>these offsite</del> <u>all off-site</u> support activities, including city or county; latitude and longitude in decimal degrees (six digits – ten-thousandths place); and whether or not the <del>offsite</del> <u>off-site</u> support activity will be covered under this general permit or a separate VPDES permit;”
9VAC25-880-50 B 5		Registration Statement – status of the construction activity	Registration Statement – excavated material: New text added to address transport of excavated material off-site: “5. <u>If excavated material (i.e., fill) will be transported off-site for disposal, the name and physical location address, when available, of all off-site excavated material disposal areas, including city or county; latitude and longitude in decimal degrees (six digits – ten-thousandths place); and the contents of the excavated material;</u> ”
9VAC25-880-50 B 5	9VAC25-880-50 B 6	Registration Statement – Status of the construction activity	Revise numbering to reflect addition of new requirement:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-880-50 B 6	9VAC25-880-50 B 7	Registration Statement – Nature of the construction activity	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 7	9VAC25-880-50 B 8	Registration Statement – stormwater management plans	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 8	9VAC25-880-50 B 9	Registration Statement – construction activity	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 9	9VAC25-880-50 B 10	Registration Statement – construction activity	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 10	9VAC25-880-50 B 11	Registration Statement – name of receiving waters	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 11	9VAC25-880-50 B 12	Registration Statement – discharge through MS4	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 12	9VAC25-880-50 B 13	Registration Statement – date	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 13	9VAC25-880-50 B 14	Registration Statement – Status of the construction activity	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 14	9VAC25-880-50 B 15	Registration Statement – total land area	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 15	9VAC25-880-50 B 16	Registration Statement – part of a larger plan of development	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 16	9VAC25-880-50 B 17	Registration Statement – stormwater pollution prevention plan	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 17	9VAC25-880-50 B 18	Registration Statement – Certification statement	Revise numbering to reflect addition of new requirement:

### 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

No alternative regulatory methods were available to accommodate this statutory change.

### **Family Impact**

*In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed 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.*

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No impact on the institution of the family and family stability is anticipated as a result of this regulatory action.



1 **Project 6490 - none**

2 **STATE WATER CONTROL BOARD**  
3 **Construction GP Regulation Amendments 2020 GA Session**

4  
5 **9VAC25-880-50. Registration statement.**

6 A. Deadlines for submitting registration statement. Any operator seeking coverage under this  
7 general permit, and that is required to submit a registration statement, shall submit a complete  
8 and accurate general VPDES permit registration statement in accordance with this section, which  
9 shall serve as a notice of intent for coverage under the general VPDES permit for discharges of  
10 stormwater from construction activities.

11 1. New construction activities.

12 a. Any operator proposing a new stormwater discharge from construction activities  
13 shall submit a complete and accurate registration statement to the VSMP authority  
14 prior to the commencement of land disturbance.

15 b. Any operator proposing a new stormwater discharge from construction activities in  
16 response to a public emergency where the related work requires immediate  
17 authorization to avoid imminent endangerment to human health or the environment is  
18 authorized to discharge under this general permit, provided that:

19 (1) The operator submits a complete and accurate registration statement to the VSMP  
20 authority no later than 30 days after commencing land disturbance; and

21 (2) Documentation to substantiate the occurrence of the public emergency is provided  
22 with the registration statement.

23 c. Any operator proposing a new stormwater discharge associated with the  
24 construction of a single-family detached residential structure, within or outside a  
25 common plan of development or sale, is authorized to discharge under this general  
26 permit and is not required to submit a registration statement or the department portion  
27 of the permit fee.

28 2. Existing construction activities.

29 a. Any operator who was authorized to discharge under the expiring or expired general  
30 permit and who intends to continue coverage under this general permit shall:

31 (1) Submit a complete and accurate registration statement to the VSMP authority at  
32 least 60 days prior to the expiration date of the existing permit or a later submittal date  
33 established by the board; and

34 (2) Update its stormwater pollution prevention plan to comply with the requirements of  
35 this general permit no later than 60 days after the date of coverage under this general  
36 permit.

37 b. Any operator with an existing stormwater discharge associated with the construction  
38 of a single-family detached residential structure, within or outside a common plan of  
39 development or sale that intends to continue coverage under this general permit, is  
40 authorized to discharge under this general permit and is not required to submit a  
41 registration statement or the department portion of the permit fee, provided that the  
42 operator updates its stormwater pollution prevention plan to comply with the  
43 requirements of this general permit no later than 60 days after the date of coverage  
44 under this general permit.

45 3. For stormwater discharges from construction activities where the operator changes, the  
46 new operator shall submit a complete and accurate registration statement or transfer  
47 agreement form and any other documents deemed necessary by the VSMP authority to  
48 the VSMP authority to demonstrate transfer of ownership and long-term maintenance

responsibilities for stormwater management facilities, as required, has occurred prior to assuming operational control over site specifications or commencing work on-site.

4. Late notifications. Operators are not prohibited from submitting registration statements after commencing land disturbance. When a late registration statement is submitted, authorization for discharges shall not occur until coverage under the general permit is issued. The VSMP authority, department, board, and the EPA reserve the right to take enforcement action for any unpermitted discharges that occur between the commencement of land disturbance and discharge authorization.

5. Late registration statements. Registration statements for existing facilities covered under subdivision A 2 a of this section will be accepted after the expiration date of this permit, but authorization to discharge will not be retroactive. The VSMP authority, department, board, and the EPA reserve the right to take enforcement action for any unpermitted discharges that occur after existing permit coverage expires and prior to coverage under this permit is approved.

B. Registration statement. The operator shall submit a registration statement to the VSMP authority that contains the following information:

1. Name, contact, mailing address, telephone number, and email address if available of the construction activity operator. No more than one operator may receive coverage under each registration statement;

NOTE: General permit coverage will be issued to this operator, and the certification in subdivision 17 of this subsection shall be signed by the appropriate person associated with this operator as described in Part III K of 9VAC25-880-70.

2. Name and physical location address of the construction activity, when available, to be covered under this general permit, including city or county, and latitude and longitude in decimal degrees (six digits - ten-thousandths place);

3. A site map (in an 8.5 inch by 11 inch format) showing the location of the existing or proposed land-disturbing activities for which the operator is seeking permit coverage, the limits of land disturbance, construction entrances, on-site support activities, and all water bodies receiving stormwater discharges from the site;

4. If ~~offsite-off-site~~ support activities will be used, the name and physical location address, when available, of ~~these offsite-all off-site~~ support activities, including city or county; latitude and longitude in decimal degrees (six digits - ten-thousandths place); and whether or not the ~~offsite-off-site~~ support activity will be covered under this general permit or a separate VPDES permit;

5. If excavated material (i.e., fill) will be transported off-site for disposal, the name and physical location address, when available, of all off-site excavated material disposal areas, including city or county; latitude and longitude in decimal degrees (six digits - ten-thousandths place); and the contents of the excavated material.

6. Status of the construction activity: federal, state, public, or private;

6.7. Nature of the construction activity (e.g., commercial, industrial, residential, agricultural, oil and gas, etc.);

7-8. If stormwater management plans for the construction activity have been approved by an entity with department approved annual standards and specifications, the name of the entity with the department approved annual standards and specifications. A copy of the annual standard and specification entity form shall be submitted with the registration statement;



- 95 ~~8.9.~~ If the construction activity was previously authorized to discharge under the general
- 96 permit effective July 1, 2014, the date of erosion and sediment control plan approval for
- 97 the estimated area to be disturbed by the construction activity during this permit term;
- 98 ~~9.10.~~ If the construction activity was previously authorized to discharge under the general
- 99 permit effective July 1, 2014, whether land disturbance has commenced;
- 100 ~~10.11.~~ Name of the receiving waters and sixth order Hydrologic Unit Code (HUC);
- 101 ~~11.12.~~ If the discharge is through a municipal separate storm sewer system (MS4), the
- 102 name of the MS4 operator;
- 103 ~~12.13.~~ Estimated project start date and completion date;
- 104 ~~13.14.~~ Total land area of development and estimated area to be disturbed by the
- 105 construction activity during this permit term (to the nearest one-hundredth of an acre);
- 106 ~~14.15.~~ Whether the area to be disturbed by the construction activity is part of a larger
- 107 common plan of development or sale;
- 108 ~~15.16.~~ If nutrient credits are to be used to demonstrate compliance with the water quality
- 109 technical criteria as allowed in 9VAC25-870-65 F, a letter of availability from an
- 110 appropriate nutrient bank that nonpoint source nutrient credits are available;
- 111 ~~16.17.~~ A stormwater pollution prevention plan (SWPPP) shall be prepared in accordance
- 112 with the requirements of the General VPDES Permit for Stormwater Discharges from
- 113 Construction Activities prior to submitting the registration statement. By signing the
- 114 registration statement the operator certifies that the SWPPP has been prepared; and
- 115 ~~17.18.~~ The following certification: "I certify under penalty of law that I have read and
- 116 understand this registration statement and that this document and all attachments were
- 117 prepared in accordance with a system designed to assure that qualified personnel properly
- 118 gathered and evaluated the information submitted. Based on my inquiry of the person or
- 119 persons who manage the system or those persons directly responsible for gathering the
- 120 information, the information submitted is to the best of my knowledge and belief true,
- 121 accurate, and complete. I am aware that there are significant penalties for submitting false
- 122 information including the possibility of fine and imprisonment for knowing violations."
- 123 C. The registration statement shall be signed in accordance with 9VAC25-880-70, Part III K.
- 124

# VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

## CHAPTER 565

*An Act to require the Department of Environmental Quality to establish a process for notice of disposal of certain fill materials.*

[H 1310]

Approved March 31, 2020

**Be it enacted by the General Assembly of Virginia:**

1. § 1. *That the Department of Environmental Quality (the Department) shall establish a process whereby any person that receives coverage under the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities and that will be transporting fill from a project site for disposal as part of its land-disturbing activities shall disclose to the Department the following information, which the Department shall disclose to every locality where such fill will be disposed of: (i) the source of the fill to be disposed of, (ii) the contents of the fill, and (iii) the location of the disposal.*



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

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Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director  
(804) 698-4000

Memorandum

To: Members of the Virginia State Water Control Board

Through: Melanie D. Davenport, Director  
Water Permitting Division

From: Erin Ervin Belt, Manager  
Office of Stormwater Management

Date: August 24, 2020

Subject: Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870)  
Amendments as a Result of 2020 General Assembly Actions

---

The attached regulatory amendments are presented to the Board for your consideration for adoption. The final exempt action amends the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870).

This proposed Final Exempt regulatory action contains amendments to the existing VSMP Regulation resulting from actions of the 2020 General Assembly. House Bill 859 (Virginia Acts of Assembly – 2020 Session – Chapter 313) mandated disclosure requirements for private residential lots relating to stormwater management facilities; House Bill 882 (Chapter 667) mandated reciprocity requirements for proprietary best management practices; and Senate Bill 747 and House Bill 1609 (Chapters 1102 and 1103) established nutrient credit and voluntary wasteload allocation requirements.

Section 2.2-4006 A 4 (a) of the Code of Virginia allows the Board to adopt these regulatory amendments as the changes are necessary to conform to changes in Virginia Statutory Law. This regulatory amendment will be effective 30 days after publication in the *Virginia Register*. A draft Virginia Regulatory Town Hall document and the proposed regulatory amendments are attached for your information.

At your Board meeting on September 24, 2020, the DEQ will request that the Board adopt the proposed amendments to the VSMP Regulation, authorize their publication, and affirm that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

cc: Cindy Berndt, DEQ - Office of Regulatory Affairs

**ATTACHMENTS:**

- Virginia Stormwater Management Program (VSMP) Regulation Amendments as a Result of 2020 General Assembly Actions - Draft Virginia Regulatory Town Hall Document (TH-09)
- Virginia Stormwater Management Program (VSMP) Regulation Amendments - Regulatory Text
- Virginia Acts of Assembly – 2020 Session – Chapter 313 (HB859)
- Virginia Acts of Assembly – 2020 Session – Chapter 667 (HB882)
- Virginia Acts of Assembly – 2020 Session – Chapter 1102 (SB747)
- Virginia Acts of Assembly – 2020 Session – Chapter 1103 (HB1609)



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC 25-870
<b>VAC Chapter title(s)</b>	Virginia Stormwater Management Program (VSMP) Regulation
<b>Action title</b>	<b>Amendment to the Virginia Stormwater Management Program Regulation (9VAC25-870) to meet changes made during the 2020 General Assembly session.</b>
<b>Final agency action date</b>	September 24, 2020
<b>Date this document prepared</b>	August 28, 2020

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The intent of this final regulatory action is to amend language in the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870) to reflect changes made to the Code of Virginia (State Water Control Law) by the 2020 General Assembly through Chapters 313, 667, 1102 and 1103 of the 2020 Acts of Assembly.

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

Chapter 313 (House Bill 859) of the 2020 Acts of Assembly directs the State Water Control Board (Board) to adopt regulations that require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property.

Chapter 667 (House Bill 882) of the 2020 Acts of Assembly directs the Board to adopt regulations that provide for the use of a proprietary best management practice only if another state, regional, or national certification program has verified and certified its nutrient or sediment removal effectiveness. In addition, the regulations shall provide for the evaluation and potential inclusion of emerging or innovative nonproprietary stormwater control technologies that may prove effective in reducing nonpoint source pollution.

Chapters 1102 and 1103 (Senate Bill 747 and House Bill 1609) of the 2020 Acts of Assembly established that any publicly owned treatment works that is permitted under the Watershed General Virginia Pollutant Discharge Elimination System (VPDES) Permit pursuant to § 62.1-44.19:14 and is constructing or expanding the treatment works, wastewater collection system, or other facility used for public wastewater utility operations may, as an alternative to acquiring and using certain perpetual nutrient credits pursuant to subsection B of § 62.1-44.19:21, permanently retire a portion of its wasteload allocation if (i) notice is given by such applicant to the Department of Environmental Quality (Department), (ii) a ratio of 10 pounds of nitrogen allocation for each pound of phosphorous allocation retired is also permanently retired and applied toward the land-disturbing project, and (iii) the general permit registration list is modified to reflect the permanent retirement of the wasteload allocation. Except for a water reclamation and reuse project at a treatment works, no more than 10 pounds per year of phosphorous allocation may be applied toward a single project's postconstruction phosphorus control requirement.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

---

- Board – State Water Control Board
- Department – Department of Environmental Quality
- VPDES – Virginia Pollutant Discharge Elimination System
- VSMP – Virginia Stormwater Management Program

### Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

---

The Board adopted amendments at its meeting on September 24, 2020. In accordance with § 2.2-4006 B of the Code of Virginia (Administrative Process Act), the Board will receive, consider and respond to petitions by any person at any time with respect to reconsideration of this regulation.

### Legal Basis

*Identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

---

The Board is authorized to adopt regulations under § 62.1-44.15:25 of the Code of Virginia (Stormwater Management Act). Furthermore, the Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for VSMPs under § 62.1-44.15:28 of the Code of Virginia (Stormwater Management Act). This regulatory amendment is being processed as a final exempt action under § 2.2-4006 A.4.a of the Code of Virginia (Administrative Process Act) as this regulatory action is necessary to conform to the changes in Virginia statutory law where no agency discretion is involved.

### **Purpose**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

---

The regulatory amendments are necessary to conform the VSMP Regulation (9VAC25-870) to changes made to the Code of Virginia (State Water Control Law) by the 2020 General Assembly through Chapters 313, 667, and 1103 of the 2020 Acts of Assembly.

### **Substance**

*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.*

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The substance of this action is to amend language in the VSMP Regulation (9VAC25-870) to reflect changes made to the Code of Virginia (State Water Control Law) by the 2020 General Assembly through Chapters 313, 667, 1102 and 1103 of the 2020 Acts of Assembly. The amendments seek to spell out and clarify the concepts of "nonproprietary best management practices" and "proprietary best management practices"; provide for reciprocity; disclosure and nutrient credit use.

### **Detail of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \*Please put an asterisk next to any substantive changes.*

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Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-870-10		Definitions. "Best management practice"	Added clarifying language to the definition to identify the concepts of "nonproprietary best management practice" and "proprietary best management practice": "Best management practice" or "BMP" means... to prevent or reduce the pollution of surface waters and groundwater systems. "This includes: 1. <u>Nonproprietary best management practice</u> " means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are in the public domain and are not protected by trademark or patent or copyright. 2. <u>Proprietary best management practice</u> " means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are privately owned and controlled and may be protected by trademark or patent or copyright."
9VAC25-870-65 B		Water Quality Compliance	Clarification of the concept of "nonproprietary BMPs: "B. The <u>nonproprietary</u> BMPs listed in this subsection are approved for use as necessary to effectively reduce the phosphorus load and runoff volume in accordance with the Virginia Runoff Reduction Method. Other approved <u>nonproprietary</u> BMPs found on the Virginia Stormwater BMP Clearinghouse Website may be utilized. Design specifications and the pollutant removal efficiencies for all approved <u>nonproprietary</u> BMPs are found on the Virginia Stormwater BMP Clearinghouse Website."
9VAC25-870-65 C		Water Quality Compliance - BMPs	Clarification of the concept if "nonproprietary BMPs: "C. <u>Nonproprietary</u> BMPs differing from those listed in subsection B of this section or <del>proprietary BMPs certified in other states</del> shall be reviewed and approved by the director in accordance with procedures established by the department."
9VAC25-870-65 D		Water Quality Compliance – VSMP Limitations	Replace text on limitations with language clarifying the concept of "proprietary BMPs" and add subsections to addresses existing proprietary BMPs and



Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>the enactment clause and to address the approval of new proprietary BMPs after July 1, 2020: <u>"D. Proprietary BMPs listed on the Virginia Stormwater BMP Clearinghouse Website are approved for use in accordance with the Virginia Runoff Reduction Method. 1. Any proprietary BMP listed on the Virginia Stormwater BMP Clearinghouse Website prior to July 1, 2020, shall by December 31, 2021, provide documentation to the department showing that another state, regional, or national certification program has verified and certified its nutrient or sediment removal effectiveness. Any proprietary BMP that fails to provide the department with the documentation required by December 31, 2021, shall not be approved for use in any stormwater management plan submitted on or after January 1, 2022, until such proprietary BMP provides the department with such required documentation. 2. Any proprietary BMP approved for use after July 1, 2020 must meet the requirements of § 62.1-44.15:28 A 9 of the Code of Virginia.</u></p>
9VAC25-870-65 D	9VAC25-870-65 E	Water Quality Compliance – VSMP Limitations	Text originally in Subsection D: <u>"E. A VSMP authority may establish limits..."</u>
9VAC25-870-65 E	9VAC25-870-65 F	Water Quality Compliance – VSMP discretion	Subsection Lettering revised to reflect addition of new Subsection D: <u>E-F. The VSMP authority shall have the discretion..."</u>
9VAC25-870-65 F	9VAC25-870-65 G	Water Quality Compliance – Offsite alternatives	Subsection Lettering revised to reflect addition of new Subsection D: <u>"F-G. Offsite alternatives..."</u>
	9VAC25-870-65 H		<p>New section H added to clarify retirement of wasteload allocations: <u>"H. Any publicly owned treatment works that is permitted under the watershed general VPDES permit pursuant to § 62.1-44.19:14 of the Code of Virginia and is constructing or expanding the treatment works, wastewater collection system, or other facility used for public wastewater utility operations may, in accordance with § 62.1-44.19:21.2 C of the Code of Virginia, permanently retire a portion of its wasteload allocation to meet the design criteria of subsection A of 9VAC25-870-63. Notice shall be given</u></p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			by such applicant to the VSMP authority and to the department.”
	9VAC25-870-112 C		New Subsection C added to clarify recording of long-term maintenance and inspection requirements: “ <u>C. In addition to the requirements of subsection A of this section, any owner of property that is zoned for residential use and on which is located a privately owed stormwater management facility serving one or more residential properties shall record the long-term maintenance and inspection requirements with the deed for the property.</u> ”

### 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

No alternative regulatory methods were available to accommodate this statutory change.

### Family Impact

*In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed 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.*

No impact on the institution of the family and family stability is anticipated as a result of this regulatory action.

1 **Project 6489 - none**2 **STATE WATER CONTROL BOARD**3 **VSMP Regulation Amendments - 2020 GA Session**4  
5 **Part I**6 **Definitions, Purpose, and Applicability**7 **9VAC25-870-10. Definitions.**

8 The following words and terms used in this chapter have the following meanings unless the  
9 context clearly indicates otherwise.

10 "Act" means the Virginia Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of  
11 Chapter 3.1 of Title 62.1 of the Code of Virginia.

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

14 "Agreement in lieu of a stormwater management plan" means a contract between the VSMP  
15 authority and the owner or permittee that specifies methods that shall be implemented to comply  
16 with the requirements of a VSMP for the construction of a single-family residence; such contract  
17 may be executed by the VSMP authority in lieu of a stormwater management plan.

18 "Applicable standards and limitations" means all state, interstate, and federal standards and  
19 limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA)  
20 (33 USC § 1251 et seq.) and the Act, including effluent limitations, water quality standards,  
21 standards of performance, toxic effluent standards or prohibitions, best management practices,  
22 and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308,  
23 403, and 405 of CWA.

24 "Approval authority" means the State Water Control Board or its designee.

25 "Approved program" or "approved state" means a state or interstate program that has been  
26 approved or authorized by EPA under 40 CFR Part 123.

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

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

33 "Best management practice" or "BMP" means schedules of activities, prohibitions of practices,  
34 maintenance procedures, and other management practices, including both structural and  
35 nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater  
36 systems. This includes:

37 1. "Nonproprietary best management practice" means both structural and nonstructural  
38 practices to prevent or reduce the pollution of surface waters and groundwater systems  
39 that are in the public domain and are not protected by trademark or patent or copyright.

40 2. "Proprietary best management practice" means both structural and nonstructural  
41 practices to prevent or reduce the pollution of surface waters and groundwater systems  
42 that are privately owned and controlled and may be protected by trademark or patent or  
43 copyright.

44 "Board" means the State Water Control Board.

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

47 "Channel" means a natural or manmade waterway.

48 "Chesapeake Bay Preservation Act" means Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter  
49 3.1 of Title 62.1 of the Code of Virginia.

50 "Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity  
51 including clearing, grading, or excavation that results in a land disturbance equal to or greater  
52 than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject  
53 to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-  
54 830) adopted pursuant to the Chesapeake Bay Preservation Act.

55 "Chesapeake Bay Preservation Area" means any land designated by a local government  
56 pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area  
57 Designation and Management Regulations and § 62.1-44.15:74 of the Chesapeake Bay  
58 Preservation Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection  
59 Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area  
60 Designation and Management Regulations (9VAC25-830).

61 "Chesapeake Bay watershed" means all land areas draining to the following Virginia river  
62 basins: Potomac River Basin, James River Basin, Rappahannock River Basin, Chesapeake Bay  
63 and its small coastal basins, and York River Basin.

64 "Common plan of development or sale" means a contiguous area where separate and distinct  
65 construction activities may be taking place at different times on different schedules.

66 "Comprehensive stormwater management plan" means a plan, which may be integrated with  
67 other land use plans or regulations, that specifies how the water quality components, quantity  
68 components, or both of stormwater are to be managed on the basis of an entire watershed or a  
69 portion thereof. The plan may also provide for the remediation of erosion, flooding, and water  
70 quality and quantity problems caused by prior development.

71 "Construction activity" means any clearing, grading, or excavation associated with large  
72 construction activity or associated with small construction activity.

73 "Contiguous zone" means the entire zone established by the United States under Article 24  
74 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).

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

78 "Control measure" means any BMP, stormwater facility, or other method used to minimize the  
79 discharge of pollutants to state waters.

80 "Co-operator" means an operator of a state permit that is only responsible for state permit  
81 conditions relating to the discharge for which it is the operator.

82 "Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC § 1251 et seq.),  
83 formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control  
84 Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-  
85 576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

86 "CWA and regulations" means the Clean Water Act (CWA) and applicable regulations  
87 published in the Code of Federal Regulations promulgated thereunder. For the purposes of this  
88 chapter, it includes state program requirements.

89 "Daily discharge" means the discharge of a pollutant measured during a calendar day or any  
90 24-hour period that reasonably represents the calendar day for purposes of sampling. For  
91 pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total  
92 mass of the pollutant discharged over the day. For pollutants with limitations expressed in other  
93 units of measurement, the daily discharge is calculated as the average measurement of the  
94 pollutant over the day.

95 "Department" means the Department of Environmental Quality.

96 "Development" means land disturbance and the resulting landform associated with the  
97 construction of residential, commercial, industrial, institutional, recreation, transportation, or utility  
98 facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The  
99 regulation of discharges from development, for purposes of this chapter, does not include the  
100 exemptions found in 9VAC25-870-300.

101 "Direct discharge" means the discharge of a pollutant.

102 "Director" means the Director of the Department of Environmental Quality or his designee.

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

104 "Discharge of a pollutant" means:

- 105 1. Any addition of any pollutant or combination of pollutants to state waters from any point  
106 source; or
- 107 2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous  
108 zone or the ocean from any point source other than a vessel or other floating craft which  
109 is being used as a means of transportation.

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

115 "Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an  
116 equivalent form developed by the operator and approved by the board, for the reporting of self-  
117 monitoring results by operators.

118 "Draft state permit" means a document indicating the board's tentative decision to issue or  
119 deny, modify, revoke and reissue, terminate, or reissue a state individual or general permit. A  
120 notice of intent to deny a state individual or general permit is a type of draft state permit. A denial  
121 of a request for modification, revocation and reissuance, or termination is not a draft state permit.

122 "Drainage area" means a land area, water area, or both from which runoff flows to a common  
123 point.

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

127 "Effluent limitations guidelines" means a regulation published by the administrator under §  
128 304(b) of the CWA to adopt or revise effluent limitations.

129 "Environmental Protection Agency" or "EPA" means the United States Environmental  
130 Protection Agency.

131 "Erosion and Sediment Control Law" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter  
132 3.1 of Title 62.1 of the Code of Virginia.

133 "ESC" means erosion and sediment control.

134 "Existing state permit" means for the purposes of this chapter a state permit issued by the  
135 board and currently held by a state permit applicant.

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

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

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

145 "Flood fringe" means the portion of the floodplain outside the floodway that is usually covered  
146 with water from the 100-year flood or storm event. This includes the flood or floodway fringe  
147 designated by the Federal Emergency Management Agency.

148 "Flooding" means a volume of water that is too great to be confined within the banks or walls  
149 of the stream, water body or conveyance system and that overflows onto adjacent lands, thereby  
150 causing or threatening damage.

151 "Floodplain" means the area adjacent to a channel, river, stream, or other water body that is  
152 susceptible to being inundated by water normally associated with the 100-year flood or storm  
153 event. This includes the floodplain designated by the Federal Emergency Management Agency.

154 "Flood-prone area" means the component of a natural or restored stormwater conveyance  
155 system that is outside the main channel. Flood-prone areas may include the floodplain, the  
156 floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

157 "Floodway" means the channel of a river or other watercourse and the adjacent land areas,  
158 usually associated with flowing water, that must be reserved in order to discharge the 100-year  
159 flood or storm event without cumulatively increasing the water surface elevation more than one  
160 foot. This includes the floodway designated by the Federal Emergency Management Agency.

161 "General permit" means a state permit authorizing a category of discharges under the CWA  
162 and the Act within a geographical area.

163 "Hazardous substance" means any substance designated under the Code of Virginia or 40  
164 CFR Part 116 pursuant to § 311 of the CWA.

165 "Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent  
166 version of Virginia's 6th Order National Watershed Boundary Dataset unless specifically identified  
167 as another order.

168 "Illicit discharge" means any discharge to a municipal separate storm sewer that is not  
169 composed entirely of stormwater, except discharges pursuant to a separate VPDES or state  
170 permit (other than the state permit for discharges from the municipal separate storm sewer),  
171 discharges resulting from firefighting activities, and discharges identified by and in compliance  
172 with 9VAC25-870-400 D 2 c (3).

173 "Impervious cover" means a surface composed of material that significantly impedes or  
174 prevents natural infiltration of water into soil.

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

177 "Indian country" means (i) all land within the limits of any Indian reservation under the  
178 jurisdiction of the United States government, notwithstanding the issuance of any patent, and

179 including rights-of-way running through the reservation; (ii) all dependent Indian communities with  
180 the borders of the United States whether within the originally or subsequently acquired territory  
181 thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian  
182 titles to which have not been extinguished, including rights-of-way running through the same.

183 "Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly  
184 owned treatment works (POTW)."

185 "Inspection" means an on-site review of the project's compliance with the permit or the state  
186 permit, the VSMP, and any applicable design criteria, or an on-site review to obtain information  
187 or conduct surveys or investigations necessary in the implementation or enforcement of the Act  
188 and this chapter.

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

193 "Karst area" means any land area predominantly underlain at the surface or shallow  
194 subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface  
195 karst features.

196 "Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and  
197 other such landscape features found in karst areas.

198 "Land disturbance" or "land-disturbing activity" means a manmade change to the land surface  
199 that potentially changes its runoff characteristics including clearing, grading, or excavation, except  
200 that the term shall not include those exemptions specified in § 62.1-44.15:34 of the Code of  
201 Virginia.

202 "Large construction activity" means construction activity including clearing, grading, and  
203 excavation, except operations that result in the disturbance of less than five acres of total land  
204 area. Large construction activity also includes the disturbance of less than five acres of total land  
205 area that is a part of a larger common plan of development or sale if the larger common plan will  
206 ultimately disturb five acres or more. Large construction activity does not include routine  
207 maintenance that is performed to maintain the original line and grade, hydraulic capacity, or  
208 original purpose of the facility.

209 "Large municipal separate storm sewer system" means all municipal separate storm sewers  
210 that are either:

211 1. Located in an incorporated place with a population of 250,000 or more as determined  
212 by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F);

213 2. Located in the counties listed in 40 CFR Part 122 Appendix H, except municipal  
214 separate storm sewers that are located in the incorporated places, townships or towns  
215 within such counties;

216 3. Owned or operated by a municipality other than those described in subdivision 1 or 2  
217 of this definition and that are designated by the board as part of the large or medium  
218 municipal separate storm sewer system due to the interrelationship between the  
219 discharges of the designated storm sewer and the discharges from municipal separate  
220 storm sewers described under subdivision 1 or 2 of this definition. In making this  
221 determination the board may consider the following factors:

222 a. Physical interconnections between the municipal separate storm sewers;

- 223 b. The location of discharges from the designated municipal separate storm sewer
- 224 relative to discharges from municipal separate storm sewers described in subdivision
- 225 1 of this definition;
- 226 c. The quantity and nature of pollutants discharged to surface waters;
- 227 d. The nature of the receiving surface waters; and
- 228 e. Other relevant factors;

229 4. The board may, upon petition, designate as a large municipal separate storm sewer  
 230 system, municipal separate storm sewers located within the boundaries of a region  
 231 defined by a stormwater management regional authority based on a jurisdictional,  
 232 watershed, or other appropriate basis that includes one or more of the systems described  
 233 in this definition.

234 "Layout" means a conceptual drawing sufficient to provide for the specified stormwater  
 235 management facilities required at the time of approval.

236 "Linear development project" means a land-disturbing activity that is linear in nature such as,  
 237 but not limited to, (i) the construction of electric and telephone utility lines, and natural gas  
 238 pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other  
 239 related structures of a railroad company; (iii) highway construction projects; (iv) construction of  
 240 stormwater channels and stream restoration activities; and (v) water and sewer lines. Private  
 241 subdivision roads or streets shall not be considered linear development projects.

242 "Locality" means a county, city, or town.

243 "Localized flooding" means smaller scale flooding that may occur outside of a stormwater  
 244 conveyance system. This may include high water, ponding, or standing water from stormwater  
 245 runoff, which is likely to cause property damage or unsafe conditions.

246 "Main channel" means the portion of the stormwater conveyance system that contains the  
 247 base flow and small frequent storm events.

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

250 "Major modification" means, for the purposes of this chapter, the modification or amendment  
 251 of an existing state permit before its expiration that is not a minor modification as defined in this  
 252 regulation.

253 "Major municipal separate storm sewer outfall" or "major outfall" means a municipal separate  
 254 storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or  
 255 more or its equivalent (discharge from a single conveyance other than circular pipe which is  
 256 associated with a drainage area of more than 50 acres); or for municipal separate storm sewers  
 257 that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning  
 258 plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter  
 259 of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated  
 260 with a drainage area of two acres or more).

261 "Manmade" means constructed by man.

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

263 "Maximum extent practicable" or "MEP" means the technology-based discharge standard for  
 264 municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part,  
 265 by selecting and implementing effective structural and nonstructural best management practices  
 266 (BMPs) and rejecting ineffective BMPs and replacing them with effective best management  
 267 practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff



268 management knowledge increases. As such, the operator's MS4 program must continually be  
 269 assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain  
 270 compliance with water quality standards.

271 "Medium municipal separate storm sewer system" means all municipal separate storm sewers  
 272 that are either:

273 1. Located in an incorporated place with a population of 100,000 or more but less than  
 274 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR  
 275 Part 122 Appendix G);

276 2. Located in the counties listed in 40 CFR Part 122 Appendix I, except municipal separate  
 277 storm sewers that are located in the incorporated places, townships or towns within such  
 278 counties;

279 3. Owned or operated by a municipality other than those described in subdivision 1 or 2  
 280 of this definition and that are designated by the board as part of the large or medium  
 281 municipal separate storm sewer system due to the interrelationship between the  
 282 discharges of the designated storm sewer and the discharges from municipal separate  
 283 storm sewers described under subdivision 1 or 2 of this definition. In making this  
 284 determination the board may consider the following factors:

285 a. Physical interconnections between the municipal separate storm sewers;

286 b. The location of discharges from the designated municipal separate storm sewer  
 287 relative to discharges from municipal separate storm sewers described in subdivision  
 288 1 of this definition;

289 c. The quantity and nature of pollutants discharged to surface waters;

290 d. The nature of the receiving surface waters; or

291 e. Other relevant factors;

292 4. The board may, upon petition, designate as a medium municipal separate storm sewer  
 293 system, municipal separate storm sewers located within the boundaries of a region  
 294 defined by a stormwater management regional authority based on a jurisdictional,  
 295 watershed, or other appropriate basis that includes one or more of the systems described  
 296 in subdivisions 1, 2, and 3 of this definition.

297 "Minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable  
 298 using stormwater controls that are technologically available and economically practicable.

299 "Minor modification" means, for the purposes of this chapter, minor modification or  
 300 amendment of an existing state permit before its expiration for the reasons listed at 40 CFR  
 301 122.63 and as specified in 9VAC25-870-640. Minor modification for the purposes of this chapter  
 302 also means other modifications and amendments not requiring extensive review and evaluation  
 303 including changes in EPA promulgated test protocols, increasing monitoring frequency  
 304 requirements, changes in sampling locations, and changes to compliance dates within the overall  
 305 compliance schedules. A minor state permit modification or amendment does not substantially  
 306 alter state permit conditions, substantially increase or decrease the amount of surface water  
 307 impacts, increase the size of the operation, or reduce the capacity of the facility to protect human  
 308 health or the environment.

309 "Municipal separate storm sewer" means a conveyance or system of conveyances otherwise  
 310 known as a municipal separate storm sewer system, including roads with drainage systems,  
 311 municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

312 1. Owned or operated by a federal, state, city, town, county, district, association, or other  
 313 public body, created by or pursuant to state law, having jurisdiction or delegated authority

- 314 for erosion and sediment control and stormwater management, or a designated and
- 315 approved management agency under § 208 of the CWA that discharges to surface waters;
- 316 2. Designed or used for collecting or conveying stormwater;
- 317 3. That is not a combined sewer; and
- 318 4. That is not part of a publicly owned treatment works.

319 "Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are  
 320 defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated  
 321 under 9VAC25-870-380 A 1.

322 "Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means  
 323 a management program covering the duration of a state permit for a municipal separate storm  
 324 sewer system that includes a comprehensive planning process that involves public participation  
 325 and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent  
 326 practicable, to protect water quality, and to satisfy the appropriate water quality requirements of  
 327 the CWA and regulations and the Act and attendant regulations, using management practices,  
 328 control techniques, and system, design and engineering methods, and such other provisions that  
 329 are appropriate.

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

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

338 "Natural channel design concepts" means the utilization of engineering analysis based on  
 339 fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance  
 340 system for the purpose of creating or recreating a stream that conveys its bankfull storm event  
 341 within its banks and allows larger flows to access its floodplain.

342 "Natural stream" means a tidal or nontidal watercourse that is part of the natural topography.  
 343 It usually maintains a continuous or seasonal flow during the year and is characterized as being  
 344 irregular in cross-section with a meandering course. Constructed channels such as drainage  
 345 ditches or swales shall not be considered natural streams; however, channels designed utilizing  
 346 natural channel design concepts may be considered natural streams.

- 347 "New discharger" means any building, structure, facility, or installation:
- 348 1. From which there is or may be a discharge of pollutants;
  - 349 2. That did not commence the discharge of pollutants at a particular site prior to August
  - 350 13, 1979;
  - 351 3. Which is not a new source; and
  - 352 4. Which has never received a finally effective separate VPDES or state permit for
  - 353 discharges at that site.

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

359 offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas  
360 developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

361 "New permit" means, for the purposes of this chapter, a state permit issued by the board to a  
362 state permit applicant that does not currently hold and has never held a state permit of that type,  
363 for that activity, at that location. An application for a new permit issued pursuant to this chapter,  
364 9VAC25-880, or 9VAC25-890 shall not be subject to §§ 62.1-44.15:3 A and 62.1-44.15:4 D of the  
365 Code of Virginia.

366 "New source," means any building, structure, facility, or installation from which there is or may  
367 be a discharge of pollutants, the construction of which commenced:

368 1. After promulgation of standards of performance under § 306 of the CWA that are  
369 applicable to such source; or

370 2. After proposal of standards of performance in accordance with § 306 of the CWA that  
371 are applicable to such source, but only if the standards are promulgated in accordance  
372 with § 306 of the CWA within 120 days of their proposal.

373 "Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorous,  
374 hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are  
375 washed from the land surface in a diffuse manner by stormwater runoff.

376 "Oil and gas exploration, production, processing, or treatment operations or transmission  
377 facilities" means all field activities or operations associated with exploration, production, or  
378 treatment operations, or transmission facilities, including activities necessary to prepare a site for  
379 drilling and for the movement and placement of drilling equipment, whether or not such field  
380 activities or operations may be considered to be construction activity. (33 USC § 1362(24))

381 "Operator" means the owner or operator of any facility or activity subject to the Act and this  
382 chapter. In the context of stormwater associated with a large or small construction activity,  
383 operator means any person associated with a construction project that meets either of the  
384 following two criteria: (i) the person has direct operational control over construction plans and  
385 specifications, including the ability to make modifications to those plans and specifications or (ii)  
386 the person has day-to-day operational control of those activities at a project that are necessary to  
387 ensure compliance with a stormwater pollution prevention plan for the site or other state permit  
388 or VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry  
389 out activities required by the stormwater pollution prevention plan or comply with other permit  
390 conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer  
391 Systems (MS4s), operator means the operator of the regulated MS4 system.

392 "Outfall" means, when used in reference to municipal separate storm sewers, a point source  
393 at the point where a municipal separate storm sewer discharges to surface waters and does not  
394 include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or  
395 other conveyances which connect segments of the same stream or other surface waters and are  
396 used to convey surface waters.

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

400 "Owner" means the Commonwealth or any of its political subdivisions including sanitation  
401 district commissions and authorities, and any public or private institution, corporation, association,  
402 firm or company organized or existing under the laws of this or any other state or country, or any  
403 officer or agency of the United States, or any person or group of persons acting individually or as  
404 a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible  
405 for any actual or potential discharge of sewage, industrial wastes, or other wastes or pollutants to

406 state waters, or any facility or operation that has the capability to alter the physical, chemical, or  
407 biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia, the  
408 Act and this chapter.

409 "Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a  
410 particular location.

411 "Percent impervious" means the impervious area within the site divided by the area of the site  
412 multiplied by 100.

413 "Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity  
414 issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of general  
415 permit coverage has been provided where applicable.

416 "Permittee" means the person to whom the state permit or VSMP authority permit is issued,  
417 including any owner or operator whose construction site is covered under a state construction  
418 general permit.

419 "Person" means any individual, corporation, partnership, association, state, municipality,  
420 commission, or political subdivision of a state, governmental body, including a federal, state, or  
421 local entity as applicable, any interstate body or any other legal entity.

422 "Point of discharge" means a location at which concentrated stormwater runoff is released.

423 "Point source" means any discernible, confined, and discrete conveyance including any pipe,  
424 ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal  
425 feeding operation, landfill leachate collection system, vessel, or other floating craft from which  
426 pollutants are or may be discharged. This term does not include return flows from irrigated  
427 agriculture or agricultural stormwater runoff.

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

- 433 1. Sewage from vessels; or  
434 2. Water, gas, or other material that is injected into a well to facilitate production of oil or  
435 gas, or water derived in association with oil and gas production and disposed of in a well  
436 if the well used either to facilitate production or for disposal purposes is approved by the  
437 board and if the board determines that the injection or disposal will not result in the  
438 degradation of groundwater or surface water resources.

439 "Pollutant discharge" means the average amount of a particular pollutant measured in pounds  
440 per year or other standard reportable unit as appropriate, delivered by stormwater runoff.

441 "Pollution" means such alteration of the physical, chemical, or biological properties of any  
442 state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental  
443 or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life;  
444 (b) unsuitable with reasonable treatment for use as present or possible future sources of public  
445 water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other  
446 reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of  
447 state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters  
448 by any owner which by itself is not sufficient to cause pollution, but which, in combination with  
449 such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause  
450 pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii)

451 contributing to the contravention of standards of water quality duly established by the State Water  
452 Control Board, are "pollution" for the terms and purposes of this chapter.

453 "Postdevelopment" refers to conditions that reasonably may be expected or anticipated to  
454 exist after completion of the land development activity on a specific site.

455 "Predevelopment" refers to the conditions that exist at the time that plans for the land  
456 development of a tract of land are submitted to the VSMP authority. Where phased development  
457 or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities,  
458 etc.), the existing conditions at the time prior to the first item being submitted shall establish  
459 predevelopment conditions.

460 "Prior developed lands" means land that has been previously utilized for residential,  
461 commercial, industrial, institutional, recreation, transportation, or utility facilities or structures, and  
462 that will have the impervious areas associated with those uses altered during a land-disturbing  
463 activity.

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

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

474 "Qualified personnel" means a person knowledgeable in the principles and practices of  
475 erosion and sediment and stormwater management controls who possesses the skills to assess  
476 conditions at the construction site for the operator that could impact stormwater quality and  
477 quantity and to assess the effectiveness of any sediment and erosion control measures or  
478 stormwater management facilities selected to control the quality and quantity of stormwater  
479 discharges from the construction activity. For VSMP authorities this requires the use of a person  
480 who holds a certificate of competency from the board in the area of project inspection for ESC  
481 and project inspection for SWM or combined administrator for ESC and combined administrator  
482 for SWM as defined in 9VAC25-850-10 or a combination of ESC and SWM qualifications from  
483 these two areas.

484 "Recommencing discharger" means a source that recommences discharge after terminating  
485 operations.

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

488 "Revoked state permit" means, for the purposes of this chapter, an existing state permit that  
489 is terminated by the board before its expiration.

490 "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as  
491 runoff.

492 "Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across  
493 the land surface or through conveyances to one or more waterways.

494 "Runoff characteristics" includes maximum velocity, peak flow rate, volume, and flow duration.

495 "Runoff volume" means the volume of water that runs off the site from a prescribed design  
496 storm.

497 "Rural Tidewater locality" means any locality that is (i) subject to the provisions of the  
498 Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia) and (ii) eligible  
499 to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76  
500 (§ 15.2-7600 et seq.) of Title 15.2 of the Code of Virginia.

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

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

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

509 "Significant materials" means, but is not limited to: raw materials; fuels; materials such as  
510 solvents, detergents, and plastic pellets; finished materials such as metallic products; raw  
511 materials used in food processing or production; hazardous substances designated under  
512 § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report  
513 pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products  
514 such as ashes, slag, and sludge that have the potential to be released with stormwater  
515 discharges.

516 "Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term  
517 county includes incorporated towns which are part of the county.

518 "Site" means the land or water area where any facility or land-disturbing activity is physically  
519 located or conducted, including adjacent land used or preserved in connection with the facility or  
520 land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be  
521 considered part of a site.

522 "Site hydrology" means the movement of water on, across, through, and off the site as  
523 determined by parameters including soil types, soil permeability, vegetative cover, seasonal water  
524 tables, slopes, land cover, and impervious cover.

525 "Small construction activity" means:

- 526 1. Construction activities including clearing, grading, and excavating that results in land
- 527 disturbance of equal to or greater than one acre and less than five acres. Small
- 528 construction activity also includes the disturbance of less than one acre of total land area
- 529 that is part of a larger common plan of development or sale if the larger common plan will
- 530 ultimately disturb equal to or greater than one and less than five acres. Small construction
- 531 activity does not include routine maintenance that is performed to maintain the original line
- 532 and grade, hydraulic capacity, or original purpose of the facility. The board may waive the
- 533 otherwise applicable requirements in a general permit for a stormwater discharge from
- 534 construction activities that disturb less than five acres where stormwater controls are not
- 535 needed based on an approved "total maximum daily load" (TMDL) that addresses the
- 536 pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent
- 537 analysis that determines allocations for small construction sites for the pollutants of
- 538 concern or that determines that such allocations are not needed to protect water quality
- 539 based on consideration of existing in-stream concentrations, expected growth in pollutant
- 540 contributions from all sources, and a margin of safety. For the purpose of this subdivision,
- 541 the pollutants of concern include sediment or a parameter that addresses sediment (such
- 542 as total suspended solids, turbidity, or siltation) and any other pollutant that has been
- 543 identified as a cause of impairment of any water body that will receive a discharge from
- 544 the construction activity. The operator must certify to the board that the construction

545 activity will take place, and stormwater discharges will occur, within the drainage area  
546 addressed by the TMDL or equivalent analysis. As of the start date in Table 1 of 9VAC25-  
547 31-1020, all certifications submitted in support of the waiver shall be submitted  
548 electronically by the owner or operator to the department in compliance with this  
549 subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-  
550 870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge  
551 Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to  
552 undo existing requirements for electronic reporting. Prior to this date, and independent of  
553 Part XI of 9VAC25-31, permittees may be required to report electronically if specified by  
554 a particular permit.

555 2. Any other construction activity designated by either the board or the EPA regional  
556 administrator, based on the potential for contribution to a violation of a water quality  
557 standard or for significant contribution of pollutants to surface waters.

558 "Small municipal separate storm sewer system" or "small MS4" means all separate storm  
559 sewers that are (i) owned or operated by the United States, a state, city, town, borough, county,  
560 parish, district, association, or other public body (created by or pursuant to state law) having  
561 jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including  
562 special districts under state law such as a sewer district, flood control district or drainage district,  
563 or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and  
564 approved management agency under § 208 of the CWA that discharges to surface waters and  
565 (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated  
566 under 9VAC25-870-380 A 1. This term includes systems similar to separate storm sewer systems  
567 in municipalities, such as systems at military bases, large hospital or prison complexes, and  
568 highway and other thoroughfares. The term does not include separate storm sewers in very  
569 discrete areas, such as individual buildings.

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

572 "State" means the Commonwealth of Virginia.

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

576 "State/EPA agreement" means an agreement between the EPA regional administrator and  
577 the state that coordinates EPA and state activities, responsibilities, and programs including those  
578 under the CWA and the Act.

579 "State permit" means an approval to conduct a land-disturbing activity issued by the board in  
580 the form of a state stormwater individual permit or coverage issued under a state general permit  
581 or an approval issued by the board for stormwater discharges from an MS4. Under these state  
582 permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean  
583 Water Act and regulations, the Act, and this chapter. As the mechanism that imposes and  
584 enforces requirements pursuant to the federal Clean Water Act and regulations, a state permit for  
585 stormwater discharges from an MS4 and, after June 30, 2014, a state permit for conducting a  
586 land-disturbing activity issued pursuant to the Act, are also types of Virginia Pollutant Discharge  
587 Elimination System (VPDES) Permits. State permit does not include any state permit that has not  
588 yet been the subject of final board action, such as a draft state permit. Approvals issued pursuant  
589 to this chapter, 9VAC25-880, and 9VAC25-890 are not issuances of a permit under § 62.1-  
590 44.15.01 of the Code of Virginia.

591 "State project" means any land development project that is undertaken by any state agency,  
592 board, commission, authority, or any branch of state government, including state-supported  
593 institutions of higher learning.

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

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

598 "Stormwater" means precipitation that is discharged across the land surface or through  
599 conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff,  
600 and surface runoff and drainage.

601 "Stormwater conveyance system" means a combination of drainage components that are  
602 used to convey stormwater discharge, either within or downstream of the land-disturbing activity.  
603 This includes:

604 1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or  
605 other stormwater conveyance system constructed by man except for restored stormwater  
606 conveyance systems;

607 2. "Natural stormwater conveyance system" means the main channel of a natural stream  
608 and the flood-prone area adjacent to the main channel; or

609 3. "Restored stormwater conveyance system" means a stormwater conveyance system  
610 that has been designed and constructed using natural channel design concepts. Restored  
611 stormwater conveyance systems include the main channel and the flood-prone area  
612 adjacent to the main channel.

613 "Stormwater discharge associated with construction activity" means a discharge of  
614 stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or  
615 excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow  
616 area, concrete truck washout, fueling); or other industrial stormwater directly related to the  
617 construction process (e.g., concrete or asphalt batch plants) are located.

618 "Stormwater discharge associated with large construction activity" means the discharge of  
619 stormwater from large construction activities.

620 "Stormwater discharge associated with small construction activity" means the discharge of  
621 stormwater from small construction activities.

622 "Stormwater management facility" means a control measure that controls stormwater runoff  
623 and changes the characteristics of that runoff including the quantity and quality, the period of  
624 release or the velocity of flow.

625 "Stormwater management plan" means a document containing material for describing  
626 methods for complying with the requirements of the VSMP or this chapter. An agreement in lieu  
627 of a stormwater management plan as defined in this chapter shall be considered to meet the  
628 requirements of a stormwater management plan.

629 "Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in  
630 accordance with good engineering practices and that identifies potential sources of pollutants that  
631 may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required  
632 under a VSMP for construction activities shall identify and require the implementation of control  
633 measures and shall include or incorporate by reference an approved erosion and sediment control  
634 plan, an approved stormwater management plan, and a pollution prevention plan.

635 "Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.



636 "Surface waters" means:

- 637 1. All waters that are currently used, were used in the past, or may be susceptible to use  
638 in interstate or foreign commerce, including all waters that are subject to the ebb and flow  
639 of the tide;
- 640 2. All interstate waters, including interstate wetlands;
- 641 3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams),  
642 mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or  
643 natural ponds the use, degradation, or destruction of which would affect or could affect  
644 interstate or foreign commerce including any such waters:
- 645 a. That are or could be used by interstate or foreign travelers for recreational or other  
646 purposes;
- 647 b. From which fish or shellfish are or could be taken and sold in interstate or foreign  
648 commerce; or
- 649 c. That are used or could be used for industrial purposes by industries in interstate  
650 commerce;
- 651 4. All impoundments of waters otherwise defined as surface waters under this definition;
- 652 5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
- 653 6. The territorial sea; and
- 654 7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified  
655 in subdivisions 1 through 6 of this definition.

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

661 "SWM" means stormwater management.

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

664 "Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations  
665 for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a  
666 margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other  
667 appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

668 "TMDL Action Plan" means the scheduled steps of activities that the MS4 operator will take  
669 to address the assumptions and requirements of the TMDL wasteload allocation. TMDL action  
670 plans may be implemented in multiple phases over more than one state permit cycle.

671 "Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the  
672 case of sludge use or disposal practices, any pollutant identified in regulations implementing  
673 § 405(d) of the CWA.

674 "Upset" means an exceptional incident in which there is unintentional and temporary  
675 noncompliance with technology based state permit effluent limitations because of factors beyond  
676 the reasonable control of the operator. An upset does not include noncompliance to the extent  
677 caused by operational error, improperly designed treatment facilities, inadequate treatment  
678 facilities, lack of preventive maintenance, or careless or improper operation.

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

685 "Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by  
686 the board that has been established by a VESCP authority for the effective control of soil erosion,  
687 sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to  
688 prevent the unreasonable degradation of properties, stream channels, waters, and other natural  
689 resources and shall include such items where applicable as local ordinances, rules, permit  
690 requirements, annual standards and specifications, policies and guidelines, technical materials,  
691 and requirements for plan review, inspection, enforcement where authorized in the Erosion and  
692 Sediment Control Act and its attendant regulations, and evaluation consistent with the  
693 requirements of the Erosion and Sediment Control Act and its attendant regulations.

694 "Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an  
695 authority approved by the board to operate a Virginia Erosion and Sediment Control Program. An  
696 authority may include a state entity, including the department; a federal entity; a district, county,  
697 city, or town; or for linear projects subject to annual standards and specifications, electric, natural  
698 gas and telephone utility companies, interstate and intrastate natural gas pipeline companies,  
699 railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

700 "Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means  
701 a document issued by the State Water Control Board pursuant to the State Water Control Law  
702 authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a  
703 point source to surface waters.

704 "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter  
705 3.1 of Title 62.1 of the Code of Virginia.

706 "Virginia Stormwater BMP Clearinghouse Website" means a website that contains detailed  
707 design standards and specifications for control measures that may be used in Virginia to comply  
708 with the requirements of the Virginia Stormwater Management Act and associated regulations.

709 "Virginia Stormwater Management Handbook" means a collection of pertinent information that  
710 provides general guidance for compliance with the Act and associated regulations and is  
711 developed by the department with advice from a stakeholder advisory committee.

712 "Virginia Stormwater Management Program" or "VSMP" means a program approved by the  
713 board after September 13, 2011, that has been established by a VSMP authority to manage the  
714 quality and quantity of runoff resulting from land-disturbing activities and shall include such items  
715 as local ordinances, rules, permit requirements, annual standards and specifications, policies and  
716 guidelines, technical materials, and requirements for plan review, inspection, enforcement, where  
717 authorized in the Act and associated regulations, and evaluation consistent with the requirements  
718 of the SWM Act and associated regulations.

719 "VSMP authority" means an authority approved by the board after September 13, 2011, to  
720 operate a Virginia Stormwater Management Program or the department. An authority may include  
721 a locality as set forth in § 62.1-44.15:27 of the Code of Virginia; state entity, including the  
722 department; federal entity; or, for linear projects subject to annual standards and specifications in  
723 accordance with subsection B of § 62.1-44.15:31 of the Code of Virginia, electric, natural gas,  
724 and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad  
725 companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. Prior to  
726 approval, the board must find that the ordinances adopted by the locality's VSMP authority are

727 consistent with the Act and this chapter including the General Permit for Discharges of Stormwater  
728 from Construction Activities (9VAC25-880).

729 "Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface  
730 water's loading or assimilative capacity allocated to one of its existing or future point sources of  
731 pollution. WLAs are a type of water quality-based effluent limitation.

732 "Water quality standards" or "WQS" means provisions of state or federal law that consist of a  
733 designated use or uses for the waters of the Commonwealth and water quality criteria for such  
734 waters based on such uses. Water quality standards are to protect the public health or welfare,  
735 enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2  
736 et seq. of the Code of Virginia), the Act (§ 62.1-44.15:24 et seq. of the Code of Virginia), and the  
737 CWA (33 USC § 1251 et seq.).

738 "Water quantity technical criteria" means standards that establish minimum design criteria for  
739 measures to control localized flooding and stream channel erosion.

740 "Watershed" means a defined land area drained by a river or stream, karst system, or system  
741 of connecting rivers or streams such that all surface water within the area flows through a single  
742 outlet. In karst areas, the karst feature to which the water drains may be considered the single  
743 outlet for the watershed.

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

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

750 **9VAC25-870-65. Water quality compliance.**

751 A. Compliance with the water quality design criteria set out in subdivisions A 1 and A 2 of  
752 9VAC25-870-63 shall be determined by utilizing the Virginia Runoff Reduction Method or another  
753 equivalent methodology that is approved by the board.

754 B. The nonproprietary BMPs listed in this subsection are approved for use ~~as necessary to~~  
755 ~~effectively reduce the phosphorus load and runoff volume~~ in accordance with the Virginia Runoff  
756 Reduction Method. Other approved nonproprietary BMPs found on the Virginia Stormwater BMP  
757 Clearinghouse Website may also be utilized. Design specifications and the pollutant removal  
758 efficiencies for all approved nonproprietary BMPs are found on the Virginia Stormwater BMP  
759 Clearinghouse Website.

- 760 1. Vegetated Roof (Version 2.3, March 1, 2011);
- 761 2. Rooftop Disconnection (Version 1.9, March 1, 2011);
- 762 3. Rainwater Harvesting (Version 1.9.5, March 1, 2011);
- 763 4. Soil Amendments (Version 1.8, March 1, 2011);
- 764 5. Permeable Pavement (Version 1.8, March 1, 2011);
- 765 6. Grass Channel (Version 1.9, March 1, 2011);
- 766 7. Bioretention (Version 1.9, March 1, 2011);
- 767 8. Infiltration (Version 1.9, March 1, 2011);
- 768 9. Dry Swale (Version 1.9, March 1, 2011);
- 769 10. Wet Swale (Version 1.9, March 1, 2011);
- 770 11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);

771 12. Extended Detention Pond (Version 1.9, March 1, 2011);

772 13. Filtering Practice (Version 1.8, March 1, 2011);

773 14. Constructed Wetland (Version 1.9, March 1, 2011); and

774 15. Wet Pond (Version 1.9, March 1, 2011).

775 C. Nonproprietary BMPs differing from those listed in subsection B of this section or  
776 proprietary BMPs certified in other states shall be reviewed and approved by the director in  
777 accordance with procedures established by the department.

778 D. Proprietary BMPs listed on the Virginia Stormwater BMP Clearinghouse Website are  
779 approved for use in accordance with the Virginia Runoff Reduction Method.

780 1. Any proprietary BMP listed on the Virginia Stormwater BMP Clearinghouse Website  
781 prior to July 1, 2020, shall by December 31, 2021, provide documentation to the  
782 department showing that another state, regional, or national certification program has  
783 verified and certified its nutrient or sediment removal effectiveness. Any proprietary BMP  
784 that fails to provide the department with the documentation required by December 31,  
785 2021, shall not be approved for use in any stormwater management plan submitted on or  
786 after January 1, 2022, until such proprietary BMP provides the department with such  
787 required documentation.

788 2. Any proprietary BMP approved for use after July 1, 2020 must meet the requirements  
789 of § 62.1-44.15:28 A 9 of the Code of Virginia.

790 E. A VSMP authority may establish limitations on the use of specific BMPs in accordance with  
791 § 62.1-44.15:33 of the Code of Virginia.

792 E.F. The VSMP authority shall have the discretion to allow for application of the design criteria  
793 to each drainage area of the site. However, where a site drains to more than one HUC, the  
794 pollutant load reduction requirements shall be applied independently within each HUC unless  
795 reductions are achieved in accordance with a comprehensive watershed stormwater  
796 management plan in accordance with 9VAC25-870-92.

797 F.G. Offsite alternatives where allowed in accordance with 9VAC25-870-69 may be utilized to  
798 meet the design criteria of subsection A of 9VAC25-870-63.

799 H. Any publicly owned treatment works that is permitted under the watershed general VPDES  
800 permit pursuant to § 62.1-44.19:14 of the Code of Virginia and is constructing or expanding the  
801 treatment works, wastewater collection system, or other facility used for public wastewater utility  
802 operations may, in accordance with § 62.1-44.19:21.2 C of the Code of Virginia, permanently  
803 retire a portion of its wasteload allocation to meet the design criteria of subsection A of 9VAC25-  
804 870-63. Notice shall be given by such applicant to the VSMP authority and to the department.

805 **9VAC25-870-112. Long-term maintenance of permanent stormwater management facilities.**

806 A. The VSMP authority shall require the provision of long-term responsibility for and  
807 maintenance of stormwater management facilities and other techniques specified to manage the  
808 quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in  
809 the local land records prior to state permit termination or earlier as required by the VSMP authority  
810 and shall at a minimum:

811 1. Be submitted to the VSMP authority for review and approval prior to the approval of  
812 the stormwater management plan;

813 2. Be stated to run with the land;

814 3. Provide for all necessary access to the property for purposes of maintenance and  
815 regulatory inspections;

816 4. Provide for inspections and maintenance and the submission of inspection and  
817 maintenance reports to the VSMP authority; and

818 5. Be enforceable by all appropriate governmental parties.

819 B. At the discretion of the VSMP authority, such recorded instruments need not be required  
820 for stormwater management facilities designed to treat stormwater runoff primarily from an  
821 individual residential lot on which they are located, provided it is demonstrated to the satisfaction  
822 of the VSMP authority that future maintenance of such facilities will be addressed through an  
823 enforceable mechanism at the discretion of the VSMP authority.

824 C. In addition to the requirements of subsection A of this section, any owner of property that  
825 is zoned for residential use and on which is located a privately owned stormwater management  
826 facility serving one or more residential properties shall record the long-term maintenance and  
827 inspection requirements for such facility with the deed for the property.

828



# VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

## CHAPTER 313

*An Act to amend and reenact §§ 55.1-703 and 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55.1-708.1, relating to stormwater management facilities; private residential lots; disclosure.*

[H 859]

Approved March 12, 2020

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 55.1-703 and 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55.1-708.1 as follows:**

**§ 55.1-703. Required disclosures for buyer to beware; buyer to exercise necessary due diligence.**

A. The owner of the residential real property shall furnish to a purchaser a residential property disclosure statement for the buyer to beware of certain matters that may affect the buyer's decision to purchase such real property. Such statement shall be provided by the Real Estate Board on its website.

B. The residential property disclosure statement provided by the Real Estate Board on its website shall include the following:

1. The owner makes no representations or warranties as to the condition of the real property or any improvements thereon, or with regard to any covenants and restrictions, or any conveyances of mineral rights, as may be recorded among the land records affecting the real property or any improvements thereon, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary, including obtaining a home inspection, as defined in § 54.1-500, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

2. The owner makes no representations with respect to any matters that may pertain to parcels adjacent to the subject parcel, including zoning classification or permitted uses of adjacent parcels, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to adjacent parcels in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

3. The owner makes no representations to any matters that pertain to whether the provisions of any historic district ordinance affect the property, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to any historic district designated by the locality pursuant to § 15.2-2306, including review of (i) any local ordinance creating such district, (ii) any official map adopted by the locality depicting historic districts, and (iii) any materials available from the locality that explain (a) any requirements to alter, reconstruct, renovate, restore, or demolish buildings or signs in the local historic district and (b) the necessity of any local review board or governing body approvals prior to doing any work on a property located in a local historic district, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

4. The owner makes no representations with respect to whether the property contains any resource protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) adopted by the locality where the property is located pursuant to § 62.1-44.15:74, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary to determine whether the provisions of any such ordinance affect the property, including review of any official map adopted by the locality depicting resource protection areas, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

5. The owner makes no representations with respect to information on any sexual offenders registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, and purchasers are advised to exercise whatever due diligence they deem necessary with respect to such information, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

6. The owner makes no representations with respect to whether the property is within a dam break inundation zone. Such disclosure statement shall advise purchasers to exercise whatever due diligence they deem necessary with respect to whether the property resides within a dam break inundation zone, including a review of any map adopted by the locality depicting dam break inundation zones;

7. The owner makes no representations with respect to the presence of any stormwater detention facilities located on the property, or the existence or recordation of any maintenance agreement for such

facilities, and purchasers are advised to exercise whatever due diligence they deem necessary to determine the presence of any stormwater detention facilities on the property, or any maintenance agreement for such facilities, such as contacting their settlement provider, consulting the locality in which the property is located, or reviewing any survey of the property that may have been conducted, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

~~8.~~ The owner makes no representations with respect to the presence of any wastewater system, including the type or size of the wastewater system or associated maintenance responsibilities related to the wastewater system, located on the property, and purchasers are advised to exercise whatever due diligence they deem necessary to determine the presence of any wastewater system on the property and the costs associated with maintaining, repairing, or inspecting any wastewater system, including any costs or requirements related to the pump-out of septic tanks, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

~~9.~~ 8. The owner makes no representations with respect to any right to install or use solar energy collection devices on the property;

~~10.~~ 9. The owner makes no representations with respect to whether the property is located in one or more special flood hazard areas, and purchasers are advised to exercise whatever due diligence they deem necessary, including (i) obtaining a flood certification or mortgage lender determination of whether the property is located in one or more special flood hazard areas, (ii) reviewing any map depicting special flood hazard areas, (iii) contacting the Federal Emergency Management Agency (FEMA) or visiting the website for FEMA's National Flood Insurance Program or for the Virginia Department of Conservation and Recreation's Flood Risk Information System, and (iv) determining whether flood insurance is required, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

~~11.~~ 10. The owner makes no representations with respect to whether the property is subject to one or more conservation or other easements, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract; and

~~12.~~ 11. The owner makes no representations with respect to whether the property is subject to a community development authority approved by a local governing body pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary in accordance with terms and conditions as may be contained in the real estate purchase contract, including determining whether a copy of the resolution or ordinance has been recorded in the land records of the circuit court for the locality in which the community development authority district is located for each tax parcel included in the district pursuant to § 15.2-5157, but in any event prior to settlement pursuant to such contract.

C. The residential property disclosure statement shall be delivered in accordance with § 55.1-709.

**§ 55.1-708.1. Required disclosures; stormwater management facilities.**

*An owner of residential real property who has actual knowledge of a privately owned stormwater management facility located on such property shall disclose to the purchaser the long-term maintenance and inspection requirements for the facility. Such disclosure shall be provided to the purchaser in accordance with this chapter and on a form provided by the Real Estate Board on its website.*

**§ 62.1-44.15:28. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.**

A. The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for Virginia Stormwater Management Programs. The regulations shall:

1. Establish standards and procedures for administering a VSMP;
2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;

3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;

4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VSMP authority shall grant land-disturbing activity approval, the conditions and processes under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the implementation of a VSMP related to land-disturbing activities of one acre or greater. Such fee attributes include the costs associated with plan review, VSMP registration statement review, permit issuance, state-coverage verification, inspections, reporting, and compliance activities associated with the



land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for land-disturbing activities between 2,500 square feet and up to one acre in Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) localities. The fee schedule shall be governed by the following:

a. The revenue generated from the statewide stormwater permit fee shall be collected utilizing, where practicable, an online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However, whenever the Board has approved a VSMP, no more than 30 percent of the total revenue generated by the statewide stormwater permit fees collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VSMP authority.

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VSMP; however, the fees shall be set at a level sufficient for the Department and the VSMP to fully carry out their responsibilities under this article and its attendant regulations and local ordinances or standards and specifications where applicable. When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision 5 a. A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under this article and its attendant regulations, ordinances, or annual standards and specifications.

c. Until July 1, 2014, the fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the Board, or where the Board has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for an entity for which it has approved annual standards and specifications, shall be \$750 for each large construction activity with sites or common plans of development equal to or greater than five acres and \$450 for each small construction activity with sites or common plans of development equal to or greater than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where coverage has been issued under the Board's General Permit for Discharges of Stormwater from Construction Activities to a state agency or federal entity for which it has approved annual standards and specifications. After establishment, such fees may be modified in the future through regulatory actions.

d. Until July 1, 2014, the Department is authorized to assess a \$125 reinspection fee for each visit to a project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection.

e. In establishing the fee schedule under this subdivision, the Department shall ensure that the VSMP authority portion of the statewide permit fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities for small construction activity involving a single family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VSMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale.

f. When any fees are collected pursuant to this section by credit cards, business transaction costs associated with processing such payments may be additionally assessed;

6. Establish statewide standards for stormwater management from land-disturbing activities of one acre or greater, except as specified otherwise within this article, and allow for the consolidation in the permit of a comprehensive approach to addressing stormwater management and erosion and sediment control, consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and this article. However, such standards shall also apply to land-disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations;

7. Establish a procedure by which a stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

8. Notwithstanding the provisions of subdivision A 5, establish a procedure by which neither a registration statement nor payment of the Department's portion of the statewide permit fee established pursuant to that subdivision shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

9. Provide for reciprocity with programs in other states for the certification of proprietary best management practices;

10. Require that VSMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site

hydrology if stream channel erosion or localized flooding is an existing predevelopment condition. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that provides for stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

11. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

12. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

13. Establish procedures to be followed when a locality that operates a VSMP wishes to transfer administration of the VSMP to the Department;

14. Establish a statewide permit fee schedule for stormwater management related to municipal separate storm sewer system permits;

15. Provide for the evaluation and potential inclusion of emerging or innovative stormwater control technologies that may prove effective in reducing nonpoint source pollution; ~~and~~

16. *Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property; and*

17. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

B. The Board may integrate and consolidate components of the regulations implementing the Erosion and Sediment Control program and the Chesapeake Bay Preservation Area Designation and Management program with the regulations governing the Virginia Stormwater Management Program (VSMP) Permit program or repeal components so that these programs may be implemented in a consolidated manner that provides greater consistency, understanding, and efficiency for those regulated by and administering a VSMP.

**§ 62.1-44.15:28. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.**

The Board is authorized to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any VESMP to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources, and that specify minimum technical criteria and administrative procedures for VESMPs. The regulations shall:

1. Establish standards and procedures for administering a VESMP;

2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to § 62.1-44.15:30, and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an inspector, each of whom is certified pursuant to § 62.1-44.15:30 and all of whom may be the same person;

3. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

4. Include any survey of lands and waters as the Board deems appropriate or as any applicable law requires to identify areas, including multijurisdictional and watershed areas, with critical soil erosion and sediment problems;

5. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of soil erosion and sediment resulting from

land-disturbing activities;

6. Establish water quality and water quantity technical criteria. These criteria shall be periodically modified as required in order to reflect current engineering methods;

7. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;

8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VESMP authority shall grant land-disturbance approval, the conditions and processes under which such approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

9. Establish a statewide fee schedule to cover all costs associated with the implementation of a VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing activities where the Board serves as a VESMP authority or VSMP authority. Such fee attributes include the costs associated with plan review, permit registration statement review, permit issuance, permit coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for a land-disturbing activity that disturbs 2,500 square feet or more but less than one acre in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). The fee schedule shall be governed by the following:

a. The revenue generated from the statewide fee shall be collected utilizing, where practicable, an online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However, whenever the Board has approved a VESMP, no more than 30 percent of the total revenue generated by the statewide fees collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VESMP authority;

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VESMP; however, the fees shall be set at a level sufficient for the Department, the Board, and the VESMP to fully carry out their responsibilities under this article and local ordinances or standards and specifications where applicable. When establishing a VESMP, the VESMP authority shall assess the statewide fees pursuant to the schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision a. A VESMP's portion of the fees shall be used solely to carry out the VESMP's responsibilities under this article and associated ordinances;

c. In establishing the fee schedule under this subdivision, the Department shall ensure that the VESMP authority portion of the statewide fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities for small construction activity involving a single-family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VESMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale;

d. When any fees are collected pursuant to this section by credit cards, business transaction costs associated with processing such payments may be additionally assessed;

e. Notwithstanding the other provisions of this subdivision 9, establish a procedure by which neither a registration statement nor payment of the Department's portion of the statewide fee established pursuant to this subdivision 9 shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

10. Establish statewide standards for soil erosion control and stormwater management from land-disturbing activities;

11. Establish a procedure by which a soil erosion control and stormwater management plan or stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

12. Provide for reciprocity with programs in other states for the certification of proprietary best management practices;

13. Require that VESMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.

a. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be

deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year; and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition. Any land-disturbing activity that complies with these requirements shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

b. Any stream restoration or relocation project that incorporates natural channel design concepts is not a man-made channel and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this article;

14. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

15. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

16. Establish procedures to be followed when a locality chooses to change the type of program it administers pursuant to subsection D of § 62.1-44.15:27;

17. Establish a statewide permit fee schedule for stormwater management related to MS4 permits;

18. Provide for the evaluation and potential inclusion of emerging or innovative stormwater control technologies that may prove effective in reducing nonpoint source pollution; ~~and~~

19. *Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property; and*

20. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

# VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

## CHAPTER 667

*An Act to amend and reenact § 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to proprietary best management practices; reciprocity.*

[H 882]

Approved April 6, 2020

**Be it enacted by the General Assembly of Virginia:**

**1. That § 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:**

**§ 62.1-44.15:28. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.**

A. The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for Virginia Stormwater Management Programs. The regulations shall:

1. Establish standards and procedures for administering a VSMP;

2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;

3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;

4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VSMP authority shall grant land-disturbing activity approval, the conditions and processes under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the implementation of a VSMP related to land-disturbing activities of one acre or greater. Such fee attributes include the costs associated with plan review, VSMP registration statement review, permit issuance, state-coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for land-disturbing activities between 2,500 square feet and up to one acre in Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) localities. The fee schedule shall be governed by the following:

a. The revenue generated from the statewide stormwater permit fee shall be collected utilizing, where practicable, an online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However, whenever the Board has approved a VSMP, no more than 30 percent of the total revenue generated by the statewide stormwater permit fees collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VSMP authority.

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VSMP; however, the fees shall be set at a level sufficient for the Department and the VSMP to fully carry out their responsibilities under this article and its attendant regulations and local ordinances or standards and specifications where applicable. When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision 5 a. A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under this article and its attendant regulations, ordinances, or annual standards and specifications.

c. Until July 1, 2014, the fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the Board, or where the Board has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for an entity for which it has approved annual standards and specifications, shall be \$750 for each large construction activity with sites or common plans of development equal to or greater than five acres and \$450 for each small construction activity with sites or common plans of development equal to or greater than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where coverage has been issued under the Board's General Permit for Discharges of Stormwater from

Construction Activities to a state agency or federal entity for which it has approved annual standards and specifications. After establishment, such fees may be modified in the future through regulatory actions.

d. Until July 1, 2014, the Department is authorized to assess a \$125 reinspection fee for each visit to a project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection.

e. In establishing the fee schedule under this subdivision, the Department shall ensure that the VSMP authority portion of the statewide permit fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities for small construction activity involving a single family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VSMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale.

f. When any fees are collected pursuant to this section by credit cards, business transaction costs associated with processing such payments may be additionally assessed;

6. Establish statewide standards for stormwater management from land-disturbing activities of one acre or greater, except as specified otherwise within this article, and allow for the consolidation in the permit of a comprehensive approach to addressing stormwater management and erosion and sediment control, consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and this article. However, such standards shall also apply to land-disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations;

7. Establish a procedure by which a stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

8. Notwithstanding the provisions of subdivision A 5, establish a procedure by which neither a registration statement nor payment of the Department's portion of the statewide permit fee established pursuant to that subdivision shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

9. Provide for ~~reciprocity with programs in other states for the certification~~ *the use of a proprietary best management practices practice only if another state, regional, or national certification program has verified and certified its nutrient or sediment removal effectiveness;*

10. Require that VSMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that provides for stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

11. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

12. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

13. Establish procedures to be followed when a locality that operates a VSMP wishes to transfer administration of the VSMP to the Department;

14. Establish a statewide permit fee schedule for stormwater management related to municipal separate storm sewer system permits;

15. Provide for the evaluation and potential inclusion of emerging or innovative *nonproprietary* stormwater control technologies that may prove effective in reducing nonpoint source pollution; and

16. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of

professional competence.

B. The Board may integrate and consolidate components of the regulations implementing the Erosion and Sediment Control program and the Chesapeake Bay Preservation Area Designation and Management program with the regulations governing the Virginia Stormwater Management Program (VSMP) Permit program or repeal components so that these programs may be implemented in a consolidated manner that provides greater consistency, understanding, and efficiency for those regulated by and administering a VSMP.

**§ 62.1-44.15:28. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.**

The Board is authorized to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any VESMP to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources, and that specify minimum technical criteria and administrative procedures for VESMPs. The regulations shall:

1. Establish standards and procedures for administering a VESMP;
2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to § 62.1-44.15:30, and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an inspector, each of whom is certified pursuant to § 62.1-44.15:30 and all of whom may be the same person;
3. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;
4. Include any survey of lands and waters as the Board deems appropriate or as any applicable law requires to identify areas, including multijurisdictional and watershed areas, with critical soil erosion and sediment problems;
5. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of soil erosion and sediment resulting from land-disturbing activities;
6. Establish water quality and water quantity technical criteria. These criteria shall be periodically modified as required in order to reflect current engineering methods;
7. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;
8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VESMP authority shall grant land-disturbance approval, the conditions and processes under which such approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;
9. Establish a statewide fee schedule to cover all costs associated with the implementation of a VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing activities where the Board serves as a VESMP authority or VSMP authority. Such fee attributes include the costs associated with plan review, permit registration statement review, permit issuance, permit coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for a land-disturbing activity that disturbs 2,500 square feet or more but less than one acre in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). The fee schedule shall be governed by the following:
  - a. The revenue generated from the statewide fee shall be collected utilizing, where practicable, an online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However, whenever the Board has approved a VESMP, no more than 30 percent of the total revenue generated by the statewide fees collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VESMP authority;
  - b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VESMP; however, the fees shall be set at a level sufficient for the Department, the Board, and the VESMP to fully carry out their responsibilities under this article and local ordinances or standards and specifications where applicable. When establishing a VESMP, the VESMP authority shall assess the statewide fees pursuant to the schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as

available to the Department for program oversight responsibilities pursuant to subdivision a. A VESMP's portion of the fees shall be used solely to carry out the VESMP's responsibilities under this article and associated ordinances;

c. In establishing the fee schedule under this subdivision, the Department shall ensure that the VESMP authority portion of the statewide fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities for small construction activity involving a single-family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VESMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale;

d. When any fees are collected pursuant to this section by credit cards, business transaction costs associated with processing such payments may be additionally assessed;

e. Notwithstanding the other provisions of this subdivision 9, establish a procedure by which neither a registration statement nor payment of the Department's portion of the statewide fee established pursuant to this subdivision 9 shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

10. Establish statewide standards for soil erosion control and stormwater management from land-disturbing activities;

11. Establish a procedure by which a soil erosion control and stormwater management plan or stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

12. Provide for ~~reciprocity with programs in other states for the certification~~ *the use of a proprietary best management practices practice only if another state, regional, or national certification program has verified and certified its nutrient or sediment removal effectiveness;*

13. Require that VESMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.

a. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition. Any land-disturbing activity that complies with these requirements shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

b. Any stream restoration or relocation project that incorporates natural channel design concepts is not a man-made channel and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this article;

14. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

15. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

16. Establish procedures to be followed when a locality chooses to change the type of program it administers pursuant to subsection D of § 62.1-44.15:27;

17. Establish a statewide permit fee schedule for stormwater management related to MS4 permits;

18. Provide for the evaluation and potential inclusion of emerging or innovative *nonproprietary* stormwater control technologies that may prove effective in reducing nonpoint source pollution; and

19. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

**2. That any proprietary best management practice (BMP) that is included by the Department of**



**Environmental Quality (the Department) on the Virginia Stormwater BMP Clearinghouse website prior to July 1, 2020, shall by December 31, 2021, provide documentation to the Department showing that another state, regional, or national certification program has verified and certified its nutrient or sediment removal effectiveness.**

**3. That any proprietary best management practice (BMP) that fails to provide the Department of Environmental Quality (the Department) with the documentation required by the second enactment of this act shall not be approved for use in any stormwater management plan submitted on or after January 1, 2022, until such proprietary BMP provides the Department with such required documentation.**

# VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

## CHAPTER 1102

*An Act to amend the Code of Virginia by adding a section numbered 62.1-44.19:21.2, relating to nutrient and sediment credit generation and transfer.*

[S 747]

Approved April 10, 2020

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding a section numbered 62.1-44.19:21.2 as follows:**

**§ 62.1-44.19:21.2. Nutrient and sediment credit generation and transfer; public body.**

*A. Except as provided in subsection B, the only nonpoint nutrient credits that shall be transferred pursuant to either (i) § 62.1-44.15:35 or (ii) subsections B, C, and D of § 62.1-44.19:21 are nutrient credits generated by the private sector, including credits generated by the private sector pursuant to an agreement with a public body.*

*B. Other than for purposes of subsection A of § 62.1-44.19:21, nutrient credits or sediment credits generated by a project undertaken by a public body, including a locality, and certified by the Department shall be used only by such public body and only for the purpose of compliance with the provisions of this chapter by such public body's project. For the purposes of this subsection, the term "public body's project" means a project for which the public body is the named permittee and for which no third party conducts any lease, sale, grant, transfer, or use of the project or its nutrient or sediment credits.*

*C. Any publicly owned treatment works that is permitted under the Watershed General Virginia Pollutant Discharge Elimination System (VPDES) Permit pursuant to § 62.1-44.19:14 and is constructing or expanding the treatment works, wastewater collection system, or other facility used for public wastewater utility operations may, as an alternative to acquiring and using certain perpetual nutrient credits pursuant to subsection B of § 62.1-44.19:21, permanently retire a portion of its wasteload allocation if (i) notice is given by such applicant to the Department, (ii) a ratio of 10 pounds of nitrogen allocation for each pound of phosphorous allocation retired is also permanently retired and applied toward the land-disturbing project, and (iii) the general permit registration list is modified to reflect the permanent retirement of the wasteload allocation. Except for a water reclamation and reuse project at a treatment works, no more than 10 pounds per year of phosphorous allocation may be applied toward a single project's postconstruction phosphorus control requirement.*

*D. Nothing in this section shall be construed to prevent any (i) public body, including a locality, from entering into an agreement with a private third party for the development of a project to generate nonpoint nutrient credits on terms and conditions upon which the public body and private third party agree or (ii) locality from operating a locality pollutant loading pro rata share program for nutrient reductions established pursuant to § 15.2-2243.*

# VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

## CHAPTER 1103

*An Act to amend the Code of Virginia by adding a section numbered 62.1-44.19:21.2, relating to nutrient and sediment credit generation and transfer.*

[H 1609]

Approved April 10, 2020

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding a section numbered 62.1-44.19:21.2 as follows:**

**§ 62.1-44.19:21.2. Nutrient and sediment credit generation and transfer; public body.**

*A. Except as provided in subsection B, the only nonpoint nutrient credits that shall be transferred pursuant to either (i) § 62.1-44.15:35 or (ii) subsections B, C, and D of § 62.1-44.19:21 are nutrient credits generated by the private sector, including credits generated by the private sector pursuant to an agreement with a public body.*

*B. Other than for purposes of subsection A of § 62.1-44.19:21, nutrient credits or sediment credits generated by a project undertaken by a public body, including a locality, and certified by the Department shall be used only by such public body and only for the purpose of compliance with the provisions of this chapter by such public body's project. For the purposes of this subsection, the term "public body's project" means a project for which the public body is the named permittee and for which no third party conducts any lease, sale, grant, transfer, or use of the project or its nutrient or sediment credits.*

*C. Any publicly owned treatment works that is permitted under the Watershed General Virginia Pollutant Discharge Elimination System (VPDES) Permit pursuant to § 62.1-44.19:14 and is constructing or expanding the treatment works, wastewater collection system, or other facility used for public wastewater utility operations may, as an alternative to acquiring and using certain perpetual nutrient credits pursuant to subsection B of § 62.1-44.19:21, permanently retire a portion of its wasteload allocation if (i) notice is given by such applicant to the Department, (ii) a ratio of 10 pounds of nitrogen allocation for each pound of phosphorous allocation retired is also permanently retired and applied toward the land-disturbing project, and (iii) the general permit registration list is modified to reflect the permanent retirement of the wasteload allocation. Except for a water reclamation and reuse project at a treatment works, no more than 10 pounds per year of phosphorous allocation may be applied toward a single project's postconstruction phosphorus control requirement.*

*D. Nothing in this section shall be construed to prevent any (i) public body, including a locality, from entering into an agreement with a private third party for the development of a project to generate nonpoint nutrient credits on terms and conditions upon which the public body and private third party agree or (ii) locality from operating a locality pollutant loading pro rata share program for nutrient reductions established pursuant to § 15.2-2243.*





*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

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Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director  
(804) 698-4000

Memorandum

To: Members of the Virginia State Water Control Board

Through: Melanie D. Davenport, Director  
Water Permitting Division

From: Brenda Winn, Senior Program Coordinator  
Virginia Water Protection Permit Program

Date: August 24, 2020

Subject: VWPPP Regulation Amendments as a Result of 2020 General Assembly Actions

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The attached regulatory amendments are presented to the Board for your consideration for adoption. The final exempt action amends the Virginia Water Protection Permit Regulation (9VAC25-210); the Virginia Water Protection General Permit for Impacts Less Than One-half Acre (9VAC25-660) the Virginia Water Protection Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Commission or the State Corporation Commission and Other Utility Line Activities (9VAC25-670); the Virginia Water Protection General Permit for Linear Transportation Projects (9VAC25-680) and the Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (9VAC25-690).

This proposed Final Exempt regulatory action contains amendments to the existing VWPPP Regulations resulting from actions of the 2020 General Assembly. HB1458 (Chapter 622 of the Virginia Acts of Assembly – 2020 Session) resulted in amendments to the regulations relating to “administrative withdrawal”. SB 616 (Chapter 958 of the Virginia Acts of Assembly - 2020 Session) resulted in amendments relating to an agency name change.

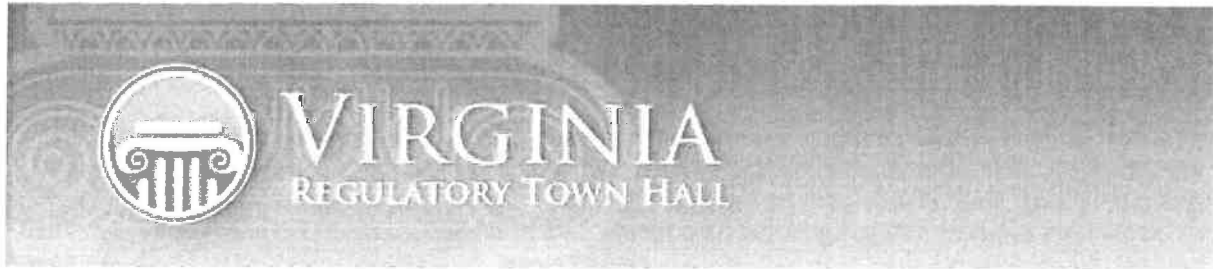
Section 2.2-4006 A 4 (a) of the Code of Virginia allows the Board to adopt these regulatory amendments as the changes are necessary to conform to changes in Virginia Statutory Law. This regulatory amendment will be effective 30 days after publication in the *Virginia Register*. A draft Virginia Regulatory Town Hall document and the proposed regulatory amendments are attached for your information.

At your Board meeting on September 24, 2020, the DEQ will request that the Board adopt the proposed amendments to the VWPPP Regulation, authorize their publication, and affirm that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

cc: Cindy Berndt, DEQ - Office of Regulatory Affairs

**ATTACHMENTS:**

- VWPPP Regulation Amendments as a Result of 2020 General Assembly Actions - Draft Virginia Regulatory Town Hall Document (TH-09)
- VWPPP Regulation Amendments - Regulatory Text



townhall.virginia.gov

## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-210; 9VAC25-660; 9VAC25-670; 9VAC25-680; and 9VAC25-690
<b>VAC Chapter title(s)</b>	Virginia Water Protection Permit Program Regulation; Virginia Water Protection General Permit for Impacts Less Than One-Half Acre; Virginia Water Protection Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities; Virginia Water Protection General Permit for Linear Transportation Projects; and Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities
<b>Action title</b>	<b>VWPPP Regulation Amendments as a Result of 2020 General Assembly Actions</b>
<b>Final agency action date</b>	
<b>Date this document prepared</b>	August 10, 2020

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

This proposed Final Exempt regulatory action contains amendments to the existing VWPPP Regulations resulting from actions of the 2020 General Assembly. HB1458 (Chapter 622 of the Virginia Acts of Assembly – 2020 Session) resulted in amendments to the regulations relating to “administrative withdrawal”. SB 616 (Chapter 958 of the Virginia Acts of Assembly - 2020 Session) resulted in amendments relating to an agency name change.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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The regulatory amendments were mandated through action of the 2020 General Assembly, specifically HB 1458 and SB 616.

## Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

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VWPPP – Virginia Water Protection Permit Program

## Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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The Virginia State Water Control Board adopted these amendments on September 24, 2020 as a final regulation and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision. These amendments revise 9VAC25-210; 9VAC25-660; 9VAC25-670; 9VAC25-680; and 9VAC25-690.

## Legal Basis

*Identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

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The Statutory Authority for these regulations includes: § 62,1-44.15 of the Code of Virginia and Section 401 of the Clean Water Act of 1977, as amended (33 U.S.C. §1341).

## Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

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The purpose of this regulatory action is to amend the VWPPP Regulations to incorporate changes mandated by the 2020 General Assembly through HB 1458 and SB 616.



### Substance

*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 substance of the proposed amendments is to clarify the administrative withdrawal process for the Virginia Water Protection Permit Program Regulations and to amend the regulations to reflect the change of the name of the Virginia Department of Game and Inland Fisheries to the Virginia Department of Wildlife Resources as referenced in the regulations.

### Issues

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

There are no disadvantages to the public or the Commonwealth associated with the proposed regulatory changes.

### Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \*Please put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-210-10		Definitions	"Administratively withdrawn" means a decision by the board that permanently discontinues the review or processing of a VWP permit application or request to modify a VWP permit. – Clarification of administrative withdrawal concept.
9VAC25-210-80 D		Application for a VWP permit. (Incomplete application.)	Section divided into subsections to clarify the process and requirements for addressing "incomplete applications" and the administrative withdrawal of applications for an individual permit or general permit coverage.  D. Incomplete application.  <u>1. Where an application for an individual permit or general permit coverage is not accepted as complete by the board</u>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>within 15 days of receipt, the board shall require the submission of additional information from the applicant and may suspend processing of any application until such time as the applicant has supplied the requested information and the board considers the application complete. Where the applicant becomes aware that he omitted one or more relevant facts from a VWP permit application, or submitted incorrect information in a VWP permit application or in any report to the board, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application for purpose of review but shall not require an additional notice or an additional permit application fee.</p> <p><u>2. An incomplete permit application for an individual permit or general permit coverage may be administratively withdrawn from processing by the board for failure to provide the required information after 60 days from the date of the latest written information request made by the board. The board shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee and may be subject to additional noticing requirements.</u></p> <p><del>3. An applicant may request a suspension of application review by the board. A submission by the applicant making such a request shall not preclude the board from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee and may be subject to additional noticing requirements. (NOTE:</del></p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			This last sentence has been slightly reworded and inserted as part of D2 above.)
9VAC25-210-230 A5		Denial of the VWP permit or variance request – Basis for denial	Name of State Agency revised to reflect legislative action:  A5. The Department of <del>Game and Inland Fisheries</del> <u>Wildlife Resources</u> indicates that natural or stockable trout waters would be permanently and negatively impacted by the proposed activity.
9VAC25-210-320 A		Preapplication procedures for new or expanded surface water withdrawals – Preapplication review panel	Name of State Agency revised to reflect legislative action:  ...DEQ shall notify the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Virginia Department of <del>Game and Inland Fisheries</del> <u>Wildlife Resources</u> , the ...
9VAC25-660-50 C		Notification – coordination requirements	Name of State Agency revised to reflect legislative action:  C. The board will determine whether the proposed activity requires coordination with the U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and the Virginia Department of <del>Game and Inland Fisheries</del> <u>Wildlife Resources</u> regarding the presence of federal or state threatened and endangered species...
9VAC25-660-60 D		Application for a VWP permit. (Incomplete application.)	Section divided into subsections to clarify the process and requirements for addressing “incomplete applications” and the administrative withdrawal of applications for general permit coverage.  D. Incomplete application.  <u>1. Where an application for general permit coverage is not accepted as complete by the board within 15 days of receipt, the board shall require the submission of additional information from the applicant and may suspend processing of any application until such time as the applicant has supplied the requested information and the board considers the application complete. Where the applicant becomes aware that</u>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>he omitted one or more relevant facts from a VWP permit application, or submitted incorrect information in a VWP permit application or in any report to the board, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application for purpose of review but shall not require an additional notice or an additional permit application fee.</p> <p><u>2. An incomplete permit application for general permit coverage may be administratively withdrawn from processing by the board for failure to provide the required information after 60 days from the date of the latest written information request made by the board. The board shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.</u></p> <p><u>3. An applicant may request a suspension of application review by the board. A submission by the applicant making such a request shall not preclude the board from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee. (NOTE: This last sentence has been slightly reworded and inserted as part of D2 above.)</u></p>
9VAC25-660-100 Part I B		VWP general permit – Special Conditions – Overall conditions – Time of Year restrictions	<p>Name of State Agency revised to reflect legislative action:</p> <p>15. The permittee shall conduct his activities in accordance with time-of-year restrictions recommended by the Virginia Department of Game and Inland Fisheries <del>Wildlife Resources</del>. The Virginia Marine Resources Commission or other interested and affected agencies...</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-670-50 C		Notification – coordination requirements	<p>Name of State Agency revised to reflect legislative action:</p> <p>C. The board will determine whether the proposed activity requires coordination with the U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and the Virginia Department of <del>Game and Inland Fisheries</del><u>Wildlife Resources</u> regarding the presence of federal or state threatened and endangered species...</p>
9VAC25-670-60 E		Application for a VWP permit. (Incomplete application.)	<p>Section divided into subsections to clarify the process and requirements for addressing "incomplete applications" and the administrative withdrawal of applications for general permit coverage.</p> <p>E. Incomplete application.</p> <p><u>1. Where an application for general permit coverage</u> is not accepted as complete by the board within 15 days of receipt, the board shall require the submission of additional information from the applicant and may suspend processing of any application until such time as the applicant has supplied the requested information and the board considers the application complete. Where the applicant becomes aware that he omitted one or more relevant facts from a VWP permit application, or submitted incorrect information in a VWP permit application or in any report to the board, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application for purpose of review but shall not require an additional notice or an additional permit application fee.</p> <p><u>2. An incomplete permit application for general permit coverage</u> may be administratively withdrawn from processing by the board for failure to provide the required information after 60 days from the date of the latest written information request made by the board. <u>The board shall provide (i) notice to the</u></p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p><u>applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.</u></p> <p><u>3. An applicant may request a suspension of application review by the board. A submission by the applicant making such a request shall not preclude the board from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee. (NOTE: This last sentence has been slightly reworded and inserted as part of E2 above.)</u></p>
9VAC25-670-100 Part I B		VWP general permit – Special Conditions – Overall conditions – Time of Year restrictions	<p>Name of State Agency revised to reflect legislative action:</p> <p>15. The permittee shall conduct his activities in accordance with time-of-year restrictions recommended by the Virginia Department of <del>Game and Inland Fisheries</del> <u>Wildlife Resources</u>. The Virginia Marine Resources Commission or other interested and affected agencies...</p>
9VAC25-680-50 C		Notification – coordination requirements	<p>Name of State Agency revised to reflect legislative action:</p> <p>C. The board will determine whether the proposed activity requires coordination with the U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and the Virginia Department of <del>Game and Inland Fisheries</del> <u>Wildlife Resources</u> regarding the presence of federal or state threatened and endangered species...</p>
9VAC25-680-60 E		Application for a VWP permit. (Incomplete application.)	Section divided into subsections to clarify the process and requirements for addressing “incomplete applications” and the administrative withdrawal of applications for general permit coverage.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>E. Incomplete application.</p> <p><u>1. Where an application for general permit coverage is not accepted as complete by the board within 15 days of receipt, the board shall require the submission of additional information from the applicant and may suspend processing of any application until such time as the applicant has supplied the requested information and the board considers the application complete. Where the applicant becomes aware that he omitted one or more relevant facts from a VWP permit application, or submitted incorrect information in a VWP permit application or in any report to the board, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application for purpose of review but shall not require an additional notice or an additional permit application fee.</u></p> <p><u>2. An incomplete permit application for general permit coverage may be administratively withdrawn from processing by the board for failure to provide the required information after 60 days from the date of the latest written information request made by the board. The board shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.</u></p> <p><u>3. An applicant may request a suspension of application review by the board. A submission by the applicant making such a request shall not preclude the board from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall</u></p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			require submittal of an additional permit application fee. (NOTE: This last sentence has been slightly reworded and inserted as part of E2 above.)
9VAC25-680-100 Part I B		WVP general permit – Special Conditions – Overall conditions – Time of Year restrictions	Name of State Agency revised to reflect legislative action:  15. The permittee shall conduct his activities in accordance with time-of-year restrictions recommended by the Virginia Department of <del>Game and Inland Fisheries</del> <u>Wildlife Resources</u> . The Virginia Marine Resources Commission or other interested and affected agencies...
9VAC25-690-50 C		Notification – coordination requirements	Name of State Agency revised to reflect legislative action:  C. The board will determine whether the proposed activity requires coordination with the U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and the Virginia Department of <del>Game and Inland Fisheries</del> <u>Wildlife Resources</u> regarding the presence of federal or state threatened and endangered species...
9VAC25-690-60 E		Application for a WVP permit. (Incomplete application.)	Section divided into subsections to clarify the process and requirements for addressing “incomplete applications” and the administrative withdrawal of applications for general permit coverage.  E. Incomplete application.  <u>1. Where an application for general permit coverage is not accepted as complete by the board within 15 days of receipt, the board shall require the submission of additional information from the applicant and may suspend processing of any application until such time as the applicant has supplied the requested information and the board considers the application complete. Where the applicant becomes aware that he omitted one or more relevant facts from a WVP permit application, or submitted incorrect information in a WVP permit application or in any report to the board, the applicant shall immediately submit such facts or the correct</u>



Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>information. A revised application with new information shall be deemed a new application for purpose of review but shall not require an additional notice or an additional permit application fee.</p> <p><u>2. An incomplete permit application for general permit coverage may be administratively withdrawn from processing by the board for failure to provide the required information after 60 days from the date of the latest written information request made by the board. The board shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.</u></p> <p><u>3. An applicant may request a suspension of application review by the board. A submission by the applicant making such a request shall not preclude the board from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee. (NOTE: This last sentence has been slightly reworded and inserted as part of E2 above.)</u></p>
9VAC25-690-100 Part I B		VWP general permit – Special Conditions – Overall conditions – Time of Year restrictions	<p>Name of State Agency revised to reflect legislative action:</p> <p>15. The permittee shall conduct his activities in accordance with time-of-year restrictions recommended by the Virginia Department of Game and Inland Fisheries Wildlife Resources. The Virginia Marine Resources Commission or other interested and affected agencies...</p>

**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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

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There are no alternative regulatory methods for incorporating the mandated amendments.

### **Family Impact**

*In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed 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.*

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There is no impact on the institution of the family or family stability.

**STATE WATER CONTROL BOARD**  
**VWPPP Regulations Amendments - 2020 GA Session (RIS Project 6473)**

Part I

VWP Permit Program Definitions, Exclusions, Prohibitions and Requirements

**9VAC25-210-10. Definitions.**

A. Definitions specific to surface water withdrawals are in 9VAC25-210-300.

B. Unless a different meaning is required by the context, the following terms as used in this chapter shall have the following meanings:

"Adjacent" means bordering, contiguous, or neighboring wetlands separated from other surface water by man-made dikes or barriers, natural river berms, sand dunes, and the like.

"Administratively withdrawn" means a decision by the board that permanently discontinues the review or processing of a VWP permit application ~~or request to modify a VWP permit~~.

"Applicant" means a person applying for a VWP individual permit or for coverage under a VWP general permit.

"Aquatic environment" means surface waters and the habitat they provide, including both plant and animal communities.

"Avoidance" means not taking or modifying a proposed action or parts of an action so that there is no adverse impact to the aquatic environment.

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, and cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include domestic uses (including public water supply), agricultural uses, electric power generation, commercial uses, and industrial uses.

"Best management practices" or "BMPs" means a schedule of activities, prohibition of practices, maintenance procedures, and other management practices that prevent or reduce the pollution of surface waters.

"Board" means the State Water Control Board.

"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning, or paving certain areas.

"Compensation" or "compensatory mitigation" means (i) the restoration (reestablishment or rehabilitation), establishment (creation), enhancement, or in certain circumstances preservation of aquatic resources or (ii) in certain circumstances an out-of-kind measure having a water quality, habitat, or other desirable benefit for the purposes of offsetting unavoidable adverse impacts to aquatic resources that remain after all appropriate and practicable avoidance and minimization has been achieved.

"Construction site" means any site where land-disturbing activity is conducted or physically located for the purpose of erecting buildings, roads, or other discrete structures, including on-site or off-site areas used for dependent, support facilities, such as quarries, mines, or temporary stormwater management or erosion control structures.

"Conversion" means those impacts to surface waters that permanently change an existing wetland or aquatic resource type to a different wetland or aquatic resource type.

"Coverage" means authorization to conduct a project in accordance with a VWP general permit.

"Cowardin classification" or "Cowardin classification method," unless otherwise specified in this chapter, means the waters classification system in Classification of Wetlands and Deepwater

1 Habitats of the United States (Cowardin, Lewis M. II, et al., U.S. Fish and Wildlife Service,  
2 December 1979, Reprinted 1992).

3 "Creation" means the establishment of a wetland or other aquatic resource where one did not  
4 formerly exist.

5 "Cross-sectional drawing" means a scaled graph or plot that represents the plane made by  
6 cutting across an object at right angles to its length. Objects may include a surface water body or  
7 a portion of it, a man-made channel, an above-ground structure, a below-ground structure, a  
8 geographical feature, or the ground surface itself.

9 "Department" or "DEQ" means the Department of Environmental Quality.

10 "Director" means the Director of the Department of Environmental Quality (DEQ) or an  
11 authorized representative.

12 "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition  
13 of any pollutant or combination of pollutants, to state waters.

14 "Draft VWP permit" means a document indicating the board's tentative decision relative to a  
15 VWP permit action.

16 "Draining" means human-induced activities such as ditching, excavation, installation of tile  
17 drains, hydrologic modification by surface water runoff diversion, pumping water from wells, or  
18 similar activities such that the activities have the effect of artificially dewatering the wetland or  
19 altering its hydroperiod.

20 "Dredged material" means material that is excavated or dredged from surface waters.

21 "Dredging" means a form of excavation in which material is removed or relocated from  
22 beneath surface waters.

23 "Ecologically and environmentally preferable" means capable of providing a higher likelihood  
24 than alternative proposals of replacing existing wetland acreage and functions, stream functions,  
25 water quality, and fish and wildlife resources.

26 "Emergent wetland" means a class of wetlands dominated by erect, rooted, herbaceous plants  
27 growing in water or on a substrate, excluding mosses and lichens. This vegetation is present for  
28 most of the growing season in most years and is usually dominated by perennial plants.

29 "Enhancement" means activities conducted in existing wetlands or other portions of the  
30 aquatic environment that increase one or more aquatic functions.

31 "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil,  
32 or rock.

33 "Fill" means replacing portions of surface water with upland, or raising the bottom elevation of  
34 a surface water for any purpose, by placement of any pollutant or material including rock, sand,  
35 earth, and man-made materials and debris.

36 "Fill material" means any pollutant that replaces portions of surface water with dry land or that  
37 raises the bottom elevation of a surface water for any purpose.

38 "Forested wetland" means a class of wetlands dominated by woody vegetation that is  
39 approximately 20 feet (six meters) tall or taller and three inches (7.6 centimeters) or larger in  
40 diameter at breast height (DBH). These areas typically possess an overstory of trees, an  
41 understory of trees or shrubs, and an herbaceous layer.

42 "Hydrologic regime" means the entire state of water movement in a given area. It is a function  
43 of the climate and includes the phenomena by which water first occurs as atmospheric water  
44 vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground  
45 surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

46 "Impacts" means results caused by those activities specified in § 62.1-44.15:20 A of the Code  
47 of Virginia.

48 "Impairment" means the damage, loss, or degradation of the acreage or functions of wetlands  
49 or the functions of state waters.

1 "Independent utility" means a test to determine what constitutes a single and complete project.  
2 A project is considered to have independent utility if it would be constructed absent the  
3 construction of other projects in the project area. Portions of a phased development project that  
4 depend upon other phases of the project do not have independent utility. Portions of a phased  
5 development project that would be constructed even if the other phases are not built can be  
6 considered as separate single complete projects with independent public and economic utility.

7 "In-lieu fee program" means a program operated by a nonprofit organization or governmental  
8 agency that receives moneys from persons impacting wetlands or streams pursuant to an  
9 authorized, permitted activity and that expends the moneys received to provide consolidated  
10 compensatory mitigation for permitted wetland or stream impacts.

11 "Isolated wetlands of minimal ecological value" means those wetlands that (i) do not have a  
12 surface water connection to other state waters, (ii) are less than one-tenth of an acre (0.10 acre  
13 or 4,356 square feet) in size, (iii) are not located in a Federal Emergency Management Agency  
14 designated 100-year floodplain, (iv) are not identified by the Virginia Natural Heritage Program as  
15 a rare or state significant natural community, (v) are not forested, and (vi) do not contain listed  
16 federal or state threatened or endangered species.

17 "Joint Permit Application" or "JPA" means an application form that is used to apply for permits  
18 from the Norfolk District Army Corps of Engineers, the Virginia Marine Resources Commission,  
19 the Virginia Department of Environmental Quality, and local wetland boards for work in waters of  
20 the United States and in surface waters of Virginia.

21 "Law" means the State Water Control Law of Virginia.

22 "Legal name" means the full legal name of an individual, business, or other organization. For  
23 an individual, legal name means the first name, middle initial, last name, and suffix. For an entity  
24 authorized to do business in Virginia, the legal name means the exact name set forth in the entity's  
25 articles of incorporation, organization or trust, or formation agreement, as applicable.

26 "Minimization" means lessening impacts by reducing the degree or magnitude of the proposed  
27 action and its implementation.

28 "Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent  
29 practicable, and then compensating for remaining unavoidable impacts of a proposed action.

30 "Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is  
31 developed and approved in accordance with all applicable federal and state laws or regulations  
32 for the establishment, use, and operation of mitigation banks and is operating under a signed  
33 banking agreement.

34 "Mitigation banking" means compensating for unavoidable wetland or stream losses in  
35 advance of development actions through the sale or purchase of credits from a mitigation bank.

36 "Nationwide permit" means a general permit issued by the U.S. Army Corps of Engineers  
37 (USACE) under 33 CFR Part 330 and, except where suspended by individual USACE Corps  
38 Districts, applicable nationwide.

39 "Nontidal wetland" means those wetlands other than tidal wetlands that are inundated or  
40 saturated by surface water or groundwater at a frequency and duration sufficient to support, and  
41 that under normal circumstances do support, a prevalence of vegetation typically adapted for life  
42 in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to  
43 § 404 of the federal Clean Water Act in 40 CFR 230.3(t). Wetlands generally include swamps,  
44 marshes, bogs, and similar areas.

45 "Normal agricultural activities" means those activities defined as an agricultural operation in  
46 § 3.2-300 of the Code of Virginia and any activity that is conducted as part of or in furtherance of  
47 such agricultural operation but shall not include any activity for which a permit would have been  
48 required as of January 1, 1997, under 33 USC § 1344 or any regulations promulgated pursuant  
49 thereto.

50 "Normal residential gardening and lawn and landscape maintenance" means ongoing  
51 noncommercial residential activities conducted by or on behalf of an individual occupant, including

1 mowing; planting; fertilizing; mulching; tilling; vegetation removal by hand or by hand tools; and  
2 placement of decorative stone, fencing, and play equipment. Other appurtenant noncommercial  
3 activities, provided that they do not result in the conversion of a wetland to upland or to a different  
4 wetland type, may also be included.

5 "Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 of  
6 the Code of Virginia, and any activity that is conducted as part of or in furtherance of such  
7 silvicultural activity but shall not include any activity for which a permit would have been required  
8 as of January 1, 1997, under 33 USC § 1344 or any regulations promulgated pursuant thereto.

9 "Notice of project completion" means a statement submitted by the permittee or authorized  
10 agent that the authorized activities and any required compensatory mitigation have been  
11 completed.

12 "Open water" means an area that, during a year with normal patterns of precipitation, has  
13 standing water for sufficient duration to establish an ordinary high water mark. The term "open  
14 water" includes lakes and ponds but does not include ephemeral waters, stream beds, or  
15 wetlands.

16 "Ordinary high water" or "ordinary high water mark" means that line on the shore established  
17 by the fluctuations of water and indicated by physical characteristics such as a clear, natural line  
18 impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial  
19 vegetation; the presence of litter and debris; or other appropriate means that consider the  
20 characteristics of the surrounding areas.

21 "Out-of-kind compensatory mitigation" or "out-of-kind mitigation" means a measure that does  
22 not replace the same type of wetland or surface water as was impacted but does replace lost  
23 wetland or surface water functions or provide a water quality, habitat, or other desirable benefit.

24 "Perennial stream" means a well-defined channel that contains water year round during a year  
25 of normal rainfall. Generally, the water table is located above the stream bed for most of the year  
26 and groundwater is the primary source for stream flow. A perennial stream exhibits the typical  
27 biological, hydrological, and physical characteristics commonly associated with the continuous  
28 conveyance of water.

29 "Permanent flooding or impounding" means a permanent increase in the duration or depth of  
30 standing water on a land surface, such as from a dam. Permanent increases in duration or depth  
31 of standing water that result from extended-detention basins and enhanced extended-detention  
32 basins, when designed, constructed, and maintained to function in accordance with Virginia  
33 Department of Conservation and Recreation (DCR) standards for such facilities (Virginia  
34 Stormwater Management Handbook, First Edition, 1999, Volume 1, Chapter 3), or when designed  
35 in accordance with local standards that, at a minimum, meet the DCR standards, are not  
36 considered to be permanent flooding and impounding.

37 "Permanent impacts" means those impacts to surface waters, including wetlands, that cause  
38 a permanent alteration of the physical, chemical, or biological properties of the surface waters or  
39 of the acreage or functions of a wetland.

40 "Permittee" means the person who holds a VWP individual or general permit.

41 "Permittee-responsible compensatory mitigation" or "permittee-responsible mitigation" means  
42 compensation or compensatory mitigation, as defined in this section, that is undertaken by the  
43 permittee, or an authorized agent or contractor, for which the permittee retains full responsibility.

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

46 "Phased development" means more than one project proposed for a single piece of property  
47 or an assemblage of contiguous properties under consideration for development by the same  
48 person, or by related persons, that will begin and be completed at different times. Depending on  
49 the relationship between the projects, a phased development may be considered a single and  
50 complete project or each project may be considered a single and complete project if each project  
51 has independent utility, as defined in this section.

1 "Plan view drawing" means a scaled graph or plot that represents the view of an object as  
2 projected onto orthogonal planes. Objects may include structures, contours, or boundaries.

3 "Pollutant" means any substance, radioactive material, or heat that causes or contributes to  
4 or may cause or contribute to pollution.

5 "Pollution" means such alteration of the physical, chemical, or biological properties of any  
6 state waters as will or is likely to create a nuisance or render such waters (i) harmful or detrimental  
7 or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life;  
8 (ii) unsuitable with reasonable treatment for use as present or possible future sources of public  
9 water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other  
10 reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property  
11 of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state  
12 waters by any owner which by itself is not sufficient to cause pollution, but which, in combination  
13 with such alteration of or discharge or deposit to state waters by other owners is sufficient to  
14 cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c)  
15 contributing to the contravention of standards of water quality duly established by the board, are  
16 "pollution" for the terms and purposes of this chapter.

17 "Practicable" means available and capable of being done after taking into consideration cost,  
18 existing technology, and logistics in light of overall project purposes.

19 "Preservation" means the protection of resources in perpetuity through the implementation of  
20 appropriate legal and physical mechanisms.

21 "Profile drawing" means a scaled graph or plot that represents the side view of an object.  
22 Objects may include a surface water body or a portion of it, a man-made channel, an above-  
23 ground structure, a below-ground structure, a geographical feature, or the ground surface itself.

24 "Public hearing" means a fact finding proceeding held to afford interested persons an  
25 opportunity to submit factual data, views, and comments to the board pursuant to § 62.1-44.15:02  
26 of the Code of Virginia.

27 "Regional permit" means a general permit issued by the U.S. Army Corps of Engineers under  
28 33 CFR Part 330 and applicable within a specified geographic area.

29 "Restoration" means the reestablishment of a wetland or other aquatic resource in an area  
30 where it previously existed. Wetland restoration means the reestablishment of wetland hydrology  
31 and vegetation in an area where a wetland previously existed. Stream restoration means the  
32 process of converting an unstable, altered, or degraded stream corridor, including adjacent areas  
33 and floodplains, to its natural conditions.

34 "Riprap" means a layer of nonerodible material such as stone or chunks of concrete.

35 "Section 401" means § 401 of the Clean Water Act, or 33 USC § 1341, as amended in 1987.

36 "Scrub-shrub wetland" means a class of wetlands dominated by woody vegetation, excluding  
37 woody vines, approximately three to 20 feet (one to six meters) tall. The species include true  
38 shrubs, young trees, and trees or shrubs that are small or stunted because of environmental  
39 conditions.

40 "Significant alteration or degradation of existing wetland acreage or function" means human-  
41 induced activities that cause either a diminution of the areal extent of the existing wetland or cause  
42 a change in wetland community type resulting in the loss or more than minimal degradation of its  
43 existing ecological functions.

44 "Single and complete project" means the total project proposed or accomplished by a person,  
45 which also has independent utility as defined in this section. For linear projects, the single and  
46 complete project (e.g., a single and complete crossing) will apply to each crossing of a separate  
47 surface water (e.g., a single water body) and to multiple crossings of the same water body at  
48 separate and distinct locations. Phases of a project that have independent utility may each be  
49 considered single and complete.

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

1 "Stream bed" or "stream channel" means the substrate of a stream, as measured between  
2 the ordinary high water mark along each side of a stream. The substrate may consist of organic  
3 matter, bedrock, or inorganic particles that range in size from clay to boulders, or a combination  
4 of both. Areas contiguous to the stream bed, but outside of the ordinary high water mark along  
5 each side of a stream, are not considered part of the stream bed.

6 "Surface water" means all state waters that are not groundwater as groundwater is defined in  
7 § 62.1-255 of the Code of Virginia.

8 "Suspend" or "suspension" means a decision by the board that stops the review or processing  
9 of a permit application or request to modify a permit or permit coverage until such time that  
10 information requested by the board is provided, reviewed, and deemed adequate.

11 "Temporal loss" means the time lag between the loss of aquatic resource functions caused  
12 by the impacts and the replacement of aquatic resource functions by compensatory mitigation.

13 "Temporary impacts" means impacts to wetlands or other surface waters that do not cause a  
14 permanent alteration of the physical, chemical, or biological properties of surface waters or the  
15 permanent alteration or degradation of existing wetland acreage or functions. Temporary impacts  
16 include activities in which the impact area is restored to its preconstruction elevations and  
17 contours with topsoil from the impact area where practicable, such that previous wetland acreage  
18 and functions or surface water functions are restored.

19 "Tidal wetland" means vegetated and nonvegetated wetlands as defined in § 28.2-1300 of the  
20 Code of Virginia.

21 "Toxic pollutant" means any agent or material including those listed under § 307(a) of the  
22 Water Pollution Prevention and Control Act (33 USC § 1317(a)), which after discharge will, on the  
23 basis of available information, cause toxicity. Toxicity means the inherent potential or capacity of  
24 a material to cause adverse effects in a living organism, including acute or chronic effects to  
25 aquatic life, detrimental effects on human health, or other adverse environmental effects.

26 "Undesirable plant species" means any species that invades, naturally colonizes, or otherwise  
27 dominates a compensatory mitigation site or mitigation bank, such that it causes or contributes to  
28 the failure of the vegetative success criteria for a particular compensatory mitigation site,  
29 mitigation bank, or in-lieu fee program project, or it otherwise prohibits the restoration of the same  
30 vegetation cover type that was originally present.

31 "VWP general permit" means the general permit text, terms, requirements, and conditions set  
32 forth in a regulation that constitutes a VWP permit authorizing a specified category of activities.

33 "VWP permit" means an individual or general permit issued by the board under § 62.1-  
34 44.15:20 of the Code of Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of  
35 the Code of Virginia or otherwise serves as the Commonwealth of Virginia's § 401 certification.  
36 For any applicant to the Federal Energy Regulatory Commission for a certificate of public  
37 convenience and necessity pursuant to § 7c of the federal Natural Gas Act (15 USC § 717f(c)) to  
38 construct any natural gas transmission pipeline greater than 36 inches inside diameter, issuance  
39 of an individual VWP permit pursuant to this chapter and a certification issued pursuant to Article  
40 2.6 (§ 62.1-44.15:80 et seq.) of the State Water Control Law shall together constitute the  
41 certification required under § 401 of the federal Clean Water Act.

42 "Water quality standards" means water quality standards adopted by the board and approved  
43 by the administrator of the U.S. Environmental Protection Agency under § 303 of the Clean Water  
44 Act as defined in 9VAC25-260-5.

45 "Watershed approach" means an analytical process for making compensatory mitigation  
46 decisions that support the sustainability or improvement of aquatic resources in a watershed and  
47 that ensures authorized impacts and mitigation have been considered on a watershed scale.

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



**1 9VAC25-210-80. Application for a VWP permit.**

2 A. Application for a VWP Permit. Any person who is required to obtain a VWP permit, except  
3 those persons applying for an emergency VWP permit for a public water supply emergency, shall  
4 submit a complete VWP permit application to the Department of Environmental Quality through  
5 the most current Joint Permit Application procedures established within each type of Joint Permit  
6 Application. The Virginia Department of Transportation (VDOT) may use its Interagency  
7 Coordination Meeting (IACM) process for submitting JPAs. There shall be no commencement of  
8 any activity subject to this chapter prior to the issuance of a VWP permit or granting VWP general  
9 permit coverage.

10 B. Informational requirements for all VWP individual permit applications are identified in this  
11 subsection with the exception of applications for emergency VWP permits to address a public  
12 water supply emergency, for which the information required in 9VAC25-210-340 C shall be  
13 submitted. In addition to the information in this subsection, applications involving a surface water  
14 withdrawal or a Federal Energy Regulatory Commission (FERC) license or relicense associated  
15 with a surface water withdrawal shall also submit the information required in 9VAC25-210-340 B.

16 1. A complete application for a VWP individual permit, at a minimum, consists of the  
17 following information, if applicable to the project:

18 a. The applicant's legal name, mailing address, telephone number, and if applicable,  
19 electronic mail address and fax number.

20 b. If different from applicant, legal name, mailing address, telephone number, and if  
21 applicable, electronic mail address and fax number of property owner.

22 c. If applicable, the authorized agent's name, mailing address, telephone number, and  
23 if applicable, fax number and electronic mail address.

24 d. Project name and proposed project schedule. This schedule will be used to  
25 determine the VWP permit term.

26 e. The following information for the project site location, and any related permittee-  
27 responsible compensatory mitigation site:

28 (1) The physical street address, nearest street, or nearest route number; city or county;  
29 zip code; and if applicable, parcel number of the site or sites.

30 (2) Name of the impacted water body or water bodies, or receiving waters, as  
31 applicable, at the site or sites.

32 (3) The latitude and longitude to the nearest second at the center of the site or sites.

33 (4) The fourth order subbasin, as defined by the hydrologic unit boundaries of the  
34 National Watershed Boundary Dataset, for the site or sites.

35 (5) A detailed map depicting the location of the site or sites, including the project  
36 boundary and existing preservation areas on the site or sites. The map (e.g., a U.S.  
37 Geologic Survey topographic quadrangle map) should be of sufficient detail to easily  
38 locate the site or sites for inspection.

39 f. A narrative description of the project, including project purpose and need.

40 g. An alternatives analysis for the proposed project detailing the specific on-site and  
41 off-site measures taken during project design and development to first avoid and then  
42 minimize impacts to surface waters to the maximum extent practicable in accordance  
43 with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40  
44 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific  
45 on-site and off-site measures taken to reduce the size, scope, configuration, or density  
46 of the proposed project, including review of alternative sites where required for the  
47 project, which would avoid or result in less adverse impact to surface waters, and  
48 documentation demonstrating the reason the applicant determined less damaging  
49 alternatives are not practicable. The analysis shall demonstrate to the satisfaction of  
50 the board that avoidance and minimization opportunities have been identified and  
51 measures have been applied to the proposed activity such that the proposed activity

1 in terms of impacts to state waters and fish and wildlife resources is the least  
2 environmentally damaging practicable alternative.

3 h. A narrative description of all impacts proposed to surface waters, including the type  
4 of activity to be conducted in surface waters and any physical alteration to surface  
5 waters. Surface water impacts shall be identified as follows:

6 (1) Wetland impacts identified according to their Cowardin classification (i.e.,  
7 emergent, scrub-shrub, or forested); and for each classification, the individual impacts  
8 quantified in square feet to the nearest whole number, cumulatively summed in square  
9 feet, and then the sum converted to acres and rounded to two decimal places using  
10 commonly accepted arithmetic principles of rounding.

11 (2) Individual stream impacts (i) quantified by length in linear feet to the nearest whole  
12 number and by average width in feet to the nearest whole number; (ii) quantified in  
13 square feet to the nearest whole number; and (iii) when compensatory mitigation is  
14 required, the impacts identified according to the assessed type using the Unified  
15 Stream Methodology.

16 (3) Open water impacts identified according to type; and for each type, the individual  
17 impacts quantified in square feet to the nearest whole number, cumulatively summed  
18 in square feet, and then the sum converted to acres and rounded to two decimal places  
19 using commonly accepted arithmetic principles of rounding.

20 (4) A copy of the approved jurisdictional determination when available, or when  
21 unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps  
22 of Engineers (USACE), U.S. Department of Agriculture Natural Resources  
23 Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE,  
24 NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface  
25 waters, including wetlands data sheets if applicable.

26 (5) A delineation map that (i) depicts the geographic area or areas of all surface water  
27 boundaries delineated in accordance with 9VAC25-210-45 and confirmed in  
28 accordance with the jurisdictional determination process; (ii) identifies such areas in  
29 accordance with subdivisions 1 h (1), 1 h (2), and 1 h (3) of this subsection; and (iii)  
30 quantifies and identifies any other surface waters according to their Cowardin  
31 classification (i.e., emergent, scrub-shrub, or forested) or similar terminology.

32 i. Plan view drawing or drawings of the project site sufficient to assess the project,  
33 including at a minimum the following:

34 (1) North arrow, graphic scale, and existing and proposed topographic or bathymetric  
35 contours.

36 (2) Limits of proposed impacts to surface waters.

37 (3) Location of all existing and proposed structures.

38 (4) All delineated wetlands and all jurisdictional surface waters on the site, including  
39 the Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface  
40 waters and waterway name, if designated; ebb and flood or direction of flow; ordinary  
41 high water mark in nontidal areas; tidal wetlands boundary; and mean low water and  
42 mean high water lines in tidal areas.

43 (5) The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified  
44 by the applicant, and if available, the limits as approved by the locality in which the  
45 project site is located, unless the proposed use is exempt from the Chesapeake Bay  
46 Preservation Area Designation and Management Regulations (9VAC25-830).

47 (6) The limits of any areas that are under a deed restriction, conservation easement,  
48 restrictive covenant, or other land use protective instrument (i.e., protected areas).

49 j. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or  
50 drawings of each proposed impact area includes at a minimum a graphic scale,  
51 existing structures, existing and proposed elevations, limits of surface water areas,

1 ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal  
2 areas, tidal wetland boundary, mean low water and mean high water lines in tidal  
3 areas, impact limits, and location of all existing and proposed structures. Profile  
4 drawing or drawings with this information may be required on a case-by-case basis to  
5 demonstrate minimization of impacts. Any application that proposes piping or  
6 culverting stream flows shall provide a longitudinal profile of the pipe or culvert position  
7 and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the  
8 beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond  
9 the limits of the proposed impact.

10 k. Materials assessment. Upon request by the board, the applicant shall provide  
11 evidence or certification that the material is free from toxic contaminants prior to  
12 disposal or that the dredging activity will not cause or contribute to a violation of water  
13 quality standards during dredging. The applicant may be required to conduct grain size  
14 and composition analyses, tests for specific parameters or chemical constituents, or  
15 elutriate tests on the dredge material.

16 l. An assessment of potential impacts to federal and state listed threatened or  
17 endangered species, including any correspondence or documentation from federal or  
18 state resource agencies addressing potential impacts to listed species.

19 m. A compensatory mitigation plan to achieve no net loss of wetland acreage and  
20 functions or stream functions and water quality benefits.

21 (1) If permittee-responsible compensation is proposed for wetland impacts, a  
22 conceptual wetland compensatory mitigation plan shall be submitted in order for an  
23 application to be deemed complete and shall include at a minimum (i) the goals and  
24 objectives in terms of replacement of wetland acreage and functions; (ii) a detailed  
25 location map including latitude and longitude to the nearest second and the fourth  
26 order subbasin, as defined by the hydrologic unit boundaries of the National  
27 Watershed Boundary Dataset, at the center of the site; (iii) a description of the  
28 surrounding land use; (iv) a hydrologic analysis including a draft water budget for  
29 nontidal areas based on expected monthly inputs and outputs that will project water  
30 level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation  
31 data, if available, or the proposed location of groundwater monitoring wells to collect  
32 these data; (vi) wetland delineation confirmation, data sheets, and maps for existing  
33 surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii)  
34 a conceptual planting scheme including suggested plant species and zonation of each  
35 vegetation type proposed; (ix) a description of existing soils including general  
36 information on both topsoil and subsoil conditions, permeability, and the need for soil  
37 amendments; (x) a draft design of water control structures; (xi) inclusion of buffer  
38 areas; (xii) a description of any structures and features necessary for the success of  
39 the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv)  
40 measures for the control of undesirable species.

41 (2) If permittee-responsible compensation is proposed for stream impacts, a  
42 conceptual stream compensatory mitigation plan shall be submitted in order for an  
43 application to be deemed complete and shall include at a minimum (i) the goals and  
44 objectives in terms of water quality benefits and replacement of stream functions; (ii)  
45 a detailed location map including the latitude and longitude to the nearest second and  
46 the fourth order subbasin, as defined by the hydrologic unit boundaries of the National  
47 Watershed Boundary Dataset, at the center of the site; (iii) a description of the  
48 surrounding land use; (iv) the proposed stream segment restoration locations including  
49 plan view and cross-section drawings; (v) the stream deficiencies that need to be  
50 addressed; (vi) data obtained from a DEQ-approved, stream impact assessment  
51 methodology such as the Unified Stream Methodology; (vii) the proposed restoration  
52 measures to be employed including channel measurements, proposed design flows,  
53 types of instream structures, and conceptual planting scheme; (viii) reference stream

1 data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities;  
2 and (xi) measures for the control of undesirable species.

3 (3) For any permittee-responsible compensatory mitigation, the conceptual  
4 compensatory mitigation plan shall also include a draft of the intended protective  
5 mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but  
6 not limited to, a conservation easement held by a third party in accordance with the  
7 Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or  
8 the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly  
9 recorded declaration of restrictive covenants, or other protective instrument. The draft  
10 intended protective mechanism shall contain the information in subdivisions (a), (b),  
11 and (c) of this subdivision B 1 m (3) or in lieu thereof shall describe the intended  
12 protective mechanism or mechanisms that contain or contains the information required  
13 as follows:

14 (a) A provision for access to the site;

15 (b) The following minimum restrictions: no ditching, land clearing, or discharge of  
16 dredge or fill material, and no activity in the area designated as compensatory  
17 mitigation area with the exception of maintenance; corrective action measures; or  
18 DEQ-approved activities described in the approved final compensatory mitigation plan  
19 or long-term management plan; and

20 (c) A long-term management plan that identifies a long-term steward and adequate  
21 financial assurances for long-term management in accordance with the current  
22 standard for mitigation banks and in-lieu fee program sites, except that financial  
23 assurances will not be necessary for permittee-responsible compensation provided by  
24 government agencies on government property. If approved by DEQ, permittee-  
25 responsible compensation on government property and long-term protection may be  
26 provided through federal facility management plans, integrated natural resources  
27 management plans, or other alternate management plans submitted by a government  
28 agency or public authority.

29 (4) Any compensatory mitigation plan proposing the purchase of mitigation bank or in-  
30 lieu fee program credits shall include the number and type of credits proposed to be  
31 purchased and documentation from the approved bank or in-lieu fee program sponsor  
32 of the availability of credits at the time of application.

33 n. A written description and a graphical depiction identifying all upland areas including  
34 buffers, wetlands, open water, other surface waters, and compensatory mitigation  
35 areas located within the proposed project boundary or permittee-responsible  
36 compensatory mitigation areas, that are under a deed restriction, conservation  
37 easement, restrictive covenant, or other land use protective instrument (i.e., protected  
38 areas). Such description and a graphical depiction shall include the nature of the  
39 prohibited activities within the protected areas and the limits of Chesapeake Bay  
40 Resource Protection Areas (RPAs) as field-verified by the applicant, and if available,  
41 the limits as approved by the locality in which the project site is located, unless the  
42 proposed use is exempt from the Chesapeake Bay Preservation Area Designation and  
43 Management Regulations (9VAC25-830), as additional state or local requirements  
44 may apply if the project is located within an RPA.

45 o. Signature page that has been signed, dated, and certified by the applicant in  
46 accordance with 9VAC25-210-100. If the applicant is a business or other organization,  
47 the signature must be made by an individual with the authority to bind the business or  
48 organization, and the title of the signatory must be provided. The application signature  
49 page, either on the copy submitted to the Virginia Marine Resources Commission or  
50 to DEQ, must have an original signature. Electronic submittals containing the original  
51 signature page, such as that contained in a scanned document file, are acceptable.

1 p. Permit application fee. The applicant will be notified by the board as to the  
 2 appropriate fee for the project in accordance with 9VAC25-20. The board will continue  
 3 to process the application, but the fee must be received prior to release of a draft VWP  
 4 permit.

5 2. Reserved.

6 C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ.  
 7 When required, the method selected for the analysis shall assess water quality or habitat metrics  
 8 and shall be coordinated with DEQ in advance of conducting the analysis.

9 1. No analysis shall be required when:

- 10 a. Wetland impacts per each single and complete project total 1.00 acre or less; or  
 11 b. The proposed compensatory mitigation consists of purchasing mitigation bank or  
 12 in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-  
 13 shrub, and 1:1 for emergent, or higher.

14 2. Analysis shall be required when wetland impacts per each single and complete project  
 15 total 1.01 acres or more, and when any of the following applies:

- 16 a. The proposed compensatory mitigation consists of permittee-responsible  
 17 compensatory mitigation, including water quality enhancements as replacement for  
 18 wetlands; or  
 19 b. The proposed compensatory mitigation consists of purchasing mitigation bank or  
 20 in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest,  
 21 1.5:1 for scrub-shrub, and 1:1 for emergent.

22 D. Incomplete application.

23 1. Where an application for an individual permit or general permit coverage is not accepted  
 24 as complete by the board within 15 days of receipt, the board shall require the submission  
 25 of additional information from the applicant and may suspend processing of any  
 26 application until such time as the applicant has supplied the requested information and  
 27 the board considers the application complete. Where the applicant becomes aware that  
 28 he omitted one or more relevant facts from a VWP permit application or submitted incorrect  
 29 information in a VWP permit application or in any report to the board, the applicant shall  
 30 immediately submit such facts or the correct information. A revised application with new  
 31 information shall be deemed a new application for purpose of review but shall not require  
 32 an additional notice or an additional permit application fee.

33 2. An incomplete ~~permit application~~ for an individual permit or general permit coverage  
 34 may be administratively withdrawn from processing by the board for failure to provide the  
 35 required information after 60 days from the date of the latest written information request  
 36 made by the board. The board shall provide (i) notice to the applicant and (ii) an  
 37 opportunity for an informal fact-finding proceeding when administratively withdrawing an  
 38 incomplete application. Resubmittal of an application for the same or similar project, after  
 39 such time that the original permit application was administratively withdrawn, shall require  
 40 submittal of an additional permit application fee and may be subject to additional noticing  
 41 requirements.

42 3. An applicant may request a suspension of application review by the board. A submission  
 43 by the applicant making such a request shall not preclude the board from administratively  
 44 withdrawing an incomplete application. ~~Resubmittal of a permit application for the same~~  
 45 ~~or similar project, after such time that the original permit application was administratively~~  
 46 ~~withdrawn, shall require submittal of an additional permit application fee and may be~~  
 47 ~~subject to additional noticing requirements.~~

48 **9VAC25-210-230. Denial of the VWP permit or variance request.**

49 A. The board shall make a decision to tentatively deny the VWP permit or variance request if  
 50 the requirements of this chapter are not met. Basis for denial include, but are not limited to, the  
 51 following:

1 1. The project will result in violations of water quality standards or will impair the beneficial  
2 uses of state waters.

3 2. As a result of project implementation, shellfish waters would be condemned in  
4 accordance with 9VAC25-260.

5 3. The project that the applicant proposed fails to adequately avoid and minimize impacts  
6 to state waters to the maximum extent practicable.

7 4. The proposed compensatory mitigation plan is insufficient or unsatisfactory for the  
8 proposed impacts and fails to achieve no net loss of existing wetland acreage and function  
9 and no net loss of functions in all surface waters.

10 5. The Department of ~~Game and Inland Fisheries~~ Wildlife Resources indicates that natural  
11 or stockable trout waters would be permanently and negatively impacted by the proposed  
12 activity.

13 6. The proposed activity is prohibited by 9VAC25-210-50.

14 7. The effect of project impacts, together with other existing or proposed impacts to  
15 wetlands, will cause or contribute to a significant impairment of state waters or fish and  
16 wildlife resources.

17 8. Failure to submit the required permit fee in accordance with 9VAC25-210-80 B 1 g or  
18 9VAC25-210-340 C 1 g.

19 9. The board determines that the applicant for an Emergency Virginia Water Protection  
20 Permit has not demonstrated that there is a substantial threat to public health and safety,  
21 and that normal Virginia Water Protection Permit procedures, including public comment  
22 provisions, should be followed.

23 B. The applicant shall be notified by letter of the board's preliminary decision to tentatively  
24 deny the VWP permit requested.

25 C. Should the applicant withdraw his application, no VWP permit or variance will be issued.

26 D. Should the applicant elect to proceed as originally proposed, the board may deny the  
27 application and advise the applicant pursuant to § 62.1-44.15:02 of the Code of Virginia of his  
28 right to a public hearing to consider the denial.

29 **9VAC25-210-320. Preapplication procedures for new or expanded surface water**  
30 **withdrawals.**

31 A. Preapplication review panel. At the request of a potential applicant for a surface water  
32 withdrawal proposing to the Department of Environmental Quality to withdraw 90 million gallons  
33 a month or greater, a preapplication review panel shall be convened prior to submission of a WWP  
34 application. The preapplication review panel shall assist potential applicants that are proposing  
35 surface water withdrawals with the early identification of issues related to the protection of  
36 beneficial instream and offstream uses of state waters and the identification of the affected stream  
37 reach. DEQ shall notify the Virginia Marine Resources Commission, the Virginia Institute of  
38 Marine Science, the Virginia Department of ~~Game and Inland Fisheries~~ Wildlife Resources, the  
39 Virginia Department of Conservation and Recreation, the Virginia Department of Health, the U.S.  
40 Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. Environmental Protection  
41 Agency, and other appropriate local, state, and federal agencies of the preapplication review  
42 panel request. These agencies shall participate to the extent practicable in the preapplication  
43 review panel by providing information and guidance on the potential natural resource impacts and  
44 regulatory implications of the options being considered by the applicant and shall provide  
45 comments within 60 days of the initial meeting of the preapplication panel.

46 B. Preapplication public notice. For new or expanded surface water withdrawals requiring an  
47 individual VWP permit and proposing to withdraw 90 million gallons a month or greater, a potential  
48 applicant shall provide information on the project, shall provide an opportunity for public comment  
49 on the proposed project, and shall assist in identifying public concerns or issues prior to filing a  
50 VWP individual permit application.

1 1. Except as provided in this subsection, the potential applicant shall provide for  
 2 publication of notice once a week for two consecutive weeks in a newspaper of general  
 3 circulation serving the locality where the surface water withdrawal is proposed to be  
 4 located.

5 2. If requested by any person, the potential applicant shall hold at least one public  
 6 information meeting. Notice of any public information meeting held pursuant to this  
 7 subsection shall be provided at least 14 days prior to the public information meeting date  
 8 and shall be published in the same manner as required in subdivision 1 of this subsection.  
 9 A potential applicant shall submit the notice to DEQ for posting on the DEQ website. At a  
 10 minimum, any notice required by this subsection shall include:

11 a. A statement of the potential applicant's intent to apply for a VWP permit for a surface  
 12 water withdrawal;

13 b. The proposed location of the surface water withdrawal;

14 c. Information on how the public may request a public information meeting or, in the  
 15 alternative, the date, time, and location of the public information meeting;

16 d. The name, address, and telephone number of the potential applicant, or an  
 17 authorized representative who can answer questions or receive comments on the  
 18 proposed surface water withdrawal; and

19 e. A statement of how oral or written public comments will be used.

20 3. In accordance with the provisions of 9VAC25-780-50 C 11 and 9VAC25-780-150, a  
 21 potential applicant shall not be required to publish public notice or provide an opportunity  
 22 for a public information meeting if a public meeting has been held within two years prior to  
 23 the submittal of an application for a VWP permit on a local or regional water supply plan,  
 24 which includes the proposed project.

25 4. The potential applicant shall maintain a list of persons making comment and their  
 26 addresses and shall make a good faith effort to notify commenters at the address provided  
 27 by the commenter when the public notice for the draft VWP individual permit is available.

28 **9VAC25-660-50. Notification.**

29 A. Notification to the board will be required prior to commencing construction, as follows:

30 1. An application for coverage for proposed, permanent nontidal wetland or open water  
 31 impacts greater than one-tenth acre or for proposed, permanent nontidal stream bed  
 32 impacts greater than 300 linear feet shall include all information pursuant to 9VAC25-660-  
 33 60 B. Compensatory mitigation may be required for all permanent impacts.

34 2. An application for coverage for proposed, permanent nontidal wetland or open water  
 35 impacts up to one-tenth acre or for proposed, permanent nontidal stream bed impacts up  
 36 to 300 linear feet shall be submitted in accordance with either subdivision 2 a or 2 b of this  
 37 subsection:

38 a. For any proposed project in wetlands, open water, streams, or compensatory  
 39 mitigation sites that are under a deed restriction, conservation easement, declaration  
 40 of restrictive covenant, or other land use protective instrument (hereafter "protected  
 41 areas"), when such restriction, easement, covenant, or instrument is the result of a  
 42 federal or state permit action and is specific to activities in wetlands and compensatory  
 43 mitigation sites, the application shall include all of the information required by 9VAC25-  
 44 660-60 B. Compensatory mitigation may be required for all permanent impacts.

45 b. For all other projects, the application shall include the information required by  
 46 subdivisions 1 through 7, 10, 11, 15, and 16 of 9VAC25-660-60 B and documentation  
 47 that verifies the quantity and type of impacts. Compensatory mitigation may be  
 48 required for all permanent impacts once the notification limits of one-tenth acre  
 49 wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required,  
 50 the application shall include the information in 9VAC25-660-60 B 12.

1 B. The Department of Environmental Quality-approved application forms shall serve as an  
2 application for a VWP permit or VWP general permit coverage.

3 C. The board will determine whether the proposed activity requires coordination with the U.S.  
4 Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia  
5 Department of Agriculture and Consumer Services, and the Virginia Department of ~~Game and~~  
6 ~~Inland Fisheries~~ Wildlife Resources regarding the presence of federal or state listed threatened  
7 and endangered species or designated critical habitat. Based upon consultation with these  
8 agencies, the board may deny application for coverage under this general permit. The applicant  
9 may also consult with these agencies prior to submitting an application. Species or habitat  
10 information that the applicant provides will assist the Department of Environmental Quality in  
11 reviewing and processing the application.

12 **9VAC25-660-60. Application.**

13 A. The applicant shall file a complete application in accordance with 9VAC25-660-50 and this  
14 section for coverage under this VWP general permit for impacts to nontidal wetlands or open  
15 water of less than one-half acre and up to 300 linear feet of nontidal stream bed.

16 B. A complete application for VWP general permit coverage, at a minimum, consists of the  
17 following information, if applicable to the project:

- 18 1. The applicant's legal name, mailing address, telephone number, and if applicable,  
19 electronic mail address and fax number.
- 20 2. If different from the applicant, legal name, mailing address, telephone number, and if  
21 applicable, electronic mail address and fax number of property owner.
- 22 3. If applicable, the authorized agent's name, mailing address, telephone number, and if  
23 applicable, fax number and electronic mail address.
- 24 4. The existing VWP general permit tracking number, if applicable.
- 25 5. Project name and proposed project schedule.
- 26 6. The following information for the project site location:
  - 27 a. The physical street address, nearest street, or nearest route number; city or county;  
28 zip code; and if applicable, parcel number of the site or sites.
  - 29 b. Name of the impacted water body or water bodies, or receiving waters, as  
30 applicable, at the site or sites.
  - 31 c. The latitude and longitude to the nearest second at the center of the site or sites.
  - 32 d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the  
33 National Watershed Boundary Dataset, for the site or sites.
  - 34 e. A detailed map depicting the location of the site or sites, including the project  
35 boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S.  
36 Geologic Survey topographic quadrangle map) should be of sufficient detail to easily  
37 locate the site or sites for inspection.
- 38 7. A narrative description of the project, including project purpose and need.
- 39 8. Plan-view drawing or drawings of the project site sufficient to assess the project,  
40 including at a minimum the following:
  - 41 a. North arrow, graphic scale, and existing and proposed topographic or bathymetric  
42 contours.
  - 43 b. Limits of proposed impacts to surface waters.
  - 44 c. Location of all existing and proposed structures.
  - 45 d. All delineated wetlands and all jurisdictional surface waters on the site, including the  
46 Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface  
47 waters and waterway name, if designated; ebb and flood or direction of flow; and  
48 ordinary high water mark in nontidal areas.
  - 49 e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified  
50 by the applicant, and if available, the limits as approved by the locality in which the



1 project site is located, unless the proposed use is exempt from the Chesapeake Bay  
2 Preservation Area Designation and Management Regulations (9VAC25-830).

3 f. The limits of areas that are under a deed restriction, conservation easement,  
4 restrictive covenant, or other land use protective instrument (i.e., protected areas).

5 9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings  
6 of each proposed impact area shall include at a minimum a graphic scale, existing  
7 structures, existing and proposed elevations, limits of surface water areas, ebb and flood  
8 or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits,  
9 and location of all existing and proposed structures. Profile drawing or drawings with this  
10 information may be required on a case-by-case basis to demonstrate minimization of  
11 impacts. Any application that proposes piping or culverting stream flows shall provide a  
12 longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide  
13 spot elevations of the stream thalweg at the beginning and end of the pipe or culvert,  
14 extending to a minimum of 10 feet beyond the limits of proposed impact.

15 10. A narrative description of all impacts proposed to surface waters, including the type of  
16 activity to be conducted in surface waters and any physical alteration to surface waters.  
17 Surface water impacts shall be identified as follows:

18 a. Wetland impacts identified according to their Cowardin classification (i.e., emergent,  
19 scrub-shrub, or forested); and for each classification, the individual impacts quantified  
20 in square feet to the nearest whole number, cumulatively summed in square feet, and  
21 then the sum converted to acres and rounded to two decimal places using commonly  
22 accepted arithmetic principles of rounding.

23 b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole  
24 number and by average width in feet to the nearest whole number; (ii) quantified in  
25 square feet to the nearest whole number; and (iii) when compensatory mitigation is  
26 required, the impacts identified according to the assessed type using the Unified  
27 Stream Methodology.

28 c. Open water impacts identified according to their Cowardin classification, and for  
29 each type, the individual impacts quantified in square feet to the nearest whole  
30 number, cumulatively summed in square feet, and then the sum converted to acres  
31 and rounded to two decimal places using commonly accepted arithmetic principles of  
32 rounding.

33 d. A copy of the approved jurisdictional determination when available, or when  
34 unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps  
35 of Engineers (USACE), U.S. Department of Agriculture Natural Resources  
36 Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE,  
37 NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface  
38 waters, including wetlands data sheets if applicable.

39 e. A delineation map that (i) depicts the geographic area or areas of all surface water  
40 boundaries delineated in accordance with 9VAC25-210-45 and confirmed in  
41 accordance with the jurisdictional determination process; (ii) identifies such areas in  
42 accordance with subdivisions 10 a, 10 b, and 10 c of this subsection; and (iii) quantifies  
43 and identifies any other surface waters according to their Cowardin classification (i.e.,  
44 emergent, scrub-shrub, or forested) or similar terminology.

45 11. An alternatives analysis for the proposed project detailing the specific on-site  
46 measures taken during project design and development to first avoid and then minimize  
47 impacts to surface waters to the maximum extent practicable in accordance with the  
48 Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part  
49 230. Avoidance and minimization includes, but is not limited to, the specific on-site  
50 measures taken to reduce the size, scope, configuration, or density of the proposed  
51 project, including review of alternative sites where required for the project, which would  
52 avoid or result in less adverse impact to surface waters, and documentation demonstrating

1 the reason the applicant determined less damaging alternatives are not practicable. The  
2 analysis shall demonstrate to the satisfaction of the board that avoidance and minimization  
3 opportunities have been identified and measures have been applied to the proposed  
4 activity such that the proposed activity in terms of impacts to state waters and fish and  
5 wildlife resources is the least environmentally damaging practicable alternative.

6 12. A compensatory mitigation plan to achieve no net loss of wetland acreage and  
7 functions or stream functions and water quality benefits. Any compensatory mitigation plan  
8 proposing the purchase of mitigation bank or in-lieu fee program credits shall include the  
9 number and type of credits proposed to be purchased and documentation from the  
10 approved bank or in-lieu fee program sponsor of the availability of credits at the time of  
11 application.

12 13. A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map  
13 depicting any 100-year floodplains.

14 14. Permit application fee. The applicant will be notified by the board as to the appropriate  
15 fee for the project in accordance with 9VAC25-20.

16 15. A written description and a graphical depiction identifying all upland areas including  
17 buffers, wetlands, open water, other surface waters, and compensatory mitigation areas  
18 located within the proposed project boundary that are under a deed restriction,  
19 conservation easement, restrictive covenant, or other land use protective instrument (i.e.,  
20 protected areas). Such description and a graphical depiction shall include the nature of  
21 the prohibited activities within the protected areas and the limits of Chesapeake Bay  
22 Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the  
23 limits as approved by the locality in which the project site is located, unless the proposed  
24 use is exempt from the Chesapeake Bay Preservation Area Designation and Management  
25 Regulations (9VAC25-830), as additional state or local requirements may apply if the  
26 project is located within an RPA.

27 16. Signature page that has been signed, dated, and certified by the applicant in  
28 accordance with 9VAC25-210-100. If the applicant is a business or other organization, the  
29 signature must be made by an individual with the authority to bind the business or  
30 organization, and the title of the signatory must be provided. The application signature  
31 page, either on the copy submitted to the Virginia Marine Resources Commission or to  
32 DEQ, must have an original signature. Electronic submittals containing the original  
33 signature page, such as that contained in a scanned document file, are acceptable.

34 C. Upon receipt of an application from the Department of Transportation for a road or highway  
35 construction project by the appropriate DEQ office, the board has 10 business days, pursuant to  
36 § 33.2-258 of the Code of Virginia, to review the application and either determine the information  
37 requested in subsection B of this section is complete or inform the Department of Transportation  
38 that additional information is required to make the application complete. Upon receipt of an  
39 application from other applicants for any type of project, the board has 15 days to review the  
40 application and either determine that the information requested in subsection B of this section is  
41 complete or inform the applicant that additional information is required to make the application  
42 complete. Pursuant to § 33.2-258 of the Code of Virginia, coverage under this VWP general permit  
43 for Department of Transportation road or highway construction projects shall be approved or  
44 approved with conditions, or the application shall be denied, within 30 business days of receipt of  
45 a complete application. For all other projects, coverage under this VWP general permit shall be  
46 approved or approved with conditions, or the application shall be denied, within 45 days of receipt  
47 of a complete application. If the board fails to act within the applicable 30 or 45 days on a complete  
48 application, coverage under this VWP general permit shall be deemed granted.

49 1. In evaluating the application, the board shall make an assessment of the impacts  
50 associated with the project in combination with other existing or proposed impacts.  
51 Application for coverage under this VWP general permit shall be denied if the cumulative

1 impacts will cause or contribute to a significant impairment of state waters or fish and  
2 wildlife resources.

3 2. The board may place additional requirements on a project in order to grant coverage  
4 under this VWP general permit. However, the requirements must be consistent with this  
5 chapter.

6 D. Incomplete application.

7 1. Where an application for general permit coverage is not accepted as complete by the  
8 board within the applicable 10 or 15 days of receipt, the board shall require the submission  
9 of additional information from the applicant and may suspend processing of any  
10 application until such time as the applicant has supplied the requested information and  
11 the application is complete. Where the applicant becomes aware that he omitted one or  
12 more relevant facts from an application, or submitted incorrect information in an  
13 application or in any report to the board, the applicant shall immediately submit such facts  
14 or the correct information. A revised application with new information shall be deemed a  
15 new application for the purposes of review but shall not require an additional permit  
16 application fee.

17 2. An incomplete permit application for general permit coverage may be administratively  
18 withdrawn from processing by the board for failure to provide the required information after  
19 60 days from the date of the latest written information request made by the board. The  
20 board shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-  
21 finding proceeding when administratively withdrawing an incomplete application.  
22 Resubmittal of an application for the same or similar project, after such time that the  
23 original permit application was administratively withdrawn, shall require submittal of an  
24 additional permit application fee.

25 3. An applicant may request a suspension of application review by the board, but  
26 requesting a suspension shall not preclude the board from administratively withdrawing  
27 an incomplete application. Resubmittal of a permit application for the same or similar  
28 project, after such time that the original permit application was administratively withdrawn,  
29 shall require submittal of an additional permit application fee.

30 **9VAC25-660-100. VWP general permit.**

31 **WWP GENERAL PERMIT NO. WP1 FOR IMPACTS LESS THAN ONE-HALF ACRE UNDER**  
32 **THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER**  
33 **CONTROL LAW**

34 Effective date: August 2, 2016

35 Expiration date: August 1, 2026

36 In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State  
37 Water Control Law and regulations adopted pursuant thereto, the board has determined that there  
38 is a reasonable assurance that this VWP general permit, if complied with, will protect instream  
39 beneficial uses, will not violate applicable water quality standards, and will not cause or contribute  
40 to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP  
41 general permit, the board has not taken into consideration the structural stability of any proposed  
42 activities.

43 The permanent or temporary impact of less than one-half acre of nontidal wetlands or open  
44 water and up to 300 linear feet of nontidal stream bed shall be subject to the provisions of the  
45 VWP general permit set forth herein; any requirements in coverage granted under this VWP  
46 general permit; the Clean Water Act, as amended; and the State Water Control Law and  
47 regulations adopted pursuant to it.

48 **Part I. Special Conditions.**

49 **A. Authorized activities.**

50 1. The activities authorized by this chapter shall not cause more than the permanent or  
51 temporary impacts to less than one-half acre of nontidal wetlands or open water and up

1 to 300 linear feet of nontidal stream bed. Additional permit requirements as stipulated by  
2 the board in the coverage letter, if any, shall be enforceable conditions of this permit.

3 2. Any changes to the authorized permanent impacts to surface waters shall require a  
4 notice of planned change in accordance with 9VAC25-660-80. An application or request  
5 for modification to coverage or another VWP permit application may be required.

6 3. Any changes to the authorized temporary impacts to surface waters shall require written  
7 notification to and approval from the Department of Environmental Quality in accordance  
8 with 9VAC25-660-80 prior to initiating the impacts and restoration to preexisting conditions  
9 in accordance with the conditions of this permit.

10 4. Modification to compensation requirements may be approved at the request of the  
11 permittee when a decrease in the amount of authorized surface waters impacts occurs,  
12 provided that the adjusted compensation meets the initial compensation goals.

13 B. Overall conditions.

14 1. The activities authorized by this VWP general permit shall be executed in a manner so  
15 as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of  
16 the Code of Virginia.

17 2. No activity may substantially disrupt the movement of aquatic life indigenous to the  
18 water body, including those species that normally migrate through the area, unless the  
19 primary purpose of the activity is to impound water. Pipes and culverts placed in streams  
20 must be installed to maintain low flow conditions and shall be countersunk at both inlet  
21 and outlet ends of the pipe or culvert, unless otherwise specifically approved by the  
22 Department of Environmental Quality on a case-by-case basis, and as follows: The  
23 requirement to countersink does not apply to extensions or maintenance of existing pipes  
24 and culverts that are not countersunk, floodplain pipes and culverts being placed above  
25 ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts  
26 required to be placed on slopes 5.0% or greater. Bedrock encountered during construction  
27 must be identified and approved in advance of a design change where the countersunk  
28 condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be  
29 countersunk three inches below the natural stream bed elevations, and pipes and culverts  
30 greater than 24 inches shall be countersunk at least six inches below the natural stream  
31 bed elevations. Hydraulic capacity shall be determined based on the reduced capacity  
32 due to the countersunk position. In all stream crossings appropriate measures shall be  
33 implemented to minimize any disruption of aquatic life movement.

34 3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters,  
35 unless the area is contained within a cofferdam and the work is performed in the dry or  
36 unless otherwise approved by the Department of Environmental Quality. Excess or waste  
37 concrete shall not be disposed of in flowing surface waters or washed into flowing surface  
38 waters.

39 4. All fill material shall be clean and free of contaminants in toxic concentrations or  
40 amounts in accordance with all applicable laws and regulations.

41 5. Erosion and sedimentation controls shall be designed in accordance with the Virginia  
42 Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be  
43 placed prior to clearing and grading and maintained in good working order to minimize  
44 impacts to state waters. These controls shall remain in place until the area is stabilized  
45 and shall then be removed.

46 6. Exposed slopes and streambanks shall be stabilized immediately upon completion of  
47 work in each permitted impact area. All denuded areas shall be properly stabilized in  
48 accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition,  
49 1992.

50 7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways)  
51 and demolition activities associated with the project shall be accomplished in a manner

1 that minimizes construction or waste materials from entering surface waters to the  
2 maximum extent practicable, unless authorized by this VWP general permit.

3 8. No machinery may enter flowing waters, unless authorized by this VWP general permit  
4 or approved prior to entry by the Department of Environmental Quality.

5 9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats,  
6 geotextile fabric, or other suitable material to minimize soil disturbance to the maximum  
7 extent practicable. Equipment and materials shall be removed immediately upon  
8 completion of work.

9 10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of  
10 authorized activities and within the project or right-of-way limits shall be clearly flagged or  
11 marked for the life of the construction activity at that location to preclude unauthorized  
12 disturbances to these surface waters and compensatory mitigation areas during  
13 construction. The permittee shall notify contractors that no activities are to occur in these  
14 marked surface waters.

15 11. Temporary disturbances to surface waters during construction shall be avoided and  
16 minimized to the maximum extent practicable. All temporarily disturbed wetland areas  
17 shall be restored to preexisting conditions within 30 days of completing work at each  
18 respective temporary impact area, which shall include reestablishing preconstruction  
19 elevations and contours with topsoil from the impact area where practicable and planting  
20 or seeding with appropriate wetland vegetation according to cover type (i.e., emergent,  
21 scrub-shrub, or forested). The permittee shall take all appropriate measures to promote  
22 and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation  
23 through the second year post-disturbance. All temporarily impacted streams and  
24 streambanks shall be restored to their preconstruction elevations and contours with topsoil  
25 from the impact area where practicable within 30 days following the construction at that  
26 stream segment. Streambanks shall be seeded or planted with the same vegetation cover  
27 type originally present, including any necessary, supplemental erosion control grasses.  
28 Invasive species identified on the Department of Conservation and Recreation's Virginia  
29 Invasive Plant Species List shall not be used to the maximum extent practicable or without  
30 prior approval from the Department of Environmental Quality.

31 12. Materials (including fill, construction debris, and excavated and woody materials)  
32 temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately  
33 stabilized to prevent entry into state waters, managed such that leachate does not enter  
34 state waters, and completely removed within 30 days following completion of that  
35 construction activity. Disturbed areas shall be returned to preconstruction elevations and  
36 contours with topsoil from the impact area where practicable; restored within 30 days  
37 following removal of the stockpile; and restored with the same vegetation cover type  
38 originally present, including any necessary, supplemental erosion control grasses.  
39 Invasive species identified on the Department of Conservation and Recreation's Virginia  
40 Invasive Plant Species List shall not be used to the maximum extent practicable or without  
41 prior approval from the Department of Environmental Quality.

42 13. Continuous flow of perennial springs shall be maintained by the installation of spring  
43 boxes, french drains, or other similar structures.

44 14. The permittee shall employ measures to prevent spills of fuels or lubricants into state  
45 waters.

46 15. The permittee shall conduct his activities in accordance with the time-of-year  
47 restrictions recommended by the Virginia Department of ~~Game and Inland~~  
48 ~~Fisheries~~ Wildlife Resources, the Virginia Marine Resources Commission, or other  
49 interested and affected agencies, as contained, when applicable, in a Department of  
50 Environmental Quality VWP general permit coverage letter, and shall ensure that all  
51 contractors are aware of the time-of-year restrictions imposed.

52 16. Water quality standards shall not be violated as a result of the construction activities.

1 17. If stream channelization or relocation is required, all work in surface waters shall be  
2 done in the dry, unless otherwise authorized by the Department of Environmental Quality,  
3 and all flows shall be diverted around the channelization or relocation area until the new  
4 channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and  
5 outlet ends of the new channel during excavation. Once the new channel has been  
6 stabilized, flow shall be routed into the new channel by first removing the downstream plug  
7 and then the upstream plug. The rerouted stream flow must be fully established before  
8 construction activities in the old stream channel can begin.

9 C. Road crossings.

10 1. Access roads and associated bridges, pipes, and culverts shall be constructed to  
11 minimize the adverse effects on surface waters to the maximum extent practicable.  
12 Access roads constructed above preconstruction elevations and contours in surface  
13 waters must be bridged, piped, or culverted to maintain surface flows.

14 2. Installation of road crossings shall occur in the dry via the implementation of cofferdams,  
15 sheetpiling, stream diversions, or other similar structures.

16 D. Utility lines.

17 1. All utility line work in surface waters shall be performed in a manner that minimizes  
18 disturbance, and the area must be returned to its preconstruction elevations and contours  
19 with topsoil from the impact area where practicable and restored within 30 days of  
20 completing work in the area, unless otherwise authorized by the Department of  
21 Environmental Quality. Restoration shall be the seeding or planting of the same vegetation  
22 cover type originally present, including any necessary, supplemental erosion control  
23 grasses. Invasive species identified on the Department of Conservation and Recreation's  
24 Virginia Invasive Plant Species List shall not be used to the maximum extent practicable  
25 or without prior approval from the Department of Environmental Quality.

26 2. Material resulting from trench excavation may be temporarily sidecast into wetlands not  
27 to exceed a total of 90 days, provided the material is not placed in a manner such that it  
28 is dispersed by currents or other forces.

29 3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g.,  
30 backfilling with extensive gravel layers creating a french drain effect). For example, utility  
31 lines may be backfilled with clay blocks to ensure that the trench does not drain surface  
32 waters through which the utility line is installed.

33 E. Stream modification and stream bank protection.

34 1. Riprap bank stabilization shall be of an appropriate size and design in accordance with  
35 the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

36 2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion  
37 and Sediment Control Handbook, Third Edition, 1992.

38 3. For stream bank protection activities, the structure and backfill shall be placed as close  
39 to the stream bank as practicable. No material shall be placed in excess of the minimum  
40 necessary for erosion protection.

41 4. All stream bank protection control structures shall be located to eliminate or minimize  
42 impacts to vegetated wetlands to the maximum extent practicable.

43 5. Asphalt and materials containing asphalt or other toxic substances shall not be used in  
44 the construction of submerged sills or breakwaters.

45 6. Redistribution of existing stream substrate for the purpose of erosion control is  
46 prohibited.

47 7. No material removed from the stream bottom shall be disposed of in surface waters,  
48 unless otherwise authorized by this VWP general permit.

49 F. Stormwater management facilities.

50 1. Stormwater management facilities shall be installed in accordance with best  
51 management practices and watershed protection techniques (e.g., vegetated buffers,

1 siting considerations to minimize adverse effects to aquatic resources, bioengineering  
2 methods incorporated into the facility design to benefit water quality and minimize adverse  
3 effects to aquatic resources) that provide for long-term aquatic resources protection and  
4 enhancement, to the maximum extent practicable.

5 2. Compensation for unavoidable impacts shall not be allowed within maintenance areas  
6 of stormwater management facilities.

7 3. Maintenance activities within stormwater management facilities shall not require  
8 additional permit coverage or compensation, provided that the maintenance activities do  
9 not exceed the original contours of the facility, as approved and constructed, and are  
10 accomplished in designated maintenance areas as indicated in the facility maintenance  
11 or design plan or when unavailable, an alternative plan approved by the Department of  
12 Environmental Quality.

### 13 Part II. Construction and Compensation Requirements, Monitoring, and Reporting.

#### 14 A. Minimum compensation requirements.

15 1. The permittee shall provide any required compensation for impacts in accordance with  
16 the conditions in this VWP general permit, the coverage letter, and the chapter  
17 promulgating the general permit.

18 2. The types of compensation options that may be considered for activities covered under  
19 this VWP general permit include the purchase of mitigation bank credits or the purchase  
20 of in-lieu fee program credits in accordance with 9VAC25-660-70 and the associated  
21 provisions of 9VAC25-210-116.

22 3. The final compensation plan shall be submitted to and approved by the board prior to a  
23 construction activity in permitted impacts areas. The board shall review and provide written  
24 comments on the final plan within 30 days of receipt or it shall be deemed approved. The  
25 final plan as approved by the board shall be an enforceable requirement of any coverage  
26 under this VWP general permit. Deviations from the approved final plan shall be submitted  
27 and approved in advance by the board.

#### 28 B. Impact site construction monitoring.

29 1. Construction activities authorized by this permit that are within impact areas shall be  
30 monitored and documented. The monitoring shall consist of:

31 a. Preconstruction photographs taken at each impact area prior to initiation of activities  
32 within impact areas. Photographs remain on the project site and shall depict the impact  
33 area and the nonimpacted surface waters immediately adjacent to and downgradient  
34 of each impact area. Each photograph shall be labeled to include the following  
35 information: permit number, impact area number, date and time of the photograph,  
36 name of the person taking the photograph, photograph orientation, and photograph  
37 subject description.

38 b. Site inspections shall be conducted by the permittee or the permittee's qualified  
39 designee once every calendar month during activities within impact areas. Monthly  
40 inspections shall be conducted in the following areas: all authorized permanent and  
41 temporary impact areas; all avoided surface waters, including wetlands, stream  
42 channels, and open water; surface water areas within 50 feet of any land disturbing  
43 activity and within the project or right-of-way limits; and all on-site permanent  
44 preservation areas required under this permit. Observations shall be recorded on the  
45 inspection form provided by the Department of Environmental Quality. The form shall  
46 be completed in its entirety for each monthly inspection and shall be kept on site and  
47 made available for review by the Department of Environmental Quality staff upon  
48 request during normal business hours. Inspections are not required during periods of  
49 no activity within impact areas.

50 2. Monitoring of water quality parameters shall be conducted during permanent relocation  
51 of perennial streams through new channels in the manner noted below. The permittee

1 shall report violations of water quality standards to the Department of Environmental  
2 Quality in accordance with the procedures in 9VAC25-660-100 Part II C. Corrective  
3 measures and additional monitoring may be required if water quality standards are not  
4 met. Reporting shall not be required if water quality standards are not violated.

5 a. A sampling station shall be located upstream and immediately downstream of the  
6 relocated channel.

7 b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every  
8 30 minutes for at least two hours at each station prior to opening the new channels  
9 and immediately before opening new channels.

10 c. Temperature, pH, and D.O. readings shall be taken after opening the channels and  
11 every 30 minutes for at least three hours at each station.

#### 12 C. Reporting.

13 1. Written communications required by this VWP general permit shall be submitted to the  
14 appropriate Department of Environmental Quality office. The VWP general permit tracking  
15 number shall be included on all correspondence.

16 2. The Department of Environmental Quality shall be notified in writing prior to the start of  
17 construction activities at the first authorized impact area.

18 3. A construction status update form provided by the Department of Environmental Quality  
19 shall be completed and submitted to the Department of Environmental Quality twice per  
20 year for the duration of coverage under a VWP general permit. Forms completed in June  
21 shall be submitted by or on July 10, and forms completed in December shall be submitted  
22 by or on January 10. The form shall include reference to the VWP permit tracking number  
23 and one of the following statements for each authorized surface water impact location:

24 a. Construction activities have not yet started;

25 b. Construction activities have started;

26 c. Construction activities have started but are currently inactive; or

27 d. Construction activities are complete.

28 4. The Department of Environmental Quality shall be notified in writing within 30 days  
29 following the completion of all activities in all authorized impact areas.

30 5. The permittee shall notify the Department of Environmental Quality in writing when  
31 unusual or potentially complex conditions are encountered that require debris removal or  
32 involve a potentially toxic substance. Measures to remove the obstruction, material, or  
33 toxic substance or to change the location of a structure are prohibited until approved by  
34 the Department of Environmental Quality.

35 6. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If  
36 spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday,  
37 the appropriate Department of Environmental Quality regional office shall be notified;  
38 otherwise, the Department of Emergency Management shall be notified at 1-800-468-  
39 8892.

40 7. Violations of state water quality standards shall be reported to the appropriate  
41 Department of Environmental Quality office no later than the end of the business day  
42 following discovery.

43 8. The permittee shall notify the Department of Environmental Quality no later than the  
44 end of the third business day following the discovery of additional impacts to surface  
45 waters including wetlands, stream channels, and open water that are not authorized by  
46 the Department of Environmental Quality or to any required preservation areas. The  
47 notification shall include photographs, estimated acreage or linear footage of impacts, and  
48 a description of the impacts.

49 9. Submittals required by this VWP general permit shall contain the following signed  
50 certification statement:



1 "I certify under penalty of law that this document and all attachments were prepared under  
2 my direction or supervision in accordance with a system designed to assure that qualified  
3 personnel properly gather and evaluate the information submitted. Based on my inquiry of  
4 the person or persons who manage the system, or those persons directly responsible for  
5 gathering the information, the information submitted is, to the best of my knowledge and  
6 belief, true, accurate, and complete. I am aware that there are significant penalties for  
7 submitting false information, including the possibility of fine and imprisonment for knowing  
8 violation."

9 Part III. Conditions Applicable to All VWP General Permits.

10 A. Duty to comply. The permittee shall comply with all conditions, limitations, and other  
11 requirements of the VWP general permit; any requirements in coverage granted under this VWP  
12 general permit; the Clean Water Act, as amended; and the State Water Control Law and  
13 regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a  
14 violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement  
15 action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage  
16 revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification  
17 to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve  
18 the permittee of the duty to comply with all applicable federal and state statutes, regulations, and  
19 toxic standards and prohibitions.

20 B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent  
21 impacts in violation of the VWP general permit which may have a reasonable likelihood of  
22 adversely affecting human health or the environment.

23 C. Reopener. This VWP general permit may be reopened to modify its conditions when the  
24 circumstances on which the previous VWP general permit was based have materially and  
25 substantially changed, or special studies conducted by the board or the permittee show material  
26 and substantial change since the time the VWP general permit was issued and thereby constitute  
27 cause for revoking and reissuing the VWP general permit.

28 D. Compliance with state and federal law. Compliance with this VWP general permit  
29 constitutes compliance with the VWP permit requirements of the State Water Control Law.  
30 Nothing in this VWP general permit shall be construed to preclude the institution of any legal  
31 action under or relieve the permittee from any responsibilities, liabilities, or other penalties  
32 established pursuant to any other state law or regulation or under the authority preserved by §  
33 510 of the Clean Water Act.

34 E. Property rights. Coverage under this VWP general permit does not convey property rights  
35 in either real or personal property or any exclusive privileges, nor does it authorize injury to private  
36 property, any invasion of personal property rights, or any infringement of federal, state, or local  
37 laws or regulations.

38 F. Severability. The provisions of this VWP general permit are severable.

39 G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the board  
40 or any duly authorized agent of the board, at reasonable times and under reasonable  
41 circumstances, to enter upon the permittee's property, public or private, and have access to  
42 inspect and copy any records that must be kept as part of the VWP general permit conditions; to  
43 inspect any facilities, operations, or practices (including monitoring and control equipment)  
44 regulated or required under the VWP general permit; and to sample or monitor any substance,  
45 parameter, or activity for the purpose of assuring compliance with the conditions of the VWP  
46 general permit or as otherwise authorized by law. For the purpose of this section, the time for  
47 inspection shall be deemed reasonable during regular business hours. Nothing contained herein  
48 shall make an inspection time unreasonable during an emergency.

49 H. Transferability of VWP general permit coverage. VWP general permit coverage may be  
50 transferred to another permittee when all of the criteria listed in this subsection are met. On the  
51 date of the VWP general permit coverage transfer, the transferred VWP general permit coverage  
52 shall be as fully effective as if it had been granted directly to the new permittee.

1 1. The current permittee notifies the board of the proposed transfer of the general permit  
 2 coverage and provides a written agreement between the current and new permittees  
 3 containing a specific date of transfer of VWP general permit responsibility, coverage, and  
 4 liability to the new permittee, or that the current permittee will retain such responsibility,  
 5 coverage, or liability, including liability for compliance with the requirements of  
 6 enforcement activities related to the authorized activity.

7 2. The board does not within 15 days notify the current and new permittees of its intent to  
 8 modify or revoke and reissue the VWP general permit.

9 I. Notice of planned change. VWP general permit coverage may be modified subsequent to  
 10 issuance in accordance with 9VAC25-660-80.

11 J. VWP general permit coverage termination for cause. VWP general permit coverage is  
 12 subject to termination for cause by the board after public notice and opportunity for a hearing  
 13 pursuant to § 62.1-44.15:02 of the Code of Virginia. Reasons for termination for cause are as  
 14 follows:

15 1. Noncompliance by the permittee with any provision of this chapter, any condition of the  
 16 VWP general permit, or any requirement in general permit coverage;

17 2. The permittee's failure in the application or during the process of granting VWP general  
 18 permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of  
 19 any relevant facts at any time;

20 3. The permittee's violation of a special or judicial order;

21 4. A determination by the board that the authorized activity endangers human health or  
 22 the environment and can be regulated to acceptable levels by a modification to the VWP  
 23 general permit coverage or a termination;

24 5. A change in any condition that requires either a temporary or permanent reduction or  
 25 elimination of any activity controlled by the VWP general permit; or

26 6. A determination that the authorized activity has ceased and that the compensation for  
 27 unavoidable adverse impacts has been successfully completed.

28 K. The board may terminate VWP general permit coverage without cause when the permittee  
 29 is no longer a legal entity due to death or dissolution or when a company is no longer authorized  
 30 to conduct business in the Commonwealth. The termination shall be effective 30 days after notice  
 31 of the proposed termination is sent to the last known address of the permittee or registered agent,  
 32 unless the permittee objects within that time. If the permittee does object during that period, the  
 33 board shall follow the applicable procedures for termination under §§ 62.1-44.15:02 and 62.1-  
 34 44.15:25 of the Code of Virginia.

35 L. VWP general permit coverage termination by consent. The permittee shall submit a request  
 36 for termination by consent within 30 days of completing or canceling all authorized activities  
 37 requiring notification under 9VAC25-660-50 A and all compensatory mitigation requirements.  
 38 When submitted for project completion, the request for termination by consent shall constitute a  
 39 notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this  
 40 termination of coverage on behalf of the board. The permittee shall submit the following  
 41 information:

42 1. Name, mailing address, and telephone number;

43 2. Name and location of the activity;

44 3. The VWP general permit tracking number; and

45 4. One of the following certifications:

46 a. For project completion:

47 "I certify under penalty of law that all activities and any required compensatory  
 48 mitigation authorized by the VWP general permit and general permit coverage have  
 49 been completed. I understand that by submitting this notice of termination I am no  
 50 longer authorized to perform activities in surface waters in accordance with the VWP  
 51 general permit and general permit coverage, and that performing activities in surface

1 waters is unlawful where the activity is not authorized by the VWP permit or coverage,  
2 unless otherwise excluded from obtaining coverage. I also understand that the  
3 submittal of this notice does not release me from liability for any violations of the VWP  
4 general permit or coverage."

5 b. For project cancellation:

6 "I certify under penalty of law that the activities and any required compensatory  
7 mitigation authorized by the VWP general permit and general permit coverage will not  
8 occur. I understand that by submitting this notice of termination I am no longer  
9 authorized to perform activities in surface waters in accordance with the VWP general  
10 permit and general permit coverage, and that performing activities in surface waters is  
11 unlawful where the activity is not authorized by the VWP permit or coverage, unless  
12 otherwise excluded from obtaining coverage. I also understand that the submittal of  
13 this notice does not release me from liability for any violations of the VWP general  
14 permit or coverage, nor does it allow me to resume the authorized activities without  
15 reapplication and coverage."

16 c. For events beyond permittee control, the permittee shall provide a detailed  
17 explanation of the events, to be approved by the Department of Environmental Quality,  
18 and the following certification statement:

19 "I certify under penalty of law that the activities or the required compensatory mitigation  
20 authorized by the VWP general permit and general permit coverage have changed as  
21 the result of events beyond my control (see attached). I understand that by submitting  
22 this notice of termination I am no longer authorized to perform activities in surface  
23 waters in accordance with the VWP general permit and general permit coverage, and  
24 that performing activities in surface waters is unlawful where the activity is not  
25 authorized by the VWP permit or coverage, unless otherwise excluded from obtaining  
26 coverage. I also understand that the submittal of this notice does not release me from  
27 liability for any violations of the VWP general permit or coverage, nor does it allow me  
28 to resume the authorized activities without reapplication and coverage."

29 M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve  
30 the permittee from civil and criminal penalties for noncompliance.

31 N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be  
32 construed to preclude the institution of legal action or relieve the permittee from any  
33 responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of  
34 the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

35 O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement  
36 action that it would have been necessary to halt or reduce the activity for which VWP general  
37 permit coverage has been granted in order to maintain compliance with the conditions of the VWP  
38 general permit or coverage.

39 P. Duty to provide information.

40 1. The permittee shall furnish to the board information that the board may request to  
41 determine whether cause exists for modifying, revoking, or terminating VWP permit  
42 coverage or to determine compliance with the VWP general permit or general permit  
43 coverage. The permittee shall also furnish to the board, upon request, copies of records  
44 required to be kept by the permittee.

45 2. Plans, maps, conceptual reports, and other relevant information shall be submitted as  
46 required by the board prior to commencing construction.

47 Q. Monitoring and records requirements.

48 1. Monitoring of parameters, other than pollutants, shall be conducted according to  
49 approved analytical methods as specified in the VWP general permit. Analysis of  
50 pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing  
51 Test Procedures for the Analysis of Pollutants.

1 2. Samples and measurements taken for the purpose of monitoring shall be representative  
2 of the monitored activity.

3 3. The permittee shall retain records of all monitoring information, including all calibration  
4 and maintenance records and all original strip chart or electronic recordings for continuous  
5 monitoring instrumentation, copies of all reports required by the VWP general permit, and  
6 records of all data used to complete the application for coverage under the VWP general  
7 permit, for a period of at least three years from the date of general permit expiration. This  
8 period may be extended by request of the board at any time.

9 4. Records of monitoring information shall include, as appropriate:

10 a. The date, exact place, and time of sampling or measurements;

11 b. The name of the individuals who performed the sampling or measurements;

12 c. The date and time the analyses were performed;

13 d. The name of the individuals who performed the analyses;

14 e. The analytical techniques or methods supporting the information such as  
15 observations, readings, calculations, and bench data used;

16 f. The results of such analyses; and

17 g. Chain of custody documentation.

18 R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit,  
19 it shall be unlawful for the permittee to:

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

22 2. Excavate in a wetland;

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

26 4. On and after October 1, 2001, conduct the following activities in a wetland:

27 a. New activities to cause draining that significantly alter or degrade existing wetland  
28 acreage or functions;

29 b. Filling or dumping;

30 c. Permanent flooding or impounding; or

31 d. New activities that cause significant alteration or degradation of existing wetland  
32 acreage or functions.

33 S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the  
34 expiration date of the VWP general permit shall comply with the provisions in 9VAC25-660-27.

35 **9VAC25-670-50. Notification.**

36 A. Notification to the board will be required prior to commencing construction, as follows:

37 1. An application for coverage for proposed, permanent nontidal wetland or open water  
38 impacts greater than one-tenth acre or for proposed permanent nontidal stream bed  
39 impacts greater than 300 linear feet shall include all information pursuant to 9VAC25-670-  
40 60 B. Compensatory mitigation may be required for all permanent impacts.

41 2. An application for the coverage for proposed, permanent nontidal wetland or open water  
42 impacts up to one-tenth acre or for proposed, permanent nontidal stream bed impacts up  
43 to 300 linear feet shall be submitted in accordance with either subdivision 2 a or 2 b of this  
44 subsection:

45 a. For any proposed project in wetlands, open water, streams, or compensatory  
46 mitigation sites that are under a deed restriction, conservation easement, declaration  
47 of restrictive covenant, or other land use protective instrument (hereafter "protected  
48 areas"), when such restriction, easement, covenant, or instrument is the result of a  
49 federal or state permit action and is specific to activities in wetlands and compensatory

1 mitigation sites, the application shall include all of the information required by 9VAC25-  
2 670-60 B. Compensatory mitigation may be required for all permanent impacts.

3 b. For all other projects, the application shall include the information required by  
4 subdivisions 1 through 7, 10, 11, 14, and 15 of 9VAC25-670-60 B and documentation  
5 that verifies the quantity and type of impacts. Compensatory mitigation may be  
6 required for all permanent impacts once the notification limits of one-tenth acre  
7 wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required,  
8 the application shall include the information in 9VAC25-670-60 B 12.

9 B. The Department of Environmental Quality-approved application forms shall serve as an  
10 application for a WWP permit or VWP general permit coverage.

11 C. The board will determine whether the proposed activity requires coordination with the U.S.  
12 Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia  
13 Department of Agriculture and Consumer Services and the Virginia Department of ~~Game and~~  
14 ~~Inland Fisheries~~ Wildlife Resources regarding the presence of federal or state listed threatened  
15 and endangered species or designated critical habitat. Based upon consultation with these  
16 agencies, the board may deny application for coverage under this general permit. The applicant  
17 may also consult with these agencies prior to submitting an application. Species or habitat  
18 information that the applicant provides will assist the Department of Environmental Quality in  
19 reviewing and processing the application.

20 **9VAC25-670-60. Application.**

21 A. The applicant shall file a complete application in accordance with 9VAC25-670-50 and this  
22 section for coverage under this VWP general permit for impacts to surface waters from utility  
23 activities.

24 B. A complete application for VWP general permit coverage, at a minimum, consists of the  
25 following information, if applicable to the project:

- 26 1. The applicant's legal name, mailing address, telephone number, and if applicable,  
27 electronic mail address and fax number.
- 28 2. If different from the applicant, legal name, mailing address, telephone number, and if  
29 applicable, electronic mail address and fax number of property owner.
- 30 3. If applicable, the authorized agent's name, mailing address, telephone number, and if  
31 applicable, fax number and electronic mail address.
- 32 4. The existing VWP general permit tracking number, if applicable.
- 33 5. Project name and proposed project schedule.
- 34 6. The following information for the project site location and any related permittee-  
35 responsible compensatory mitigation site:
  - 36 a. The physical street address, nearest street, or nearest route number; city or county;  
37 zip code; and if applicable, parcel number of the site or sites.
  - 38 b. Name of the impacted water body or water bodies, or receiving waters, as  
39 applicable, at the site or sites.
  - 40 c. The latitude and longitude to the nearest second at the center of the site or sites.
  - 41 d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the  
42 National Watershed Boundary Dataset, for the site or sites.
  - 43 e. A detailed map depicting the location of the site or sites, including the project  
44 boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S.  
45 Geologic Survey topographic quadrangle map) should be of sufficient detail to easily  
46 locate the site or sites for inspection.
- 47 7. A narrative description of the project, including project purpose and need.
- 48 8. Plan-view drawing or drawings of the project site sufficient to assess the project,  
49 including at a minimum the following:

- 1 a. North arrow, graphic scale, and existing and proposed topographic or bathymetric  
2 contours.
- 3 b. Limits of proposed impacts to surface waters.
- 4 c. Location of all existing and proposed structures.
- 5 d. All delineated wetlands and all jurisdictional surface waters on the site, including the  
6 Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface  
7 waters and waterway name, if designated; ebb and flood or direction of flow; and  
8 ordinary high water mark in nontidal areas.
- 9 e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified  
10 by the applicant, and if available, the limits as approved by the locality in which the  
11 project site is located, unless the proposed use is exempt from the Chesapeake Bay  
12 reservation Area Designation and Management Regulations (9VAC25-830).
- 13 f. The limits of any areas that are under a deed restriction, conservation easement,  
14 restrictive covenant, or other land use protective instrument (i.e., protected areas).
- 15 9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings  
16 of each proposed impact area shall include at a minimum a graphic scale, existing  
17 structures, existing and proposed elevations, limits of surface water areas, ebb and flood  
18 or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits,  
19 and location of all existing and proposed structures. Profile drawing or drawings with this  
20 information may be required on a case-by-case basis to demonstrate minimization of  
21 impacts. Any application that proposes piping or culverting stream flows shall provide a  
22 longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide  
23 spot elevations of the stream thalweg at the beginning and end of the pipe or culvert,  
24 extending to a minimum of 10 feet beyond the limits of proposed impact.
- 25 10. A narrative description of all impacts proposed to surface waters, including the type of  
26 activity to be conducted in surface waters and any physical alteration to surface waters.  
27 Surface water impacts shall be identified as follows:
  - 28 a. Wetland impacts identified according to their Cowardin classification (i.e., emergent,  
29 scrub-shrub, or forested); and for each classification, the individual impacts quantified  
30 in square feet to the nearest whole number, cumulatively summed in square feet, and  
31 then the sum converted to acres and rounded to two decimal places using commonly  
32 accepted arithmetic principles of rounding.
  - 33 b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole  
34 number and by average width in feet to the nearest whole number; (ii) quantified in  
35 square feet to the nearest whole number; and (iii) when compensatory mitigation is  
36 required, the impacts identified according to the assessed type using the Unified  
37 Stream Methodology.
  - 38 c. Open water impacts identified according to their Cowardin classification, and for  
39 each type, the individual impacts quantified in square feet to the nearest whole  
40 number, cumulatively summed in square feet, and then the sum converted to acres  
41 and rounded to two decimal places using commonly accepted arithmetic principles of  
42 rounding.
  - 43 d. A copy of the approved jurisdictional determination, when available, or when  
44 unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps  
45 of Engineers (USACE), U.S. Department of Agriculture Natural Resources  
46 Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE,  
47 NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface  
48 waters, including wetlands data sheets if applicable.
  - 49 e. A delineation map that (i) depicts the geographic area or areas of all surface water  
50 boundaries delineated in accordance with 9VAC25-210-45 and confirmed in  
51 accordance with the jurisdictional determination process; (ii) identifies such areas in

1 accordance with subdivisions 10 a, 10 b, and 10 c of this subsection; and (iii) quantifies  
2 and identifies any other surface waters according to their Cowardin classification (i.e.,  
3 emergent, scrub-shrub, or forested) or similar terminology.

4 11. An alternatives analysis for the proposed project detailing the specific on-site  
5 measures taken during project design and development to first avoid and then minimize  
6 impacts to surface waters to the maximum extent practicable in accordance with the  
7 Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part  
8 230. Avoidance and minimization includes, but is not limited to, the specific on-site  
9 measures taken to reduce the size, scope, configuration, or density of the proposed  
10 project, including review of alternative sites where required for the project, which would  
11 avoid or result in less adverse impact to surface waters, and documentation demonstrating  
12 the reason the applicant determined less damaging alternatives are not practicable. The  
13 analysis shall demonstrate to the satisfaction of the board that avoidance and minimization  
14 opportunities have been identified and measures have been applied to the proposed  
15 activity such that the proposed activity in terms of impacts to state waters and fish and  
16 wildlife resources is the least environmentally damaging practicable alternative.

17 12. A compensatory mitigation plan to achieve no net loss of wetland acreage and  
18 functions or stream functions and water quality benefits.

19 a. If permittee-responsible compensation is proposed for wetland impacts, a  
20 conceptual wetland compensatory mitigation plan must be submitted in order for an  
21 application to be deemed complete and shall include at a minimum (i) the goals and  
22 objectives in terms of replacement of wetland acreage and functions; (ii) a detailed  
23 location map including latitude and longitude to the nearest second and the fourth  
24 order subbasin, as defined by the hydrologic unit boundaries of the National  
25 Watershed Boundary Dataset, at the center of the site; (iii) a description of the  
26 surrounding land use; (iv) a hydrologic analysis including a draft water budget for  
27 nontidal areas based on expected monthly inputs and outputs that will project water  
28 level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation  
29 data, if available, or the proposed location of groundwater monitoring wells to collect  
30 these data; (vi) wetland delineation confirmation, data sheets, and maps for existing  
31 surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii)  
32 a conceptual planting scheme including suggested plant species and zonation of each  
33 vegetation type proposed; (ix) a description of existing soils including general  
34 information on both topsoil and subsoil conditions, permeability, and the need for soil  
35 amendments; (x) a draft design of any water control structures; (xi) inclusion of buffer  
36 areas; (xii) a description of any structures and features necessary for the success of  
37 the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv)  
38 measures for the control of undesirable species.

39 b. If permittee-responsible compensation is proposed for stream impacts, a conceptual  
40 stream compensatory mitigation plan must be submitted in order for an application to  
41 be deemed complete and shall include at a minimum (i) the goals and objectives in  
42 terms of water quality benefits and replacement of stream functions; (ii) a detailed  
43 location map including the latitude and longitude to the nearest second and the fourth  
44 order subbasin, as defined by the hydrologic unit boundaries of the National  
45 Watershed Boundary Dataset, at the center of the site; (iii) a description of the  
46 surrounding land use; (iv) the proposed stream segment restoration locations including  
47 plan view and cross-sectional drawings; (v) the stream deficiencies that need to be  
48 addressed; (vi) data obtained from a DEQ-approved, stream impact assessment  
49 methodology such as the Unified Stream Methodology; (vii) the proposed restoration  
50 measures to be employed including channel measurements, proposed design flows,  
51 types of instream structures, and conceptual planting scheme; (viii) reference stream  
52 data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities;  
53 and (xi) measures for the control of undesirable species.

1 c. For any permittee-responsible compensatory mitigation, the conceptual  
2 compensatory mitigation plan shall also include a draft of the intended protective  
3 mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but  
4 not limited to, a conservation easement held by a third party in accordance with the  
5 Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or  
6 the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly  
7 recorded declaration of restrictive covenants, or other protective instrument. The draft  
8 intended protective mechanism shall contain the information in subdivisions c (1), c  
9 (2), and c (3) of this subdivision 12 or in lieu thereof shall describe the intended  
10 protective mechanism or mechanisms that contains the information required below:

11 (1) A provision for access to the site;

12 (2) The following minimum restrictions: no ditching, land clearing, or discharge of  
13 dredge or fill material, and no activity in the area designated as compensatory  
14 mitigation area with the exception of maintenance; corrective action measures; or  
15 DEQ-approved activities described in the approved final compensatory mitigation plan  
16 or long-term management plan; and

17 (3) A long-term management plan that identifies a long-term steward and adequate  
18 financial assurances for long-term management in accordance with the current  
19 standard for mitigation banks and in-lieu fee program sites, except that financial  
20 assurances will not be necessary for permittee-responsible compensation provided by  
21 government agencies on government property. If approved by DEQ, permittee-  
22 responsible compensation on government property and long-term protection may be  
23 provided through federal facility management plans, integrated natural resources  
24 management plans, or other alternate management plans submitted by a government  
25 agency or public authority.

26 d. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-  
27 lieu fee program credits shall include the number and type of credits proposed to be  
28 purchased and documentation from the approved mitigation bank or in-lieu fee  
29 program sponsor of the availability of credits at the time of application.

30 13. Permit application fee. The applicant will be notified by the board as to the appropriate  
31 fee for the project in accordance with 9VAC25-20.

32 14. A written description and a graphical depiction identifying all upland areas including  
33 buffers, wetlands, open water, other surface waters, and compensatory mitigation areas  
34 located within the proposed project boundary or permittee-responsible compensatory  
35 mitigation areas that are under a deed restriction, conservation easement, restrictive  
36 covenant, or other land use protective instrument (i.e., protected areas). Such description  
37 and a graphical depiction shall include the nature of the prohibited activities within the  
38 protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as  
39 field-verified by the applicant, and if available, the limits as approved by the locality in  
40 which the project site is located, unless the proposed use is exempt from the Chesapeake  
41 Bay Preservation Area Designation and Management Regulations (9VAC25-830), as  
42 additional state or local requirements may apply if the project is located within an RPA.

43 15. Signature page that has been signed, dated, and certified by the applicant in  
44 accordance with 9VAC25-210-100. If the applicant is a business or other organization, the  
45 signature must be made by an individual with the authority to bind the business or  
46 organization, and the title of the signatory must be provided. The application signature  
47 page, either on the copy submitted to the Virginia Marine Resources Commission or to  
48 DEQ, must have an original signature. Electronic submittals containing the original  
49 signature page, such as that contained in a scanned document file, are acceptable.

50 C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ.  
51 When required, the method selected for the analysis shall assess water quality or habitat metrics  
52 and shall be coordinated with DEQ in advance of conducting the analysis.



1 1. No analysis shall be required when:

2 a. Wetland impacts per each single and complete project total 1.00 acre or less; or

3 b. The proposed compensatory mitigation consists of purchasing mitigation bank or  
4 in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-  
5 shrub, and 1:1 for emergent, or higher.

6 2. Analysis shall be required when wetland impacts per each single and complete project  
7 total 1.01 acres or more and when any of the following applies:

8 a. The proposed compensatory mitigation consists of permittee-responsible  
9 compensation, including water quality enhancements as replacement for wetlands; or

10 b. The proposed compensatory mitigation consists of purchasing mitigation bank or  
11 in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest,  
12 1.5:1 for scrub-shrub, and 1:1 for emergent.

13 D. Upon receipt of an application by the appropriate DEQ office, the board has 15 days to  
14 review the application and either determine the information requested in subsection B of this  
15 section is complete or inform the applicant that additional information is required to make the  
16 application complete. Coverage under the VWP general permit shall be approved or approved  
17 with conditions, or the application shall be denied, within 45 days of receipt of a complete  
18 application. If the board fails to act within 45 days on a complete application, coverage under the  
19 VWP general permit shall be deemed granted.

20 1. In evaluating the application, the board shall make an assessment of the impacts  
21 associated with the project in combination with other existing or proposed impacts.  
22 Application for coverage under the VWP general permit shall be denied if the cumulative  
23 impacts will cause or contribute to a significant impairment of surface waters or fish and  
24 wildlife resources.

25 2. The board may place additional requirements on a project in order to grant coverage  
26 under this VWP general permit. However, the requirements must be consistent with this  
27 chapter.

28 E. Incomplete application.

29 1. Where an application for general permit coverage is not accepted as complete by the  
30 board within 15 days of receipt, the board shall require the submission of additional  
31 information from the applicant and may suspend processing of any application until such  
32 time as the applicant has supplied the requested information and the application is  
33 complete. Where the applicant becomes aware that he omitted one or more relevant facts  
34 from an application, or submitted incorrect information in an application or any report to  
35 the board, the applicant shall immediately submit such facts or the correct information. A  
36 revised application with new information shall be deemed a new application for the  
37 purposes of review but shall not require an additional permit application fee.

38 2. An incomplete permit application for general permit coverage may be administratively  
39 withdrawn from processing by the board for failure to provide the required information after  
40 60 days from the date of the latest written information request made by the board. The  
41 board shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-  
42 finding proceeding when administratively withdrawing an incomplete application.  
43 Resubmittal of an application for the same or similar project, after such time that the  
44 original permit application was administratively withdrawn, shall require submittal of an  
45 additional permit application fee.

46 3. An applicant may request a suspension of application review by the board, but  
47 requesting a suspension shall not preclude the board from administratively withdrawing  
48 an incomplete application. Resubmittal of a permit application for the same or similar  
49 project, after such time that the original permit application was administratively withdrawn,  
50 shall require submittal of an additional permit application fee.

1 **9VAC25-670-100. VWP general permit.**

2 WWP GENERAL PERMIT NO. WP2 FOR FACILITIES AND ACTIVITIES OF UTILITIES AND  
 3 PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY  
 4 COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE  
 5 ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA  
 6 STATE WATER CONTROL LAW

7 Effective date: August 2, 2016

8 Expiration date: August 1, 2026

9 In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State  
 10 Water Control Law and regulations adopted pursuant thereto, the board has determined that there  
 11 is a reasonable assurance that this VWP general permit, if complied with, will protect instream  
 12 beneficial uses, will not violate applicable water quality standards, and will not cause or contribute  
 13 to a significant impairment of surface waters or fish and wildlife resources. In issuing this VWP  
 14 general permit, the board has not taken into consideration the structural stability of any proposed  
 15 activities.

16 The permanent or temporary impact of up to one acre of nontidal wetlands or open water and  
 17 up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general  
 18 permit set forth herein; any requirements in coverage granted under this VWP general permit; the  
 19 Clean Water Act, as amended; and the State Water Control Law and regulations adopted  
 20 pursuant to it.

21 Part I. Special Conditions.

22 A. Authorized activities.

23 1. The activities authorized by this chapter shall not cause more than the permanent or  
 24 temporary impacts of up to one acre of nontidal wetlands or open water and up to 1,500  
 25 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the  
 26 board in the coverage letter, if any, shall be enforceable conditions of this permit.

27 2. Any changes to the authorized permanent impacts to surface waters shall require a  
 28 notice of planned change in accordance with 9VAC25-670-80. An application or request  
 29 for modification to coverage or another VWP permit application may be required.

30 3. Any changes to the authorized temporary impacts to surface waters shall require written  
 31 notification to and approval from the Department of Environmental Quality in accordance  
 32 with 9VAC25-670-80 prior to initiating the impacts and restoration to preexisting conditions  
 33 in accordance with the conditions of this permit.

34 4. Modification to compensation requirements may be approved at the request of the  
 35 permittee when a decrease in the amount of authorized surface waters impacts occurs,  
 36 provided that the adjusted compensation meets the initial compensation goals.

37 B. Overall conditions.

38 1. The activities authorized by this VWP general permit shall be executed in a manner so  
 39 as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of  
 40 the Code of Virginia.

41 2. No activity may substantially disrupt the movement of aquatic life indigenous to the  
 42 water body, including those species which normally migrate through the area, unless the  
 43 primary purpose of the activity is to impound water. Pipes and culverts placed in streams  
 44 must be installed to maintain low flow conditions and shall be countersunk at both inlet  
 45 and outlet ends of the pipe or culvert, unless otherwise specifically approved by the  
 46 Department of Environmental Quality on a case-by-case basis, and as follows: The  
 47 requirement to countersink does not apply to extensions or maintenance of existing pipes  
 48 and culverts that are not countersunk, floodplain pipes and culverts being placed above  
 49 ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts  
 50 required to be placed on slopes 5.0% or greater. Bedrock encountered during construction  
 51 must be identified and approved in advance of a design change where the countersunk

1 condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be  
2 countersunk three inches below the natural stream bed elevations, and pipes and culverts  
3 greater than 24 inches shall be countersunk at least six inches below the natural stream  
4 bed elevations. Hydraulic capacity shall be determined based on the reduced capacity  
5 due to the countersunk position. In all stream crossings appropriate measures shall be  
6 implemented to minimize any disruption of aquatic life movement.

7 3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters,  
8 unless the area is contained within a cofferdam and the work is performed in the dry or  
9 unless otherwise approved by the Department of Environmental Quality. Excess or waste  
10 concrete shall not be disposed of in flowing surface waters or washed into flowing surface  
11 waters.

12 4. All fill material shall be clean and free of contaminants in toxic concentrations or  
13 amounts in accordance with all applicable laws and regulations.

14 5. Erosion and sedimentation controls shall be designed in accordance with the Virginia  
15 Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be  
16 placed prior to clearing and grading and maintained in good working order to minimize  
17 impacts to state waters. These controls shall remain in place until the area is stabilized  
18 and shall then be removed.

19 6. Exposed slopes and streambanks shall be stabilized immediately upon completion of  
20 work in each permitted area. All denuded areas shall be properly stabilized in accordance  
21 with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

22 7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways)  
23 and demolition activities associated with the project shall be accomplished in such a  
24 manner that minimizes construction or waste materials from entering surface waters to the  
25 maximum extent practicable, unless authorized by this VWP general permit.

26 8. No machinery may enter flowing waters, unless authorized by this VWP general permit  
27 or approved prior to entry by the Department of Environmental Quality.

28 9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats,  
29 geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum  
30 extent practicable. Equipment and materials shall be removed immediately upon  
31 completion of work.

32 10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of  
33 authorized activities and within the project or right-of-way limits shall be clearly flagged or  
34 marked for the life of the construction activity at that location to preclude any unauthorized  
35 disturbances to these surface waters and compensatory mitigation areas during  
36 construction. The permittee shall notify contractors that no activities are to occur in these  
37 marked surface waters.

38 11. Temporary disturbances to surface waters during construction shall be avoided and  
39 minimized to the maximum extent practicable. All temporarily disturbed wetland areas  
40 shall be restored to preexisting conditions within 30 days of completing work at each  
41 respective temporary impact area, which shall include reestablishing preconstruction  
42 elevations and contours with topsoil from the impact area where practicable and planting  
43 or seeding with appropriate wetland vegetation according to cover type (i.e., emergent,  
44 scrub-shrub, or forested). The permittee shall take all appropriate measures to promote  
45 and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation  
46 through the second year post-disturbance. All temporarily impacted streams and  
47 streambanks shall be restored to their preconstruction elevations and contours with topsoil  
48 from the impact area where practicable within 30 days following the construction at that  
49 stream segment. Streambanks shall be seeded or planted with the same vegetation cover  
50 type originally present, including any necessary, supplemental erosion control grasses.  
51 Invasive species identified on the Department of Conservation and Recreation's Virginia

1 Invasive Plant Species List shall not be used to the maximum extent practicable or without  
2 prior approval from the Department of Environmental Quality.

3 12. Materials (including fill, construction debris, and excavated and woody materials)  
4 temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately  
5 stabilized to prevent entry into state waters, managed such that leachate does not enter  
6 state waters, and completely removed within 30 days following completion of that  
7 construction activity. Disturbed areas shall be returned to preconstruction elevations and  
8 contours with topsoil from the impact areas where practicable; restored within 30 days  
9 following removal of the stockpile; and restored with the same vegetation cover type  
10 originally present, including any necessary, supplemental erosion control grasses.  
11 Invasive species identified on the Department of Conservation and Recreation's Virginia  
12 Invasive Plant Species List shall not be used to the maximum extent practicable or without  
13 prior approval from the Department of Environmental Quality.

14 13. Continuous flow of perennial springs shall be maintained by the installation of spring  
15 boxes, french drains, or other similar structures.

16 14. The permittee shall employ measures to prevent spills of fuels or lubricants into state  
17 waters.

18 15. The permittee shall conduct his activities in accordance with the time-of-year  
19 restrictions recommended by the Virginia Department of ~~Game and Inland~~  
20 Fisheries/Wildlife Resources, the Virginia Marine Resources Commission, or other  
21 interested and affected agencies, as contained, when applicable, in a Department of  
22 Environmental Quality VWP general permit coverage letter, and shall ensure that all  
23 contractors are aware of the time-of-year restrictions imposed.

24 16. Water quality standards shall not be violated as a result of the construction activities.

25 17. If stream channelization or relocation is required, all work in surface waters shall be  
26 done in the dry, unless otherwise authorized by the Department of Environmental Quality,  
27 and all flows shall be diverted around the channelization or relocation area until the new  
28 channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and  
29 outlet ends of the new channel during excavation. Once the new channel has been  
30 stabilized, flow shall be routed into the new channel by first removing the downstream plug  
31 and then the upstream plug. The rerouted stream flow must be fully established before  
32 construction activities in the old stream channel can begin.

33 C. Road crossings.

34 1. Access roads and associated bridges, pipes, and culverts shall be constructed to  
35 minimize the adverse effects on surface waters to the maximum extent practicable.  
36 Access roads constructed above preconstruction elevations and contours in surface  
37 waters must be bridged, piped, or culverted to maintain surface flows.

38 2. Installation of road crossings shall occur in the dry via the implementation of cofferdams,  
39 sheetpiling, stream diversions, or similar structures.

40 D. Utility lines.

41 1. All utility line work in surface waters shall be performed in a manner that minimizes  
42 disturbance, and the area must be returned to its preconstruction elevations and contours  
43 with topsoil from the impact area where practicable and restored within 30 days of  
44 completing work in the area, unless otherwise authorized by the Department of  
45 Environmental Quality. Restoration shall be the seeding or planting of the same vegetation  
46 cover type originally present, including any necessary, supplemental erosion control  
47 grasses. Invasive species identified on the Department of Conservation and Recreation's  
48 Virginia Invasive Plant Species List shall not be used to the maximum extent practicable  
49 or without prior approval from the Department of Environmental Quality.

1 2. Material resulting from trench excavation may be temporarily sidecast into wetlands,  
2 not to exceed 90 days, provided the material is not placed in a manner such that it is  
3 dispersed by currents or other forces.

4 3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g.,  
5 backfilling with extensive gravel layers creating a trench drain effect.). For example, utility  
6 lines may be backfilled with clay blocks to ensure that the trench does not drain surface  
7 waters through which the utility line is installed.

8 E. Stream modification and stream bank protection.

9 1. Riprap bank stabilization shall be of an appropriate size and design in accordance with  
10 the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

11 2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion  
12 and Sediment Control Handbook, Third Edition, 1992.

13 3. For stream bank protection activities, the structure and backfill shall be placed as close  
14 to the stream bank as practicable. No material shall be placed in excess of the minimum  
15 necessary for erosion protection.

16 4. All stream bank protection structures shall be located to eliminate or minimize impacts  
17 to vegetated wetlands to the maximum extent practicable.

18 5. Asphalt and materials containing asphalt or other toxic substances shall not be used in  
19 the construction of submerged sills or breakwaters.

20 6. Redistribution of existing stream substrate for the purpose of erosion control is  
21 prohibited.

22 7. No material removed from the stream bottom shall be disposed of in surface waters,  
23 unless otherwise authorized by this VWP general permit.

24 Part II. Construction and Compensation Requirements, Monitoring, and Reporting.

25 A. Minimum compensation requirements.

26 1. The permittee shall provide any required compensation for impacts in accordance with  
27 the conditions in this VWP general permit, the coverage letter, and the chapter  
28 promulgating the general permit. For all compensation that requires a protective  
29 mechanism, including preservation of surface waters or buffers, the permittee shall record  
30 the approved protective mechanism in the chain of title to the property, or an equivalent  
31 instrument for government-owned lands, and proof of recordation shall be submitted to  
32 the Department of Environmental Quality prior to commencing impacts in surface waters.

33 2. Compensation options that may be considered under this VWP general permit shall  
34 meet the criteria in 9VAC25-210-116 and 9VAC25-670-70.

35 3. The permittee-responsible compensation site or sites depicted in the conceptual  
36 compensation plan submitted with the application shall constitute the compensation site.  
37 A site change may require a modification to coverage.

38 4. For compensation involving the purchase of mitigation bank credits or the purchase of  
39 in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas  
40 until documentation of the mitigation bank credit purchase or of the in-lieu fee program  
41 credit purchase has been submitted to and received by the Department of Environmental  
42 Quality.

43 5. The final compensation plan shall be submitted to and approved by the board prior to a  
44 construction activity in permitted impact areas. The board shall review and provide written  
45 comments on the final plan within 30 days of receipt or it shall be deemed approved. The  
46 final plan as approved by the board shall be an enforceable requirement of any coverage  
47 under this VWP general permit. Deviations from the approved final plan shall be submitted  
48 and approved in advance by the board.

49 a. The final permittee-responsible wetlands compensation plan shall include:

50 (1) The complete information on all components of the conceptual compensation plan.

1 (2) A summary of the type and acreage of existing wetland impacts anticipated during  
2 the construction of the compensation site and the proposed compensation for these  
3 impacts; a site access plan; a monitoring plan, including proposed success criteria,  
4 monitoring goals, and the location of photo-monitoring stations, monitoring wells,  
5 vegetation sampling points, and reference wetlands or streams, if available; an  
6 abatement and control plan for undesirable plant species; an erosion and  
7 sedimentation control plan; a construction schedule; and the final protective  
8 mechanism for the protection of the compensation site or sites, including all surface  
9 waters and buffer areas within its boundaries.

10 (3) The approved protective mechanism. The protective mechanism shall be recorded  
11 in the chain of title to the property, or an equivalent instrument for government-owned  
12 lands, and proof of recordation shall be submitted to the Department of Environmental  
13 Quality prior to commencing impacts in surface waters.

14 b. The final permittee-responsible stream compensation plan shall include:

15 (1) The complete information on all components of the conceptual compensation plan.

16 (2) An evaluation, discussion, and plan drawing or drawings of existing conditions on  
17 the proposed compensation stream, including the identification of functional and  
18 physical deficiencies for which the measures are proposed, and summary of  
19 geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth  
20 ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including  
21 a monitoring and reporting schedule, monitoring design and methodologies for  
22 success, proposed success criteria, location of photo-monitoring stations, vegetation  
23 sampling points, survey points, bank pins, scour chains, and reference streams; an  
24 abatement and control plan for undesirable plant species; an erosion and  
25 sedimentation control plan, if appropriate; a construction schedule; a plan-view  
26 drawing depicting the pattern and all compensation measures being employed; a  
27 profile drawing; cross-sectional drawing or drawings of the proposed compensation  
28 stream; and the final protective mechanism for the protection of the compensation site  
29 or sites, including all surface waters and buffer areas within its boundaries.

30 (3) The approved protective mechanism. The protective mechanism shall be recorded  
31 in the chain of title to the property, or an equivalent instrument for government-owned  
32 lands, and proof of recordation shall be submitted to the Department of Environmental  
33 Quality prior to commencing impacts in surface waters.

34 6. The following criteria shall apply to permittee-responsible wetland or stream  
35 compensation:

36 a. The vegetation used shall be native species common to the area, shall be suitable  
37 for growth in local wetland or riparian conditions, and shall be from areas within the  
38 same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural  
39 Resources Conservation Service Land Resource Region as that of the project site.  
40 Planting of woody plants shall occur when vegetation is normally dormant, unless  
41 otherwise approved in the final wetlands or stream compensation plan or plans.

42 b. All work in permitted impact areas shall cease if compensation site construction has  
43 not commenced within 180 days of commencement of project construction, unless  
44 otherwise authorized by the board.

45 c. The Department of Environmental Quality shall be notified in writing prior to the  
46 initiation of construction activities at the compensation site.

47 d. Point sources of stormwater runoff shall be prohibited from entering a wetland  
48 compensation site prior to treatment by appropriate best management practices.  
49 Appropriate best management practices may include sediment traps, grassed  
50 waterways, vegetated filter strips, debris screens, oil and grease separators, or  
51 forebays.

1 e. The success of the compensation shall be based on meeting the success criteria  
2 established in the approved final compensation plan.

3 f. If the wetland or stream compensation area fails to meet the specified success  
4 criteria in a particular monitoring year, other than the final monitoring year, the reasons  
5 for this failure shall be determined and a corrective action plan shall be submitted to  
6 the Department of Environmental Quality for approval with or before that year's  
7 monitoring report. The corrective action plan shall contain at a minimum the proposed  
8 actions, a schedule for those actions, and a monitoring plan, and shall be implemented  
9 by the permittee in accordance with the approved schedule. Should significant  
10 changes be necessary to ensure success, the required monitoring cycle shall begin  
11 again, with monitoring year one being the year that the changes are complete, as  
12 confirmed by the Department of Environmental Quality. If the wetland or stream  
13 compensation area fails to meet the specified success criteria by the final monitoring  
14 year or if the wetland or stream compensation area has not met the stated restoration  
15 goals, reasons for this failure shall be determined and a corrective action plan,  
16 including proposed actions, a schedule, and a monitoring plan, shall be submitted with  
17 the final year monitoring report for Department of Environmental Quality approval.  
18 Corrective action shall be implemented by the permittee in accordance with the  
19 approved schedule. Annual monitoring shall be required to continue until two  
20 sequential, annual reports indicate that all criteria have been successfully satisfied and  
21 the site has met the overall restoration goals (e.g., that corrective actions were  
22 successful).

23 g. The surveyed wetland boundary for the compensation site shall be based on the  
24 results of the hydrology, soils, and vegetation monitoring data and shall be shown on  
25 the site plan. Calculation of total wetland acreage shall be based on that boundary at  
26 the end of the monitoring cycle. Data shall be submitted by December 31 of the final  
27 monitoring year.

28 h. Herbicides or algicides shall not be used in or immediately adjacent to the  
29 compensation site or sites without prior authorization by the board. All vegetation  
30 removal shall be done by manual means; unless authorized by the Department of  
31 Environmental Quality in advance.

#### 32 B. Impact site construction monitoring.

33 1. Construction activities authorized by this permit that are within impact areas shall be  
34 monitored and documented. The monitoring shall consist of:

35 a. Preconstruction photographs taken at each impact area prior to initiation of activities  
36 within impact areas. Photographs shall remain on the project site and depict the impact  
37 area and the nonimpacted surface waters immediately adjacent to and downgradient  
38 of each impact area. Each photograph shall be labeled to include the following  
39 information: permit number, impact area number, date and time of the photograph,  
40 name of the person taking the photograph, photograph orientation, and photograph  
41 subject description.

42 b. Site inspections shall be conducted by the permittee or the permittee's qualified  
43 designee once every calendar month during activities within impact areas. Monthly  
44 inspections shall be conducted in the following areas: all authorized permanent and  
45 temporary impact areas; all avoided surface waters, including wetlands, stream  
46 channels, and open water; surface water areas within 50 feet of any land disturbing  
47 activity and within the project or right-of-way limits; and all on-site permanent  
48 preservation areas required under this permit. Observations shall be recorded on the  
49 inspection form provided by the Department of Environmental Quality. The form shall  
50 be completed in its entirety for each monthly inspection and shall be kept on site and  
51 made available for review by the Department of Environmental Quality staff upon

- 1 request during normal business hours. Inspections are not required during periods of  
2 no activity within impact areas.
- 3 2. Monitoring of water quality parameters shall be conducted during permanent relocation  
4 of perennial streams through new channels in the manner noted below. The permittee  
5 shall report violations of water quality standards to the Department of Environmental  
6 Quality in accordance with the procedures in 9VAC25-670-100 Part II E. Corrective  
7 measures and additional monitoring may be required if water quality standards are not  
8 met. Reporting shall not be required if water quality standards are not violated.
- 9 a. A sampling station shall be located upstream and immediately downstream of the  
10 relocated channel.
- 11 b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every  
12 30 minutes for at least two hours at each station prior to opening the new channels  
13 and immediately before opening new channels.
- 14 c. Temperature, pH, and D.O. readings shall be taken after opening the channels and  
15 every 30 minutes for at least three hours at each station.
- 16 C. Permittee-responsible wetland compensation site monitoring.
- 17 1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial  
18 surveys, shall be conducted for the entire compensation site or sites including invert  
19 elevations for all water elevation control structures and spot elevations throughout the site  
20 or sites. Aerial surveys shall include the variation from actual ground conditions, such as  
21 +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered  
22 professional engineer to conform to the design plans. The survey shall be submitted within  
23 60 days of completing compensation site construction. Changes or deviations in the as-  
24 built survey or aerial survey shall be shown on the survey and explained in writing.
- 25 2. Photographs shall be taken at the compensation site or sites from the permanent  
26 markers identified in the final compensation plan, and established to ensure that the same  
27 locations and view directions at the site or sites are monitored in each monitoring period.  
28 These photographs shall be taken after the initial planting and at a time specified in the  
29 final compensation plan during every monitoring year.
- 30 3. Compensation site monitoring shall begin on the first day of the first complete growing  
31 season (monitoring year 1) after wetland compensation site construction activities,  
32 including planting, have been completed. Monitoring shall be required for monitoring years  
33 1, 2, 3, and 5, unless otherwise approved by the Department of Environmental Quality. In  
34 all cases, if all success criteria have not been met in the fifth monitoring year, then  
35 monitoring shall be required for each consecutive year until two annual sequential reports  
36 indicate that all criteria have been successfully satisfied.
- 37 4. The establishment of wetland hydrology shall be measured during the growing season,  
38 with the location and number of monitoring wells, and frequency of monitoring for each  
39 site, set forth in the final monitoring plan. Hydrology monitoring well data shall be  
40 accompanied by precipitation data, including rainfall amounts, either from on site, or from  
41 the closest weather station. Once the wetland hydrology success criteria have been  
42 satisfied for a particular monitoring year, weekly monitoring may be discontinued for the  
43 remainder of that monitoring year following Department of Environmental Quality approval.  
44 After a period of three monitoring years, the permittee may request that hydrology  
45 monitoring be discontinued, providing that adequate hydrology has been established and  
46 maintained. Hydrology monitoring shall not be discontinued without written approval from  
47 the Department of Environmental Quality.
- 48 5. The presence of hydric soils or soils under hydric conditions shall be evaluated in  
49 accordance with the final compensation plan.
- 50 6. The establishment of wetland vegetation shall be in accordance with the final  
51 compensation plan. Monitoring shall take place in August, September, or October during  
52 the growing season of each monitoring year, unless authorized in the monitoring plan.



1 7. The presence of undesirable plant species shall be documented.

2 8. All wetland compensation monitoring reports shall be submitted in accordance with  
3 9VAC25-670-100 Part II E 6.

4 D. Permittee-responsible stream compensation and monitoring.

5 1. Riparian buffer restoration activities shall be detailed in the final compensation plan and  
6 shall include, as appropriate, the planting of a variety of native species currently growing  
7 in the site area, including appropriate seed mixtures and woody species that are bare root,  
8 balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the  
9 stream bank at bankfull elevation landward on both sides of the stream, shall be required  
10 where practical.

11 2. The installation of root wads, vanes, and other instream structures, shaping of the  
12 stream banks, and channel relocation shall be completed in the dry whenever practicable.

13 3. Livestock access to the stream and designated riparian buffer shall be limited to the  
14 greatest extent practicable.

15 4. Stream channel restoration activities shall be conducted in the dry or during low flow  
16 conditions. When site conditions prohibit access from the streambank or upon prior  
17 authorization from the Department of Environmental Quality, heavy equipment may be  
18 authorized for use within the stream channel.

19 5. Photographs shall be taken at the compensation site from the vicinity of the permanent  
20 photo-monitoring stations identified in the final compensation plan. The photograph  
21 orientation shall remain constant during all monitoring events. At a minimum, photographs  
22 shall be taken from the center of the stream, facing downstream, with a sufficient number  
23 of photographs to view the entire length of the restoration site. Photographs shall  
24 document the completed restoration conditions. Photographs shall be taken prior to site  
25 activities, during instream and riparian compensation construction activities, within one  
26 week of completion of activities, and during at least one day of each monitoring year to  
27 depict restored conditions.

28 6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial  
29 surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall  
30 include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall  
31 be certified by the licensed surveyor or by a registered, professional engineer to conform  
32 to the design plans. The survey shall be submitted within 60 days of completing  
33 compensation site construction. Changes or deviations from the final compensation plans  
34 in the as-built survey or aerial survey shall be shown on the survey and explained in  
35 writing.

36 7. Compensation site monitoring shall begin on day one of the first complete growing  
37 season (monitoring year 1) after stream compensation site construction activities,  
38 including planting, have been completed. Monitoring shall be required for monitoring years  
39 1 and 2, unless otherwise approved by the Department of Environmental Quality. In all  
40 cases, if all success criteria have not been met in the final monitoring year, then monitoring  
41 shall be required for each consecutive year until two annual sequential reports indicate  
42 that all criteria have been successfully satisfied.

43 8. All stream compensation site monitoring reports shall be submitted in accordance with  
44 9VAC25-670-100 Part II E 6.

45 E. Reporting.

46 1. Written communications required by this VWP general permit shall be submitted to the  
47 appropriate Department of Environmental Quality office. The VWP general permit tracking  
48 number shall be included on all correspondence.

49 2. The Department of Environmental Quality shall be notified in writing prior to the start of  
50 construction activities at the first permitted impact area.

1 3. A construction status update form provided by the Department of Environmental Quality  
2 shall be completed and submitted to the Department of Environmental Quality twice per  
3 year for the duration of coverage under a VWP general permit. Forms completed in June  
4 shall be submitted by or on July 10, and forms completed in December shall be submitted  
5 by or on January 10. The form shall include reference to the VWP permit tracking number  
6 and one of the following statements for each authorized surface water impact location:

- 7 a. Construction activities have not yet started;  
8 b. Construction activities have started;  
9 c. Construction activities have started but are currently inactive; or  
10 d. Construction activities are complete.

11 4. The Department of Environmental Quality shall be notified in writing within 30 days  
12 following the completion of all activities in all authorized impact areas.

13 5. The Department of Environmental Quality shall be notified in writing prior to the initiation  
14 of activities at the permittee-responsible compensation site. The notification shall include  
15 a projected schedule of activities and construction completion.

16 6. All permittee-responsible compensation site monitoring reports shall be submitted  
17 annually by December 31, with the exception of the last year, in which case the report  
18 shall be submitted at least 60 days prior to the expiration of the general permit, unless  
19 otherwise approved by the Department of Environmental Quality.

20 a. All wetland compensation site monitoring reports shall include, as applicable, the  
21 following:

22 (1) General description of the site including a site location map identifying photo-  
23 monitoring stations, vegetative and soil monitoring stations, monitoring wells, and  
24 wetland zones.

25 (2) Summary of activities completed during the monitoring year, including alterations  
26 or maintenance conducted at the site.

27 (3) Description of monitoring methods.

28 (4) Analysis of all hydrology information, including monitoring well data, precipitation  
29 data, and gauging data from streams or other open water areas, as set forth in the  
30 final compensation plan.

31 (5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

32 (6) Analysis of all vegetative community information, including woody and herbaceous  
33 species, both planted and volunteers, as set forth in the final compensation plan.

34 (7) Photographs labeled with the permit number, the name of the compensation site,  
35 the photo-monitoring station number, the photograph orientation, the date and time of  
36 the photograph, the name of the person taking the photograph, and a brief description  
37 of the photograph subject. This information shall be provided as a separate attachment  
38 to each photograph, if necessary. Photographs taken after the initial planting shall be  
39 included in the first monitoring report after planting is complete.

40 (8) Discussion of wildlife or signs of wildlife observed at the compensation site.

41 (9) Comparison of site conditions from the previous monitoring year and reference site.

42 (10) Discussion of corrective measures or maintenance activities to control  
43 undesirable species, to repair damaged water control devices, or to replace damaged  
44 planted vegetation.

45 (11) Corrective action plan that includes proposed actions, a schedule, and monitoring  
46 plan.

47 b. All stream compensation site monitoring reports shall include, as applicable, the  
48 following:

49 (1) General description of the site including a site location map identifying photo-  
50 monitoring stations and monitoring stations.

1 (2) Summary of activities completed during the monitoring year, including alterations  
2 or maintenance conducted at the site.

3 (3) Description of monitoring methods.

4 (4) Evaluation and discussion of the monitoring results in relation to the success  
5 criteria and overall goals of compensation.

6 (5) Photographs shall be labeled with the permit number, the name of the  
7 compensation site, the photo-monitoring station number, the photograph orientation,  
8 the date and time of the photograph, the name of the person taking the photograph,  
9 and a brief description of the photograph subject. Photographs taken prior to  
10 compensation site construction activities, during instream and riparian restoration  
11 activities, and within one week of completion of activities shall be included in the first  
12 monitoring report.

13 (6) Discussion of alterations, maintenance, or major storm events resulting in  
14 significant change in stream profile or cross section, and corrective actions conducted  
15 at the stream compensation site.

16 (7) Documentation of undesirable plant species and summary of abatement and  
17 control measures.

18 (8) Summary of wildlife or signs of wildlife observed at the compensation site.

19 (9) Comparison of site conditions from the previous monitoring year and reference site,  
20 and as-built survey, if applicable.

21 (10) Corrective action plan that includes proposed actions, a schedule and monitoring  
22 plan.

23 (11) Additional submittals that were approved by the Department of Environmental  
24 Quality in the final compensation plan.

25 7. The permittee shall notify the Department of Environmental Quality in writing when  
26 unusual or potentially complex conditions are encountered which require debris removal  
27 or involve potentially toxic substance. Measures to remove the obstruction, material, or  
28 toxic substance or to change the location of a structure are prohibited until approved by  
29 the Department of Environmental Quality.

30 8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If  
31 spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday,  
32 the appropriate Department of Environmental Quality regional office shall be notified;  
33 otherwise, the Department of Emergency Management shall be notified at 1-800-468-  
34 8892.

35 9. Violations of state water quality standards shall be reported to the appropriate  
36 Department of Environmental Quality office no later than the end of the business day  
37 following discovery.

38 10. The permittee shall notify the Department of Environmental Quality no later than the  
39 end of the third business day following the discovery of additional impacts to surface  
40 waters including wetlands, stream channels, and open water that are not authorized by  
41 the Department of Environmental Quality or to any required preservation areas. The  
42 notification shall include photographs, estimated acreage or linear footage of impacts, and  
43 a description of the impacts.

44 11. Submittals required by this VWP general permit shall contain the following signed  
45 certification statement:

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

1 submitting false information, including the possibility of fine and imprisonment for knowing  
2 violation."

3 Part III. Conditions Applicable to All VWP General Permits.

4 A. Duty to comply. The permittee shall comply with all conditions, limitations, and other  
5 requirements of the VWP general permit; any requirements in coverage granted under this VWP  
6 general permit; the Clean Water Act, as amended; and the State Water Control Law and  
7 regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a  
8 violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement  
9 action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage  
10 revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification  
11 to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve  
12 the permittee of the duty to comply with all applicable federal and state statutes, regulations, and  
13 toxic standards and prohibitions.

14 B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent  
15 impacts in violation of the VWP general permit which may have a reasonable likelihood of  
16 adversely affecting human health or the environment.

17 C. Reopener. This VWP general permit may be reopened to modify its conditions when the  
18 circumstances on which the previous VWP general permit was based have materially and  
19 substantially changed, or special studies conducted by the board or the permittee show material  
20 and substantial change since the time the VWP general permit was issued and thereby constitute  
21 cause for revoking and reissuing the VWP general permit.

22 D. Compliance with state and federal law. Compliance with this VWP general permit  
23 constitutes compliance with the VWP permit requirements of the State Water Control Law.  
24 Nothing in this VWP general permit shall be construed to preclude the institution of any legal  
25 action under or relieve the permittee from any responsibilities, liabilities, or other penalties  
26 established pursuant to any other state law or regulation or under the authority preserved by §  
27 510 of the Clean Water Act.

28 E. Property rights. The issuance of this VWP general permit does not convey property rights  
29 in either real or personal property or any exclusive privileges, nor does it authorize injury to private  
30 property, any invasion of personal property rights, or any infringement of federal, state, or local  
31 laws or regulations.

32 F. Severability. The provisions of this VWP general permit are severable.

33 G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the board  
34 or any duly authorized agent of the board, at reasonable times and under reasonable  
35 circumstances, to enter upon the permittee's property, public or private, and have access to  
36 inspect and copy any records that must be kept as part of the VWP general permit conditions; to  
37 inspect any facilities, operations, or practices (including monitoring and control equipment)  
38 regulated or required under the VWP general permit; and to sample or monitor any substance,  
39 parameter, or activity for the purpose of assuring compliance with the conditions of the VWP  
40 general permit or as otherwise authorized by law. For the purpose of this section, the time for  
41 inspection shall be deemed reasonable during regular business hours. Nothing contained herein  
42 shall make an inspection time unreasonable during an emergency.

43 H. Transferability of VWP general permit coverage. VWP general permit coverage may be  
44 transferred to another permittee when all of the criteria listed in this subsection are met. On the  
45 date of the VWP general permit coverage transfer, the transferred VWP general permit coverage  
46 shall be as fully effective as if it had been granted directly to the new permittee.

47 1. The current permittee notifies the board of the proposed transfer of the general permit  
48 coverage and provides a written agreement between the current and new permittees  
49 containing a specific date of transfer of VWP general permit responsibility, coverage, and  
50 liability to the new permittee, or that the current permittee will retain such responsibility,  
51 coverage, or liability, including liability for compliance with the requirements of  
52 enforcement activities related to the authorized activity.

1           2. The board does not within the 15 days notify the current and new permittees of its intent  
2           to modify or revoke and reissue the VWP general permit.

3           I. Notice of planned change. VWP general permit coverage may be modified subsequent to  
4           issuance in accordance with 9VAC25-670-80.

5           J. VWP general permit coverage termination for cause. VWP general permit coverage is  
6           subject to termination for cause by the board after public notice and opportunity for a hearing  
7           pursuant to § 62.1-44.15:02 of the Code of Virginia. Reasons for termination for cause are as  
8           follows:

9           1. Noncompliance by the permittee with any provision of this chapter, any condition of the  
10           VWP general permit, or any requirement in general permit coverage;

11           2. The permittee's failure in the application or during the process of granting VWP general  
12           permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of  
13           any relevant facts at any time;

14           3. The permittee's violation of a special or judicial order;

15           4. A determination by the board that the authorized activity endangers human health or  
16           the environment and can be regulated to acceptable levels by a modification to the VWP  
17           general permit coverage or a termination;

18           5. A change in any condition that requires either a temporary or permanent reduction or  
19           elimination of any activity controlled by the VWP general permit; or

20           6. A determination that the authorized activity has ceased and that the compensation for  
21           unavoidable adverse impacts has been successfully completed.

22           K. The board may terminate VWP general permit coverage without cause when the permittee  
23           is no longer a legal entity due to death or dissolution or when a company is no longer authorized  
24           to conduct business in the Commonwealth. The termination shall be effective 30 days after notice  
25           of the proposed termination is sent to the last known address of the permittee or registered agent,  
26           unless the permittee objects within that time. If the permittee does object during that period, the  
27           board shall follow the applicable procedures for termination under §§ 62.1-44.15:02 and 62.1-  
28           44.15:25 of the Code of Virginia.

29           L. VWP general permit coverage termination by consent. The permittee shall submit a request  
30           for termination by consent within 30 days of completing or canceling all authorized activities  
31           requiring notification under 9VAC25-670-50 A and all compensatory mitigation requirements.  
32           When submitted for project completion, the request for termination by consent shall constitute a  
33           notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this  
34           termination of coverage on behalf of the board. The permittee shall submit the following  
35           information:

36           1. Name, mailing address, and telephone number;

37           2. Name and location of the activity;

38           3. The VWP general permit tracking number; and

39           4. One of the following certifications:

40           a. For project completion:

41           "I certify under penalty of law that all activities and any required compensatory  
42           mitigation authorized by the VWP general permit and general permit coverage have  
43           been completed. I understand that by submitting this notice of termination I am no  
44           longer authorized to perform activities in surface waters in accordance with the VWP  
45           general permit and general permit coverage, and that performing activities in surface  
46           waters is unlawful where the activity is not authorized by the VWP permit or coverage,  
47           unless otherwise excluded from obtaining coverage. I also understand that the  
48           submittal of this notice does not release me from liability for any violations of the VWP  
49           general permit or coverage."

50           b. For project cancellation:

1 "I certify under penalty of law that the activities and any required compensatory  
2 mitigation authorized by the VWP general permit and general permit coverage will not  
3 occur. I understand that by submitting this notice of termination I am no longer  
4 authorized to perform activities in surface waters in accordance with the VWP general  
5 permit and general permit coverage, and that performing activities in surface waters is  
6 unlawful where the activity is not authorized by the VWP permit or coverage, unless  
7 otherwise excluded from obtaining coverage. I also understand that the submittal of  
8 this notice does not release me from liability for any violations of the VWP general  
9 permit or coverage, nor does it allow me to resume the authorized activities without  
10 reapplication and coverage."

11 c. For events beyond permittee control, the permittee shall provide a detailed  
12 explanation of the events, to be approved by the Department of Environmental Quality,  
13 and the following certification statement:

14 "I certify under penalty of law that the activities or the required compensatory mitigation  
15 authorized by the VWP general permit and general permit coverage have changed as  
16 the result of events beyond my control (see attached). I understand that by submitting  
17 this notice of termination I am no longer authorized to perform activities in surface  
18 waters in accordance with the VWP general permit and general permit coverage, and  
19 that performing activities in surface waters is unlawful where the activity is not  
20 authorized by the VWP permit or coverage, unless otherwise excluded from obtaining  
21 coverage. I also understand that the submittal of this notice does not release me from  
22 liability for any violations of the VWP general permit or coverage, nor does it allow me  
23 to resume the authorized activities without reapplication and coverage."

24 M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve  
25 the permittee from civil and criminal penalties for noncompliance.

26 N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be  
27 construed to preclude the institution of legal action or relieve the permittee from any  
28 responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of  
29 the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

30 O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement  
31 action that it would have been necessary to halt or reduce the activity for which VWP general  
32 permit coverage has been granted in order to maintain compliance with the conditions of the VWP  
33 general permit or coverage.

34 P. Duty to provide information.

35 1. The permittee shall furnish to the board any information that the board may request to  
36 determine whether cause exists for modifying, revoking, or terminating VWP permit  
37 coverage or to determine compliance with the VWP general permit or general permit  
38 coverage. The permittee shall also furnish to the board, upon request, copies of records  
39 required to be kept by the permittee.

40 2. Plans, maps, conceptual reports, and other relevant information shall be submitted as  
41 required by the board prior to commencing construction.

42 Q. Monitoring and records requirements.

43 1. Monitoring of parameters, other than pollutants, shall be conducted according to  
44 approved analytical methods as specified in the VWP general permit. Analysis of  
45 pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing  
46 Test Procedures for the Analysis of Pollutants.

47 2. Samples and measurements taken for the purpose of monitoring shall be representative  
48 of the monitored activity.

49 3. The permittee shall retain records of all monitoring information, including all calibration  
50 and maintenance records and all original strip chart or electronic recordings for continuous  
51 monitoring instrumentation, copies of all reports required by the VWP general permit, and

1 records of all data used to complete the application for coverage under the VWP general  
2 permit, for a period of at least three years from the date of general permit expiration. This  
3 period may be extended by request of the board at any time.

4 4. Records of monitoring information shall include, as appropriate:

5 a. The date, exact place, and time of sampling or measurements;

6 b. The name of the individuals who performed the sampling or measurements;

7 c. The date and time the analyses were performed;

8 d. The name of the individuals who performed the analyses;

9 e. The analytical techniques or methods supporting the information such as  
10 observations, readings, calculations, and bench data used;

11 f. The results of such analyses; and

12 g. Chain of custody documentation.

13 R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit,  
14 it shall be unlawful for the permittee to:

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

17 2. Excavate in a wetland;

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

21 4. On and after October 1, 2001, conduct the following activities in a wetland:

22 a. New activities to cause draining that significantly alters or degrades existing wetland  
23 acreage or functions;

24 b. Filling or dumping;

25 c. Permanent flooding or impounding; or

26 d. New activities that cause significant alteration or degradation of existing wetland  
27 acreage or functions.

28 S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the  
29 expiration date of the VWP general permit shall comply with the provisions in 9VAC25-670-27.

30 **9VAC25-680-50. Notification.**

31 A. Notification to the board will be required prior to commencing construction, as follows:

32 1. When the Virginia Department of Transportation is the applicant for coverage under this  
33 VWP general permit, the notification requirements shall be in accordance with this section  
34 and 9VAC25-680-60, unless otherwise authorized by the Department of Environmental  
35 Quality.

36 2. An application for coverage for proposed, permanent nontidal wetland or open water  
37 impacts greater than one-tenth acre or for proposed permanent nontidal stream bed  
38 impacts greater than 300 linear feet shall include all information pursuant to 9VAC25-680-  
39 60 B. Compensatory mitigation may be required for all permanent impacts.

40 3. An application for coverage for proposed, permanent nontidal wetland or open water  
41 impacts up to one-tenth acre or for proposed, permanent nontidal stream bed impacts up  
42 to 300 linear feet shall be submitted in accordance with either subdivision 3 a or 3 b of this  
43 subsection:

44 a. For any proposed project in wetlands, open water, streams, or compensatory  
45 mitigation sites that are under a deed restriction, conservation easement, declaration  
46 of restrictive covenant, or other land use protective instrument (hereafter "protected  
47 areas"), when such restriction, easement, covenant, or instrument is the result of a  
48 federal or state permit action and is specific to activities in wetlands and compensatory

1 mitigation sites, the application shall include all of the information required by 9VAC25-  
2 680-60 B. Compensatory mitigation may be required for all permanent impacts.

3 b. For all other projects, the application shall include the information required by  
4 subdivisions 1 through 7, 11, 12, 15, and 16 of 9VAC25-680-60 B and documentation  
5 that verifies the quantity and type of impacts. Compensatory mitigation may be  
6 required for all permanent impacts once the notification limits of one-tenth acre  
7 wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required,  
8 the application shall include the information in 9VAC25-680-60 B 13.

9 B. The Department of Environmental Quality-approved application forms shall serve as an  
10 application for a VWP permit or VWP general permit coverage.

11 C. The board will determine whether the proposed activity requires coordination with the U.S.  
12 Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia  
13 Department of Agriculture and Consumer Services, and the Virginia Department of ~~Game and~~  
14 ~~Inland Fisheries~~ Wildlife Resources regarding the presence of federal or state listed threatened  
15 and endangered species or designated critical habitat. Based upon consultation with these  
16 agencies, the board may deny application for coverage under this general permit. The applicant  
17 may also consult with these agencies prior to submitting an application. Species or habitat  
18 information that the applicant provides will assist the Department of Environmental Quality in  
19 reviewing and processing the application.

20 **9VAC25-680-60. Application.**

21 A. Applications shall be filed with the board as follows:

22 1. The applicant shall file a complete application in accordance with 9VAC25-680-50 and  
23 this section for coverage under this VWP general permit for impacts to surface waters  
24 from linear transportation projects.

25 2. The VDOT may use its monthly IACM process for submitting applications.

26 B. A complete application for VWP general permit coverage, at a minimum, consists of the  
27 following information, if applicable to the project:

28 1. The applicant's legal name, mailing address, telephone number, and if applicable,  
29 electronic mail address and fax number.

30 2. If different from the applicant, legal name, mailing address, telephone number, and if  
31 applicable, electronic mail address and fax number of property owner.

32 3. If applicable, authorized agent's name, mailing address, telephone number, and if  
33 applicable, fax number and electronic mail address.

34 4. The existing VWP general permit tracking number, if applicable.

35 5. Project name and proposed project schedule.

36 6. The following information for the project site location, and any related permittee-  
37 responsible compensatory mitigation site:

38 a. The physical street address, nearest street, or nearest route number; city or county;  
39 zip code; and if applicable, parcel number of the site or sites.

40 b. Name of the impacted water body or water bodies, or receiving waters, as  
41 applicable, at the site or sites.

42 c. The latitude and longitude to the nearest second at the center of the site or sites.

43 d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the  
44 National Watershed Boundary Dataset, for the site or sites.

45 e. A detailed map depicting the location of the site or sites, including the project  
46 boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S.  
47 Geologic Survey topographic quadrangle map) should be of sufficient detail to easily  
48 locate the site or sites for inspection.

49 7. A narrative description of the project, including project purpose and need.



1 8. Plan-view drawing or drawings of the project site sufficient to assess the project,  
2 including at a minimum the following:

3 a. North arrow, graphic scale, and existing and proposed topographic or bathymetric  
4 contours.

5 b. Limits of proposed impacts to surface waters.

6 c. Location of all existing and proposed structures.

7 d. All delineated wetlands and all jurisdictional surface waters on the site, including the  
8 Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface  
9 waters and waterway name, if designated; ebb and flood or direction of flow; and  
10 ordinary high water mark in nontidal areas.

11 e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified  
12 by the applicant, and if available, the limits as approved by the locality in which the  
13 project site is located, unless the proposed use is exempt from the Chesapeake Bay  
14 Preservation Area Designation and Management Regulations (9VAC25-830).

15 f. The limits of any areas that are under a deed restriction, conservation easement,  
16 restrictive covenant, or other land use protective instrument (i.e., protected areas).

17 9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings  
18 of each proposed impact area shall include at a minimum a graphic scale, existing  
19 structures, existing and proposed elevations, limits of surface water areas, ebb and flood  
20 or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits,  
21 and location of all existing and proposed structures. Profile drawing or drawings with this  
22 information may be required on a case-by-case basis to demonstrate minimization of  
23 impacts. Any application that proposes piping or culverting stream flows shall provide a  
24 longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide  
25 spot elevations of the stream thalweg at the beginning and end of the pipe or culvert,  
26 extending to a minimum of 10 feet beyond the limits of proposed impact.

27 10. Materials assessment. Upon request by the board, the applicant shall provide  
28 evidence or certification that the material is free from toxic contaminants prior to disposal  
29 or that the dredging activity will not cause or contribute to a violation of water quality  
30 standards during dredging. The applicant may be required to conduct grain size and  
31 composition analyses, tests for specific parameters or chemical constituents, or elutriate  
32 tests on the dredge material.

33 11. A narrative description of all impacts proposed to surface waters, including the type of  
34 activity to be conducted in surface waters and any physical alteration to surface waters.  
35 Surface water impacts shall be identified as follows:

36 a. Wetland impacts identified according to their Cowardin classification (i.e., emergent,  
37 scrub-shrub, or forested); and for each classification, the individual impacts quantified  
38 in square feet to the nearest whole number, cumulatively summed in square feet, and  
39 then the sum converted to acres and rounded to two decimal places using commonly  
40 accepted arithmetic principles of rounding.

41 b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole  
42 number and by average width in feet to the nearest whole number; (ii) quantified in  
43 square feet to the nearest whole number; and (iii) when compensatory mitigation is  
44 required, the impacts identified according to the assessed type using the Unified  
45 Stream Methodology.

46 c. Open water impacts identified according to their Cowardin classification; and for  
47 each type, the individual impacts quantified in square feet to the nearest whole  
48 number, cumulatively summed in square feet, and then the sum converted to acres  
49 and rounded to two decimal places using commonly accepted arithmetic principles of  
50 rounding.

1 d. A copy of the approved jurisdictional determination when available, or when  
2 unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps  
3 of Engineers (USACE), U.S. Department of Agriculture Natural Resources  
4 Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE,  
5 NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface  
6 waters, including wetlands data sheets if applicable.

7 e. A delineation map that (i) depicts the geographic area or areas of all surface water  
8 boundaries delineated in accordance with 9VAC25-210-45 and confirmed in  
9 accordance with the jurisdictional determination process; (ii) identifies such areas in  
10 accordance with subdivisions 11 a, 11 b, and 11 c of this subsection; and (iii) quantifies  
11 and identifies any other surface waters according to their Cowardin classification (i.e.,  
12 emergent, scrub-shrub, or forested) or similar terminology.

13 12. An alternatives analysis for the proposed project detailing the specific on-site  
14 measures taken during project design and development to first avoid and then minimize  
15 impacts to surface waters to the maximum extent practicable in accordance with the  
16 Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part  
17 230. Avoidance and minimization includes, but is not limited to, the specific on-site  
18 measures taken to reduce the size, scope, configuration, or density of the proposed  
19 project, including review of alternative sites where required for the project, which would  
20 avoid or result in less adverse impact to surface waters, and documentation demonstrating  
21 the reason the applicant determined less damaging alternatives are not practicable. The  
22 analysis shall demonstrate to the satisfaction of the board that avoidance and minimization  
23 opportunities have been identified and measures have been applied to the proposed  
24 activity such that the proposed activity in terms of impacts to state waters and fish and  
25 wildlife resources is the least environmentally damaging practicable alternative.

26 13. A compensatory mitigation plan to achieve no net loss of wetland acreage and  
27 functions or stream functions and water quality benefits.

28 a. If permittee-responsible compensation is proposed for wetland impacts, a  
29 conceptual wetland compensatory mitigation plan must be submitted in order for an  
30 application to be deemed complete and shall include at a minimum (i) the goals and  
31 objectives in terms of replacement of wetland acreage and functions; (ii) a detailed  
32 location map including latitude and longitude to the nearest second and the fourth  
33 order subbasin, as defined by the hydrologic unit boundaries of the National  
34 Watershed Boundary Dataset, at the center of the site; (iii) a description of the  
35 surrounding land use; (iv) a hydrologic analysis including a draft water budget for  
36 nontidal areas based on expected monthly inputs and outputs that will project water  
37 level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation  
38 data, if available, or the proposed location of groundwater monitoring wells to collect  
39 these data; (vi) wetland delineation confirmation, data sheets, and maps for existing  
40 surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii)  
41 a conceptual planting scheme including suggested plant species and zonation of each  
42 vegetation type proposed; (ix) a description of existing soils including general  
43 information on both topsoil and subsoil conditions, permeability, and the need for soil  
44 amendments; (x) a draft design of any water control structures; (xi) inclusion of buffer  
45 areas; (xii) a description of any structures and features necessary for the success of  
46 the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv)  
47 measures for the control of undesirable species.

48 b. If permittee-responsible compensation is proposed for stream impacts, a conceptual  
49 stream compensatory mitigation plan must be submitted in order for an application to  
50 be deemed complete and shall include at a minimum (i) the goals and objectives in  
51 terms of water quality benefits and replacement of stream functions; (ii) a detailed  
52 location map including the latitude and longitude to the nearest second and the fourth  
53 order subbasin, as defined by the hydrologic unit boundaries of the National

1 Watershed Boundary Dataset, at the center of the site; (iii) a description of the  
2 surrounding land use; (iv) the proposed stream segment restoration locations including  
3 plan view and cross-sectional drawings; (v) the stream deficiencies that need to be  
4 addressed; (vi) data obtained from a DEQ-approved, stream impact assessment  
5 methodology such as the Unified Stream Methodology; (vii) the proposed restoration  
6 measures to be employed including channel measurements, proposed design flows,  
7 types of instream structures, and conceptual planting scheme; (viii) reference stream  
8 data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities;  
9 and (xi) measures for the control of undesirable species.

10 c. For any permittee-responsible compensatory mitigation, the conceptual  
11 compensatory mitigation plan shall also include a draft of the intended protective  
12 mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but  
13 not limited to, a conservation easement held by a third party in accordance with the  
14 Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or  
15 the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly  
16 recorded declaration of restrictive covenants, or other protective instrument. The draft  
17 intended protective mechanism shall contain the information in subdivisions c (1), c  
18 (2), and c (3) of this subdivision 13 or in lieu thereof shall describe the intended  
19 protective mechanism or mechanisms that contains the information required below:

20 (1) A provision for access to the site;

21 (2) The following minimum restrictions: no ditching, land clearing, or discharge of  
22 dredge or fill material, and no activity in the area designated as compensatory  
23 mitigation area with the exception of maintenance; corrective action measures; or  
24 DEQ-approved activities described in the approved final compensatory mitigation plan  
25 or long-term management plan; and

26 (3) A long-term management plan that identifies a long-term steward and adequate  
27 financial assurances for long-term management in accordance with the current  
28 standard for mitigation banks and in-lieu fee program sites, except that financial  
29 assurances will not be necessary for permittee-responsible compensation provided by  
30 government agencies on government property. If approved by DEQ, permittee-  
31 responsible compensation on government property and long-term protection may be  
32 provided through federal facility management plans, integrated natural resources  
33 management plans, or other alternate management plans submitted by a government  
34 agency or public authority.

35 d. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-  
36 lieu fee program credits shall include the number and type of credits proposed to be  
37 purchased and documentation from the approved mitigation bank or in-lieu fee  
38 program sponsor of the availability of credits at the time of application.

39 14. Permit application fee. The applicant will be notified by the board as to the appropriate  
40 fee for the project in accordance with 9VAC25-20.

41 15. A written description and a graphical depiction identifying all upland areas including  
42 buffers, wetlands, open water, other surface waters, and compensatory mitigation areas  
43 located within the proposed project boundary or permittee-responsible compensatory  
44 mitigation areas that are under a deed restriction, conservation easement, restrictive  
45 covenant, or other land use protective instrument (i.e., protected areas). Such description  
46 and a graphical depiction shall include the nature of the prohibited activities within the  
47 protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as  
48 field-verified by the applicant, and if available, the limits as approved by the locality in  
49 which the project site is located, unless the proposed use is exempt from the Chesapeake  
50 Bay Preservation Area Designation and Management Regulations (9VAC25-830), as  
51 additional state or local requirements may apply if the project is located within an RPA.

1 16. Signature page that has been signed, dated, and certified by the applicant in  
 2 accordance with 9VAC25-210-100. If the applicant is a business or other organization, the  
 3 signature must be made by an individual with the authority to bind the business or  
 4 organization, and the title of the signatory must be provided. The application signature  
 5 page, either on the copy submitted to the Virginia Marine Resources Commission or to  
 6 DEQ, must have an original signature. Electronic submittals containing the original  
 7 signature page, such as that contained in a scanned document file, are acceptable.

8 C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ.  
 9 When required, the method selected for the analysis shall assess water quality or habitat metrics  
 10 and shall be coordinated with DEQ in advance of conducting the analysis.

11 1. No analysis shall be required when:

- 12 a. Wetland impacts per each single and complete project total 1.00 acre or less; or  
 13 b. The proposed compensatory mitigation consists of purchasing mitigation bank or  
 14 in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-  
 15 shrub, and 1:1 for emergent, or higher.

16 2. Analysis shall be required when wetland impacts per each single and complete project  
 17 total 1.01 acres or more and when any of the following applies:

- 18 a. The proposed compensatory mitigation consists of permittee-responsible  
 19 compensation, including water quality enhancements as replacement for wetlands; or  
 20 b. The proposed compensatory mitigation consists of purchasing mitigation bank or  
 21 in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest,  
 22 1.5:1 for scrub-shrub, and 1:1 for emergent.

23 D. Upon receipt of an application from the Department of Transportation for a road or highway  
 24 construction project by the appropriate DEQ office, the board has 10 business days, pursuant to  
 25 § 33.2-258 of the Code of Virginia, to review the application and either determine the information  
 26 requested in subsection B of this section is complete or inform the Department of Transportation  
 27 that additional information is required to make the application complete. Upon receipt of an  
 28 application from other applicants for any type of project, the board has 15 days to review the  
 29 application and either determine the information requested in subsection B of this section is  
 30 complete or inform the applicant that additional information is required to make the application  
 31 complete. Pursuant to § 33.2-258 of the Code of Virginia, coverage under this VWP general  
 32 permit for Department of Transportation road or highway construction projects shall be approved  
 33 or approved with conditions, or the application shall be denied, within 30 business days of receipt  
 34 of a complete application. For all other projects, coverage under this VWP general permit shall be  
 35 approved or approved with conditions, or the application shall be denied, within 45 days of receipt  
 36 of a complete application. If the board fails to act within the applicable 30 or 45 days on a complete  
 37 application, coverage under this VWP general permit shall be deemed granted.

38 1. In evaluating the application, the board shall make an assessment of the impacts  
 39 associated with the project in combination with other existing or proposed impacts.  
 40 Application for coverage under this VWP general permit shall be denied if the cumulative  
 41 impacts will cause or contribute to a significant impairment of state waters or fish and  
 42 wildlife resources.

43 2. The board may place additional requirements on a project in order to grant coverage  
 44 under this VWP general permit. However, the requirements must be consistent with this  
 45 chapter.

46 E. Incomplete application.

47 1. Where an application for general permit coverage is not accepted as complete by the  
 48 board within the applicable 10 or 15 days of receipt, the board shall require the submission  
 49 of additional information from the applicant and may suspend processing of any  
 50 application until such time as the applicant has supplied the requested information and  
 51 the application is complete. Where the applicant becomes aware that he omitted one or

1 more relevant facts from an application, or submitted incorrect information in an  
2 application or in any report to the board, the applicant shall immediately submit such facts  
3 or the correct information. A revised application with new information shall be deemed a  
4 new application for the purposes of review but shall not require an additional permit  
5 application fee.

6 2. An incomplete permit application for general permit coverage may be administratively  
7 withdrawn from processing by the board for failure to provide the required information after  
8 60 days from the date of the latest written information request made by the board. The  
9 board shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-  
10 finding proceeding when administratively withdrawing an incomplete application.  
11 Resubmittal of an application for the same or similar project, after such time that the  
12 original permit application was administratively withdrawn, shall require submittal of an  
13 additional permit application fee.

14 3. An applicant may request a suspension of application review by the board, but  
15 requesting a suspension shall not preclude the board from administratively withdrawing  
16 an incomplete application. Resubmittal of a permit application for the same or similar  
17 project, after such time that the original permit application was administratively withdrawn,  
18 shall require submittal of an additional permit application fee.

19 **9VAC25-680-100. VWP general permit.**

20 WWP GENERAL PERMIT NO. WP3 FOR LINEAR TRANSPORTATION PROJECTS UNDER  
21 THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER  
22 CONTROL LAW

23 Effective date: August 2, 2016

24 Expiration date: August 1, 2026

25 In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State  
26 Water Control Law and regulations adopted pursuant thereto, the board has determined that there  
27 is a reasonable assurance that this VWP general permit, if complied with, will protect instream  
28 beneficial uses, will not violate applicable water quality standards, and will not cause or contribute  
29 to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP  
30 general permit, the board has not taken into consideration the structural stability of any proposed  
31 activities.

32 The permanent or temporary impact of up to two acres of nontidal wetlands or open water and  
33 up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general  
34 permit set forth herein; any requirements in coverage granted under this VWP general permit; the  
35 Clean Water Act, as amended; and the State Water Control Law and regulations adopted  
36 pursuant to it.

37 Part I. Special Conditions.

38 A. Authorized activities.

39 1. The activities authorized by this chapter shall not cause more than the permanent or  
40 temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500  
41 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the  
42 board in the coverage letter, if any, shall be enforceable conditions of this permit.

43 2. Any changes to the authorized permanent impacts to surface waters shall require a  
44 notice of planned change in accordance with 9VAC25-680-80. An application or request  
45 for modification to coverage or another VWP permit application may be required.

46 3. Any changes to the authorized temporary impacts to surface waters shall require written  
47 notification to and approval from the Department of Environmental Quality in accordance  
48 with 9VAC25-680-80 prior to initiating the impacts and restoration to preexisting conditions  
49 in accordance with the conditions of this permit.

1 4. Modification to compensation requirements may be approved at the request of the  
2 permittee when a decrease in the amount of authorized surface waters impacts occurs,  
3 provided that the adjusted compensation meets the initial compensation goals.

4 B. Overall conditions.

5 1. The activities authorized by this VWP general permit shall be executed in a manner so  
6 as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of  
7 the Code of Virginia.

8 2. No activity may substantially disrupt the movement of aquatic life indigenous to the  
9 water body, including those species which normally migrate through the area, unless the  
10 primary purpose of the activity is to impound water. Pipes and culverts placed in streams  
11 must be installed to maintain low flow conditions and shall be countersunk at both inlet  
12 and outlet ends of the pipe or culvert, unless specifically approved by the Department of  
13 Environmental Quality on a case-by-case basis and as follows: The requirement to  
14 countersink does not apply to extensions or maintenance of existing pipes and culverts  
15 that are not countersunk, floodplain pipe and culverts being placed above ordinary high  
16 water, pipes and culverts being placed on bedrock, or pipes or culverts required to be  
17 placed on slopes 5.0% or greater. Bedrock encountered during construction must be  
18 identified and approved in advance of a design change where the countersunk condition  
19 cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three  
20 inches below the natural stream bed elevations, and pipes and culverts greater than 24  
21 inches shall be countersunk at least six inches below the natural stream bed elevations.  
22 Hydraulic capacity shall be determined based on the reduced capacity due to the  
23 countersunk position. In all stream crossings appropriate measures shall be implemented  
24 to minimize any disruption of aquatic life movement.

25 3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters,  
26 unless the area is contained within a cofferdam and the work is performed in the dry or  
27 unless otherwise approved by the Department of Environmental Quality. Excess or waste  
28 concrete shall not be disposed of in flowing surface waters or washed into flowing surface  
29 waters.

30 4. All fill material shall be clean and free of contaminants in toxic concentrations or  
31 amounts in accordance with all applicable laws and regulations.

32 5. Erosion and sedimentation controls shall be designed in accordance with the Virginia  
33 Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be  
34 placed prior to clearing and grading and maintained in good working order to minimize  
35 impacts to state waters. These controls shall remain in place until the area is stabilized  
36 and shall then be removed.

37 6. Exposed slopes and streambanks shall be stabilized immediately upon completion of  
38 work in each permitted impact area. All denuded areas shall be properly stabilized in  
39 accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition,  
40 1992.

41 7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways)  
42 and demolition activities associated with the project shall be accomplished in a manner  
43 that minimizes construction or waste materials from entering surface waters to the  
44 maximum extent practicable, unless authorized by this VWP general permit.

45 8. No machinery may enter flowing waters, unless authorized by this VWP general permit  
46 or approved prior to entry by the Department of Environmental Quality.

47 9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats,  
48 geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum  
49 extent practicable. Equipment and materials shall be removed immediately upon  
50 completion of work.

51 10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of  
52 authorized activities and within the project or right-of-way limits shall be clearly flagged or

1 marked for the life of the construction activity at that location to preclude unauthorized  
2 disturbances to these surface waters and compensatory mitigation areas during  
3 construction. The permittee shall notify contractors that no activities are to occur in these  
4 marked surface waters.

5 11. Temporary disturbances to surface waters during construction shall be avoided and  
6 minimized to the maximum extent practicable. All temporarily disturbed wetland areas  
7 shall be restored to preexisting conditions within 30 days of completing work at each  
8 respective temporary impact area, which shall include reestablishing preconstruction  
9 elevations and contours with topsoil from the impact area where practicable and planting  
10 or seeding with appropriate wetland vegetation according to cover type (i.e., emergent,  
11 scrub-shrub, or forested). The permittee shall take all appropriate measures to promote  
12 and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation  
13 through the second year post-disturbance. All temporarily impacted streams and  
14 streambanks shall be restored to their preconstruction elevations and contours with topsoil  
15 from the impact area where practicable within 30 days following the construction at that  
16 stream segment. Streambanks shall be seeded or planted with the same vegetation cover  
17 type originally present, including any necessary, supplemental erosion control grasses.  
18 Invasive species identified on the Department of Conservation and Recreation's Virginia  
19 Invasive Plant Species List shall not be used to the maximum extent practicable or without  
20 prior approval from the Department of Environmental Quality.

21 12. Materials (including fill, construction debris, and excavated and woody materials)  
22 temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately  
23 stabilized to prevent entry into state waters, managed such that leachate does not enter  
24 state waters, and completely removed within 30 days following completion of that  
25 construction activity. Disturbed areas shall be returned to preconstruction elevations and  
26 contours with topsoil from the impact area where practicable; restored within 30 days  
27 following removal of the stockpile; and restored with the same vegetation cover type  
28 originally present, including any necessary supplemental erosion control grasses. Invasive  
29 species identified on the Department of Conservation and Recreation's Virginia Invasive  
30 Plant Species List shall not be used to the maximum extent practicable or without prior  
31 approval from the Department of Environmental Quality.

32 13. Continuous flow of perennial springs shall be maintained by the installation of spring  
33 boxes, french drains, or other similar structures.

34 14. The permittee shall employ measures to prevent spills of fuels or lubricants into state  
35 waters.

36 15. The permittee shall conduct his activities in accordance with the time-of-year  
37 restrictions recommended by the Virginia Department of ~~Game and Inland~~  
38 ~~Fisheries~~ Wildlife Resources, the Virginia Marine Resources Commission, or other  
39 interested and affected agencies, as contained, when applicable, in Department of  
40 Environmental Quality VWP general permit coverage, and shall ensure that all contractors  
41 are aware of the time-of-year restrictions imposed.

42 16. Water quality standards shall not be violated as a result of the construction activities.

43 17. If stream channelization or relocation is required, all work in surface waters shall be  
44 done in the dry, unless otherwise authorized by the Department of Environmental Quality,  
45 and all flows shall be diverted around the channelization or relocation area until the new  
46 channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and  
47 outlet ends of the new channel during excavation. Once the new channel has been  
48 stabilized, flow shall be routed into the new channel by first removing the downstream plug  
49 and then the upstream plug. The rerouted stream flow must be fully established before  
50 construction activities in the old stream channel can begin.

51 C. Road crossings.

1 1. Access roads and associated bridges, pipes, and culverts shall be constructed to  
2 minimize the adverse effects on surface waters to the maximum extent practicable.  
3 Access roads constructed above preconstruction elevations and contours in surface  
4 waters must be bridged, piped, or culverted to maintain surface flows.

5 2. Installation of road crossings shall occur in the dry via the implementation of cofferdams,  
6 sheetpiling, stream diversions, or similar structures.

7 D. Utility lines.

8 1. All utility line work in surface waters shall be performed in a manner that minimizes  
9 disturbance, and the area must be returned to its preconstruction elevations and contours  
10 with topsoil from the impact area where practicable and restored within 30 days of  
11 completing work in the area, unless otherwise authorized by the Department of  
12 Environmental Quality. Restoration shall be the seeding or planting of the same vegetation  
13 cover type originally present, including any necessary supplemental erosion control  
14 grasses. Invasive species identified on the Department of Conservation and Recreation's  
15 Virginia Invasive Plant Species List shall not be used to the maximum extent practicable  
16 or without prior approval from the Department of Environmental Quality.

17 2. Material resulting from trench excavation may be temporarily sidecast into wetlands not  
18 to exceed a total of 90 days, provided the material is not placed in a manner such that it  
19 is dispersed by currents or other forces.

20 3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g.,  
21 backfilling with extensive gravel layers creating a french drain effect). For example, utility  
22 lines may be backfilled with clay blocks to ensure that the trench does not drain surface  
23 waters through which the utility line is installed.

24 E. Stream modification and stream bank protection.

25 1. Riprap bank stabilization shall be of an appropriate size and design in accordance with  
26 the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

27 2. Riprap aprons for all outfalls shall be designed in accordance with the Virginia Erosion  
28 and Sediment Control Handbook, Third Edition, 1992.

29 3. For bank protection activities, the structure and backfill shall be placed as close to the  
30 stream bank as practicable. No material shall be placed in excess of the minimum  
31 necessary for erosion protection.

32 4. All stream bank protection structures shall be located to eliminate or minimize impacts  
33 to vegetated wetlands to the maximum extent practicable.

34 5. Asphalt and materials containing asphalt or other toxic substances shall not be used in  
35 the construction of submerged sills or breakwaters.

36 6. Redistribution of existing stream substrate for the purpose of erosion control is  
37 prohibited.

38 7. No material removed from the stream bottom shall be disposed of in surface waters,  
39 unless otherwise authorized by this VWP general permit.

40 F. Dredging.

41 1. Dredging depths shall be determined and authorized according to the proposed use  
42 and controlling depths outside the area to be dredged.

43 2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom  
44 and minimizes turbidity levels in the water column.

45 3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging,  
46 dredging operations shall cease, and the Department of Environmental Quality shall be  
47 notified immediately.

48 4. Barges used for the transportation of dredge material shall be filled in such a manner  
49 to prevent the overflow of dredged materials.

50 5. Double handling of dredged material in state waters shall not be permitted.



6. For navigation channels the following shall apply:

a. A buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.

b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, filter bags, or other similar filtering practices, any of which shall be properly stabilized prior to placing the dredged material within the containment area.

11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

G. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit coverage or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II. Construction and Compensation Requirements, Monitoring and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in 9VAC25-210-116 and 9VAC25-680-70.

1 3. The permittee-responsible compensation site or sites depicted in the conceptual  
2 compensation plan submitted with the application shall constitute the compensation site.  
3 A site change may require a modification to coverage.

4 4. For compensation involving the purchase of mitigation bank credits or the purchase of  
5 in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas  
6 until documentation of the mitigation bank credit purchase or of the in-lieu fee program  
7 credit purchase has been submitted to and received by the Department of Environmental  
8 Quality.

9 5. The final compensatory mitigation plan shall be submitted to and approved by the board  
10 prior to a construction activity in permitted impact areas. The board shall review and  
11 provide written comments on the final plan within 30 days of receipt or it shall be deemed  
12 approved. The final plan as approved by the board shall be an enforceable requirement  
13 of any coverage under this VWP general permit. Deviations from the approved final plan  
14 shall be submitted and approved in advance by the board.

15 a. The final permittee-responsible wetlands compensation plan shall include:

16 (1) The complete information on all components of the conceptual compensation plan.

17 (2) A summary of the type and acreage of existing wetland impacts anticipated during  
18 the construction of the compensation site and the proposed compensation for these  
19 impacts; a site access plan; a monitoring plan, including proposed success criteria,  
20 monitoring goals, and the location of photo-monitoring stations, monitoring wells,  
21 vegetation sampling points, and reference wetlands or streams, if available; an  
22 abatement and control plan for undesirable plant species; an erosion and  
23 sedimentation control plan; a construction schedule; and the final protective  
24 mechanism for the protection of the compensation site or sites, including all surface  
25 waters and buffer areas within its boundaries.

26 (3) The approved protective mechanism. The protective mechanism shall be recorded  
27 in the chain of title to the property, or an equivalent instrument for government-owned  
28 lands, and proof of recordation shall be submitted to the Department of Environmental  
29 Quality prior to commencing impacts in surface waters.

30 b. The final permittee-responsible stream compensation plan shall include:

31 (1) The complete information on all components of the conceptual compensation plan.

32 (2) An evaluation, discussion, and plan drawing or drawings of existing conditions on  
33 the proposed compensation stream, including the identification of functional and  
34 physical deficiencies for which the measures are proposed, and summary of  
35 geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth  
36 ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including  
37 a monitoring and reporting schedule, monitoring design and methodologies for  
38 success, proposed success criteria, location of photo-monitoring stations, vegetation  
39 sampling points, survey points, bank pins, scour chains, and reference streams; an  
40 abatement and control plan for undesirable plant species; an erosion and  
41 sedimentation control plan, if appropriate; a construction schedule; a plan-view  
42 drawing depicting the pattern and all compensation measures being employed; a  
43 profile drawing; cross-sectional drawing or drawings of the proposed compensation  
44 stream; and the final protective mechanism for the protection of the compensation site  
45 or sites, including all surface waters and buffer areas within its boundaries.

46 (3) The approved protective mechanism. The protective mechanism shall be recorded  
47 in the chain of title to the property, or an equivalent instrument for government-owned  
48 lands, and proof of recordation shall be submitted to the Department of Environmental  
49 Quality prior to commencing impacts in surface waters.

50 6. The following criteria shall apply to permittee-responsible wetland or stream  
51 compensation:

1 a. The vegetation used shall be native species common to the area, shall be suitable  
2 for growth in local wetland or riparian conditions, and shall be from areas within the  
3 same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural  
4 Resources Conservation Service Land Resource Region as that of the project site.  
5 Planting of woody plants shall occur when vegetation is normally dormant, unless  
6 otherwise approved in the final wetlands or stream compensation plan or plans.

7 b. All work in permitted impact areas shall cease if compensation site construction has  
8 not commenced within 180 days of commencement of project construction, unless  
9 otherwise authorized by the board.

10 c. The Department of Environmental Quality shall be notified in writing prior to the  
11 initiation of construction activities at the compensation site.

12 d. Point sources of stormwater runoff shall be prohibited from entering a wetland  
13 compensation site prior to treatment by appropriate best management practices.  
14 Appropriate best management practices may include sediment traps, grassed  
15 waterways, vegetated filter strips, debris screens, oil and grease separators, or  
16 forebays.

17 e. The success of the compensation shall be based on meeting the success criteria  
18 established in the approved final compensation plan.

19 f. If the wetland or stream compensation area fails to meet the specified success  
20 criteria in a particular monitoring year, other than the final monitoring year, the reasons  
21 for this failure shall be determined and a corrective action plan shall be submitted to  
22 the Department of Environmental Quality for approval with or before that year's  
23 monitoring report. The corrective action plan shall contain at minimum the proposed  
24 actions, a schedule for those actions, and a monitoring plan, and shall be implemented  
25 by the permittee in accordance with the approved schedule. Should significant  
26 changes be necessary to ensure success, the required monitoring cycle shall begin  
27 again, with monitoring year one being the year that the changes are complete as  
28 confirmed by the Department of Environmental Quality. If the wetland or stream  
29 compensation area fails to meet the specified success criteria by the final monitoring  
30 year or if the wetland or stream compensation area has not met the stated restoration  
31 goals, reasons for this failure shall be determined and a corrective action plan,  
32 including proposed actions, a schedule, and a monitoring plan, shall be submitted with  
33 the final year monitoring report for the Department of Environmental Quality approval.  
34 Corrective action shall be implemented by the permittee in accordance with the  
35 approved schedule. Annual monitoring shall be required to continue until two  
36 sequential, annual reports indicate that all criteria have been successfully satisfied and  
37 the site has met the overall restoration goals (e.g., that corrective actions were  
38 successful).

39 g. The surveyed wetland boundary for the compensation site shall be based on the  
40 results of the hydrology, soils, and vegetation monitoring data and shall be shown on  
41 the site plan. Calculation of total wetland acreage shall be based on that boundary at  
42 the end of the monitoring cycle. Data shall be submitted by December 31 of the final  
43 monitoring year.

44 h. Herbicides or algicides shall not be used in or immediately adjacent to the  
45 compensation site or sites without prior authorization by the board. All vegetation  
46 removal shall be done by manual means only, unless authorized by the Department  
47 of Environmental Quality in advance.

48 **B. Impact site construction monitoring.**

49 1. Construction activities authorized by this permit that are within impact areas shall be  
50 monitored and documented. The monitoring shall consist of:

51 a. Preconstruction photographs taken at each impact area prior to initiation of activities  
52 within impact areas. Photographs shall remain on the project site and depict the impact

1 area and the nonimpacted surface waters immediately adjacent to and downgradient  
2 of each impact area. Each photograph shall be labeled to include the following  
3 information: permit number, impact area number, date and time of the photograph,  
4 name of the person taking the photograph, photograph orientation, and photograph  
5 subject description.

6 b. Site inspections shall be conducted by the permittee or the permittee's qualified  
7 designee once every calendar month during activities within impact areas. Monthly  
8 inspections shall be conducted in the following areas: all authorized permanent and  
9 temporary impact areas; all avoided surface waters, including wetlands, stream  
10 channels, and open water; surface water areas within 50 feet of any land disturbing  
11 activity and within the project or right-of-way limits; and all on-site permanent  
12 preservation areas required under this permit. Observations shall be recorded on the  
13 inspection form provided by the Department of Environmental Quality. The form shall  
14 be completed in its entirety for each monthly inspection and shall be kept on site and  
15 made available for review by the Department of Environmental Quality staff upon  
16 request during normal business hours. Inspections are not required during periods of  
17 no activity within impact areas.

18 2. Monitoring of water quality parameters shall be conducted during permanent relocation  
19 of perennial streams through new channels in the manner noted below. The permittee  
20 shall report violations of water quality standards to the Department of Environmental  
21 Quality in accordance with the procedures in 9VAC25-680-100 Part II E. Corrective  
22 measures and additional monitoring may be required if water quality standards are not  
23 met. Reporting shall not be required if water quality standards are not violated.

24 a. A sampling station shall be located upstream and immediately downstream of the  
25 relocated channel.

26 b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every  
27 30 minutes for at least two hours at each station prior to opening the new channels  
28 and immediately before opening new channels.

29 c. Temperature, pH, and D.O. readings shall be taken after opening the channels and  
30 every 30 minutes for at least three hours at each station.

31 C. Permittee-responsible wetland compensation site monitoring.

32 1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial  
33 surveys, shall be conducted for the entire compensation site or sites, including invert  
34 elevations for all water elevation control structures and spot elevations throughout the site  
35 or sites. Aerial surveys shall include the variation from actual ground conditions, such as  
36 +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered  
37 professional engineer to conform to the design plans. The survey shall be submitted within  
38 60 days of completing compensation site construction. Changes or deviations in the as-  
39 built survey or aerial survey shall be shown on the survey and explained in writing.

40 2. Photographs shall be taken at the compensation site or sites from the permanent  
41 markers identified in the final compensation plan, and established to ensure that the same  
42 locations and view directions at the site or sites are monitored in each monitoring period.  
43 These photographs shall be taken after the initial planting and at a time specified in the  
44 final compensation plan during every monitoring year.

45 3. Compensation site monitoring shall begin on the first day of the first complete growing  
46 season (monitoring year 1) after wetland compensation site construction activities,  
47 including planting, have been completed. Monitoring shall be required for monitoring years  
48 1, 2, 3, and 5, unless otherwise approved by the Department of Environmental Quality. In  
49 all cases, if all success criteria have not been met in the final monitoring year, then  
50 monitoring shall be required for each consecutive year until two annual sequential reports  
51 indicate that all criteria have been successfully satisfied.

1 4. The establishment of wetland hydrology shall be measured weekly during the growing  
2 season, with the location and number of monitoring wells, and frequency of monitoring for  
3 each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be  
4 accompanied by precipitation data, including rainfall amounts, either from on site or from  
5 the closest weather station. Once the wetland hydrology success criteria have been  
6 satisfied for a particular monitoring year, monitoring may be discontinued for the remainder  
7 of that monitoring year following Department of Environmental Quality approval. After a  
8 period of three monitoring years, the permittee may request that hydrology monitoring be  
9 discontinued, providing that adequate hydrology has been established and maintained.  
10 Hydrology monitoring shall not be discontinued without written approval from the  
11 Department of Environmental Quality.

12 5. The presence of hydric soils or soils under hydric conditions shall be evaluated in  
13 accordance with the final compensation plan.

14 6. The establishment of wetland vegetation shall be in accordance with the final  
15 compensation plan. Monitoring shall take place in August, September, or October during  
16 the growing season of each monitoring year, unless otherwise authorized in the monitoring  
17 plan.

18 7. The presence of undesirable plant species shall be documented.

19 8. All wetland compensation monitoring reports shall be submitted in accordance with  
20 9VAC25-680-100 Part II E 6.

21 D. Permittee-responsible stream compensation and monitoring.

22 1. Riparian buffer restoration activities shall be detailed in the final compensation plan and  
23 shall include, as appropriate, the planting of a variety of native species currently growing  
24 in the site area, including appropriate seed mixtures and woody species that are bare root,  
25 balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the  
26 stream bank at bankfull elevation landward on both sides of the stream, shall be required  
27 where practical.

28 2. The installation of root wads, vanes, and other instream structures, shaping of the  
29 stream banks and channel relocation shall be completed in the dry whenever practicable.

30 3. Livestock access to the stream and designated riparian buffer shall be limited to the  
31 greatest extent practicable.

32 4. Stream channel restoration activities shall be conducted in the dry or during low flow  
33 conditions. When site conditions prohibit access from the streambank or upon prior  
34 authorization from the Department of Environmental Quality, heavy equipment may be  
35 authorized for use within the stream channel.

36 5. Photographs shall be taken at the compensation site from the vicinity of the permanent  
37 photo-monitoring stations identified in the final compensation plan. The photograph  
38 orientation shall remain constant during all monitoring events. At a minimum, photographs  
39 shall be taken from the center of the stream, facing downstream, with a sufficient number  
40 of photographs to view the entire length of the restoration site. Photographs shall  
41 document the completed restoration conditions. Photographs shall be taken prior to site  
42 activities, during instream and riparian compensation construction activities, within one  
43 week of completion of activities, and during at least one day of each monitoring year to  
44 depict restored conditions.

45 6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial  
46 surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall  
47 include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall  
48 be certified by the licensed surveyor or by a registered, professional engineer to conform  
49 to the design plans. The survey shall be submitted within 60 days of completing  
50 compensation site construction. Changes or deviations from the final compensation plans  
51 in the as-built survey or aerial survey shall be shown on the survey and explained in  
52 writing.

1 7. Compensation site monitoring shall begin on day one of the first complete growing  
2 season (monitoring year 1) after stream compensation site constructions activities,  
3 including planting, have been completed. Monitoring shall be required for monitoring years  
4 1 and 2, unless otherwise approved by the Department of Environmental Quality. In all  
5 cases, if all success criteria have not been met in the final monitoring year, then monitoring  
6 shall be required for each consecutive year until two annual sequential reports indicate  
7 that all criteria have been successfully satisfied.

8 8. All stream compensation site monitoring reports shall be submitted in accordance with  
9 9VAC25-680-100 Part II E 6.

10 E. Reporting.

11 1. Written communications required by this VWP general permit shall be submitted to the  
12 appropriate Department of Environmental Quality office. The VWP general permit tracking  
13 number shall be included on all correspondence.

14 2. The Department of Environmental Quality shall be notified in writing prior to the start of  
15 construction activities at the first permitted impact area.

16 3. A construction status update form provided by the Department of Environmental Quality  
17 shall be completed and submitted to the Department of Environmental Quality twice per  
18 year for the duration of coverage under a VWP general permit. Forms completed in June  
19 shall be submitted by or on July 10, and forms completed in December shall be submitted  
20 by or on January 10. The form shall include reference to the VWP permit tracking number  
21 and one of the following statements for each authorized surface water impact location:

- 22 a. Construction activities have not yet started;
- 23 b. Construction activities have started;
- 24 c. Construction activities have started but are currently inactive; or
- 25 d. Construction activities are complete.

26 4. The Department of Environmental Quality shall be notified in writing within 30 days  
27 following the completion of all activities in all authorized impact areas.

28 5. The Department of Environmental Quality shall be notified in writing prior to the initiation  
29 of activities at the permittee-responsible compensation site. The notification shall include  
30 a projected schedule of activities and construction completion.

31 6. All permittee-responsible compensation site monitoring reports shall be submitted  
32 annually by December 31, with the exception of the last year, in which case the report  
33 shall be submitted at least 60 days prior to the expiration of the general permit, unless  
34 otherwise approved by the Department of Environmental Quality.

35 a. All wetland compensation site monitoring reports shall include, as applicable, the  
36 following:

37 (1) General description of the site including a site location map identifying photo-  
38 monitoring stations, vegetative and soil monitoring stations, monitoring wells, and  
39 wetland zones.

40 (2) Summary of activities completed during the monitoring year, including alterations  
41 or maintenance conducted at the site.

42 (3) Description of monitoring methods.

43 (4) Analysis of all hydrology information, including monitoring well data, precipitation  
44 data, and gauging data from streams or other open water areas, as set forth in the  
45 final compensation plan.

46 (5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

47 (6) Analysis of all vegetative community information, including woody and herbaceous  
48 species, both planted and volunteers, as set forth in the final compensation plan.

49 (7) Photographs labeled with the permit number, the name of the compensation site,  
50 the photo-monitoring station number, the photograph orientation, the date and time of

1 the photograph, the name of the person taking the photograph, and a brief description  
2 of the photograph subject. This information shall be provided as a separate attachment  
3 to each photograph, if necessary. Photographs taken after the initial planting shall be  
4 included in the first monitoring report after planting is complete.

5 (8) Discussion of wildlife or signs of wildlife observed at the compensation site.

6 (9) Comparison of site conditions from the previous monitoring year and reference site.

7 (10) Discussion of corrective measures or maintenance activities to control  
8 undesirable species, to repair damaged water control devices, or to replace damaged  
9 planted vegetation.

10 (11) Corrective action plan that includes proposed actions, a schedule, and monitoring  
11 plan.

12 b. All stream compensation site monitoring reports shall include, as applicable, the  
13 following:

14 (1) General description of the site including a site location map identifying photo-  
15 monitoring stations and monitoring stations.

16 (2) Summary of activities completed during the monitoring year, including alterations  
17 or maintenance conducted at the site.

18 (3) Description of monitoring methods.

19 (4) Evaluation and discussion of the monitoring results in relation to the success  
20 criteria and overall goals of compensation.

21 (5) Photographs shall be labeled with the permit number, the name of the  
22 compensation site, the photo-monitoring station number, the photograph orientation,  
23 the date and time of the photograph, the name of the person taking the photograph,  
24 and a brief description of the photograph subject. Photographs taken prior to  
25 compensation site construction activities, during instream and riparian restoration  
26 activities, and within one week of completion of activities shall be included in the first  
27 monitoring report.

28 (6) Discussion of alterations, maintenance, or major storm events resulting in  
29 significant change in stream profile or cross section, and corrective actions conducted  
30 at the stream compensation site.

31 (7) Documentation of undesirable plant species and summary of abatement and  
32 control measures.

33 (8) Summary of wildlife or signs of wildlife observed at the compensation site.

34 (9) Comparison of site conditions from the previous monitoring year and reference site,  
35 and as-built survey, if applicable.

36 (10) Corrective action plan that includes proposed actions, a schedule and monitoring  
37 plan.

38 (11) Additional submittals that were approved by the Department of Environmental  
39 Quality in the final compensation plan.

40 7. The permittee shall notify the Department of Environmental Quality in writing when  
41 unusual or potentially complex conditions are encountered which require debris removal  
42 or involve potentially toxic substance. Measures to remove the obstruction, material, or  
43 toxic substance or to change the location of a structure are prohibited until approved by  
44 the Department of Environmental Quality.

45 8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If  
46 spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday,  
47 the appropriate Department of Environmental Quality regional office shall be notified;  
48 otherwise, the Department of Emergency Management shall be notified at 1-800-468-  
49 8892.

1 9. Violations of state water quality standards shall be reported to the appropriate  
2 Department of Environmental Quality office no later than the end of the business day  
3 following discovery.

4 10. The permittee shall notify the Department of Environmental Quality no later than the  
5 end of the third business day following the discovery of additional impacts to surface  
6 waters including wetlands, stream channels, and open water that are not authorized by  
7 the Department of Environmental Quality or to any required preservation areas. The  
8 notification shall include photographs, estimated acreage or linear footage of impacts, and  
9 a description of the impacts.

10 11. Submittals required by this VWP general permit shall contain the following signed  
11 certification statement:

12 "I certify under penalty of law that this document and all attachments were prepared under  
13 my direction or supervision in accordance with a system designed to assure that qualified  
14 personnel properly gather and evaluate the information submitted. Based on my inquiry of  
15 the person or persons who manage the system, or those persons directly responsible for  
16 gathering the information, the information submitted is, to the best of my knowledge and  
17 belief, true, accurate, and complete. I am aware that there are significant penalties for  
18 submitting false information, including the possibility of fine and imprisonment for knowing  
19 violation."

20 Part III. Conditions Applicable to All VWP General Permits.

21 A. Duty to comply. The permittee shall comply with all conditions, limitations, and other  
22 requirements of the VWP general permit; any requirements in coverage granted under this VWP  
23 general permit; the Clean Water Act, as amended; and the State Water Control Law and  
24 regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a  
25 violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement  
26 action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage  
27 revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification  
28 to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve  
29 the permittee of the duty to comply with all applicable federal and state statutes, regulations, and  
30 toxic standards and prohibitions.

31 B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent  
32 impacts in violation of the VWP general permit that may have a reasonable likelihood of adversely  
33 affecting human health or the environment.

34 C. Reopener. This VWP general permit may be reopened to modify its conditions when the  
35 circumstances on which the previous VWP general permit was based have materially and  
36 substantially changed, or special studies conducted by the board or the permittee show material  
37 and substantial change since the time the VWP general permit was issued and thereby constitute  
38 cause for revoking and reissuing the VWP general permit.

39 D. Compliance with state and federal law. Compliance with this VWP general permit  
40 constitutes compliance with the VWP permit requirements of the State Water Control Law.  
41 Nothing in this VWP general permit shall be construed to preclude the institution of any legal  
42 action under or relieve the permittee from any responsibilities, liabilities, or other penalties  
43 established pursuant to any other state law or regulation or under the authority preserved by §  
44 510 of the Clean Water Act.

45 E. Property rights. The issuance of this VWP general permit does not convey property rights  
46 in either real or personal property or any exclusive privileges, nor does it authorize injury to private  
47 property, any invasion of personal property rights, or any infringement of federal, state, or local  
48 laws or regulations.

49 F. Severability. The provisions of this VWP general permit are severable.

50 G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the board  
51 or any duly authorized agent of the board, at reasonable times and under reasonable  
52 circumstances, to enter upon the permittee's property, public or private, and have access to



1 inspect and copy any records that must be kept as part of the VWP general permit conditions; to  
2 inspect any facilities, operations, or practices (including monitoring and control equipment)  
3 regulated or required under the VWP general permit; and to sample or monitor any substance,  
4 parameter, or activity for the purpose of assuring compliance with the conditions of the VWP  
5 general permit or as otherwise authorized by law. For the purpose of this section, the time for  
6 inspection shall be deemed reasonable during regular business hours. Nothing contained herein  
7 shall make an inspection time unreasonable during an emergency.

8 H. Transferability of VWP general permit coverage. VWP general permit coverage may be  
9 transferred to another permittee when all of the criteria listed in this subsection are met. On the  
10 date of the VWP general permit coverage transfer, the transferred VWP general permit coverage  
11 shall be as fully effective as if it had been granted directly to the new permittee.

12 1. The current permittee notifies the board of the proposed transfer of the general permit  
13 coverage and provides a written agreement between the current and new permittees  
14 containing a specific date of transfer of VWP general permit responsibility, coverage, and  
15 liability to the new permittee, or that the current permittee will retain such responsibility,  
16 coverage, or liability, including liability for compliance with the requirements of  
17 enforcement activities related to the authorized activity.

18 2. The board does not within 15 days notify the current and new permittees of its intent to  
19 modify or revoke and reissue the VWP general permit.

20 I. Notice of planned change. VWP general permit coverage may be modified subsequent to  
21 issuance in accordance with 9VAC25-680-80.

22 J. VWP general permit coverage termination for cause. VWP general permit coverage is  
23 subject to termination for cause by the board after public notice and opportunity for a hearing  
24 pursuant to § 62.1-44.15:02 of the Code of Virginia. Reasons for termination for cause are as  
25 follows:

26 1. Noncompliance by the permittee with any provision of this chapter, any condition of the  
27 VWP general permit, or any requirement in general permit coverage;

28 2. The permittee's failure in the application or during the process of granting VWP general  
29 permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of  
30 any relevant facts at any time;

31 3. The permittee's violation of a special or judicial order;

32 4. A determination by the board that the authorized activity endangers human health or  
33 the environment and can be regulated to acceptable levels by a modification to VWP  
34 general permit coverage or a termination;

35 5. A change in any condition that requires either a temporary or permanent reduction or  
36 elimination of any activity controlled by the VWP general permit; or

37 6. A determination that the authorized activity has ceased and that the compensation for  
38 unavoidable adverse impacts has been successfully completed.

39 K. The board may terminate VWP general permit coverage without cause when the permittee  
40 is no longer a legal entity due to death or dissolution or when a company is no longer authorized  
41 to conduct business in the Commonwealth. The termination shall be effective 30 days after notice  
42 of the proposed termination is sent to the last known address of the permittee or registered agent,  
43 unless the permittee objects within that time. If the permittee does object during that period, the  
44 board shall follow the applicable procedures for termination under §§ 62.1-44.15:02 and 62.1-  
45 44.15:25 of the Code of Virginia.

46 L. VWP general permit coverage termination by consent. The permittee shall submit a request  
47 for termination by consent within 30 days of completing or canceling all authorized activities  
48 requiring notification under 9VAC25-680-50 A and all compensatory mitigation requirements.  
49 When submitted for project completion, the request for termination by consent shall constitute a  
50 notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this

1 termination of coverage on behalf of the board. The permittee shall submit the following  
2 information:

- 3 1. Name, mailing address, and telephone number;
- 4 2. Name and location of the activity;
- 5 3. The VWP general permit tracking number; and
- 6 4. One of the following certifications:

7 a. For project completion:

8 "I certify under penalty of law that all activities and any required compensatory  
9 mitigation authorized by the VWP general permit and general permit coverage have  
10 been completed. I understand that by submitting this notice of termination I am no  
11 longer authorized to perform activities in surface waters in accordance with the VWP  
12 general permit and general permit coverage, and that performing activities in surface  
13 waters is unlawful where the activity is not authorized by the VWP permit or coverage,  
14 unless otherwise excluded from obtaining coverage. I also understand that the  
15 submittal of this notice does not release me from liability for any violations of the VWP  
16 general permit coverage."

17 b. For project cancellation:

18 "I certify under penalty of law that the activities and any required compensatory  
19 mitigation authorized by the VWP general permit and general permit coverage will not  
20 occur. I understand that by submitting this notice of termination I am no longer  
21 authorized to perform activities in surface waters in accordance with the VWP general  
22 permit and general permit coverage, and that performing activities in surface waters is  
23 unlawful where the activity is not authorized by the VWP permit or coverage, unless  
24 otherwise excluded from obtaining coverage. I also understand that the submittal of  
25 this notice does not release me from liability for any violations of the VWP general  
26 permit or coverage, nor does it allow me to resume the authorized activities without  
27 reapplication and coverage."

28 c. For events beyond permittee control, the permittee shall provide a detailed  
29 explanation of the events, to be approved by the Department of Environmental Quality,  
30 and the following certification statement:

31 "I certify under penalty of law that the activities or the required compensatory mitigation  
32 authorized by the VWP general permit and general permit coverage have changed as  
33 the result of events beyond my control (see attached). I understand that by submitting  
34 this notice of termination I am no longer authorized to perform activities in surface  
35 waters in accordance with the VWP general permit and general permit coverage, and  
36 that performing activities in surface waters is unlawful where the activity is not  
37 authorized by the VWP permit or coverage, unless otherwise excluded from obtaining  
38 coverage. I also understand that the submittal of this notice does not release me from  
39 liability for any violations of the VWP general permit authorization or coverage, nor  
40 does it allow me to resume the authorized activities without reapplication and  
41 coverage."

42 M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve  
43 the permittee from civil and criminal penalties for noncompliance.

44 N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be  
45 construed to preclude the institution of legal action or relieve the permittee from any  
46 responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of  
47 the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

48 O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement  
49 action that it would have been necessary to halt or reduce the activity for which VWP general  
50 permit coverage has been granted in order to maintain compliance with the conditions of the VWP  
51 general permit or coverage.

1 P. Duty to provide information.

2 1. The permittee shall furnish to the board any information that the board may request to  
3 determine whether cause exists for modifying, revoking, or terminating VWP permit  
4 coverage or to determine compliance with the VWP general permit or general permit  
5 coverage. The permittee shall also furnish to the board, upon request, copies of records  
6 required to be kept by the permittee.

7 2. Plans, maps, conceptual reports, and other relevant information shall be submitted as  
8 required by the board prior to commencing construction.

9 Q. Monitoring and records requirements.

10 1. Monitoring of parameters, other than pollutants, shall be conducted according to  
11 approved analytical methods as specified in the VWP general permit. Analysis of  
12 pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing  
13 Test Procedures for the Analysis of Pollutants.

14 2. Samples and measurements taken for the purpose of monitoring shall be representative  
15 of the monitored activity.

16 3. The permittee shall retain records of all monitoring information, including all calibration  
17 and maintenance records and all original strip chart or electronic recordings for continuous  
18 monitoring instrumentation, copies of all reports required by the VWP general permit, and  
19 records of all data used to complete the application for coverage under the VWP general  
20 permit, for a period of at least three years from the date of general permit expiration. This  
21 period may be extended by request of the board at any time.

22 4. Records of monitoring information shall include, as appropriate:

23 a. The date, exact place, and time of sampling or measurements;

24 b. The name of the individuals who performed the sampling or measurements;

25 c. The date and time the analyses were performed;

26 d. The name of the individuals who performed the analyses;

27 e. The analytical techniques or methods supporting the information such as  
28 observations, readings, calculations, and bench data used;

29 f. The results of such analyses; and

30 g. Chain of custody documentation.

31 R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit,  
32 it shall be unlawful for the permittee to:

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

35 2. Excavate in a wetland;

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

39 4. On and after August 1, 2001, for linear transportation projects of the Virginia Department  
40 of Transportation, or on and after October 1, 2001, for all other projects, conduct the  
41 following activities in a wetland:

42 a. New activities to cause draining that significantly alters or degrades existing wetland  
43 acreage or functions;

44 b. Filling or dumping;

45 c. Permanent flooding or impounding; or

46 d. New activities that cause significant alteration or degradation of existing wetland  
47 acreage or functions.

48 S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the  
49 expiration date of the VWP general permit shall comply with the provisions in 9VAC25-680-27.

1 **9VAC25-690-50. Notification.**

2 A. Notification to the board will be required prior to commencing construction as follows:

3 1. An application for coverage for proposed, permanent nontidal wetland or open water  
4 impacts greater than one-tenth acre or for proposed permanent nontidal stream bed  
5 impacts greater than 300 linear feet shall include all information pursuant to 9VAC25-690-  
6 60 B. Compensatory mitigation may be required for all permanent impacts.

7 2. An application for coverage for proposed, permanent nontidal wetland or open water  
8 impacts up to one-tenth acre or for proposed, permanent nontidal stream bed impacts up  
9 to 300 linear feet shall be submitted in accordance with either subdivision 2 a or 2 b of this  
10 subsection:

11 a. For any proposed project in wetlands; open water, streams, or compensatory  
12 mitigation sites that are under a deed restriction, conservation easement, declaration  
13 of restrictive covenant, or other land use protective instrument (hereafter "protected  
14 areas"), when such restriction, easement, covenant, or instrument is the result of a  
15 federal or state permit action and is specific to activities in wetlands and compensatory  
16 mitigation sites, the application shall include all of the information required by 9VAC25-  
17 690-60 B. Compensatory mitigation may be required for all permanent impacts.

18 b. For all other projects, the application shall include the information required by  
19 subdivisions 1 through 7, 11, 12, 15, and 16 of 9VAC25-690-60 B, and documentation  
20 that verifies the quantity and type of impacts. Compensatory mitigation may be  
21 required for all permanent impacts once the notification limits of one-tenth acre  
22 wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required,  
23 the application shall include the information in 9VAC25-690-60 B 13.

24 B. The Department of Environmental Quality-approved application forms shall serve as an  
25 application for a VWP permit or VWP general permit coverage.

26 C. The board will determine whether the proposed activity requires coordination with the U.S.  
27 Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia  
28 Department of Agriculture and Consumer Services and the Virginia Department of ~~Game and~~  
29 ~~Inland Fisheries~~ Wildlife Resources regarding the presence of federal or state listed threatened  
30 and endangered species or designated critical habitat. Based upon consultation with these  
31 agencies, the board may deny application for coverage under this general permit. The applicant  
32 may also consult with these agencies prior to submitting an application. Species or habitat  
33 information that the applicant provides will assist the Department of Environmental Quality in  
34 reviewing and processing the application.

35 **9VAC25-690-60. Application.**

36 A. The applicant shall file a complete application in accordance with 9VAC25-690-50 and this  
37 section for coverage under this VWP general permit for impacts to surface waters from  
38 development and certain mining activities.

39 B. A complete application for VWP general permit coverage, at a minimum, consists of the  
40 following information, if applicable to the project:

41 1. The applicant's legal name, mailing address, telephone number, and if applicable,  
42 electronic mail address and fax number.

43 2. If different from the applicant, legal name, mailing address, telephone number, and if  
44 applicable, electronic mail address and fax number of property owner.

45 3. If applicable, the authorized agent's name, mailing address, telephone number, and if  
46 applicable, fax number and electronic mail address.

47 4. The existing VWP general permit tracking number, if applicable.

48 5. Project name and proposed project schedule.

49 6. The following information for the project site location, and any related permittee-  
50 responsible compensatory mitigation site:

- 1 a. The physical street address, nearest street, or nearest route number; city or county;  
2 zip code; and if applicable, parcel number of the site or sites.
- 3 b. Name of the impacted water body or water bodies, or receiving waters, as  
4 applicable, at the site or sites.
- 5 c. The latitude and longitude to the nearest second at the center of the site or sites.
- 6 d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the  
7 National Watershed Boundary Dataset, for the site or sites.
- 8 e. A detailed map depicting the location of the site or sites, including the project  
9 boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S.  
10 Geologic Survey topographic quadrangle map) should be of sufficient detail to easily  
11 locate the site or sites for inspection.
- 12 7. A narrative description of the project, including project purpose and need.
- 13 8. Plan-view drawing or drawings of the project site sufficient to assess the project,  
14 including at a minimum the following:
  - 15 a. North arrow, graphic scale, and existing and proposed topographic or bathymetric  
16 contours.
  - 17 b. Limits of proposed impacts to surface waters.
  - 18 c. Location of all existing and proposed structures.
  - 19 d. All delineated wetlands and all jurisdictional surface waters on the site, including the  
20 Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface  
21 waters and waterway name, if designated; ebb and flood or direction of flow; and  
22 ordinary high water mark in nontidal areas.
  - 23 e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified  
24 by the applicant, and if available, the limits as approved by the locality in which the  
25 project site is located, unless the proposed use is exempt from the Chesapeake Bay  
26 Preservation Area Designation and Management Regulations (9VAC25-830).
  - 27 f. The limits of any areas that are under a deed restriction, conservation easement,  
28 restrictive covenant, or other land use protective instrument (i.e., protected areas).
- 29 9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings  
30 of each proposed impact area shall include at a minimum a graphic scale, existing  
31 structures, existing and proposed elevations, limits of surface water areas, ebb and flood  
32 or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits,  
33 and location of all existing and proposed structures. Profile drawing or drawings with this  
34 information may be required on a case-by-case basis to demonstrate minimization of  
35 impacts. Any application that proposes piping or culverting stream flows shall provide a  
36 longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide  
37 spot elevations of the stream thalweg at the beginning and end of the pipe or culvert,  
38 extending to a minimum of 10 feet beyond the limits of proposed impact.
- 39 10. Materials assessment. Upon request by the board, the applicant shall provide  
40 evidence or certification that the material is free from toxic contaminants prior to disposal  
41 or that the dredging activity will not cause or contribute to a violation of water quality  
42 standards during dredging. The applicant may be required to conduct grain size and  
43 composition analyses, tests for specific parameters or chemical constituents, or elutriate  
44 tests on the dredge material.
- 45 11. A narrative description of all impacts proposed to surface waters, including the type of  
46 activity to be conducted in surface waters and any physical alteration to surface waters.  
47 Surface water impacts shall be identified as follows:
  - 48 a. Wetland impacts identified according to their Cowardin classification (i.e., emergent,  
49 scrub-shrub, or forested); and for each classification, the individual impacts quantified  
50 in square feet to the nearest whole number, cumulatively summed in square feet, and

1 then the sum converted to acres and rounded to two decimal places using commonly  
2 accepted arithmetic principles of rounding.

3 b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole  
4 number and by average width in feet to the nearest whole number; (ii) quantified in  
5 square feet to the nearest whole number; and (iii) when compensatory mitigation is  
6 required, the impacts identified according to the assessed type using the Unified  
7 Stream Methodology.

8 c. Open water impacts identified according to their Cowardin classification, and for  
9 each type, the individual impacts quantified in square feet to the nearest whole  
10 number, cumulatively summed in square feet, and then the sum converted to acres  
11 and rounded to two decimal places using commonly accepted arithmetic principles of  
12 rounding.

13 d. A copy of the approved jurisdictional determination when available, or when  
14 unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps  
15 of Engineers (USACE), U.S. Department of Agriculture Natural Resources  
16 Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE,  
17 NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface  
18 waters, including wetlands data sheets if applicable.

19 e. A delineation map that (i) depicts the geographic area or areas of all surface water  
20 boundaries delineated in accordance with 9VAC25-210-45 and confirmed in  
21 accordance with the jurisdictional determination process; (ii) identifies such areas in  
22 accordance with subdivisions 11 a, 11 b, and 11 c of this subsection; and (iii) quantifies  
23 and identifies any other surface waters according to their Cowardin classification (i.e.,  
24 emergent, scrub-shrub, or forested) or similar terminology.

25 12. An alternatives analysis for the proposed project detailing the specific on-site  
26 measures taken during project design and development to first avoid and then minimize  
27 impacts to surface waters to the maximum extent practicable in accordance with the  
28 Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part  
29 230. Avoidance and minimization includes, but is not limited to, the specific on-site  
30 measures taken to reduce the size, scope, configuration, or density of the proposed  
31 project, including review of alternative sites where required for the project, which would  
32 avoid or result in less adverse impact to surface waters, and documentation demonstrating  
33 the reason the applicant determined less damaging alternatives are not practicable. The  
34 analysis shall demonstrate to the satisfaction of the board that avoidance and minimization  
35 opportunities have been identified and measures have been applied to the proposed  
36 activity such that the proposed activity in terms of impacts to state waters and fish and  
37 wildlife resources is the least environmentally damaging practicable alternative.

38 13. A compensatory mitigation plan to achieve no net loss of wetland acreage and  
39 functions or stream functions and water quality benefits.

40 a. If permittee-responsible compensation is proposed for wetland impacts, a  
41 conceptual wetland compensatory mitigation plan must be submitted in order for an  
42 application to be deemed complete and shall include at a minimum (i) the goals and  
43 objectives in terms of replacement of wetland acreage and functions; (ii) a detailed  
44 location map including latitude and longitude to the nearest second and the fourth  
45 order subbasin, as defined by the hydrologic unit boundaries of the National  
46 Watershed Boundary Dataset, at the center of the site; (iii) a description of the  
47 surrounding land use; (iv) a hydrologic analysis including a draft water budget for  
48 nontidal areas based on expected monthly inputs and outputs that will project water  
49 level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation  
50 data, if available, or the proposed location of groundwater monitoring wells to collect  
51 these data; (vi) wetland delineation confirmation, data sheets, and maps for existing  
52 surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii)

1 a conceptual planting scheme including suggested plant species and zonation of each  
2 vegetation type proposed; (ix) a description of existing soils including general  
3 information on both topsoil and subsoil conditions, permeability, and the need for soil  
4 amendments; (x) a draft design of any water control structures; (xi) inclusion of buffer  
5 areas; (xii) a description of any structures and features necessary for the success of  
6 the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv)  
7 measures for the control of undesirable species.

8 b. If permittee-responsible compensation is proposed for stream impacts, a conceptual  
9 stream compensatory mitigation plan must be submitted in order for an application to  
10 be deemed complete and shall include at a minimum (i) the goals and objectives in  
11 terms of water quality benefits and replacement of stream functions; (ii) a detailed  
12 location map including the latitude and longitude to the nearest second and the fourth  
13 order subbasin, as defined by the hydrologic unit boundaries of the National  
14 Watershed Boundary Dataset, at the center of the site; (iii) a description of the  
15 surrounding land use; (iv) the proposed stream segment restoration locations including  
16 plan view and cross-sectional drawings; (v) the stream deficiencies that need to be  
17 addressed; (vi) data obtained from a DEQ-approved, stream impact assessment  
18 methodology such as the Unified Stream Methodology; (vii) the proposed restoration  
19 measures to be employed including channel measurements, proposed design flows,  
20 types of instream structures, and conceptual planting scheme; (viii) reference stream  
21 data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities;  
22 and (xi) measures for the control of undesirable species.

23 c. For any permittee-responsible compensatory mitigation, the conceptual  
24 compensatory mitigation plan shall also include a draft of the intended protective  
25 mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but  
26 not limited to, a conservation easement held by a third party in accordance with the  
27 Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or  
28 the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly  
29 recorded declaration of restrictive covenants, or other protective instrument. The draft  
30 intended protective mechanism shall contain the information in subdivisions c (1), c  
31 (2), and c (3) of this subdivision 13 or in lieu thereof shall describe the intended  
32 protective mechanism or mechanisms that contains the information required below:

33 (1) A provision for access to the site;

34 (2) The following minimum restrictions: no ditching, land clearing, or discharge of  
35 dredge or fill material, and no activity in the area designated as compensatory  
36 mitigation area with the exception of maintenance; corrective action measures; or  
37 DEQ-approved activities described in the approved final compensatory mitigation plan  
38 or long-term management plan; and

39 (3) A long-term management plan that identifies a long-term steward and adequate  
40 financial assurances for long-term management in accordance with the current  
41 standard for mitigation banks and in-lieu fee program sites, except that financial  
42 assurances will not be necessary for permittee-responsible compensation provided by  
43 government agencies on government property. If approved by DEQ, permittee-  
44 responsible compensation on government property and long-term protection may be  
45 provided through federal facility management plans, integrated natural resources  
46 management plans, or other alternate management plans submitted by a government  
47 agency or public authority.

48 d. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-  
49 lieu fee program credits shall include the number and type of credits proposed to be  
50 purchased and documentation from the approved bank or in-lieu fee program sponsor  
51 of the availability of credits at the time of application.

1 14. Permit application fee. The applicant will be notified by the board as to the appropriate  
2 fee for the project in accordance with 9VAC25-20.

3 15. A written description and a graphical depiction identifying all upland areas including  
4 buffers, wetlands, open water, other surface waters, and compensatory mitigation areas  
5 located within the proposed project boundary or permittee-responsible compensatory  
6 mitigation areas that are under a deed restriction, conservation easement, restrictive  
7 covenant, or other land use protective instrument (i.e., protected areas). Such description  
8 and a graphical depiction shall include the nature of the prohibited activities within the  
9 protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as  
10 field-verified by the applicant, and if available, the limits as approved by the locality in  
11 which the project site is located, unless the proposed use is exempt from the Chesapeake  
12 Bay Preservation Area Designation and Management Regulations (9VAC25-830), as  
13 additional state or local requirements may apply if the project is located within an RPA.

14 16. Signature page that has been signed, dated, and certified by the applicant in  
15 accordance with 9VAC25-210-100. If the applicant is a business or other organization, the  
16 signature must be made by an individual with the authority to bind the business or  
17 organization, and the title of the signatory must be provided. The application signature  
18 page, either on the copy submitted to the Virginia Marine Resources Commission or to  
19 DEQ, must have an original signature. Electronic submittals containing the original  
20 signature page, such as that contained in a scanned document file, are acceptable.

21 C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ.  
22 When required, the method selected for the analysis shall assess water quality or habitat metrics  
23 and shall be coordinated with DEQ in advance of conducting the analysis.

24 1. No analysis shall be required when:

- 25 a. Wetland impacts per each single and complete project total 1.00 acre or less; or  
26 b. The proposed compensatory mitigation consists of purchasing mitigation bank or  
27 in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-  
28 shrub, and 1:1 for emergent, or higher.

29 2. Analysis shall be required when wetland impacts per each single and complete project  
30 total 1.01 acres or more and when any of the following applies:

- 31 a. The proposed compensatory mitigation consists of permittee-responsible  
32 compensation, including water quality enhancements as replacement for wetlands; or  
33 b. The proposed compensatory mitigation consists of purchasing mitigation bank or  
34 in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest,  
35 1.5:1 for scrub-shrub, and 1:1 for emergent.

36 D. Upon receipt of an application by the appropriate DEQ office, the board has 15 days to  
37 review the application and either determine the information requested in subsection B of this  
38 section is complete or inform the applicant that additional information is required to make the  
39 application complete. Coverage under this VWP general permit shall be approved or approved  
40 with conditions, or the application shall be denied, within 45 days of receipt of a complete  
41 application. If the board fails to act within 45 days on a complete application, coverage under this  
42 VWP permit general permit shall be deemed granted.

43 1. In evaluating the application, the board shall make an assessment of the impacts  
44 associated with the project in combination with other existing or proposed impacts.  
45 Application for coverage under this VWP general permit shall be denied if the cumulative  
46 impacts will cause or contribute to a significant impairment of state waters or fish and  
47 wildlife resources.

48 2. The board may place additional requirements on a project in order to grant coverage  
49 under this VWP general permit. However, the requirements must be consistent with this  
50 chapter.

51 E. Incomplete application.



1 1. Where an application for general permit coverage is not accepted as complete by the  
 2 board within 15 days of receipt, the board shall require the submission of additional  
 3 information from the applicant and may suspend processing of any application until such  
 4 time as the applicant has supplied the requested information and the application is  
 5 complete. Where the applicant becomes aware that he omitted one or more relevant facts  
 6 from an application, or submitted incorrect information in an application or in any report to  
 7 the board, the applicant shall immediately submit such facts or the correct information. A  
 8 revised application with new information shall be deemed a new application for purposes  
 9 of review but shall not require an additional permit application fee.

10 2. An incomplete permit application for general permit coverage may be administratively  
 11 withdrawn from processing by the board for failure to provide the required information after  
 12 60 days from the date of the latest written information request made by the board. The  
 13 board shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-  
 14 finding proceeding when administratively withdrawing an incomplete application.  
 15 Resubmittal of an application for the same or similar project, after such time that the  
 16 original permit application was administratively withdrawn, shall require submittal of an  
 17 additional permit application fee.

18 3. An applicant may request a suspension of application review by the board, but  
 19 requesting a suspension shall not preclude the board from administratively withdrawing  
 20 an incomplete application. Resubmittal of a permit application for the same or similar  
 21 project, after such time that the original permit application was administratively withdrawn,  
 22 shall require submittal of an additional permit application fee.

23 **9VAC25-690-100. VWP general permit.**

24 **VWP GENERAL PERMIT NO. WP4 FOR IMPACTS FROM DEVELOPMENT AND CERTAIN**  
 25 **MINING ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE**  
 26 **VIRGINIA STATE WATER CONTROL LAW**

27 **Effective date: August 2, 2016**

28 **Expiration date: August 1, 2026**

29 In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State  
 30 Water Control Law and regulations adopted pursuant thereto, the board has determined that there  
 31 is a reasonable assurance that this VWP general permit, if complied with, will protect instream  
 32 beneficial uses, will not violate applicable water quality standards, and will not cause or contribute  
 33 to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP  
 34 general permit, the board has not taken into consideration the structural stability of any proposed  
 35 activities.

36 The permanent or temporary impact of up to two acres of nontidal wetlands or open water and  
 37 up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general  
 38 permit set forth herein; any requirements in coverage granted under this general permit; the Clean  
 39 Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

40 **Part I. Special Conditions.**

41 **A. Authorized activities.**

42 1. The activities authorized by this chapter shall not cause more than the permanent or  
 43 temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500  
 44 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the  
 45 board in the coverage letter, if any, shall be enforceable conditions of this permit.

46 2. Any changes to the authorized permanent impacts to surface waters shall require a  
 47 notice of planned change in accordance with 9VAC25-690-80. An application or request  
 48 for modification to coverage or another VWP permit application may be required.

49 3. Any changes to the authorized temporary impacts to surface waters shall require written  
 50 notification to and approval from the Department of Environmental Quality in accordance

1 with 9VAC25-690-80 prior to initiating the impacts and restoration to preexisting conditions  
2 in accordance with the conditions of this permit.

3 4. Modification to compensation requirements may be approved at the request of the  
4 permittee when a decrease in the amount of authorized surface waters impacts occurs,  
5 provided that the adjusted compensation meets the initial compensation goals.

6 B. Overall conditions.

7 1. The activities authorized by this VWP general permit shall be executed in a manner so  
8 as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of  
9 the Code of Virginia.

10 2. No activity may substantially disrupt the movement of aquatic life indigenous to the  
11 water body, including those species which normally migrate through the area, unless the  
12 primary purpose of the activity is to impound water. Pipes and culverts placed in streams  
13 must be installed to maintain low flow conditions and shall be countersunk at both inlet  
14 and outlet ends of the pipe or culvert, unless otherwise specifically approved by the  
15 Department of Environmental Quality on a case-by-case basis, and as follows: The  
16 requirement to countersink does not apply to extensions or maintenance of existing pipes  
17 and culverts that are not countersunk, floodplain pipes and culverts being placed above  
18 ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts  
19 required to be placed on slopes 5.0% or greater. Bedrock encountered during construction  
20 must be identified and approved in advance of a design change where the countersunk  
21 condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be  
22 countersunk three inches below the natural stream bed elevations, and pipes and culverts  
23 greater than 24 inches shall be countersunk at least six inches below the natural stream  
24 bed elevations. Hydraulic capacity shall be determined based on the reduced capacity  
25 due to the countersunk position. In all stream crossings appropriate measures shall be  
26 implemented to minimize any disruption of aquatic life movement.

27 3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters,  
28 unless the area is contained within a cofferdam and the work is performed in the dry or  
29 unless otherwise approved by the Department of Environmental Quality. Excess or waste  
30 concrete shall not be disposed of in flowing surface waters or washed into flowing surface  
31 waters.

32 4. All fill material shall be clean and free of contaminants in toxic concentrations or  
33 amounts in accordance with all applicable laws and regulations.

34 5. Erosion and sedimentation controls shall be designed in accordance with the Virginia  
35 Erosion and Sediment Control Handbook, Third Edition, 1992, or for mining activities  
36 covered by this general permit, the standards issued by the Virginia Department of Mines,  
37 Minerals and Energy that are effective as those in the Virginia Erosion and Sediment  
38 Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing  
39 and grading and maintained in good working order to minimize impacts to state waters.  
40 These controls shall remain in place until the area is stabilized and shall then be removed.

41 6. Exposed slopes and streambanks shall be stabilized immediately upon completion of  
42 work in each permitted impact area. All denuded areas shall be properly stabilized in  
43 accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition,  
44 1992.

45 7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways)  
46 and demolition activities associated with the project shall be accomplished in a manner  
47 that minimizes construction or waste materials from entering surface waters to the  
48 maximum extent practicable, unless authorized by this VWP general permit.

49 8. No machinery may enter flowing waters, unless authorized by this VWP general permit  
50 or approved prior to entry by the Department of Environmental Quality.

51 9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats,  
52 geotextile fabric, or other suitable material to minimize soil disturbance to the maximum

1 extent practicable. Equipment and materials shall be removed immediately upon  
2 completion of work.

3 10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of  
4 authorized activities and within the project or right-of-way limits shall be clearly flagged or  
5 marked for the life of the construction activity at that location to preclude unauthorized  
6 disturbances to these surface waters and compensatory mitigation areas during  
7 construction. The permittee shall notify contractors that no activities are to occur in these  
8 marked surface waters.

9 11. Temporary disturbances to surface waters during construction shall be avoided and  
10 minimized to the maximum extent practicable. All temporarily disturbed wetland areas  
11 shall be restored to preexisting conditions within 30 days of completing work at each  
12 respective temporary impact area, which shall include reestablishing preconstruction  
13 elevations and contours with topsoil from the impact area where practicable and planting  
14 or seeding with appropriate wetland vegetation according to cover type (i.e., emergent,  
15 scrub-shrub, or forested). The permittee shall take all appropriate measures to promote  
16 and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation  
17 through the second year post-disturbance. All temporarily impacted streams and  
18 streambanks shall be restored to their preconstruction elevations and contours with topsoil  
19 from the impact area where practicable within 30 days following the construction at that  
20 stream segment. Streambanks shall be seeded or planted with the same vegetation cover  
21 type originally present, including any necessary supplemental erosion control grasses.  
22 Invasive species identified on the Department of Conservation and Recreation's Virginia  
23 Invasive Plant Species List shall not be used to the maximum extent practicable or without  
24 prior approval from the Department of Environmental Quality.

25 12. Materials (including fill, construction debris, and excavated and woody materials)  
26 temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately  
27 stabilized to prevent entry into state waters, managed such that leachate does not enter  
28 state waters, and completely removed within 30 days following completion of that  
29 construction activity. Disturbed areas shall be returned to preconstruction elevations and  
30 contours with topsoil from the impact area where practicable; restored within 30 days  
31 following removal of the stockpile; and restored with the same vegetation cover type  
32 originally present, including any necessary supplemental erosion control grasses. Invasive  
33 species identified on the Department of Conservation and Recreation's Virginia Invasive  
34 Plant Species List shall not be used to the maximum extent practicable or without prior  
35 approval from the Department of Environmental Quality.

36 13. Continuous flow of perennial springs shall be maintained by the installation of spring  
37 boxes, french drains, or other similar structures.

38 14. The permittee shall employ measures to prevent spills of fuels or lubricants into state  
39 waters.

40 15. The permittee shall conduct activities in accordance with the time-of-year restrictions  
41 recommended by the Virginia Department of ~~Game and Inland Fisheries~~ Wildlife  
42 Resources, the Virginia Marine Resources Commission, or other interested and affected  
43 agencies, as contained, when applicable, in Department of Environmental Quality VWP  
44 general permit coverage, and shall ensure that all contractors are aware of the time-of-  
45 year restrictions imposed.

46 16. Water quality standards shall not be violated as a result of the construction activities.

47 17. If stream channelization or relocation is required, all work in surface waters shall be  
48 done in the dry, unless otherwise authorized by the Department of Environmental Quality,  
49 and all flows shall be diverted around the channelization or relocation area until the new  
50 channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and  
51 outlet ends of the new channel during excavation. Once the new channel has been  
52 stabilized, flow shall be routed into the new channel by first removing the downstream plug

1 and then the upstream plug. The rerouted stream flow must be fully established before  
2 construction activities in the old stream channel can begin.

3 C. Road crossings.

4 1. Access roads and associated bridges, pipes, and culverts shall be constructed to  
5 minimize the adverse effects on surface waters to the maximum extent practicable.  
6 Access roads constructed above preconstruction elevations and contours in surface  
7 waters must be bridged, piped, or culverted to maintain surface flows.

8 2. Installation of road crossings shall occur in the dry via the implementation of cofferdams,  
9 sheetpiling, stream diversions, or similar structures.

10 D. Utility lines.

11 1. All utility line work in surface waters shall be performed in a manner that minimizes  
12 disturbance, and the area must be returned to its preconstruction elevations and contours  
13 with topsoil from the impact area where practicable and restored within 30 days of  
14 completing work in the area, unless otherwise authorized the Department of  
15 Environmental Quality. Restoration shall be the seeding or planting of the same vegetation  
16 cover type originally present, including any necessary supplemental erosion control  
17 grasses. Invasive species identified on the Department of Conservation and Recreation's  
18 Virginia Invasive Plant Species List shall not be used to the maximum extent practicable  
19 or without prior approval from the Department of Environmental Quality.

20 2. Material resulting from trench excavation may be temporarily sidecast into wetlands not  
21 to exceed a total of 90 days, provided the material is not placed in a manner such that it  
22 is dispersed by currents or other forces.

23 3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g.,  
24 backfilling with extensive gravel layers creating a french drain effect.). For example, utility  
25 lines may be backfilled with clay blocks to ensure that the trench does not drain surface  
26 waters through which the utility line is installed.

27 E. Stream modification and stream bank protection.

28 1. Riprap bank stabilization shall be of an appropriate size and design in accordance with  
29 the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

30 2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion  
31 and Sediment Control Handbook, Third Edition, 1992.

32 3. For stream bank protection activities, the structure and backfill shall be placed as close  
33 to the stream bank as practicable. No material shall be placed in excess of the minimum  
34 necessary for erosion protection.

35 4. All stream bank protection structures shall be located to eliminate or minimize impacts  
36 to vegetated wetlands to the maximum extent practicable.

37 5. Asphalt and materials containing asphalt or other toxic substances shall not be used in  
38 the construction of submerged sills or breakwaters.

39 6. Redistribution of existing stream substrate for the purpose of erosion control is  
40 prohibited.

41 7. No material removed from the stream bottom shall be disposed of in surface waters,  
42 unless otherwise authorized by this VWP general permit.

43 F. Dredging.

44 1. Dredging depths shall be determined and authorized according to the proposed use  
45 and controlling depths outside the area to be dredged.

46 2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom  
47 and minimizes turbidity levels in the water column.

48 3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging,  
49 dredging operations shall cease, and the Department of Environmental Quality shall be  
50 notified immediately.

1 4. Barges used for the transportation of dredge material shall be filled in such a manner  
2 to prevent the overflow of dredged materials.

3 5. Double handling of dredged material in state waters shall not be permitted.

4 6. For navigation channels the following shall apply:

5 a. A buffer of four times the depth of the dredge cut shall be maintained between the  
6 bottom edge of the design channel and the channelward limit of wetlands, or a buffer  
7 of 15 feet shall be maintained from the dredged cut and the channelward edge of  
8 wetlands, whichever is greater. This landward limit of buffer shall be flagged and  
9 inspected prior to construction.

10 b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-  
11 vertical slope to prevent slumping of material into the dredged area.

12 7. A dredged material management plan for the designated upland disposal site shall be  
13 submitted and approved 30 days prior to initial dredging activity.

14 8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area  
15 to allow for maximum retention and settling time. Filter fabric shall be used to line the  
16 dewatering area and to cover the outfall pipe to further reduce sedimentation to state  
17 waters.

18 9. The dredge material dewatering area shall be of adequate size to contain the dredge  
19 material and to allow for adequate dewatering and settling out of sediment prior to  
20 discharge back into state waters.

21 10. The dredge material dewatering area shall utilize an earthen berm or straw bales  
22 covered with filter fabric along the edge of the area to contain the dredged material, filter  
23 bags, or other similar filtering practices, any of which shall be properly stabilized prior to  
24 placing the dredged material within the containment area.

25 11. Overtopping of the dredge material containment berms with dredge materials shall be  
26 strictly prohibited.

27 G. Stormwater management facilities.

28 1. Stormwater management facilities shall be installed in accordance with best  
29 management practices and watershed protection techniques (e.g., vegetated buffers,  
30 siting considerations to minimize adverse effects to aquatic resources, bioengineering  
31 methods incorporated into the facility design to benefit water quality and minimize adverse  
32 effects to aquatic resources) that provide for long-term aquatic resources protection and  
33 enhancement, to the maximum extent practicable.

34 2. Compensation for unavoidable impacts shall not be allowed within maintenance areas  
35 of stormwater management facilities.

36 3. Maintenance activities within stormwater management facilities shall not require  
37 additional permit coverage or compensation provided that the maintenance activities do  
38 not exceed the original contours of the facility, as approved and constructed, and is  
39 accomplished in designated maintenance areas as indicated in the facility maintenance  
40 or design plan or when unavailable, an alternative plan approved by the Department of  
41 Environmental Quality.

42 Part II. Construction and Compensation Requirements, Monitoring, and Reporting.

43 A. Minimum compensation requirements.

44 1. The permittee shall provide any required compensation for impacts in accordance with  
45 the conditions in this VWP general permit, the coverage letter, and the chapter  
46 promulgating the general permit. For all compensation that requires a protective  
47 mechanism, including preservation of surface waters or buffers, the permittee shall record  
48 the approved protective mechanism in the chain of title to the property, or an equivalent  
49 instrument for government-owned lands, and proof of recordation shall be submitted to  
50 the Department of Environmental Quality prior to commencing impacts in surface waters.

1 2. Compensation options that may be considered under this VWP general permit shall  
2 meet the criteria in 9VAC25-210-116 and 9VAC25-690-70.

3 3. The permittee-responsible compensation site or sites depicted in the conceptual  
4 compensation plan submitted with the application shall constitute the compensation site.  
5 A site change may require a modification to coverage.

6 4. For compensation involving the purchase of mitigation bank credits or the purchase of  
7 in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas  
8 until documentation of the mitigation bank credit purchase or of the in-lieu fee program  
9 credit purchase has been submitted to and received by the Department of Environmental  
10 Quality.

11 5. The final compensation plan shall be submitted to and approved by the board prior to a  
12 construction activity in permitted impact areas. The board shall review and provide written  
13 comments on the final plan within 30 days of receipt or it shall be deemed approved. The  
14 final plan as approved by the board shall be an enforceable requirement of any coverage  
15 under this VWP general permit. Deviations from the approved final plan shall be submitted  
16 and approved in advance by the board.

17 a. The final permittee-responsible wetlands compensation plan shall include:

18 (1) The complete information on all components of the conceptual compensation plan.

19 (2) A summary of the type and acreage of existing wetland impacts anticipated during  
20 the construction of the compensation site and the proposed compensation for these  
21 impacts; a site access plan; a monitoring plan, including proposed success criteria,  
22 monitoring goals, and the location of photo-monitoring stations, monitoring wells,  
23 vegetation sampling points, and reference wetlands or streams, if available; an  
24 abatement and control plan for undesirable plant species; an erosion and  
25 sedimentation control plan; a construction schedule; and the final protective  
26 mechanism for the compensation site or sites, including all surface waters and buffer  
27 areas within its boundaries.

28 (3) The approved protective mechanism. The protective mechanism shall be recorded  
29 in the chain of title to the property, or an equivalent instrument for government-owned  
30 lands, and proof of recordation shall be submitted to the Department of Environmental  
31 Quality prior to commencing impacts in surface waters.

32 b. The final permittee-responsible stream compensation plan shall include:

33 (1) The complete information on all components of the conceptual compensation plan.

34 (2) An evaluation, discussion, and plan drawing or drawings of existing conditions on  
35 the proposed compensation stream, including the identification of functional and  
36 physical deficiencies for which the measures are proposed, and summary of  
37 geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth  
38 ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including  
39 a monitoring and reporting schedule, monitoring design and methodologies for  
40 success, proposed success criteria, location of photo-monitoring stations, vegetation  
41 sampling points, survey points, bank pins, scour chains, and reference streams; an  
42 abatement and control plan for undesirable plant species; an erosion and  
43 sedimentation control plan, if appropriate; a construction schedule; a plan-view  
44 drawing depicting the pattern and all compensation measures being employed; a  
45 profile drawing; cross-sectional drawing or drawings of the proposed compensation  
46 stream; and the final protective mechanism for the protection of the compensation site  
47 or sites, including all surface waters and buffer areas within its boundaries.

48 (3) The approved protective mechanism. The protective mechanism shall be recorded  
49 in the chain of title to the property, or an equivalent instrument for government-owned  
50 lands, and proof of recordation shall be submitted to the Department of Environmental  
51 Quality prior to commencing impacts in surface waters.

1 6. The following criteria shall apply to permittee-responsible wetland or stream  
2 compensation:

3 a. The vegetation used shall be native species common to the area, shall be suitable  
4 for growth in local wetland or riparian conditions, and shall be from areas within the  
5 same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural  
6 Resources Conservation Service Land Resource Region as that of the project site.  
7 Planting of woody plants shall occur when vegetation is normally dormant, unless  
8 otherwise approved in the final wetlands or stream compensation plan or plans.

9 b. All work in permitted impact areas shall cease if compensation site construction has  
10 not commenced within 180 days of commencement of project construction, unless  
11 otherwise authorized by the board.

12 c. The Department of Environmental Quality shall be notified in writing prior to the  
13 initiation of construction activities at the compensation site.

14 d. Point sources of stormwater runoff shall be prohibited from entering a wetland  
15 compensation site prior to treatment by appropriate best management practices.  
16 Appropriate best management practices may include sediment traps, grassed  
17 waterways, vegetated filter strips, debris screens, oil and grease separators, or  
18 forebays.

19 e. The success of the compensation shall be based on meeting the success criteria  
20 established in the approved final compensation plan.

21 f. If the wetland or stream compensation area fails to meet the specified success  
22 criteria in a particular monitoring year, other than the final monitoring year, the reasons  
23 for this failure shall be determined, and a corrective action plan shall be submitted to  
24 the Department of Environmental Quality for approval with or before that year's  
25 monitoring report. The corrective action plan shall contain at minimum the proposed  
26 actions, a schedule for those actions, and a monitoring plan, and shall be implemented  
27 by the permittee in accordance with the approved schedule. Should significant  
28 changes be necessary to ensure success, the required monitoring cycle shall begin  
29 again, with monitoring year one being the year that the changes are complete, as  
30 confirmed by the Department of Environmental Quality. If the wetland or stream  
31 compensation area fails to meet the specified success criteria by the final monitoring  
32 year or if the wetland or stream compensation area has not met the stated restoration  
33 goals, reasons for this failure shall be determined and a corrective action plan,  
34 including proposed actions, a schedule, and a monitoring plan, shall be submitted with  
35 the final year monitoring report for Department of Environmental Quality approval.  
36 Corrective action shall be implemented by the permittee in accordance with the  
37 approved schedule. Annual monitoring shall be required to continue until two  
38 sequential, annual reports indicate that all criteria have been successfully satisfied and  
39 the site has met the overall restoration goals (e.g., that corrective actions were  
40 successful).

41 g. The surveyed wetland boundary for the wetlands compensation site shall be based  
42 on the results of the hydrology, soils, and vegetation monitoring data and shall be  
43 shown on the site plan. Calculation of total wetland acreage shall be based on that  
44 boundary at the end of the monitoring cycle. Data shall be submitted by December 31  
45 of the final monitoring year.

46 h. Herbicides or algicides shall not be used in or immediately adjacent to the wetlands  
47 or stream compensation site or sites without prior authorization by the board. All  
48 vegetation removal shall be done by manual means, unless authorized by the  
49 Department of Environmental Quality in advance.

50 B. Impact site construction monitoring.

51 1. Construction activities authorized by this permit that are within impact areas shall be  
52 monitored and documented. The monitoring shall consist of:

1 a. Preconstruction photographs taken at each impact area prior to initiation of activities  
2 within impact areas. Photographs shall remain on the project site and depict the impact  
3 area and the nonimpacted surface waters immediately adjacent to and downgradient  
4 of each impact area. Each photograph shall be labeled to include the following  
5 information: permit number, impact area number, date and time of the photograph,  
6 name of the person taking the photograph, photograph orientation, and photograph  
7 subject description.

8 b. Site inspections shall be conducted by the permittee or the permittee's qualified  
9 designee once every calendar month during activities within impact areas. Monthly  
10 inspections shall be conducted in the following areas: all authorized permanent and  
11 temporary impact areas; all avoided surface waters, including wetlands, stream  
12 channels, and open water; surface water areas within 50 feet of any land disturbing  
13 activity and within the project or right-of-way limits; and all on-site permanent  
14 preservation areas required under this permit. Observations shall be recorded on the  
15 inspection form provided by the Department of Environmental Quality. The form shall  
16 be completed in its entirety for each monthly inspection and shall be kept on site and  
17 made available for review by the Department of Environmental Quality staff upon  
18 request during normal business hours. Inspections are not required during periods of  
19 no activity within impact areas.

20 2. Monitoring of water quality parameters shall be conducted during permanent relocation  
21 of perennial streams through new channels in the manner noted below. The permittee  
22 shall report violations of water quality standards to the Department of Environmental  
23 Quality in accordance with the procedures in 9VAC25-690-100 Part II E. Corrective  
24 measures and additional monitoring may be required if water quality standards are not  
25 met. Reporting shall not be required if water quality standards are not violated.

26 a. A sampling station shall be located upstream and immediately downstream of the  
27 relocated channel.

28 b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every  
29 30 minutes for at least two hours at each station prior to opening the new channels  
30 and immediately before opening new channels.

31 c. Temperature, pH, and D.O. readings shall be taken after opening the channels and  
32 every 30 minutes for at least three hours at each station.

33 C. Permittee-responsible wetland compensation site monitoring.

34 1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial  
35 surveys, shall be conducted for the entire compensation site or sites including invert  
36 elevations for all water elevation control structures and spot elevations throughout the site  
37 or sites. Aerial surveys shall include the variation from actual ground conditions, such as  
38 +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered  
39 professional engineer to conform to the design plans. The survey shall be submitted within  
40 60 days of completing compensation site construction. Changes or deviations in the as-  
41 built survey or aerial survey shall be shown on the survey and explained in writing.

42 2. Photographs shall be taken at the compensation site or sites from the permanent  
43 markers identified in the final compensation plan, and established to ensure that the same  
44 locations and view directions at the site or sites are monitored in each monitoring period.  
45 These photographs shall be taken after the initial planting and at a time specified in the  
46 final compensation plan during every monitoring year.

47 3. Compensation site monitoring shall begin on day one of the first complete growing  
48 season (monitoring year 1) after wetland compensation site construction activities,  
49 including planting, have been completed. Monitoring shall be required for monitoring years  
50 1, 2, 3, and 5, unless otherwise approved by the Department of Environmental Quality. In  
51 all cases, if all success criteria have not been met in the final monitoring year, then



1 monitoring shall be required for each consecutive year until two annual sequential reports  
2 indicate that all criteria have been successfully satisfied.

3 4. The establishment of wetland hydrology shall be measured during the growing season,  
4 with the location and number of monitoring wells, and frequency of monitoring for each  
5 site, set forth in the final monitoring plan. Hydrology monitoring well data shall be  
6 accompanied by precipitation data, including rainfall amounts either from on site or from  
7 the closest weather station. Once the wetland hydrology success criteria have been  
8 satisfied for a particular monitoring year, monitoring may be discontinued for the remainder  
9 of that monitoring year following Department of Environmental Quality approval. After a  
10 period of three monitoring years, the permittee may request that hydrology monitoring be  
11 discontinued, providing that adequate hydrology has been established and maintained.  
12 Hydrology monitoring shall not be discontinued without written approval from the  
13 Department of Environmental Quality.

14 5. The presence of hydric soils or soils under hydric conditions shall be evaluated in  
15 accordance with the final compensation plan.

16 6. The establishment of wetland vegetation shall be in accordance with the final  
17 compensation plan. Monitoring shall take place in August, September, or October during  
18 the growing season of each monitoring year, unless otherwise authorized in the monitoring  
19 plan.

20 7. The presence of undesirable plant species shall be documented.

21 8. All wetland compensation monitoring reports shall be submitted in accordance with  
22 9VAC25-690-100 Part II E 6.

23 D. Permittee-responsible stream compensation and monitoring.

24 1. Riparian buffer restoration activities shall be detailed in the final compensation plan and  
25 shall include, as appropriate, the planting of a variety of native species currently growing  
26 in the site area, including appropriate seed mixtures and woody species that are bare root,  
27 balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the  
28 stream bank at bankfull elevation landward on both sides of the stream, shall be required  
29 where practical.

30 2. The installation of root wads, vanes, and other instream structures, shaping of the  
31 stream banks, and channel relocation shall be completed in the dry whenever practicable.

32 3. Livestock access to the stream and designated riparian buffer shall be limited to the  
33 greatest extent practicable.

34 4. Stream channel restoration activities shall be conducted in the dry or during low flow  
35 conditions. When site conditions prohibit access from the streambank or upon prior  
36 authorization from the Department of Environmental Quality, heavy equipment may be  
37 authorized for use within the stream channel.

38 5. Photographs shall be taken at the compensation site from the vicinity of the permanent  
39 photo-monitoring stations identified in the final compensation plan. The photograph  
40 orientation shall remain constant during all monitoring events. At a minimum, photographs  
41 shall be taken from the center of the stream, facing downstream, with a sufficient number  
42 of photographs to view the entire length of the restoration site. Photographs shall  
43 document the completed restoration conditions. Photographs shall be taken prior to site  
44 activities, during instream and riparian compensation construction activities, within one  
45 week of completion of activities, and during at least one day of each monitoring year to  
46 depict restored conditions.

47 6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial  
48 surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall  
49 include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall  
50 be certified by the licensed surveyor or by a registered, professional engineer to conform  
51 to the design plans. The survey shall be submitted within 60 days of completing

1 compensation site construction. Changes or deviations from the final compensation plans  
2 in the as-built survey or aerial survey shall be shown on the survey and explained in  
3 writing.

4 7. Compensation site monitoring shall begin on day one of the first complete growing  
5 season (monitoring year 1) after stream compensation site construction activities,  
6 including planting, have been completed. Monitoring shall be required for monitoring years  
7 1 and 2, unless otherwise approved by the Department of Environmental Quality. In all  
8 cases, if all success criteria have not been met in the final monitoring year, then monitoring  
9 shall be required for each consecutive year until two annual sequential reports indicate  
10 that all criteria have been successfully satisfied.

11 8. All stream compensation site monitoring reports shall be submitted by in accordance  
12 with 9VAC25-690-100 Part II E 6.

#### 13 E. Reporting.

14 1. Written communications required by this VWP general permit shall be submitted to the  
15 appropriate Department of Environmental Quality office. The VWP general permit tracking  
16 number shall be included on all correspondence.

17 2. The Department of Environmental Quality shall be notified in writing prior to the start of  
18 construction activities at the first permitted impact area.

19 3. A construction status update form provided by the Department of Environmental Quality  
20 shall be completed and submitted to the Department of Environmental Quality twice per  
21 year for the duration of coverage under a VWP general permit. Forms completed in June  
22 shall be submitted by or on July 10, and forms completed in December shall be submitted  
23 by or on January 10. The form shall include reference to the VWP permit tracking number  
24 and one of the following statements for each authorized surface water impact location:

- 25 a. Construction activities have not yet started;
- 26 b. Construction activities have started;
- 27 c. Construction activities have started but are currently inactive; or
- 28 d. Construction activities are complete.

29 4. The Department of Environmental Quality shall be notified in writing within 30 days  
30 following the completion of all activities in all authorized impact areas.

31 5. The Department of Environmental Quality shall be notified in writing prior to the initiation  
32 of activities at the permittee-responsible compensation site. The notification shall include  
33 a projected schedule of activities and construction completion.

34 6. All permittee-responsible compensation site monitoring reports shall be submitted  
35 annually by December 31, with the exception of the last year, in which case the report  
36 shall be submitted at least 60 days prior to the expiration of the general permit, unless  
37 otherwise approved by the Department of Environmental Quality.

38 a. All wetland compensation site monitoring reports shall include, as applicable, the  
39 following:

40 (1) General description of the site including a site location map identifying photo-  
41 monitoring stations, vegetative and soil monitoring stations, monitoring wells, and  
42 wetland zones.

43 (2) Summary of activities completed during the monitoring year, including alterations  
44 or maintenance conducted at the site.

45 (3) Description of monitoring methods.

46 (4) Analysis of all hydrology information, including monitoring well data, precipitation  
47 data, and gauging data from streams or other open water areas, as set forth in the  
48 final compensation plan.

49 (5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

1 (6) Analysis of all vegetative community information, including woody and herbaceous  
2 species, both planted and volunteers, as set forth in the final compensation plan.

3 (7) Photographs labeled with the permit number, the name of the compensation site,  
4 the photo-monitoring station number, the photograph orientation, the date and time of  
5 the photograph, the name of the person taking the photograph, and a brief description  
6 of the photograph subject. This information shall be provided as a separate attachment  
7 to each photograph, if necessary. Photographs taken after the initial planting shall be  
8 included in the first monitoring report after planting is complete.

9 (8) Discussion of wildlife or signs of wildlife observed at the compensation site.

10 (9) Comparison of site conditions from the previous monitoring year and reference site.

11 (10) Discussion of corrective measures or maintenance activities to control  
12 undesirable species, to repair damaged water control devices, or to replace damaged  
13 planted vegetation.

14 (11) Corrective action plan that includes proposed actions, a schedule, and monitoring  
15 plan.

16 b. All stream compensation site monitoring reports shall include, as applicable, the  
17 following:

18 (1) General description of the site including a site location map identifying photo-  
19 monitoring stations and monitoring stations.

20 (2) Summary of activities completed during the monitoring year, including alterations  
21 or maintenance conducted at the site.

22 (3) Description of monitoring methods.

23 (4) Evaluation and discussion of the monitoring results in relation to the success  
24 criteria and overall goals of compensation.

25 (5) Photographs shall be labeled with the permit number, the name of the  
26 compensation site, the photo-monitoring station number, the photograph orientation,  
27 the date and time of the photograph, the name of the person taking the photograph,  
28 and a brief description of the photograph subject. Photographs taken prior to  
29 compensation site construction activities, during instream and riparian restoration  
30 activities, and within one week of completion of activities shall be included in the first  
31 monitoring report.

32 (6) Discussion of alterations, maintenance, or major storm events resulting in  
33 significant change in stream profile or cross section, and corrective actions conducted  
34 at the stream compensation site.

35 (7) Documentation of undesirable plant species and summary of abatement and  
36 control measures.

37 (8) Summary of wildlife or signs of wildlife observed at the compensation site.

38 (9) Comparison of site conditions from the previous monitoring year and reference site,  
39 and as-built survey, if applicable.

40 (10) Corrective action plan that includes proposed actions, a schedule and monitoring  
41 plan.

42 (11) Additional submittals that were approved by the Department of Environmental  
43 Quality in the final compensation plan.

44 7. The permittee shall notify the Department of Environmental Quality in writing when  
45 unusual or potentially complex conditions are encountered which require debris removal  
46 or involve potentially toxic substance. Measures to remove the obstruction, material, or  
47 toxic substance or to change the location of a structure are prohibited until approved by  
48 the Department of Environmental Quality.

49 8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If  
50 spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday,

1 the appropriate Department of Environmental Quality regional office shall be notified;  
2 otherwise, the Department of Emergency Management shall be notified at 1-800-468-  
3 8892.

4 9. Violations of state water quality standards shall be reported to the appropriate  
5 Department of Environmental Quality office no later than the end of the business day  
6 following discovery.

7 10. The permittee shall notify the Department of Environmental Quality no later than the  
8 end of the third business day following the discovery of additional impacts to surface  
9 waters including wetlands, stream channels, and open water that are not authorized by  
10 the Department of Environmental Quality or to any required preservation areas. The  
11 notification shall include photographs, estimated acreage or linear footage of impacts, and  
12 a description of the impacts.

13 11. Submittals required by this VWP general permit shall contain the following signed  
14 certification statement:

15 "I certify under penalty of law that this document and all attachments were prepared under  
16 my direction or supervision in accordance with a system designed to assure that qualified  
17 personnel properly gather and evaluate the information submitted. Based on my inquiry of  
18 the person or persons who manage the system, or those persons directly responsible for  
19 gathering the information, the information submitted is, to the best of my knowledge and  
20 belief, true, accurate, and complete. I am aware that there are significant penalties for  
21 submitting false information, including the possibility of fine and imprisonment for knowing  
22 violation."

### 23 Part III. Conditions Applicable to All VWP General Permits.

24 A. Duty to comply. The permittee shall comply with all conditions, limitations, and other  
25 requirements of the VWP general permit; any requirements in coverage granted under this VWP  
26 general permit; the Clean Water Act, as amended; and the State Water Control Law and  
27 regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a  
28 violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement  
29 action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage  
30 revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification  
31 to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve  
32 the permittee of the duty to comply with all applicable federal and state statutes, regulations, and  
33 toxic standards and prohibitions.

34 B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent  
35 impacts in violation of the VWP general permit which may have a reasonable likelihood of  
36 adversely affecting human health or the environment.

37 C. Reopener. This VWP general permit may be reopened to modify its conditions when the  
38 circumstances on which the previous VWP general permit was based have materially and  
39 substantially changed, or special studies conducted by the board or the permittee show material  
40 and substantial change since the time the VWP general permit was issued and thereby constitute  
41 cause for revoking and reissuing the VWP general permit.

42 D. Compliance with state and federal law. Compliance with this VWP general permit  
43 constitutes compliance with the VWP permit requirements of the State Water Control Law.  
44 Nothing in this VWP general permit shall be construed to preclude the institution of any legal  
45 action under or relieve the permittee from any responsibilities, liabilities, or other penalties  
46 established pursuant to any other state law or regulation or under the authority preserved by §  
47 510 of the Clean Water Act.

48 E. Property rights. The issuance of this VWP general permit does not convey property rights  
49 in either real or personal property or any exclusive privileges, nor does it authorize injury to private  
50 property, any invasion of personal property rights, or any infringement of federal, state, or local  
51 laws or regulations.

52 F. Severability. The provisions of this VWP general permit are severable.

1 G. Inspection and entry. Upon presentation of credential, the permittee shall allow the board  
2 or any duly authorized agent of the board, at reasonable times and under reasonable  
3 circumstances, to enter upon the permittee's property, public or private, and have access to  
4 inspect and copy any records that must be kept as part of the VWP general permit conditions; to  
5 inspect any facilities, operations, or practices (including monitoring and control equipment)  
6 regulated or required under the VWP general permit; and to sample or monitor any substance,  
7 parameter, or activity for the purpose of assuring compliance with the conditions of the VWP  
8 general permit or as otherwise authorized by law. For the purpose of this section, the time for  
9 inspection shall be deemed reasonable during regular business hours. Nothing contained herein  
10 shall make an inspection time unreasonable during an emergency.

11 H. Transferability of VWP general permit coverage. VWP general permit coverage may be  
12 transferred to another permittee when all of the criteria listed in this subsection are met. On the  
13 date of the VWP general permit coverage transfer, the transferred VWP general permit coverage  
14 shall be as fully effective as if it had been granted directly to the new permittee.

15 1. The current permittee notifies the board of the proposed transfer of the general permit  
16 coverage and provides a written agreement between the current and new permittees  
17 containing a specific date of transfer of VWP general permit responsibility, coverage, and  
18 liability to the new permittee, or that the current permittee will retain such responsibility,  
19 coverage, or liability, including liability for compliance with the requirements of  
20 enforcement activities related to the authorized activity.

21 2. The board does not within 15 days notify the current and new permittees of its intent to  
22 modify or revoke and reissue the VWP general permit.

23 I. Notice of planned change. VWP general permit coverage may be modified subsequent to  
24 issuance in accordance with 9VAC25-690-80.

25 J. VWP general permit coverage termination for cause. VWP general permit coverage is  
26 subject to termination for cause by the board after public notice and opportunity for a hearing  
27 pursuant to § 62.1-44.15:02 of the Code of Virginia. Reasons for termination for cause are as  
28 follows:

29 1. Noncompliance by the permittee with any provision of this chapter, any condition of the  
30 VWP general permit, or any requirement in general permit coverage;

31 2. The permittee's failure in the application or during the process of granting VWP general  
32 permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of  
33 any relevant facts at any time;

34 3. The permittee's violation of a special or judicial order;

35 4. A determination by the board that the authorized activity endangers human health or  
36 the environment and can be regulated to acceptable levels by a modification to VWP  
37 general permit coverage or a termination;

38 5. A change in any condition that requires either a temporary or permanent reduction or  
39 elimination of any activity controlled by the VWP general permit; or

40 6. A determination that the authorized activity has ceased and that the compensation for  
41 unavoidable adverse impacts has been successfully completed.

42 K. The board may terminate VWP general permit coverage without cause when the permittee  
43 is no longer a legal entity due to death or dissolution or when a company is no longer authorized  
44 to conduct business in the Commonwealth. The termination shall be effective 30 days after notice  
45 of the proposed termination is sent to the last known address of the permittee or registered agent,  
46 unless the permittee objects within that time. If the permittee does object during that period, the  
47 board shall follow the applicable procedures for termination under §§ 62.1-44.15:02 and 62.1-  
48 44.15:25 of the Code of Virginia.

49 L. VWP general permit coverage termination by consent. The permittee shall submit a request  
50 for termination by consent within 30 days of completing or canceling all authorized activities  
51 requiring notification under 9VAC25-690-50 A and all compensatory mitigation requirements.

1 When submitted for project completion, the request for termination by consent shall constitute a  
2 notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this  
3 termination of coverage on behalf of the board. The permittee shall submit the following  
4 information:

- 5 1. Name, mailing address, and telephone number;
- 6 2. Name and location of the activity;
- 7 3. The VWP general permit tracking number; and
- 8 4. One of the following certifications:

9 a. For project completion:

10 "I certify under penalty of law that all activities and any required compensatory  
11 mitigation authorized by the VWP general permit and general permit coverage have  
12 been completed. I understand that by submitting this notice of termination I am no  
13 longer authorized to perform activities in surface waters in accordance with the VWP  
14 general permit and general permit coverage, and that performing activities in surface  
15 waters is unlawful where the activity is not authorized by the VWP permit or coverage,  
16 unless otherwise excluded from obtaining coverage. I also understand that the  
17 submittal of this notice does not release me from liability for any violations of the VWP  
18 general permit or coverage."

19 b. For project cancellation:

20 "I certify under penalty of law that the activities and any required compensatory  
21 mitigation authorized by the VWP general permit and general permit coverage will not  
22 occur. I understand that by submitting this notice of termination I am no longer  
23 authorized to perform activities in surface waters in accordance with the VWP general  
24 permit and general permit coverage, and that performing activities in surface waters is  
25 unlawful where the activity is not authorized by the VWP permit or coverage, unless  
26 otherwise excluded from obtaining coverage. I also understand that the submittal of  
27 this notice does not release me from liability for any violations of the VWP general  
28 permit or coverage, nor does it allow me to resume the authorized activities without  
29 reapplication and coverage."

30 c. For events beyond permittee control, the permittee shall provide a detailed  
31 explanation of the events, to be approved by the Department of Environmental Quality,  
32 and the following certification statement:

33 "I certify under penalty of law that the activities or the required compensatory mitigation  
34 authorized by the VWP general permit and general permit coverage have changed as  
35 the result of events beyond my control (see attached). I understand that by submitting  
36 this notice of termination I am no longer authorized to perform activities in surface  
37 waters in accordance with the VWP general permit and general permit coverage, and  
38 that performing activities in surface waters is unlawful where the activity is not  
39 authorized by the VWP permit or coverage, unless otherwise excluded from obtaining  
40 coverage. I also understand that the submittal of this notice does not release me from  
41 liability for any violations of the VWP general permit or coverage, nor does it allow me  
42 to resume the authorized activities without reapplication and coverage."

43 M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve  
44 the permittee from civil and criminal penalties for noncompliance.

45 N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be  
46 construed to preclude the institution of legal action or relieve the permittee from any  
47 responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of  
48 the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

49 O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement  
50 action that it would have been necessary to halt or reduce the activity for which VWP general

1 permit coverage has been granted in order to maintain compliance with the conditions of the VWP  
2 general permit or coverage.

3 P. Duty to provide information.

4 1. The permittee shall furnish to the board any information that the board may request to  
5 determine whether cause exists for modifying, revoking, or terminating VWP permit  
6 coverage or to determine compliance with the VWP general permit or general permit  
7 coverage. The permittee shall also furnish to the board, upon request, copies of records  
8 required to be kept by the permittee.

9 2. Plans, maps, conceptual reports, and other relevant information shall be submitted as  
10 required by the board prior to commencing construction.

11 Q. Monitoring and records requirements.

12 1. Monitoring of parameters, other than pollutants, shall be conducted according to  
13 approved analytical methods as specified in the VWP general permit. Analysis of  
14 pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing  
15 Test Procedures for the Analysis of Pollutants.

16 2. Samples and measurements taken for the purpose of monitoring shall be representative  
17 of the monitored activity.

18 3. The permittee shall retain records of all monitoring information, including all calibration  
19 and maintenance records and all original strip chart or electronic recordings for continuous  
20 monitoring instrumentation, copies of all reports required by the VWP general permit, and  
21 records of all data used to complete the application for coverage under the VWP general  
22 permit, for a period of at least three years from the date of general permit expiration. This  
23 period may be extended by request of the board at any time.

24 4. Records of monitoring information shall include, as appropriate:

25 a. The date, exact place, and time of sampling or measurements;

26 b. The name of the individuals who performed the sampling or measurements;

27 c. The date and time the analyses were performed;

28 d. The name of the individuals who performed the analyses;

29 e. The analytical techniques or methods supporting the information such as  
30 observations, readings, calculations, and bench data used;

31 f. The results of such analyses; and

32 g. Chain of custody documentation.

33 R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit,  
34 it shall be unlawful for the permittee to:

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

37 2. Excavate in a wetland;

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

41 4. On and after October 1, 2001, conduct the following activities in a wetland:

42 a. New activities to cause draining that significantly alters or degrades existing wetland  
43 acreage or functions;

44 b. Filling or dumping;

45 c. Permanent flooding or impounding; or

46 d. New activities that cause significant alteration or degradation of existing wetland  
47 acreage or functions.

48 S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the  
49 expiration date of the VWP general permit shall comply with the provisions in 9VAC25-690-27.

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# VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

## CHAPTER 622

*An Act to amend and reenact § 62.1-44.15:21 of the Code of Virginia, relating to water protection permits; administrative withdrawal.*

[H 1458]

Approved April 2, 2020

**Be it enacted by the General Assembly of Virginia:**

**1. That § 62.1-44.15:21 of the Code of Virginia is amended and reenacted as follows:**

**§ 62.1-44.15:21. Impacts to wetlands.**

A. Permits shall address avoidance and minimization of wetland impacts to the maximum extent practicable. A permit shall be issued only if the Board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

B. Permits shall contain requirements for compensating impacts on wetlands. Such compensation requirements shall be sufficient to achieve no net loss of existing wetland acreage and functions and may be met through (i) wetland creation or restoration, (ii) purchase or use of mitigation bank credits pursuant to § 62.1-44.15:23, (iii) contribution to the Wetland and Stream Replacement Fund established pursuant to § 62.1-44.15:23.1 to provide compensation for impacts to wetlands, streams, or other state waters that occur in areas where neither mitigation bank credits nor credits from a Board-approved fund that have met the success criteria are available at the time of permit application, or (iv) contribution to a Board-approved fund dedicated to achieving no net loss of wetland acreage and functions. The Board shall evaluate the appropriate compensatory mitigation option on a case-by-case basis with consideration for which option is practicable and ecologically and environmentally preferable, including, in terms of replacement of acreage and functions, which option offers the greatest likelihood of success and avoidance of temporal loss of acreage and function. This evaluation shall be consistent with the U.S. Army Corps of Engineers Compensatory Mitigation for Losses of Aquatic Resources (33 C.F.R. Part 332). When utilized in conjunction with creation, restoration, or mitigation bank credits, compensation may incorporate (a) preservation or restoration of upland buffers adjacent to wetlands or other state waters or (b) preservation of wetlands.

C. The Board shall utilize the U.S. Army Corps of Engineers' "Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" as the approved method for delineating wetlands. The Board shall adopt appropriate guidance and regulations to ensure consistency with the U.S. Army Corps of Engineers' implementation of delineation practices. The Board shall also adopt guidance and regulations for review and approval of the geographic area of a delineated wetland. Any such approval of a delineation shall remain effective for a period of five years; however, if the Board issues a permit pursuant to this article for an activity in the delineated wetland within the five-year period, the approval shall remain effective for the term of the permit. Any delineation accepted by the U.S. Army Corps of Engineers as sufficient for its exercise of jurisdiction pursuant to § 404 of the Clean Water Act shall be determinative of the geographic area of that delineated wetland.

D. The Board shall develop general permits for such activities in wetlands as it deems appropriate. General permits shall include such terms and conditions as the Board deems necessary to protect state waters and fish and wildlife resources from significant impairment. The Board is authorized to waive the requirement for a general permit or deem an activity in compliance with a general permit when it determines that an isolated wetland is of minimal ecological value. The Board shall develop general permits for:

1. Activities causing wetland impacts of less than one-half of an acre;
2. Facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or State Corporation Commission, except for construction of any natural gas transmission pipeline that is greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)). No Board action on an individual or general permit for such facilities shall alter the siting determination made through Federal Energy Regulatory Commission or State Corporation Commission approval. The Board and the State Corporation Commission shall develop a memorandum of agreement pursuant to §§ 56-46.1, 56-265.2, 56-265.2:1, and 56-580 to ensure that consultation on wetland impacts occurs prior to siting determinations;
3. Coal, natural gas, and coalbed methane gas mining activities authorized by the Department of Mines, Minerals and Energy, and sand mining;
4. Virginia Department of Transportation or other linear transportation projects; and
5. Activities governed by nationwide or regional permits approved by the Board and issued by the

U.S. Army Corps of Engineers. Conditions contained in the general permits shall include, but not be limited to, filing with the Board any copies of preconstruction notification, postconstruction report, and certificate of compliance required by the U.S. Army Corps of Engineers.

E. Within 15 days of receipt of an individual permit application, the Board shall review the application for completeness and either accept the application or request additional specific information from the applicant. ~~Within~~ *Provided the application is not administratively withdrawn, the Board shall, within 120 days of receipt of a complete application, the Board shall* issue the permit, issue the permit with conditions, deny the permit, or decide to conduct a public meeting or hearing. If a public meeting or hearing is held, it shall be held within 60 days of the decision to conduct such a proceeding, and a final decision as to the permit shall be made within 90 days of completion of the public meeting or hearing. *A permit application may be administratively withdrawn from processing by the Board if the application is incomplete or for failure by the applicant to provide the required information after 60 days from the date of the latest written information request made by the Board. Such administrative withdrawal shall occur after the Board has provided (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding pursuant to § 2.2-4019. An applicant may request a suspension of application review by the Board. A submission by the applicant making such a request shall not preclude the Board from administratively withdrawing an application. Resubmittal of a permit application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee and may be subject to additional notice requirements.* In addition, for an individual permit application related to an application to the Federal Energy Regulatory Commission for a certificate of public convenience and necessity pursuant to § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)) for construction of any natural gas transmission pipeline greater than 36 inches inside diameter, the Board shall complete its consideration within the one-year period established under 33 U.S.C. § 1341(a).

F. Within 15 days of receipt of a general permit coverage application, the Board shall review the application for completeness and either accept the application or request additional specific information from the applicant. ~~A determination that an application is complete shall not mean the Board will issue the permit but means only that the applicant has submitted sufficient information to process the application.~~ *Provided the application is not administratively withdrawn, the Board shall, within 45 days of receipt of a complete application, deny, approve, or approve with conditions any application for coverage under a general permit within 45 days of receipt of a complete preconstruction application. The application shall be deemed approved if the Board fails to act within 45 days. A permit coverage application may be administratively withdrawn from processing by the Board if the application is incomplete or for failure by the applicant to provide the required information after 60 days from the date of the latest written application request made by the Board. Such administrative withdrawal shall occur after the Board has provided (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding pursuant to § 2.2-4019. An applicant may request suspension of an application review by the Board. A submission by the applicant making such a request shall not preclude the Board from administratively withdrawing an application. Resubmittal of a permit coverage application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee and may be subject to additional notice requirements.*

G. No Virginia Water Protection Permit shall be required for impacts to wetlands caused by activities governed under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 or normal agricultural activities or normal silvicultural activities. This section shall also not apply to normal residential gardening, lawn and landscape maintenance, or other similar activities that are incidental to an occupant's ongoing residential use of property and of minimal ecological impact. The Board shall develop criteria governing this exemption and shall specifically identify the activities meeting these criteria in its regulations.

H. No Virginia Water Protection Permit shall be required for impacts caused by the construction or maintenance of farm or stock ponds, but other permits may be required pursuant to state and federal law. For purposes of this exclusion, farm or stock ponds shall include all ponds and impoundments that do not fall under the authority of the Virginia Soil and Water Conservation Board pursuant to Article 2 (§ 10.1-604 et seq.) of Chapter 6 pursuant to normal agricultural or silvicultural activities.

I. No Virginia Water Protection Permit shall be required for wetland and open water impacts to a stormwater management facility that was created on dry land for the purpose of conveying, treating, or storing stormwater, but other permits may be required pursuant to local, state, or federal law. The Department shall adopt guidance to ensure that projects claiming this exemption create no more than minimal ecological impact.

J. An individual Virginia Water Protection Permit shall be required for impacts to state waters for the construction of any natural gas transmission pipeline greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)). For purposes of this subsection:

1. Each wetland and stream crossing shall be considered as a single and complete project; however, only one individual Virginia Water Protection Permit addressing all such crossings shall be required for

any such pipeline. Notwithstanding the requirement for only one such individual permit addressing all such crossings, individual review of each proposed water body crossing with an upstream drainage area of five square miles or greater shall be performed.

2. All pipelines shall be constructed in a manner that minimizes temporary and permanent impacts to state waters and protects water quality to the maximum extent practicable, including by the use of applicable best management practices that the Board determines to be necessary to protect water quality.

3. The Department shall assess an administrative charge to any applicant for such project to cover the direct costs of services rendered associated with its responsibilities pursuant to this subsection. This administrative charge shall be in addition to any fee assessed pursuant to § 62.1-44.15:6.

# VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

## CHAPTER 958

An Act to amend and reenact §§ 2.2-106, 2.2-215, 2.2-220.2, 2.2-507, 2.2-4002, 2.2-4024, 2.2-4030, 3.2-108.1, 3.2-801, 3.2-3904, 3.2-3936, 3.2-3937, 3.2-6525, 8.01-480, 9.1-101, 9.1-500, 10.1-204.1, 10.1-211, 10.1-405, 10.1-651, 10.1-659, 10.1-1018, 10.1-1121, 10.1-1152, 10.1-1153, 10.1-1156, 10.1-1186, 10.1-1417, 15.2-915.2, 18.2-56.1, 18.2-134.1, 18.2-308, 18.2-308.02, 18.2-308.03, 18.2-308.06, 18.2-308.016, 22.1-204.2, 24.2-411.2, 24.2-416.3, 28.2-106.1, 28.2-108, 28.2-302.1, 28.2-302.2, 28.2-302.2:1, 28.2-638, 28.2-1103, 28.2-1205.1, 28.2-1302, 28.2-1403, 28.2-1505, 29.1-100, 29.1-101.1, 29.1-102, 29.1-109, 29.1-114, 29.1-300.1, 29.1-302.1, 29.1-302.2, 29.1-309.1, 29.1-358, 29.1-505.1, 29.1-529, 29.1-530.1, 29.1-530.4, 29.1-532, 29.1-753.3, 29.1-801, 30-34.5, 32.1-48.1, 33.2-329, 33.2-613, 33.2-909, 33.2-910, 43-32, 51.1-212, 54.1-3800, 55.1-2902, 56-46.1, 58.1-344.3, 58.1-1405, 58.1-1410, 58.1-2289, 58.1-3510.4, 58.1-3942, 59.1-148.3, 62.1-44.15, as it is currently effective and as it shall become effective, 62.1-44.15:5.01, 62.1-44.15:6, 62.1-44.15:20, 62.1-44.15:81, 62.1-44.19:6, 62.1-44.33, 62.1-44.34:25, 62.1-250, 65.2-402, and 65.2-402.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 29.1-100.1 relating to the Department of Game and Inland Fisheries; name change.

[S 616]

Approved April 9, 2020

### Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-106, 2.2-215, 2.2-220.2, 2.2-507, 2.2-4002, 2.2-4024, 2.2-4030, 3.2-108.1, 3.2-801, 3.2-3904, 3.2-3936, 3.2-3937, 3.2-6525, 8.01-480, 9.1-101, 9.1-500, 10.1-204.1, 10.1-211, 10.1-405, 10.1-651, 10.1-659, 10.1-1018, 10.1-1121, 10.1-1152, 10.1-1153, 10.1-1156, 10.1-1186, 10.1-1417, 15.2-915.2, 18.2-56.1, 18.2-134.1, 18.2-308, 18.2-308.02, 18.2-308.03, 18.2-308.06, 18.2-308.016, 22.1-204.2, 24.2-411.2, 24.2-416.3, 28.2-106.1, 28.2-108, 28.2-302.1, 28.2-302.2, 28.2-302.2:1, 28.2-638, 28.2-1103, 28.2-1205.1, 28.2-1302, 28.2-1403, 28.2-1505, 29.1-100, 29.1-101.1, 29.1-102, 29.1-109, 29.1-114, 29.1-300.1, 29.1-302.1, 29.1-302.2, 29.1-309.1, 29.1-358, 29.1-505.1, 29.1-529, 29.1-530.1, 29.1-530.4, 29.1-532, 29.1-753.3, 29.1-801, 30-34.5, 32.1-48.1, 33.2-329, 33.2-613, 33.2-909, 33.2-910, 43-32, 51.1-212, 54.1-3800, 55.1-2902, 56-46.1, 58.1-344.3, 58.1-1405, 58.1-1410, 58.1-2289, 58.1-3510.4, 58.1-3942, 59.1-148.3, 62.1-44.15, as it is currently effective and as it shall become effective, 62.1-44.15:5.01, 62.1-44.15:6, 62.1-44.15:20, 62.1-44.15:81, 62.1-44.19:6, 62.1-44.33, 62.1-44.34:25, 62.1-250, 65.2-402, and 65.2-402.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 29.1-100.1 as follows:

#### § 2.2-106. Appointment of agency heads; disclosure of resumes; severance.

A. Notwithstanding any provision of law to the contrary, the Governor shall appoint the administrative head of each agency of the executive branch of state government except the:

1. Executive Director of the Virginia Port Authority;
2. Director of the State Council of Higher Education for Virginia;
3. Executive Director of the Department of Game and Inland Fisheries Wildlife Resources;
4. Executive Director of the Jamestown-Yorktown Foundation;
5. Executive Director of the Motor Vehicle Dealer Board;
6. Librarian of Virginia;
7. Administrator of the Commonwealth's Attorneys' Services Council;
8. Executive Director of the Virginia Housing Development Authority; and
9. Executive Director of the Board of Accountancy.

However, the manner of selection of those heads of agencies chosen as set forth in the Constitution of Virginia shall continue without change. Each administrative head and Secretary appointed by the Governor pursuant to this section shall (i) be subject to confirmation by the General Assembly, (ii) have the professional qualifications prescribed by law, and (iii) serve at the pleasure of the Governor.

B. As part of the confirmation process for each administrative head and Secretary, the Secretary of the Commonwealth shall provide copies of the resumes and statements of economic interests filed pursuant to § 2.2-3117 to the chairs of the House of Delegates and Senate Committees on Privileges and Elections. For appointments made before January 1, copies shall be provided to the chairs within 30 days of the appointment or by January 7 whichever time is earlier; and for appointments made after January 1 through the regular session of that year, copies shall be provided to the chairs within seven days of the appointment. Each appointee shall be available for interviews by the Committees on Privileges and Elections or other applicable standing committee. For the purposes of this section and § 2.2-107, there shall be a joint subcommittee of the House of Delegates and Senate Committees on Privileges and Elections consisting of five members of the House Committee and three members of the

only providing page 1  
of legislation



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

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Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director  
(804) 698-4000

**TO: The Members of the State Water Control Board**  
**FROM: Kristen Sadtler, Division of Enforcement**  
**DATE: September 24, 2020**  
**RE: REPORT ON FACILITIES IN SIGNIFICANT NONCOMPLIANCE AND  
CHESAPEAKE BAY PRESERVATION ACT PROGRAM NOTICES OF  
VIOLATION**

**Significant Noncompliance**

There were no new facilities reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance for the quarter ending March 31, 2020.

**Chesapeake Bay Preservation Act Program Notice of Violation**

DEQ completed its compliance review of the Town of Clifton's (Town) Chesapeake Bay Preservation Act (CBPA) program in 2018. On December 7, 2018, DEQ transmitted the staff report of the review to the Town, which identified seven conditions for compliance as well as a timeframe for addressing the conditions. On July 2, 2020, DEQ issued the Town a Notice of Violation for not meeting two conditions related to its local ordinances and septic tank pump-out. The local ordinances did not include all requirements listed in 9VAC25-830-130 and 9VAC25-830-190 and the Town could not provide information to DEQ on the status of septic tank pump-outs in the Town. A Corrective Action Agreement between DEQ and the Town describing the deficiencies, corrective action, and a timeframe for completing the corrective action has been placed on the agenda for the Town Council for approval at its next meeting on September 1, 2020.



**ENFORCEMENT ITEM SUMMARY FORM  
STATE WATER CONTROL BOARD MEETING  
ON SEPTEMBER 24, 2020**

**ITEM:** City of Covington

**DEQ CONTACT:** R. Nelson Dail, BRRO  
[Nelson.dail@deq.virginia.gov](mailto:Nelson.dail@deq.virginia.gov)  
540.562.6754

**FACILITY ADDRESS:** 711 W Park Street in the City of Covington, Virginia.

**TYPE OF PERMIT OR PROGRAM:** Virginia Pollutant Discharge Elimination System

**STATE WATER AFFECTED:** Jackson River, Upper James River Basin. The Jackson River was listed as a 5D Water Body in the 2016 Integrated Report.

**PROPOSED BOARD ACTION:** Consent Special Order with Civil Charge and SEP

**BACKGROUND:** The City of Covington operates the Covington Wastewater Treatment Plant and associated collection system. The discharge of treated wastewater to the Jackson River is regulated by VPDES Permit No. VA0025542.

**DISCUSSION:**

The City of Covington (City) reported multiple unpermitted discharges from the treatment plant and associated collection system from May 2017 to February 2020. The unpermitted discharges are detailed in Appendix E of the proposed order. DEQ's Blue Ridge Regional Office issued multiple warning letters and notices of violation from 2017 to 2019 for the discharges. The proposed order requires that the City design, construct, and place into service, a 2.5 million gallon equalization basin at the wastewater treatment plant. The estimated cost for the equalization basin project is \$5,708,000 (FY 2019 cost). The proposed order also requires the City to develop and submit to the department a revised inflow & infiltration plan.

**CIVIL CHARGES/SUPPLEMENTAL ENVIRONMENTAL PROJECT:**

Section D of the order requires that the City pay a civil charge of \$62,426 to settle the violations. Of this amount, \$6,426 is due within 30 days of the effective date of the order, the remainder (\$56,000) is to be satisfied by completion of a Supplemental Environmental Project. The SEP to be performed involves stabilization of the streambank in sections of Dry Run (a tributary of the Jackson River) located in the City of Covington. The SEP will be completed by March 31, 2021.

**PREVIOUS ENFORCEMENT ACTIONS:**

The City of Covington was the subject of a consent decree issued by the Circuit Court of Richmond effective in July 1988 requiring the elimination of combined sewer overflows. This work was completed in 1995 and the decree was terminated. The City of Covington was subject to a Consent Order in 1997 which was issued for SSOs. The Consent Order was terminated in 1997 upon payment of the civil charge.

**PUBLIC COMMENT:**

The proposed consent order was signed on May 5, 2020. A public notice for this proposed consent order was run on May 23, 2020 in *The Virginia Review*, in the *Virginia Register* on May 25, 2020, and on the Department's website. The 30 day public comment period ended on June 25, 2020. No public comments were received during the comment period.



# *COMMONWEALTH of VIRGINIA*

Matthew J. Strickler  
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY

Blue Ridge Regional Office

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David K. Paylor  
Director

Robert J. Weld  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
CITY OF COVINGTON  
FOR  
COVINGTON WASTEWATER TREATMENT PLANT  
AND  
COLLECTION SYSTEM  
VPDES PERMIT No. VA0025542**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the City of Covington, regarding the Covington Wastewater Treatment Plant and collection system, for the purpose of resolving certain violations of the State Water Control Law and the applicable Permit and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Salem, Virginia.
3. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.



4. "City" or "Covington" means the City of Covington, a political subdivision of the Commonwealth of Virginia. Covington is a "person" within the meaning of Va. Code § 62.1-44.3.
5. "Collection system" or "sanitary sewer collection system" means a sewage collection system consisting of pipelines or conduits, pumping stations and force mains, and all other construction, devices and appliances appurtenant thereto, use for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
9. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
10. "DMR" means Discharge Monitoring Report.
11. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant or sanitary sewer.
12. "Facility" or "Plant" means the Covington Wastewater Treatment Plant, located at 711 W. Park Street, Covington, Virginia, which treats and discharges domestic sewage, for the residents and businesses of the City of Covington.
13. "I&I" means infiltration and inflow.
14. "Infiltration" means groundwater that enters sanitary sewer systems through cracks or leaks in the system.
15. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
16. "O&M" means operations and maintenance.

17. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
18. "Overflow" means the unintentional diversion of waste streams from any portion of a treatment works.
19. "Permit" means VPDES Permit No. VA0025542, which was re-issued under the State Water Control Law and the Regulation to the City of Covington on February 10, 2014, and expired on January 31, 2019, and re-issued on February 1, 2019, and expires on January 31, 2024.
20. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
21. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
22. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
23. "SEP" means Supplemental Environmental Project, undertaken as partial settlement of a civil enforcement action and not otherwise required by law.
24. "SSO" or "sanitary sewer overflow" means the unintentional discharge of waste streams (including infiltration and inflow) from a sewage collection system.
25. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
26. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

27. "Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.
28. "Va. Code" means the Code of Virginia (1950), as amended.
29. "VAC" means the Virginia Administrative Code.
30. "VPDES" means Virginia Pollutant Discharge Elimination System.
31. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

**SECTION C: Findings of Fact and Conclusions of Law**

1. The City of Covington owns and operates the Facility and collection system located in Covington, Virginia. The Permit allows the City to discharge treated sewage and other municipal wastes from the Facility to the Jackson River, in strict compliance with the terms and conditions of the Permit.
2. The Jackson River is located in the James River Basin. The Jackson River was listed as a category 5D water body in the 2016 Integrated Report.
3. The City reported unpermitted discharges from the WWTP and the collection system from May 2017 to February 2020 as described in the table in Appendix E.
4. The Department issued Warning Letters and Notices of Violation to the City for the unpermitted discharges as described in the table in Appendix F.
5. DEQ and City representatives met on January 25, 2018, July 26, 2018 and November 1, 2019 to discuss the City's compliance history and corrective actions.
6. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."

7. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES Permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
8. The Permit, at Part I.A.1., authorizes the discharge of effluent at outfall 001.
9. The Permit, at Part II.F. prohibits unauthorized discharges.
10. Va. Code § 62.1-44.15(5a) states that a VPDES Permit is a “certificate” under the statute.
11. The Jackson River is a surface water located wholly within the Commonwealth and is considered a “state water” under State Water Control Law.
12. Based on Department staff file review, the overflow reports and discussions with the City, the Board concludes that the City of Covington has violated VPDES Permit No. VA0025542, Va. Code § 62.1-44.5 and 9 VAC 25-31-50 by discharging untreated sewage from its WWTP and collection system, while concurrently failing to comply with the conditions of the Permit, as summarized in paragraph C.3., above.
13. In order for the City to return to compliance, DEQ staff and representatives of the City have agreed to the Schedule of Compliance, which is incorporated as Appendices A and B of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 and 10.1-1186.2, the Board orders Covington, and Covington agrees:

1. To perform the actions described in Appendices A, B and C of this Order; and
2. To pay a civil charge of \$62,426 in settlement of the violations cited in this Order, to be paid as follows:
  - a. Covington shall pay \$6,426 of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104

Richmond, Virginia 23218

Covington shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Covington shall be liable for attorneys' fees of 30% of the amount outstanding.

- b. Covington shall satisfy \$56,000 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix C of this Order.
- c. The net project costs of the SEP to Covington shall not be less than the amount set forth in Paragraph D.2.b. If it is, Covington shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
- d. By signing this Order, Covington certifies that it has not commenced performance of the SEP.
- e. Covington acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Covington to a third party, shall not relieve Covington of its responsibility to complete the SEP as described in this Order.
- f. In the event it publicizes the SEP or the SEP results, Covington shall state in a prominent manner that the project is part of a settlement of an enforcement action.
- g. The Department has the sole discretion to:
  - i. Authorize any alternate, equivalent SEP proposed by the City; and
  - ii. Determine whether the SEP, or alternate SEP, has been complete in a satisfactory manner.
- h. Should the Department determine that Covington has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Covington

in writing. Within 30 days of being notified, Covington shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Covington for good cause shown by Covington, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in the Warning Letters and Notices of Violation described in the table in Appendix F. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order only, the City of Covington admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Covington consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Covington declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Covington to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Covington shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Covington shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on

its part. Covington shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Covington.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Covington has completed all of the requirements of the Order;
  - b. Covington petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Covington.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Covington from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable

12. Any plans, reports, schedules or specifications attached hereto or submitted by Covington and approved by the Department pursuant to this Order are incorporated into this Order.

Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Covington certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Covington to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Covington.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Covington voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

---

Robert J. Weld, Regional Director  
Department of Environmental Quality



The City of Covington voluntarily agrees to the issuance of this Order.

Date: 5/8/20 By: [Signature] Krystal Onaitis  
Krystal Onaitis City Manager  
City of Covington

Commonwealth of Virginia

City/County of Covington

The foregoing document was signed and acknowledged before me this 5<sup>th</sup> day of May, 2020, by Krystal Onaitis who is City manager of the City of Covington on behalf of the City of Covington.

[Signature]  
Notary Public

330496  
Registration No.

My commission expires: Feb. 28, 2023

Notary seal:



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**APPENDIX A  
CITY OF COVINGTON  
SCHEDULE OF COMPLIANCE**

To address the violations described in Section C of this Order, the City of Covington shall:

1. No later than **14 days from the effective date of the Order**, initiate design, plans and specifications for the construction of the proposed 2.5 MGD equalization basin at the Covington Wastewater Treatment Plant. Covington shall notify DEQ when it initiates the design of the project within 48 hours of initiation.
2. No later than **240 days from initiation of design, plans and specifications from Item 1**, complete the design, plans and specifications for the construction of the proposed 2.5 MGD equalization basin at the Covington Wastewater Treatment Plant, and submit the application for the Certificate to Construct (“CTC”) to DEQ for the proposed project.
3. Not later than **670 days from the completion of design, plans and specifications from Item 2**, complete all construction activities related to the project, submit the Certificate to Operate (“CTO”) documentation to DEQ, and place the EQ Basin in service.

**APPENDIX B**  
**CITY OF COVINGTON**  
**I&I Plan**

1. Covington shall submit to the Department no later than March 31, 2021, for review and approval, a revised I&I Plan (Plan) that, at a minimum, identifies and describes the following:
  - a. Major goals, including reducing the frequency and duration of sanitary sewer overflows (SSOs) in the collection system and bypasses at the treatment plant.
  - b. A description of the administration of the Plan, including:
    - i. The number of staff serving the program and their status (e.g. full time, part time, contract).
    - ii. A description of the duties of each staff member.
    - iii. A copy of the current budget for system maintenance.
    - iv. A description of the training requirements for staff who have duties under the Plan.
  - c. A description of the maintenance activities, including:
    - i. A description and schedule of routine inspection, operation and maintenance activities, including information sufficient to determine which portions or units of the system are being served by the activity (e.g. inspect all manholes on Main Street once per quarter).
    - ii. A description of how infiltration and inflow will be identified and corrected, including:
      1. How baseline system flows will be established and measured, including contributions from Alleghany County.
      2. How rainfall-induced flows will be established and measured.
      3. How groundwater infiltration will be identified, and, if present, eliminated.
      4. How sources of inflow will be identified, measured, categorized, and eliminated.
      5. The requirement that the City will clean and inspect ten percent of the sanitary sewer collection system on an annual basis.
    - iii. A description of the methods of identifying and prioritizing needed repair, replacement or upgrade of system units.
    - iv. Management of a list, with sufficient location detail, identifying which portion of the system is to be repaired, replaced and/or upgraded.
    - v. Implementation of short-term and long-term rehabilitation actions to address deficiencies.

- d. A current map of the treatment works showing unique identifying numbers for each manhole, pump station, and force main along with a description of the approach to be used to maintain and update the map as new information becomes available.
- e. Documentation of funding for implementing the plan of action, including:
  - i. A description of any loans or grants anticipated to be necessary to fund corrective action.
  - ii. Whether or not those loans have been secured.
  - iii. If not secured, when it is anticipated the loan or grant will be secured, and identification of alternative funding sources if the loan or grant is not securable.

A description of the approach to be used to determine the amount of funding necessary to implement the plan of action and the priority collection system repairs, including identification of known and potential revenue and funding sources.

- f. A standard protocol for responding to collection system overflows, including methods to be used to mitigate environmental and health impacts from the overflows and for notifying parties with actual or potential exposure to pollutants contained in the overflows.
  - g. Annual performance evaluations of the City's Plan to evaluate the efficacy of the Plan and for amendment of the Plan if it is not demonstrated to be efficacious in preventing overflows and bypasses within the collection system and treatment works. An annual report which includes the program performance evaluation shall be submitted to the Department by January 10<sup>th</sup> of each calendar year. In addition to the performance evaluation, the annual report shall contain a list of activities planned for the upcoming calendar year relating to the collection system and the following quantitative performance measures of inspection and maintenance activities:
    - i. Linear feet of gravity sewer cleaned
    - ii. Linear feet of gravity sewer line inspected, repaired or replaced
    - iii. Pumping station equipment inspection, repair, and replacement
2. Covington shall promptly respond to any comments made by the Department concerning the sufficiency of the Plan and shall correct any Plan deficiencies noted by the Department expeditiously and shall submit a final approvable plan to the Department within 3 months of receiving comments or a later date agreed to by the Department in writing.
  3. Covington shall implement the Plan immediately upon approval by the Department and shall continue to implement the Plan for no less than five years.
  4. Covington shall submit progress reports on a quarterly basis, due on January 10<sup>th</sup>, April 10<sup>th</sup>, July 10<sup>th</sup>, and October 10<sup>th</sup> until the termination of this Order.

5. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to Nelson Dail, VADEQ – Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153.

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**APPENDIX C**  
**City of Covington**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)**

In accordance with Va. Code § 10.1-1186.2, Covington shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix. As used in this Order and Appendix, SEP means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

1. The SEP to be performed by Covington is a stream bank restoration project along the 1,700 linear foot section of Dry Run depicted in Appendix D. The top 700 linear feet of stream bank will be cleaned of debris. The bottom 1,000 linear feet of the stream will be armored using a combination of river rock and imported rip rap stone.
2. Covington shall obtain any required federal, state, and local permits and approvals prior to performing the SEP. The SEP shall be completed by March 31, 2021.
3. Beginning with the effective date of the Order and continuing until completion of the SEP, Covington shall submit progress reports on the SEP on a quarterly basis, due the 10th day of each quarter (January 10<sup>th</sup>, April 10<sup>th</sup>, July 10<sup>th</sup>, October 10<sup>th</sup>).
4. Covington shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible officer or owner. Covington shall submit the final report and certification to the Department within 14 days from the completion of the SEP.
5. If the SEP has not or cannot be completed as described in the Order, Covington shall notify DEQ in writing no later than December 31, 2020. Such notification shall include:
  - a. an alternate SEP proposal, or
  - b. payment of the amount specified in Paragraph D.2.b as described in Paragraph D.2.a.
6. Covington hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.
7. Covington shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 14 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from Covington's Chief Financial Officer, or equivalent City position, concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

8. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to the contact identified in Appendix B of this Order.

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### APPENDIX D





**APPENDIX E**  
**Table of Unauthorized Discharges**

<b>Date of Discharge</b>	<b>Location of Discharge</b>	<b>Type of Discharge</b>	<b>Discharge Volume (gallons)</b>	<b>Date of Written Notification</b>	<b>Cause of Discharge</b>
May 5, 2017	WWTP	Bypass	801,000	May 5, 2017	Rainfall
May 23-24, 2017	WWTP	Bypass	884,000	May 24, 2017	Rainfall
May 24-25, 2017	WWTP	Bypass	899,000	May 26, 2017	Rainfall
June 5, 2017	WWTP	Bypass	2,340	June 6, 2017	Rainfall
June 13, 2017	WWTP	Bypass	116,000	June 14, 2017	Rainfall
June 13, 2017	Monroe Street Underpass	SSOs	Unknown	June 14, 2017	Rainfall
June 13, 2017	Royal Avenue	SSOs	Unknown	June 14, 2017	Rainfall
August 7, 2017	WWTP	Bypass	374,000	August 8, 2017	Rainfall
August 7, 2017	WestRock Gate #1 and #6; Monroe Street Underpass; Royal Avenue; Wood Street; and Prospect/Craig Streets	SSOs	Unknown	August 8, 2017	Rainfall
August 13, 2017	East Hickory Street and north Rockbridge Ave	SSOs	Unknown	August 18, 2017	Rainfall
August 23, 2017	3027 South Gateway Drive	SSO	Unknown	August 24, 2017	Rainfall
October 9, 2017	WWTP	Bypass	461,000	October 9, 2017	Rainfall

October 9, 2017	426 East Trout Street and 916 North Pocahontas Ave	SSOs	Unknown	October 9, 2017	Rainfall
October 24, 2017	WWTP	Bypass	856,000	October 24, 2017	Rainfall
October 28-29, 2017	WWTP	Bypass	557,000	October 30, 2017	Rainfall
January 12, 2018	WWTP	Bypass	3,100	January 16, 2018	Rainfall
January 30, 2018	Russell Drive	SSO	3,600	February 1, 2018	Blocked Manhole
February 7, 2018	WWTP	Bypass	35,000	February 8, 2018	Rainfall
February 10-11, 2018	WWTP	Bypass	2,231,000	February 11, 2018	Rainfall
February 12, 2018	3027 Greenway Drive	SSO	Unknown	February 12, 2018	Rainfall
April 15-16, 2018	500 block of Larch St; WestRock Gate 3; Wood Street Lagoon (Whitey's Field); 3027 S. Greenway Drive; Jackson St. Pump Station	SSOs	Unknown	April 15, 2018	Rainfall
April 15-16, 2018	WWTP	Bypass	2,206,000	April 16, 2018	Rainfall
May 6, 2018	213 N. Monroe Street and Monroe Street underpass	SSOs	unknown	May 7, 2018	Rainfall
May 6, 2018	WWTP	Bypass	129,000 and 33,000	May 7, 2018	Rainfall

May 16, 2018	WWTP	Bypass	13,000	May 17, 2018	Rainfall
July 4, 2018	WWTP	Bypass	1,200	July 5, 2018	Rainfall
August 2, 2018	Monroe St. underpass; S. Greenway Drive; 100 Block of E. Fudge St; West Rock Parking lot; 304 Royal Ave and Wood St Lagoon (Whitey's Field)	SSOs	Unknown	August 3, 2018	Rainfall
August 2, 2018	WWTP	Bypass	32,000	August 3, 2018	Rainfall
August 3, 2018	WWTP	Bypass	10,500	August 6, 2018	Rainfall
August 21, 2018	WWTP	Bypass	2,616	August 22, 2018	Rainfall
August 30, 2018	WWTP	Bypass	640,000	August 31, 2018	Electrical Storm
September 17, 2018	S. Greenway Dr; 304 Royal Ave; E. Phillip St; Wayside Park; WestRock Gate 6 and parking lot; Wood Street/Whitey's Field	SSOs	Unknown	September 18, 2018	Rainfall
September 17, 2018	WWTP	Bypass	1,681,000	September 18, 2018	Rainfall
September 23, 2018	WWTP	Bypass	617,000	September 24, 2018	Rainfall
September 24, 2018	Wayside Park; Wood	SSOs	Unknown	September 24, 2018	Rainfall

	Street/Whitey's Field				
September 27, 2018	Monroe St; 920 N. Rockbridge Ave; Wayside Park; Westrock Gate 1 and parking lot; Wood St/Whitey's Field	SSOs	Unknown	September 28, 2018	Rainfall
September 27-28, 2018	WWTP	Bypass	2,384,000	September 28, 2018	Rainfall
October 10, 2018	WWTP	Bypass	197,000	October 11, 2018	Rainfall
October 11, 2018	WWTP	Bypass	765,000	October 12, 2018	Rainfall
November 2, 2018	WWTP	Bypass	2,800	November 6, 2018	Rainfall
November 12, 2018	WWTP	Bypass	127,000	November 13, 2018	Rainfall
November 15, 2018	WWTP	Bypass	504,000	November 16, 2018	Rainfall
November 15, 2018	Wood Street/Whitey's Field and Wayside Park	SSOs	Unknown	November 15, 2018	Rainfall
November 24, 2018	WWTP	Bypass	7,900	November 28, 2018	Rainfall
November 25, 2018	WWTP	Bypass	180,000	November 28, 2018	Operator error
December 5, 2018	WWTP	Bypass	6,000	December 7, 2018	Equipment malfunction
December 14, 2018	WWTP	Bypass	2,646,000	December 17, 2018	Rainfall
December 20, 2018	WWTP	Bypass	439,000	December 21, 2018	Rainfall

December 21, 2018	WWTP	Bypass	767,000	December 22, 2018	Rainfall
February 17, 2019	WWTP	Bypass	65,000	February 18, 2019	Rainfall
February 20, 2019	WWTP	Bypass	439,000	February 21, 2019	Rainfall
February 21, 2019	WWTP	Bypass	418,000	February 22, 2019	Rainfall
February 21, 2019	613 W. Park Street	SSOs	Unknown	February 21, 2019	Rainfall
February 22, 2019	WWTP	Bypass	3,498,000	February 25, 2019	Rainfall
February 22-24, 2019	West Rock parking lot; Short Street; Royal Ave; Wayside Park	SSOs	Unknown	February 25, 2019	Rainfall
March 1, 2019	WWTP	Bypass	9,800	March 5, 2019	Rainfall
March 3, 2019	WWTP	Bypass	206,000	March 4, 2019	Rainfall
April 13, 2019	WWTP	Bypass	111,000	April 13, 2019	Rainfall
April 19, 2019	WWTP	Bypass	1,195,000	April 23, 2019	Rainfall
April 23, 2019	Dry Run Pump Station	SSO	Unknown	April 23, 2019	Equipment failure
June 24-25, 2019	WWTP	Bypass	36,000	June 25, 2019	Rainfall
June 27, 2019	WWTP	Bypass	351,000	June 28, 2019	Rainfall
June 29, 2019	WWTP	Bypass	46,000	July 1, 2019	Rainfall
October 20, 2019	WWTP	Bypass	263,000	October 21, 2019	Rainfall
October 31, 2019	WWTP	Bypass	99,000	November 4, 2019	Rainfall

December 1, 2019	WWTP	Bypass	96,000	December 1, 2019	Rainfall
January 24, 2020	WWTP	Bypass	109,000	January 27, 2020	Rainfall
February 6, 2020	WWTP	Bypass	4,822,000	February 11, 2020	Rainfall
February 6, 2020	Monroe Street; Fudge St; Westrock parking lot; Parrish St	SSOs	Unknown	February 6, 2020	Rainfall

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**APPENDIX F**  
**Table of Warning Letters and Notices of Violation**

<b>Document</b>	<b>Date Issued</b>	<b>Response Date</b>
Warning Letter No. W2017-07-B-1003	July 11, 2017	July 28, 2017
Warning Letter No. W2017-08-B-1006	August 18, 2017	No response required
Notice of Violation No. W2017-12-B-0001	December 12, 2017	December 21, 2017
Warning Letter No. W2018-04-B-1002	April 16, 2018	No response required
Warning Letter No. W2018-06-B-1004	June 11, 2018	No response required
Notice of Violation No. W2018-07-B-0001	July 11, 2018	July 20, 2018
Notice of Violation No. W2019-01-B-0003	February 11, 2019	February 15, 2019
Notice of Violation No. W2019-05-B-0003	May 14, 2019	May 15, 2019
Notice of Violation No. W2019-05-B-0007	May 30, 2019	June 5, 2019
Notice of Violation No. W2019-06-B-0002	June 19, 2019	June 25, 2019
Notice of Violation No. W2019-07-B-0001	July 31, 2019	August 7, 2019

Analysis of Proposed Supplemental Environmental Project  
Va. Code § 10.1-1186.2

Source/Facility/Regulated Party

**City of Covington**

**Project Description: Dry Run Streambank Restoration and Stabilization**

Dry Run is a small tributary to the Jackson River and discharges stormwater and surface waters from the northeastern section of Covington and surrounding areas to the Jackson River. During periods of heavy precipitation, stream flows increase and are eroding several stream bank areas adjacent to Dry Run Road. The areas of greatest erosion are located in the Hillcrest Drive area and the approximate 1,700-foot section extending upstream in Dry Run (see pictures). The erosion results in the conveyance and deposition of soil and other streambank solids into the Jackson River, a local recreational and boating resource which also serves as a source of potable water for the City and downstream communities. In the Covington area, the Jackson River is classified as an impaired water body. Once in the river, the sediment from Dry Run can be conveyed downstream and accumulate in areas of low river velocity. These depositions can degrade water quality and the aquatic habitat.

Covington's proposed project involves the restoration and stabilization of the streambank in specific sections of Dry Run to reduce or prevent additional erosion and the associated solids deposition in the Jackson River (see map). The portions of the bank that are currently lined with rocks will be cleaned of debris and left as-is (top 700 LF). The bottom portion of the stream has significant bank erosion (see pictures) and will be armored using a combination of existing river rock that has fallen into the stream channel and imported riprap stone. Areas already reinforced by vegetation will not be disturbed. The retaining wall (see pictures) shows how the lack of bank stabilization is causing damage to adjacent structures. This will be addressed as part of the project considering the proximity of the wall to the stream.

The project will use contractors to complete the stream bank restoration work. The work will be completed by December 31, 2020.

The estimated cost of the project is \$56,000 based on the following itemized breakdown:

Item	Cost	Unit(s)	Total Cost
Buffer Design / Permitting (Lump Sum)	\$8,000	1	\$8,000
Rip Rap Stone (Tons)	\$80	400	\$32,000
Contractor Labor (Hourly)	\$37	300	\$11,100
Overgrowth Removal (Linear Foot)	\$7	700	\$4,900
		<b>Totals:</b>	<b>\$56,000</b>

1. Explain how the project is environmentally beneficial:



Dry Run discharges into the Jackson River at a point just downstream of the City's Water Treatment Plant intake. This location is the uppermost section of the impaired segment of the Jackson River. The TMDL that was developed to address this impairment identified dissolved oxygen impairment and general benthic impairment as the sources of the non-attainment. While nutrient enrichment and the associated excessive periphyton development was identified as the primary benthic habitat stressor, sediment deposition can negatively impact the benthic community as well by filling the interstitial spaces in the river substrate, preventing the circulation of water and oxygen. A reduction in streambank erosion in Dry Run and the corresponding reduction in sediment deposition in the Jackson River can work in conjunction with the ongoing nutrient reduction and periphyton control strategies to improve instream habits and the health of the benthic community.

2. A SEP may only be a partial settlement: show what initial civil charge was computed, along with the appropriate SEP amount and final civil charge figure:

Civil Charge/Penalty without a SEP		<u>\$62,426</u>
Minimum Payment Amount with a SEP (see Section VII)		<u>\$6,242.60 + SEP</u>
Projected Net Project Costs (see No. 6, below)		<u>\$56,000</u>
SEP Mitigation Percentage and Amount	<u>89.7%</u>	<u>\$56,000</u>
Final Monetary Civil Charge/Penalty		<u>\$6,426</u>

3. Explain how the SEP is not otherwise required by law:

The proposed erosion control and streambank stabilization and restoration project will reduce the impacts associated with the erosion due to stormwater flows from heavy precipitation events. There are no ongoing construction or land disturbance activities that require permitting and/or erosion and sediment control and stream bank restoration, and the City is not otherwise required to make these improvements. This project is solely the result of the settlement.

4. Is there reasonable geographic nexus? YES                      If YES, explain:

The compliance issues that resulted in the need for a Special Order by Consent were associated with wastewater overflows at the City of Covington Wastewater Treatment Plant that flowed into the Jackson River. The proposed project will involve work within the City limits in a tributary of the Jackson River that flows into the Jackson River at a location approximately 7 river miles upstream of the City's WWTP. Thus, there is both a geographical nexus and a watershed functionality nexus.

If NO, then does the SEP advance one of the declared objectives of the law or regulation that is the basis of the enforcement action? (always preferred) Explain:

5. Check all the qualifying categories that may apply (at least one must be checked):

- |   |  |
|---|--|
| <input type="checkbox"/> Public Health        | <input checked="" type="checkbox"/> Environmental Restoration and Protection |
| <input type="checkbox"/> Pollution Prevention | <input type="checkbox"/> Environmental Compliance Promotion                  |
| <input type="checkbox"/> Pollution Reduction  | <input type="checkbox"/> Emergency Planning and Preparedness                 |

6. Does the SEP require a significant amount of DEQ management, resource investment or evaluation such that DEQ is unable to provide active oversight?

No, Covington will provide updates and progress reports along with photographic documentation and a final report.

7. Does the proposed SEP require a significant amount of DEQ time and resources for negotiation, administration, SEP oversight or other management activities in comparison to the value of the SEP?

No, Covington did not require significant resource time for negotiations and DEQ will not have to spend a lot of time on administration/oversight.

8. Does the Responsible Party have the ability or reliability to complete the proposed SEP and demonstrated an ability or willingness to comply with existing requirements?

Yes, the City is willing and able to complete the SEP.

9. Each of the following factors MUST be considered. Respond to each:

o Net Project Costs (zero out all state or federal government loans, grants, tax credits for project). Explain:

The estimated project cost to implement the proposed streambank restoration and erosion control measures is approximately \$56,000 (see explanation above). This will be funded entirely by City resources and revenues and will not be supplemented by any loans or grants. In addition, the City will receive no tax credits associated with the performance of this project.

o Benefit to the Public or the Environment. Explain:

As described above, the ongoing Dry Run erosion and resulting sediment deposition in the Jackson River can negatively impact the benthic community by filling the interstitial spaces in the river substrate, preventing the circulation of water and oxygen and eliminating habitat for aquatic organisms. A reduction in streambank erosion in Dry Run and the corresponding reduction in sediment deposition in the Jackson River can work in conjunction with the ongoing nutrient reduction and periphyton control strategies to improve instream habits and the health of the benthic community. The Jackson River is a local recreational fishery and boating resource and improvements to aquatic habitat will also benefit the public.

In addition to the environmental benefit, the proposed project will also serve to protect the nearby Dry Run Road from future damage due to continued erosion of the stream bank.

o Innovation. Explain:

The proposed project will use effective, but conventional stream bank restoration and erosion control methods and techniques.

o Impact on Minority or Low-Income Populations. Explain:

The proposed project will not adversely impact minority or low-income populations. The project will benefit all users of the Jackson River. The City MHI was %39,432 in 2018 (U.S. Census Bureau) compared to the state average of \$71,535.

o Multimedia Impact. Explain:

The proposed project will improve local water quality but will have limited multi-media impact.

o Pollution Prevention. Explain:

The Dry Run streambank restoration and erosion control project will serve to prevent continued erosion and sediment-based pollution of the Jackson River. Enhancement of the appearance of Dry Run will serve as a deterrent to localized litter disposal.

Recommended

Kristen C. Sadtler 3/10/2020

Approved

Jeff A. [Signature] 3/10/2020

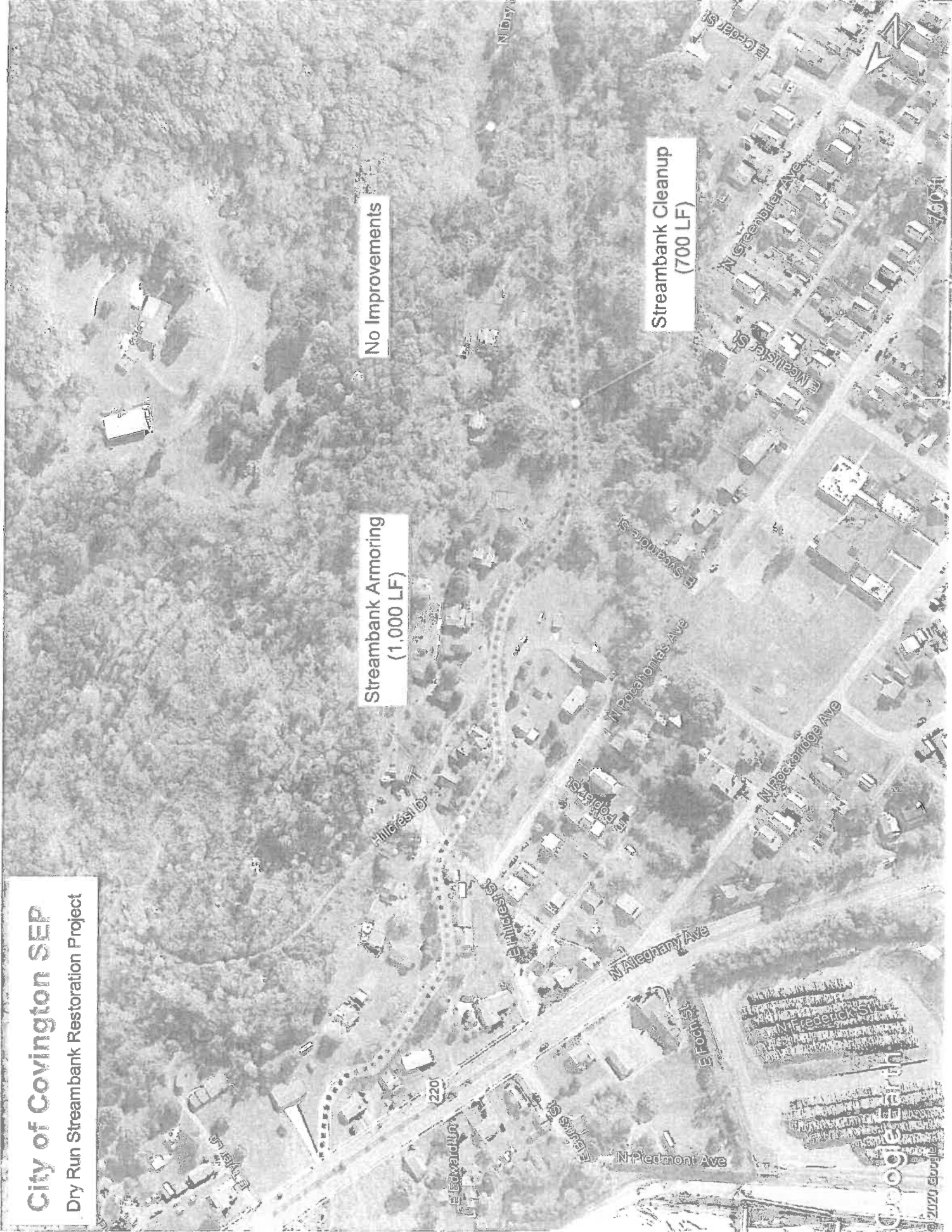
**City of Covington SEP**

Dry Run Streambank Restoration Project

No Improvements

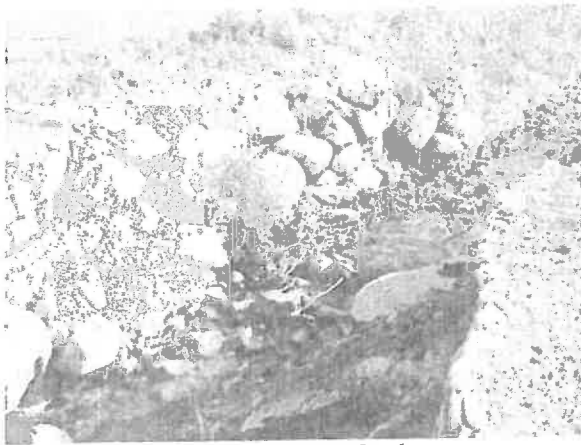
Streambank Armoring  
(1,000 LF)

Streambank Cleanup  
(700 LF)



# Covington Streambank Restoration Project

DEQ Supplemental Environmental Project



Existing Armored Bank



Retaining Wall Failure



Bridge Abutment Blockage



Retaining Wall Failure



Stream Bank Erosion (No Protection)



Stream Bank Erosion (No Protection)





# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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### MEMORANDUM

TO: State Water Control Board Members

FROM: Karen M. Doran, Clean Water Financing and Assistance Program *Karen M Doran*

DATE: August 24, 2020

SUBJECT: FY 2021 Virginia Clean Water Revolving Loan Fund Final Authorizations  
Southwest Virginia Pilot Program Projects

### Purpose

Title IV of the Clean Water Act requires the annual submission of a Project Priority List and Intended Use Plan in conjunction with Virginia's Clean Water Revolving Loan Fund (VCWRLF) Capitalization Grant application. Section 62.1-229 of Chapter 22, Code of Virginia, authorizes the Board to establish to whom loans are made, the loan amounts, and repayment terms. The next step in this process is for the Board to authorize the execution of funding agreements for the Southwest Virginia Pilot Program Projects.

### Background

The Clean Water Financing and Assistance Program (CWFAP) developed the Southwest Virginia Pilot Program to address a critical need for wastewater infrastructure funding in Southwest Virginia. In phase one of the program, CWFAP will provide 75% principal forgiveness to localities within DEQ's Southwest Regional Office boundary for completion of a Sewer System Evaluation Survey (SSES) that identifies high priority repairs to reduce collection system inflow and infiltration (I/I) and/or sanitary sewer overflows (SSOs). The locality will provide 25% matching funds. Since SSES work is best conducted during dry weather months, CWFAP proceeded with application evaluation, tentative approval, and the public comment period rapidly in order to request final approval from the Board during the September 24, 2020 meeting and to allow SSES initiation during favorable weather conditions.

On June 1, 2020, CWFAP staff solicited applications for SSES work from localities and wastewater authorities within DEQ's Southwest Regional Office boundary as part of the Southwest Virginia Pilot Program. July 3, 2020 was established as the deadline for receiving applications. Based on this solicitation, DEQ received 13 SSES applications requesting \$1,117,875.

By memorandum dated July 13, 2020, the Director of DEQ tentatively approved the list of 13 projects for which funding assistance was requested from available and anticipated FY 2021 resources and authorized staff to proceed to public comment. A listing of the projects and a brief description of each is included in Attachment A. A virtual public meeting was convened on August 21<sup>st</sup>. Notice of the meeting was posted on the Virginia Regulatory Town Hall and DEQ's CWFAP website. No comments were received. The remainder of the projects for the FY 2021 VCWRLF Funding List will be reviewed and evaluated over the next two months. Approval to proceed to public comment will be sought and the Board will consider the full FY 2021 VCWRLF Funding List and any comments at the December 9, 2020 meeting.

### Discussion

The staff has conducted initial meetings with the FY 2021 Southwest Virginia Pilot Program recipients and has finalized the recommended funding amounts in accordance with the Board's guidelines. No changes from the tentative approval list previously approved are being recommended. The projects listed in the table below are submitted for Board consideration.

Congress has not finalized the federal State Revolving Fund appropriation for FY 2021, however the VCWRLF continues to maintain very healthy account balances. In addition, federal funds remained similar to last year and we fully expect at least level funding moving forward.

<b>FY 2021 Proposed Authorizations - SW VA Pilot Program Projects</b>			
	<i>Applicant</i>	<i>Project Type</i>	<i>Funding Amount</i>
1	Buchanan County Public Service Authority	SSES	\$ 75,000
2	Town of Hillsville	SSES	\$ 75,000
3	Town of Big Stone Gap	SSES	\$ 75,000
4	Town of Independence	SSES	\$ 56,250
5	Town of Saltville	SSES	\$ 75,000
6	Wythe County Board of Supervisors	SSES	\$ 116,625
7	Town of Chilhowie	SSES	\$ 67,500
8	Town of Wytheville	SSES	\$ 75,000
9	Tazewell County Public Service Authority	SSES	\$ 45,000
10	Bland County	SSES	\$ 82,500
11	Bristol Virginia Utilities Authority	SSES	\$ 225,000
12	Town of Abingdon	SSES	\$ 75,000
13	Town of Gate City	SSES	\$ 75,000
<b>TOTAL</b>			<b>\$ 1,117,875</b>

### Staff Recommendation

Authorize the execution of funding agreements for the FY21 VCWRLF Southwest Virginia Pilot Program projects and principal forgiveness funding amounts listed above.



Attachment A

FY 2021 Southwest Virginia Pilot Program Applicants	Amount Requested	Project Description	Projected SSES Start
Buchanan County Public Service Authority	\$ 75,000.00	Improve structural integrity and determine required improvements to manhole covers. System consists of approximately 67 miles of sewer interceptors and mains.	Fall 2020
Town of Hillsville	\$ 75,000.00	To address the I/I issues for the approximately 40 miles of sewer infrastructure.	September 2020
Town of Big Stone Gap	\$ 75,000.00	To conduct an SSES to address I/I issues throughout the Town's entire sewer system.	October 2020
Town of Independence	\$ 56,250.00	To conduct an SSES to address I/I issues throughout the Town's entire sewer system.	October 2020
Town of Saltville	\$ 75,000.00	To address the I/I issues throughout the Plasterco Sewer Shed.	January 2021
Wythe County Board of Supervisors	\$ 116,625.00	To address the I/I issues to the Max Meadows Treatment Plant (Fort Chiswell, Max Meadows, Exit 86 and Exit 77 areas).	August 2020
Town of Chilhowie	\$ 67,500.00	To conduct an SSES to address I/I issues throughout the Town's entire sewer system.	November 2020
Town Of Wytheville	\$ 75,000.00	To conduct an SSES to address I/I and capacity issues throughout the Town's entire sewer system.	November 2020
Tazewell County Public Service Authority	\$ 45,000.00	To conduct an SSES to address I/I issues throughout the entire sewer system.	Fall 2020
Bland County	\$ 82,500.00	To conduct an SSES to address I/I and infrastructure issues throughout the entire Bastian sewer system.	August 2020
Bristol Virginia Utilities Authority (BVUA)	\$ 225,000.00	To conduct an SSES in the BC-1568 sub-basin, in the southern section of the Beaver Creek sewer shed.	September 2020
Town of Abingdon	\$ 75,000.00	To conduct an SSES throughout the Town of Abingdon's sewer system to address overflows.	September 2020
Town of Gate City	\$ 75,000.00	To conduct an updated SSES to address I/I and infrastructure issues in several of the six (6) sewersheds within the service area.	September 2020

**Total Requested \$ 1,117,875.00**

