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Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9 VAC25-670
Regulation title(s)	VIRGINIA WATER PROTECTION GENERAL PERMIT FOR FACILITIES AND ACTIVITIES OF UTILITY AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE ACTIVITIES
Action title	Incorporation of recent policy and guidance specific to the Virginia Water Protection Permit Program.
Final agency action date	April 1, 2016

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

In support of the purpose of this regulatory action, the regulation is being reissued with amendments. Since 2006, the Virginia Water Protection Permit Program has implemented many policy and guidance decisions that should be incorporated into the regulation. Portions of overarching federal regulations also need to be incorporated. There are also places that sentence structure and grammar make the agency's intent difficult to interpret. Therefore, the regulation format in some places was re-organized, and the necessary amendments for clarity and accuracy were made. Concurrently, the over-arching Virginia Water Protection Permit Program Regulation and three additional Virginia Water Protection general permit regulations are also being amended to better match any amendments made to this regulation, as

applicable or necessary, and because the general permit regulations are due to expire in 2016. Separate Notices of Intended Regulatory Action (NOIRAs) were prepared for each of the applicable regulations. The amendments will protect public health, safety and welfare of citizens as they are designed to clarify, update and streamline the regulation to protect the Commonwealth's wetland and surface water resources, which are important for maintaining water quality, flood control and providing fish and wildlife habitat.

Acronyms and definitions

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

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

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

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

Statement of final agency action

Please 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 adopted the amendments to 9VAC25-670 VIRGINIA WATER PROTECTION GENERAL PERMIT FOR FACILITIES AND ACTIVITIES OF UTILITY AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE ACTIVITIES at its meeting on April 1, 2016.

Family impact

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

This regulatory action is unlikely to increase or decrease the disposable income available to a family-run business that is subject to the provisions of the Virginia Water Protection general permit regulations because the law on which the regulations are based in not being amended, but rather, only the implementation and interpretation of the law is being considered for amendment.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

9VAC25-670 - Changes Made Since the Proposed Stage			
Section Number	Requirement at proposed stage	What has changed	Rationale for Change
10	<i>Clarified introductory paragraph for consistency with 9VAC25-210-10</i>	<i>Punctuation – comma added</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>
20 A	<i>Revised to change ‘authorization’ to ‘coverage’; text added for consistency with other VWP general permit regulations</i>	<i>Replaced ‘regulation’ with ‘chapter’; replaced ‘the VWP permit program regulation’ with ‘9VAC25-210’</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>
25 A and B	<i>Specifies how applications through 2016 will be processed and that existing authorizations for coverage remain effective until the date specified on the authorization cover page unless otherwise terminated or revoked</i>	<i>Punctuation – commas deleted</i>	<i>Commas inserted by Registrar were deleted due to change in meaning of proposed text. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
27 A and B	<i>Specifies how applications after 2016 will be processed and sets forth the criteria for those applicants who receive coverage under a general permit but who cannot begin or complete the project before the general permit term expires</i>	<i>Punctuation – commas deleted. Deleted phrase ‘or unless a notice of project completion is received by the board’. Expiration year revised from 2031 to 2026 in subsection B.</i>	<i>Commas inserted by Registrar were deleted due to change in meaning of proposed text. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations. Deletion of clause due to unintended potential release of permittee from permit conditions. Revision due to public comment on general permit term length.</i>

9VAC25-670 - Changes Made Since the Proposed Stage			
Section Number	Requirement at proposed stage	What has changed	Rationale for Change
30 A 3	<i>Revised to clarify that applicant may utilize the general permit if comply with the limits and requirements that exist in the general permit, the coverage, the Clean Water Act, State Water Control Law, and regulations pursuant to it</i>	<i>Inserted 'letter' after 'coverage'</i>	<i>Revisions due to staff comment on coverage requirements to ensure that compliance with the requirements of coverage is an enforceable permit condition and to make this requirement clear to the permittee</i>
30 A 4	<i>Deleted and combined with revised A 3</i>	<i>Replaced 'the VWP permit program regulation' with '9VAC25-210'</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>
30 A 8	<i>Authorization to impact surface waters compensation for unavoidable impacts.</i>	<i>Revised "When required, Compensation..." to read "When required, compensation..."</i>	<i>Grammatical correction due to addition of the phrase "When required,"</i>
30 E	<i>Renumbered and clarified to reference the correct regulatory citation and new general permit effective date, as well as being revised for wording choice. The last sentence of the subsection was stricken as duplicative of the preceding text.</i>	<i>Punctuation – added comma</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>
40 F 5	<i>Original text moved and revised to combine with the existing text there regarding threatened and endangered species</i>	<i>Deleted 'or proposed' as a modifier to species and "proposed or" as a modifier to designated critical habitat. Replaced 'be the' with 'result in a'.</i>	<i>Revisions due to public comment on protection of proposed species and habitat. Clarification to improve readability - does not change intent of requirement.</i>
40 F 5 a	<i>Original text moved and revised to combine with the existing text there regarding threatened and endangered species</i>	<i>Replaced 'United States' with 'U.S.'</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>
40 F 5 b	<i>Not applicable</i>	<i>Replaced 'state-listed' with 'state listed'</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>

9VAC25-670 - Changes Made Since the Proposed Stage			
Section Number	Requirement at proposed stage	What has changed	Rationale for Change
50 A 2 b	<i>Revised for wording choice, citations for informational items, to add the citation to refer to if compensation is required, and to delete the last sentence as an out-of-place permit condition</i>	<i>Deleted 'that are not subject to subdivision 2 b of this subsection' in the first sentence</i>	<i>Correcting change made by Registrar where deleted text, if left, changes the meaning of proposed text</i>
50 C	<i>Revised to clarify denial is associated with the application for coverage and to spell out 'DEQ'</i>	<i>Replaced 'United States' with 'U.S.' Deleted 'proposed or' as a modifier to species and habitat.</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations. Revisions due to public comment on protection of proposed species and habitat.</i>
60 B	<i>Revised for wording choice and reorganization</i>	<i>Punctuation – re-inserted comma previously deleted</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>
60 B 6	<i>Incorporated information required by original B 6 through 9</i>	<i>Deleted phrase 'if applicable'</i>	<i>Clarification to improve readability - does not change intent of requirement. Removes redundant phrase repeated throughout regulation subsection. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
60 B 6 e	<i>Requirement for location map</i>	<i>Replaced 'United States' with 'U.S.' Moved 'and existing preservation areas on the site or sites' here from f.</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations. Revisions due to public comment on GIS shape files.</i>
60 B 6 f	<i>Added requirement for GIS shape files of project boundary unless otherwise waived by DEQ</i>	<i>Deleted f.</i>	<i>Revisions due to public comment on GIS shape files.</i>

9VAC25-670 - Changes Made Since the Proposed Stage			
Section Number	Requirement at proposed stage	What has changed	Rationale for Change
60 B 8 e	<i>Renumbered and revised to clarify the required information about already protected areas on the project site</i>	<i>Punctuation - added commas</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>
60 B 10 b	<i>Renumbered and revised to clarify the information required about surface water impacts</i>	<i>Added requirement for average stream width and associated item numbering and punctuation. Added phrase "by length". Deleted the phrase "then cumulatively summed," and added "by average width in feet to the nearest whole number, (ii) quantified in square feet to the nearest whole number;" Inserted (iii).</i>	<i>Correction of agency oversight in movement and revision of existing regulation text requiring the same – no intent to purposely delete requirement. Clarification of requirements.</i>
60 B 10 d	<i>Moved and revised requirement for a jurisdictional determination</i>	<i>Replaced 'if' with 'when'; inserted 'when unavailable, (i)'; inserted '(ii)'. Punctuation – deleted comma.</i>	<i>Clarification to improve readability - does not change intent of requirement</i>
60 B 10 e	<i>Relocated information required for delineation map to 11 e and revised to add GIS shapefile</i>	<i>Enumerated items. Deleted 'if applicable' and 'and GIS compatible shapefile or shape files of the delineation map'. Deleted the last sentence regarding waiver of GIS shape files.</i>	<i>Clarification to improve readability - does not change intent of requirement. Revisions due to public comment on GIS shape files.</i>
60 B 12 and 12 a	<i>Existing text was clarified regarding what is required for a complete application regarding compensation plans</i>	<i>Replaced 'or' with 'and' in language regarding compensation plan for complete application</i>	<i>Revisions due to staff review regarding consistent use of the word 'or' and 'and' when used with acreage, functions. Consistency with existing text elsewhere in the regulations and Code of Virginia.</i>
60 B 13	<i>Renumbered and revised to remove reference to the permit fee regulation</i>	<i>Reinserted 'in accordance with 9VAC25-20'</i>	<i>Revisions due to public comment on citation to Fees for Permits and Certifications regulation</i>
60 B 14	<i>Renumbered and revised to clarify the required information about already protected areas on the project site</i>	<i>Punctuation – added comma</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>

9VAC25-670 - Changes Made Since the Proposed Stage			
Section Number	Requirement at proposed stage	What has changed	Rationale for Change
60 D	<i>Revised for wording choice and replace 'authorization' with 'coverage'</i>	<i>Punctuation – added comma</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>
60 D 2	<i>Revised for wording choice and replace 'authorization' with 'coverage'</i>	<i>Replaced 'the VWP general permit regulation' with 'this chapter'</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>
70 E	<i>Renumbered and clarified that open water does not include streams in this provision; for consistency with other VWP general permit regulations; revise the maximum mitigation ratio; to add when open water compensation not required</i>	<i>Replaced 'except' with 'but compensation may be required'</i>	<i>Revisions due to public comment on when open water compensation may be required</i>
70 F	<i>Renumbered and revised to rearrange existing text and correct a grammatical error.</i>	<i>Replaced 'regulation' with 'chapter'</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>
80 A	<i>Revised to clarify applications or requests may be accepted that request a change to existing general permit coverage and to specify under what circumstances a request is not applicable</i>	<i>Inserted 'for a single and complete project' after 'impacts' in (i)</i>	<i>Revisions due to public comment on notices of planned change. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
80 B 1 b	<i>Revised to clarify how additional impacts may be authorized and the criteria that must be met</i>	<i>Punctuation – added comma and replaced 'VWP general permit regulation' with 'chapter'</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>

9VAC25-670 - Changes Made Since the Proposed Stage			
Section Number	Requirement at proposed stage	What has changed	Rationale for Change
80 B 1 c	<i>Revised to clarify the circumstances in which a modification may apply</i>	<i>Deleted 'or proposed' as a modifier to species and "proposed or" as a modifier to designated critical habitat. Replaced 'be the' with 'result in a'. Added last sentence: 'The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.'</i>	<i>Revisions due to public comment on protection of proposed species and habitat. Clarification to improve readability - does not change intent of requirement.</i>
80 B 1 h	<i>Revised to clarify how additional impacts may be authorized and the criteria that must be met</i>	<i>Punctuation – deleted two commas</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>
90 A 4 b	<i>Revised for wording choice and consistency; to spell out the acronym 'DEQ'; to replace 'authorization' with 'coverage'; and to clarify activities may be unlawful if not otherwise excluded from coverage</i>	<i>Replaced 'cancellation' with 'cancelation'</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>
90 B	<i>Subsection added to reference two additional types of termination.</i>	<i>Replaced '9VAC25-230' with '§ 62.1-44.15:02 of the Code of Virginia'</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>
100	<i>Heading of general permit</i>	<i>Expiration year revised from 2031 to 2026 in heading.</i>	<i>Revision due to public comment on general permit term length.</i>
100, Part I A 1	<i>Subdivision Part I A 1 was revised to clarify that no specific project or application was considered in the adoption of the general permit</i>	<i>Added sentence to end of provision: 'Additional permit requirements as stipulated by the Board in the coverage letter, if any, shall be enforceable conditions of this permit.'</i>	<i>Revisions due to staff comment on coverage requirements to ensure that compliance with the requirements of coverage is an enforceable permit condition and to make this requirement clear to the permittee</i>
100, Part I B 2	<i>Existing language in the renumbered Part I B 2 was clarified regarding the requirements for culvert and pipe placement in streams and to relocate existing text within the same subdivision.</i>	<i>Punctuation – added comma</i>	<i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations</i>

9VAC25-670 - Changes Made Since the Proposed Stage			
Section Number	Requirement at proposed stage	What has changed	Rationale for Change
100, Part I B 3	Renumbered Part I B 3 was revised for consistency with the other VWP general permit regulations and to allow staff ability to make case-by-case decisions on need for equipment in surface waters.	Punctuation – added comma	Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations
100 Part I B 11	Temporary disturbances – cover type	Replaced phrase “(emergent, scrub shrub or forested) with “(i.e., emergent, scrub-shrub, or forested)”	Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations. Clarification of requirements Agency preference for wording.
100, Part I B 11 and 12	Renumbered Part I B 11 and B 12 were revised for wording choice and to include the use of existing topsoil in restoration activities where practicable, per a suggestion from the Citizen Advisory Group and consistency with federal nationwide (general) permit conditions.	Replaced ‘if necessary’ in fifth sentence with ‘any necessary’ before ‘supplemental’	Agency preference for word choice
100 Part I B 15	Time of year restrictions.	Added the word “letter” after “...VWP general permit coverage”.	Agency preference for word choice – clarification of requirements.
100, Part I D 1	Subdivision D 1 was revised for wording choice and to include the use of existing topsoil in restoration activities where practicable, per a suggestion from the Citizen Advisory Group and consistency with federal nationwide (general) permit conditions	Replaced ‘if necessary’ in fifth sentence with ‘any necessary’ before ‘supplemental’	Agency preference for word choice
100, Part II A 1	Minimum compensation requirements required compensation.	Added the phrase “the coverage letter”.	Added to conform to existing requirements – conditions are also contained in the coverage letter. Clarification of requirements.

9VAC25-670 - Changes Made Since the Proposed Stage			
Section Number	Requirement at proposed stage	What has changed	Rationale for Change
100, Part II A 5 a (2)	Revised to renumber the required information items for providing permittee-responsible wetlands mitigation and to delete the 120-day timeline for recordation of a final protective instrument and require such prior to implementing project impacts in surface waters, as is consistent with when a final compensation plan must be submitted and approved	Replaced '(if available)' with 'if available'	Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations
100, Part II A 6 f	The original text at Part II A 9 was moved to Part II A 6 and 7.	Punctuation – deleted comma	Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations
100, Part II B 1 b	The original subdivisions Part II B 1 c, B 2, and B 3 were stricken and simplified into B 1 a and b.	Replaced 'on-site' with 'on site'	Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations
100, Part II B 2 b and c	Monitoring of water quality parameters	Added comma after "pH".	Grammatical - Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.
100, Part II D 5	Not applicable	Replaced 'photo' with 'photo-monitoring'	Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation
100, Part II D 6 a (1) and b (1)	Not applicable	Replaced 'photo' with 'photo-monitoring'	Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation
100, Part II D 6 a (11) and b (10)	Not applicable	Replaced ', which' with 'that'	Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation

9VAC25-670 - Changes Made Since the Proposed Stage			
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100, Part II D 6 b (1)	Stream compensation site monitoring reports.	Replace the term "photo" with "photo-monitoring".	Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation
100, Part II D 6 b (4), (6), (8), and (10)	Not applicable	Deleted 'An evaluation'; "A discussion"; "A summary"; and 'A corrective' and replace with "Evaluation"; "Discussion"; "Summary" and "Corrective" in the appropriate locations. Replace ", which" with "that".	Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation
100, Part III A	Subdivision Part III A was revised for wording choice and to clarify the authorities that apply.	Punctuation – added semi-colon and deleted comma. Reinserted 'and' before 'toxic'.	Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation. Correction of change made by Registrar.
100, Part III J and K	Revised for wording choice. A new subdivision Part III K was added to specify the conditions that apply to a termination without cause.	Replaced '9VAC25-230' with '§ 62.1-44.15:02 of the Code of Virginia'	Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation
100, Part III J 1	Subdivision Part III J 1 was revised to clarify that noncompliance may be associated with the coverage or the general permit	Replaced 'the VWP general permit regulation' with 'this chapter'	Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation
100, Part III J 4	Determination by the board	Replaced period with a semi-colon.	Consistency with existing text elsewhere in the regulations – grammatical.
100, Part III K	Termination without cause	Added Code of Virginia Reference: "§ 62.1-44.15:02" and deleted the phrase "and 9VAC25-230".	Correction of references - Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation
100, Part III L 4 b	Subdivision Part III K was renumbered to L and revised for wording choice. Replaced 'authorization' with 'coverage'. Existing text was relocated within the same subdivision.	Replaced 'cancellation' with 'cancelation'	Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation

9VAC25-670 - Changes Made Since the Proposed Stage			
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FORMS	Forms	Deleted reference to "Joint Permit Application for Projects in Tidewater, Virginia".	Correction of forms list – GP does not apply in tidal waters.
DOCUMENTS	Revised to update dates and titles. Added classification of wetlands, guideline for disposal sites, and invasive plant list.	Punctuation – deleted periods at end of document titles. Deleted parenthetical reference '(Federal Register December 24, 1980)'	Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation

Public Comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Comments on the Proposed 9VAC25-690 regulation have been organized first into the overall type of provisions and then by topic, including those comments in support of the proposed regulation provisions. In some cases, a summary precedes the individual comments received.

Consistency

Many of the recommended amendments to the Proposed regulation were generated from the review of the text by the Virginia Registrar’s office, and then the subsequent review by Department staff. The amendments include adding back missing words/phrases; striking words/phrases that were not stricken as the Department intended; inconsistent use of words/phrases; and correcting citations or adding missing citations. All amendments for consistency are noted within the ‘Changes made since the proposed stage’ section of this form. Several public comments were received about consistency in this regulation, as noted below.

The following amendment was made based on Department staff review of the Proposed regulation:

- The Department added a requirement for average stream width, as this is currently required by regulation and in the Joint Permit Application, but was unintentionally left out of the Proposed regulation. In the same provision, staff revised punctuation and corrected the word ‘united’ to ‘unified’.
- The Department clarified the need for a permittee’s compliance with not only the general permit, but the general permit regulation and any requirements applied through coverage under a general permit, by adding one sentence to the end of Section 100, Part I A 1.
- The Department deleted a clause that unintentionally conveyed that a notice of project completion could relieve a permittee from complying with the general permit, general permit regulation, and coverage in Section 27 B.

Commenter	Comment	Agency response
Virginia Department of Transportation	Request deletion of reference to 9VAC25-230 as it does not pertain to terminations	The Department recommends retaining reference to Procedural Rule No. 1, but amending it to match that which was amended in 9VAC25-210 by changing '9VAC25-230-10 et seq.' to '§ 62.1-44.15:02 of the Code of Virginia'.

Virginia Department of Transportation	Notice of project completion: make wording consistent with 210 by changing 'signed' to 'submitted'	The Department concurs and recommends revising the text for consistency.
Virginia Department of Transportation	Add 'for a single and complete project' as it relates to total permanent and temporary impacts for clarity	The Department recommends amending this provision for consistency with Section 30 A.

Comments on general permit term and transition

All comments pertaining to general permit term and transition provisions in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Chesapeake Bay Foundation	Oppose changes in terms and administrative continuance. net effect of changes reduces DEQ's current opportunities to assess project compliance and urge completion, and reduce frequency of updating permit requirements.	The Department recommends amending the general permit term to 10 years, rather than 15 years. The Department believes that the proposed general permit term does not affect the Department's ability to conduct compliance activities, but may require more careful project planning on the part of permittees.
Virginia Department of Transportation	Language drafted during the CAG was removed that would have allowed projects to continue during the transition period between general permits. previous authorizations should be grandfathered. under existing proposal, VDOT and other permittees could be forced to stop work until new authorization granted. concerned that permittee could be found non-compliant while waiting for new authorization.	The Department recommends amending the general permit term to 10 years, rather than the 15 years noted in the Proposed regulations. The Department does not recommend amending the transition provisions. This was a non-consensus issue at the end of the Citizen Advisory Group process, as noted at the March 2015 State Water Control Board meeting. Because the Department is bound by the existing statute and regulation, any general permit coverage action that DEQ has made or will make from 12:00 a.m. on March 11, 2015 through 11:59 p.m. on August 1, 2016 shall not extend authorization beyond 11:59 p.m. on July 31, 2021 – approximately 6 years. Compliance activity conducted by the Department will continue under current procedures until such time that new regulations become effective.

Commenter	Comment	Agency response
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support the 15 year term change and removing the authorization term. However, applicants applying in the late years of the term will have difficulty using a general permit and completing a project under the same terms/conditions. Unduly burdensome requirement - one option may be to include a provision stating reissued gps will be developed at least one year in advance of prior permit's expiration; another option would be to reinstate language allowing terms/conditions to be based on term length and duration of the project so permittee are not forced to choose which permit to apply for.	The Department recommends amending the general permit term to 10 years, rather than 15 years. The Department does not recommend amending the transition provisions. This was a non-consensus issue at the end of the Citizen Advisory Group process, as noted at the March 2015 State Water Control Board meeting. VWP individual permits are available for those projects where there is a higher risk of not completing in the allotted, remaining time. However, while the Department is bound by the existing statute and regulation, we recognize the need to continue discussion with stakeholders about the manner in which general permits expire and transition into a newly issued or reissued general permit.
Virginia Transportation Construction Alliance	This paragraph does not allow for permits to be longer than 15 years with the exception of the first year, where each only allows for a the remaining permit term from the year of the permit issuance. Therefore a permit issued in 2030 will only be valid for one year.	The Code of Virginia does not allow a VWP permit term of more than 15 years, regardless of when the permit is issued.
Wetland Studies and Solutions and Home Builders Association of Virginia	Development industry supports a specific permit term (certain number of years), duration for general permits. 15 year proposal is good but all expire on same day. Thought previous committee solved problem in 2001 with current structure. Permits expiring all on the same day cause substantial work for everyone. General Attorney opined back then that it was legal, but there is apparently a different opinion now. Confident we can find a legal solution to allow variable expirations. Not a huge issue, but would be relatively easy change to make things better for everybody.	The Department recommends amending the general permit term to 10 years, rather than 15 years. The Department does not recommend amending the transition provisions. This was a non-consensus issue at the end of the Citizen Advisory Group process, as noted at the March 2015 State Water Control Board meeting. VWP individual permits are available for those projects where there is a higher risk of not completing in the allotted, remaining time. However, while the Department is bound by the existing statute and regulation, we recognize the need to continue discussion with stakeholders about the manner in which general permits expire and transition into a newly issued or reissued general permit.

Comments on administrative continuance of permits

No comments were received pertaining to general permit administrative continuance in this regulation. The provision for administrative continuance of individual permits (9VAC25-210-65) did not reach consensus during the Citizen Advisory Group process, and the Board directed the Department to highlight

this provision in the Proposed public notice and consider adding a timeline on the action. Two commenters support the provisions in general and one opposed the provision, but none suggested a timeline. The Department's recommendation for amendments to 9VAC25-210 includes replacing 'may' with 'shall' and adding a clarifying statement that was inadvertently left out to complete the first sentence of subsection B. The Department does not recommend a timeline be inserted regarding the amount of days a continuance may last, as this would be inconsistent with other DEQ water program regulations and possibly a contradiction to the requirements of the Administrative Process Act. The Department does not recommend any amendments to the language in Section 35 of each general permit regulation.

Comments on application requirements

All comments pertaining to general permit application requirements in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Chesapeake Bay Foundation	New rule would require functional assessment only where applicant proposes permittee-responsible mitigation. DEQ justifies the change through the use of standard mitigation ratios, but these plainly will not take into account myriad site-specific conditions that determine wetland functions...tools cannot reasonably be said to be consistent with statutory command to ensure not loss of wetlands functions. Oppose this change.	The Department does not recommend revising this provision because the provision as proposed continues to meet the statutory obligation of no net loss of existing wetland acreage and function and continues to be managed in accordance with program guidance for standard mitigation ratios. While the program is moving toward the use of better tools to assess compensatory mitigation needs and inform compensatory mitigation decisions, the methods historically used for functional analysis are still valid, albeit not particularly informative. The provision as currently proposed is a compromise between eliminating the requirement altogether and reducing the circumstances under which such analysis is required to those situations where ambiguity is most often encountered, such as in on-the-ground compensation projects.
Townes Engineering	The proposed language puts many highly qualified survey groups at a disadvantage. ...In low flow conditions, [thalweg] can be easily identified, however, during periods of high flow, its location can be challenging. Most field survey groups are not familiar with this term, much less how to correctly identify [it]. Standard engineering convention for site plans only requires that the centerline of the associated stream channel be identified and depicted on plans and profiles. ...will adversely affect the time and budget of projects involving road crossings, bridges, trail crossings, and stormwater management. ...will also force survey firms to hire a stream	The Department does not recommend revising the thalweg language in Section 60 B 9. The Department finds that the majority of firms working in the environmental field are experienced in creating longitudinal profiles that often identify the thalweg of a stream, particularly when proposing a stream restoration project. The Department acknowledges that while upgrading staff's skills may be a necessary cost of doing business, it does not believe there is a need for any specifically-licensed or -degreed individual in order to determine the thalweg. Several resources exist on-line to assist with educating staff in conducting longitudinal profiles, including the thalweg, such as but not limited to manuals, training programs, and internet tools created by the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service.

Commenter	Comment	Agency response
	<p>scientist to be onsite to ensure that the thalweg is correctly identified in the field. ...the language...should be revised to state: "Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed centerline, or shall provide spot elevations of the stream centerline at the beginning and end of the pipe or culvert extending to a minimum of 10 feet beyond the limits of the proposed impact."</p>	
<p>Virginia Department of Transportation</p>	<p>Change 'linear transportation activities' to 'linear transportation projects'</p>	<p>The Department recommends revising 9VAC25-680-60 A 1 to be consistent with the terminology used in this general permit regulation.</p>
<p>Virginia Department of Transportation</p>	<p>Request relief from providing email addresses on applications</p>	<p>The Department continues to recommend maintaining the requirement for email addresses. If this causes VDOT to revise paper forms, electronic forms, and/or database fields, the Department can accept this information as an attachment to an application, or as part of any cover letter or email submitted with an application. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.</p>
<p>Virginia Department of Transportation</p>	<p>Break out project name and proposed project schedule into separate numbered items, and that proposed project schedule not be required for spreadsheet projects under 50 A 3 b</p>	<p>The Department recommends maintaining the text as proposed, as the requirements are clearly stated as shown. Dividing these informational items in this way will require renumbering the section again. Regarding the submittal of a project schedule for VDOT spreadsheet projects, the Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.</p>
<p>Virginia Department of Transportation</p>	<p>Replace 'fourth order subbasin' with 'fourth level or 8-digit hydrologic unit' because NWBD does not have a fourth order subbasin.</p>	<p>The Department does not recommend replacing 'order' with 'level'. The Department recognizes that the National Watershed Boundary Dataset uses the term 'level' instead of 'order'; however, we recommend keeping the same term used in governing Code §62.1-44.15:23.</p>

Commenter	Comment	Agency response
Virginia Department of Transportation	Object to requirement for GIS-compatible shape files and recommends these be provided if available	The Department recommends replacing the GIS shapefile with a map for the required information by combining portions of 9VAC25-6x0-60 B 6 e and f, and striking the GIS language in 6x0-60 B 6 f and 11 e, based on public comment and the assessment of economic impacts.
Virginia Department of Transportation	Break out narrative description and project purpose and need into separate items	The Department recommends maintaining the text as proposed, as the requirements are clearly stated as shown. Dividing these informational items in this way will require renumbering the section again.
Virginia Department of Transportation	Object to requirement for proposed topographic or bathymetric contours on plan view drawings - don't have this information for most projects	The Department recommends maintaining the text as proposed, as contours are typically used and submitted by the majority of applicants. This language proposed and agreed to through collaboration with the Citizen Advisory Group to ensure consistent requirements for all VWP permits. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Object to requirement to provide thalweg - we do not have this information for most projects and may extend off of dot's right of way.	The Department does not recommend revising the thalweg language in Section 60 B 9. The Department would not expect VDOT to provide this information beyond the project limits. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Object to providing wetland impacts with sum converted to acres - do not provide this information in current applications, only provide sq ft	The Department recommends maintaining the text as proposed, as acreage is the default unit typically used and submitted by the majority of applicants and is the designated unit for regulatory limits and thresholds. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.

Commenter	Comment	Agency response
Virginia Department of Transportation	Delete reference to least environmentally damaging practicable alternative. Concerned deq will now make its own LEDPA decision when they are not a NEPA authority. No statutory authority for the SWCB to make LEDPA decisions.	The Department does not recommend deleting the reference to the 'least environmentally damaging practicable alternative'. This language is copied to each general permit regulation from the Proposed 9VAC25-210 to ensure consistent requirements for all VWP permits. There is no intent for the Department to apply the provision differently due to its inclusion in the general permit regulations. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns with providing this information on VDOT projects incurring less than 1/10 acre or 300 linear feet of impacts.
Virginia Department of Transportation	Replace 'wetland delineation confirmation' with comparable language from B 11 d - don't typically have a written confirmation unless project is a consultant-managed compensation site design	The Department recommends maintaining the text as proposed, as the wetland delineation confirmation is typically submitted by the majority of applicants. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Keep 'in accordance with 9VAC25-20' to clearly reference the permit fees	The Department recommends reinserting this citation.
Virginia Department of Transportation	Support this section [assessment of functions] as written	The Department thanks you for your support.
Virginia Transportation Construction Alliance	If a new application fee is being required then should it not be 180 days versus the shorter period of 60 days. As we saw through the recession, many projects were put on hold in the middle of a project, and it took time for project to be re-initiated as companies re-organized, determined the need for a project etc., or needed the additional time to develop an adequate responses to satisfy the comment posed by VDEQ.	The Department does not recommend revising the amount of days after which an incomplete application can be withdrawn. The Department experiences extensive delays in responses at times when the project applicants have not completed enough design or obtained the necessary funding to actually complete a project, thus requiring staff to 'track' lingering projects beyond that which is reasonable. This change was discussed through the Citizen Advisory Group and identified as an acceptable time period.

Commenter	Comment	Agency response
Virginia Transportation Construction Alliance	<p>...the proposed regulation will have a broader effect on the regulated community, in the form of the cost of the GIS software (\$3,500 to 11,000 per single license and \$5,000 to \$40,000 for a server license, where functionality is limited at the lower cost levels), the cost of new hardware to run the software as it has different requirements from the standard AutoCAD software that most firms operate, as well as the many man-hours needed to become proficient with the GIS software. Most firms work in AutoCAD, which is more proficient with engineering for a given project and providing construction plans. The estimation of cost has been greatly underestimated by the Commonwealth of Virginia. ...Without the specificity, the VDEQ would not be able to use the data in the manner in which they intend, and this may be an obstacle to deeming a permit application complete.</p>	<p>The Department recommends replacing the GIS shapefile with a map for the required information by combining portions of 9VAC25-6x0-60 B 6 e and f, and striking the GIS language in 6x0-60 B 6 f and 11 e, based on public comment and the assessment of economic impacts.</p>

Comments on compensatory mitigation

All comments pertaining to general permit compensatory mitigation in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Chesapeake Bay Foundation	<p>Support amendments regarding compensatory mitigation hierarchy with evaluation on case-by-case basis</p>	<p>The Department thanks you for your support.</p>
Dominion Resources Services, Inc.	<p>Support provisions: exempting some open water impacts from permitting and compensation requirements; allowing administrative continuances; requiring functional assessment only for certain projects with non-standard mitigation ratios.</p>	<p>The Department thanks you for your support.</p>

Commenter	Comment	Agency response
Virginia Department of Transportation	Object to new language re compensation for open water - unsure of how we would effectively compensate for open water impacts in karst	The Department recommends revising the provision for clarification that open water compensation may be required in certain circumstances. Compensation for open water impacts may be required under general permit coverage at a 1:1 ratio or less, regardless of their location on the landscape. The Department intends to reduce the potential situations where compensation may be required, particularly under general permit coverage. The Department will continue to evaluate compensation proposals in accordance to regulation and program policy.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support changes made to mitigation hierarchy	The Department thanks you for your support.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support changes that allow deq discretion on need for open water compensation	The Department thanks you for your support.
Virginia Mitigation Banking Association c/o Troutman Sanders LLP	Support changes to the mitigation hierarchy	The Department thanks you for your support.
Virginia Transportation Construction Alliance	[Section 70 C] should be deleted or substituted with the following language which is more appropriate language such as: "The proposed compensatory mitigation consists of compensating at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent wetlands."	The Department does not recommend amending Section 70 C regarding compensation. The suggested language means the same as the existing language.

Commenter	Comment	Agency response
Virginia Transportation Construction Alliance	<p>This provides the opportunity for VDEQ to require compensation for ponds and other open waters, where this has not been the standard. I would suggest striking this language.</p> <p>...Typically open water impacts count toward the total impacts of a project, but do not require compensation. Portions of the above are new requirements allowing the VDEQ to ask for compensation [for open water impacts]. ...if a value to open waters was to be assessed, a reasonable starting point would be at the 1:20 ratio or less.</p> <p>Given the low value of open waters, should compensation be required at all.</p>	<p>The Department recommends revising the provision for clarification that open water compensation may be required in certain circumstances. The Department has taken discretion on requiring compensation for open water impacts incurred under individual permits, and no set ratio exists in 9VAC25-210.</p> <p>Compensation for open water impacts may be required under general permit coverage at a 1:1 ratio or less. The Department intended to reduce the potential situations where compensation may be required under either permit type, and potentially allow less than a 1:1 ratio under general permit coverage.</p>

Comments on definitions related to activities in surface waters

All comments pertaining to general permit definitions in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Transportation Construction Alliance	<p>Isolated Wetland of Minimal Ecological Value (IWOMEV): [definition] was deleted from the definitions, and should not be as this is an important distinction for smaller isolated wetlands that are not jurisdictional.</p>	<p>The Department does not recommend amending the Proposed regulation texts. This definition was previously repeated in all regulations including 9VAC25-210, and a decision was made to reduce duplication by placing certain definitions applicable to all permit types into 9VAC25-210. The proposed language reached consensus through collaboration with the Citizen Advisory Group.</p>

Comments on modifications to permits

All comments pertaining to general permit modifications in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	<p>Prefer use of wording 'affect' and 'result in taking' instead. Request that deq consider relaxing prohibition of using general permits for projects with minor impacts to cypress/tupelo swamps - could affect some projects in Hampton Roads area.</p>	<p>The Department does not recommend amending 'impact' in this provision, as this is the original language that was moved from a different location in the same section. The Department does recommend amending 'be the taking' to 'result in a taking' for consistency among regulations.</p>

Commenter	Comment	Agency response
Virginia Department of Transportation	Add 'for a single and complete project' as it relates to total permanent and temporary impacts for clarity	The Department recommends amending this provision for consistency with Section 30 A.
Virginia Department of Transportation	Review time should be 5 days instead of 10 - could result in significant cost and scheduling delays	The Department does not recommend revising the amount of days provided to staff for responding to notice of additional temporary impacts. Ten days represents a compromise between five and 15 days, both suggestions made by participants of the Citizens Advisory Group. This length of time allows for the consideration of weekends and state holidays, as well as potential coordination inside and outside of the Department. Staff makes shall make every effort to respond in a timely manner.
Virginia Transportation Construction Alliance	Proposed threatened or endangered species are not list species under the Endangered Species Act, thus are not afforded the same protections as listed threatened or endangered species - reference to proposed should be removed, as well as reference to federal species as the Commonwealth of Virginia does not have jurisdiction over federal T&E species, and this has to be handled through U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service. These two items are listed in order of importance.	The Department does not recommend deleting 'federally listed' in relation to threatened or endangered species but does recommend an amendment to strike use of the modifier 'proposed' in these Sections, but the Department also suggest that permittee verifies the project will not impact proposed species or habitat. Original language containing 'federally listed' was revised and moved from Section 40 A 3 to Section 40 G 12 and copied to Section 80 B 1 c. The same language appears in Section 50 C and is not proposed for change. In accordance with 9VAC25-210-50 B 2, no VWP permit shall be issued where terms and conditions of such permit do not comply with state law, including Chapter 5 of Title 29.1, which authorizes Virginia to adopt the federal list, as well as modifications and amendments thereto, and to declare by regulation that species <i>not appearing</i> on the federal lists are endangered or threatened species in Virginia.

Comments on notification requirements

All comments pertaining to notification requirements in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
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Commenter	Comment	Agency response
Virginia Department of Transportation	Will deq continue to allow VDOT to use SERP, NEPA, or GIS integrator to provide deed restriction location information?	The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns with providing this information on VDOT projects.
Virginia Department of Transportation	Continue to reference VDOT's joint permit application previously approved for use by deq	The Department does not recommend amending this provision, as the approved forms for use by VDOT are located in the FORMS section of each regulation.
Virginia Department of Transportation	VDOT requests that a meeting be scheduled with DEQ and VDOT to revisit our existing Memorandum of Understanding and identify additional items that need to be included to allow VDOT to continue in an efficient manner while applying for and receiving DEQ permits.	The Department intends to meet with VDOT regarding the Memorandum of Understanding process to address VDOT concerns.

Comments on permit conditions

All comments pertaining to permit conditions in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	Need to be able to get an expedited decision from deq when encountering bedrock, or considerable contractor delay claims could occur. Need a commitment from deq to get a timely resolution.	The Department does not recommend amending the provision regarding DEQ response on bedrock encounters. Staff makes every effort to respond in a timely manner but cannot respond during outside of normal business hours unless an environmental emergency situation arises. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns.
Virginia Department of Transportation	Appreciate the changes incorporated regarding topsoil and invasive species	The Department thanks you for your support.
Virginia Department of Transportation	Keep references to use of mitigation bank and in-lieu fee program credits - don't always purchase credits but use them instead from our own multi-project sites. Edit in similar places for ILF credits.	The Department does not recommend reinserting language recognizing multi-project compensation sites as this option for providing compensatory mitigation is extremely unlikely to be approved after implementation of the 2008 Federal Mitigation Rule. Thus, the associated language was removed from the regulation to reduce confusion as to the acceptable compensatory mitigation options available to VWP permittees. The Department does not intend to require VDOT or any private entity to revise and update existing multi-project compensation plans or instruments to meet the current Rule standards, as these sites are few in number and in some cases are close to being exhausted.

Commenter	Comment	Agency response
Virginia Department of Transportation	Proposed increase to inspection frequency is unnecessary and overly burdensome, particularly for projects lasting over 6 months. semi-annual self inspections are sufficient for compliance with general permits.	The Department does not recommend amending the provisions related to compliance monitoring. The Department believes that the frequency of inspections required of permittees may actually decrease, even with reporting the status of areas not currently under construction. The Department understands that these provisions may actually benefit permittees more than it may benefit those serving as advisors or consultants to permittees; however, these provisions are consistent with what has been required of permittees holding VWP individual permits over the last one to two years, which have well over a 6-month time line.
Virginia Department of Transportation	Delete need for photos within 3 days - an estimate of additional impacts and description can be provided but it may take more than 3 days to get photos	The Department does not recommend amending the proposed provision, as this length of time was increased from that which was originally proposed by the Department (24 hours) to allow consideration of weekends and holidays. With today's technology, the Department believes photos can be generated and submitted along with the other information within this time period, including via email.

Miscellaneous comments

All comments pertaining to miscellaneous provisions in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	Object to inclusion of new language that seems to give DEQ ability to request information on a case-by-case basis beyond what is required for a complete application. DEQ could use this section to deem application incomplete and keep review clock from starting.	The Department does not recommend deleting Section 15. This section duplicates - within the regulation body - a general permit condition requiring a permittee to provide information when requested. Similar language is used in multiple other Department regulations and is reflective of authority provided in the Code of Virginia. The stand-alone Section 15 does not provide any authority to make informational requests beyond that which is already afforded the Department.
Virginia Department of Transportation	Add 'for a single and complete project' as it relates to total permanent and temporary impacts for clarity	The Department recommends amending this provision for consistency with Section 30 A.

Commenter	Comment	Agency response
<p>Virginia Transportation Construction Alliance</p>	<p>This requirement is more stringent than in previous version of the VWPs. One main point of concern is in (3) a. the language is requiring operators to report to the DEQ on permits where no construction activities have started - viewed as unnecessary reporting. DEQ should not have a concern over a situation where nothing has been started. (3) a. should be removed from the proposed language. DEQ has been retroactively changing this requirement in all VWPs for the last year. DEQ has requested applicants to willingly change permits issued with the previous VWP language to this new language. This is a cost of doing business item that can protect you and prevent VDEQ from conducting site visit; however, leaves the burden on the permittee. DEQ is requiring new notification requirements twice a year for the life of the permit, where failure to notify will be a violation of the permit, even if no construction has or is planned to commence - a nuance that can become a serious permit violation overtime, especially if a project does not go to construction for several years after the issuance of the permit and DEQ is not notified that construction is not occurring at each report period.</p>	<p>The Department does not recommend amending the provisions related to compliance monitoring. The Department believes that the frequency of inspections required of permittees may actually decrease - previously required monthly - even with reporting the status of areas not currently under construction. The Department understands that these provisions may actually benefit permittees more than it may benefit those serving as advisors or consultants to permittees; however, these provisions are consistent with what has been required of permittees holding VWP individual permits over the last one to two years.</p>
<p>Virginia Department of Transportation</p>	<p>Prefer use of wording 'affect' and 'result in taking' instead. Request that deq consider relaxing prohibition of using general permits for projects with minor impacts to cypress/tupelo swamps - could affect some projects in Hampton Roads area.</p>	<p>The Department does not recommend amending 'impact' in this provision, as this is the original language that was moved from a different location in the same section; however, the Department does recommend amending 'be the taking' to 'result in a taking' for consistency among regulations. While the Department recognizes the specific concern about small impacts, general permit coverage has not been authorized in tidal waters as a matter of policy. 9VAC25-660 specifically prohibits use of that general permit in nontidal wetlands adjacent to tidal waters. The Department does not recommend amending the prohibition from using general permits in tidal waters.</p>

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Items in italicized font indicate an amendment since the Proposed stage, as noted in the table above entitled 'Changes made since the proposed stage'.

9VAC25-670 - Summary of All Changes			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
10		Definitions	Clarified introductory paragraph for consistency with 9VAC25-210-10. <i>Punctuation – comma added. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
10		Definitions	Deleted “Channelization, “Cross-sectional drawing”, “Impacts”, “Isolated Wetland of Minimal Ecological Value”, “Surface waters”, “Temporary impacts” - already included under the over-arching program regulation 9VAC25-210-10.
	10	Definitions	Added “Coverage” as a result of changes made to the VWP general permit term and transition provisions.
10		Definitions	Deleted “Emergent wetland”, “Forested wetland”, “Open water”, “Ordinary high water”, “Perennial stream”, “Permanent impacts”, “Person”, “Riprap”, “Scrub-shrub”, “Stream bed” - moved to 9VAC25-210-10 and revised.
10		Definitions	Deleted “FEMA”, used full spelling in text rather than the acronym.
10		Definitions	Deleted “Forebay” since the definition is not needed to understand the regulation and multiple definitions may exist in the engineering field.
10		Definitions	Deleted “Greater than one acre” and “Less than one-half of an acre”, not used in regulation text.
10		Definitions	Revised “Independent utility” to add modifiers of ‘public and economic’ in last sentence for consistency with “Single and complete project”.
	10	Definitions	Added “Notice of project completion” as a result of revising the VWP general permit term and transition provisions. This provision was already a requirement in the regulation but referred to as a notice of termination.
10		Definitions	Revised “Single and complete project” to change ‘waterbody’ to ‘water body and deleted ‘public and economic’ as modifiers of utility for better consistency with Corps’ definition.

9VAC25-670 - Summary of All Changes			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
10		Definitions	Revised "State program general permit" to correct citations.
10		Definitions	Revised "Up to 300 linear feet" and "Up to 1500 linear feet" for consistency.
10		Definitions	Revised "Up to one-tenth of an acre" to "up to one-tenth acre".
10		Definitions	Revised "Up to two acres" to "Up to one acre" as two acres not used for a limit in this regulation.
10		Definitions	Added "VWP general permit" as a result of revising the VWP general permit term and transition provisions to clarify what is intended by section 100 of the general permit regulation and to combine it with the existing 'general permit' and 'VWP permit' definitions in 9VAC25-210-10.
10		Definitions	Citations were corrected in the Statutory Authority footnote.
	15	Statewide information	Added new section 'Statewide information' to explicitly state authority of board to request information as needed to make permitting decisions or for other reasons in carrying out authority under Chapter 3.1; derived from Code 62.1-44.15:21 and -44.21.
20		Purpose; delegation of authority	Revised title of section to remove 'effective date of the general permit', which is now in section 27.
20 A		Purpose; delegation of authority	Revised to change 'authorization' to 'coverage'; text added for consistency with other VWP general permit regulations. <i>Replaced 'regulation' with 'chapter'; replaced 'the VWP permit program regulation' with '9VAC25-210'. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
20 C	27 A; 100 preamble	Purpose; delegation of authority	Deleted and moved to new section 27 and to section 100 in the general permit text.
20 D	27 B	Purpose; delegation of authority	The first sentence of subsection D was moved to the new section 27. The second sentence of subsection D was deleted to reflect change to fixed general permit term.
	25	Authorization for coverage under VWP general permit effective August 1, 2006	Added new section to specify how applications will be processed by DEQ prior to August 2, 2016 and to address the transition of existing permit authorization holders into a new general permit regulation having a set term.

9VAC25-670 - Summary of All Changes			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	25 A	Authorization for coverage under VWP general permit effective August 1, 2006	Specifies how applications through 2016 will be processed. <i>Punctuation – commas deleted. Commas inserted by Registrar were deleted due to change in meaning of proposed text. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
	25 B	Authorization for coverage under VWP general permit effective August 1, 2006	Specifies that existing authorizations for coverage remain effective until the date specified on the authorization cover page unless otherwise terminated or revoked. <i>Punctuation – commas deleted. Commas inserted by Registrar were deleted due to change in meaning of proposed text. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
	27	VWP general permit coverage; transition; continuation	Added new section to specify how applications will be processed by DEQ after August 2, 2016 and to address how future transitions will occur.
	27 A	VWP general permit coverage; transition; continuation	Specifies how applications after 2016 will be processed. <i>Punctuation – commas deleted. Commas inserted by Registrar were deleted due to change in meaning of proposed text. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
	27 B	VWP general permit coverage; transition; continuation	Sets forth the criteria for those applicants who receive coverage under a general permit but who cannot begin or complete the project before the general permit term expires. <i>Punctuation – commas deleted. Deleted phrase ‘or unless a notice of project completion is received by the board’. Expiration year revised from 2031 to 2026 in subsection B. Commas inserted by Registrar were deleted due to change in meaning of proposed text. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations. Deletion of clause due to unintended potential release of permittee from permit conditions. Revision due to public comment on general permit term length.</i>
	27 C	VWP general permit coverage; transition; continuation	States that application may be made at any time for a VWP individual permit.

9VAC25-670 - Summary of All Changes			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
30 A		Authorization to impact surface waters	Revised for wording choice and to clarify that no coverage is being granted in the regulation.
30 A 2		Authorization to impact surface waters	Revised for wording choice and to remove the reference to the permit fee regulation, as that regulation is contrary to historic and current program practices for determining certain fees, and in some cases contains erroneous or misleading information. Revision of the permit fee regulation is not included as part of this VWP regulatory action.
30 A 3		Authorization to impact surface waters	Revised to clarify that applicant may utilize the general permit if comply with the limits and requirements that exist in the general permit, the coverage, the Clean Water Act, State Water Control Law, and regulations pursuant to it. <i>Inserted 'letter' after 'coverage'.</i> <i>Revisions due to staff comment on coverage requirements to ensure that compliance with the requirements of coverage is an enforceable permit condition and to make this requirement clear to the permittee.</i>
30 A 4		Authorization to impact surface waters	Deleted and combined with revised A 3. <i>Replaced 'the VWP permit program regulation' with '9VAC25-210'. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
30 A 5	30 A 4	Authorization to impact surface waters	Renumbered and citation was corrected.
30 A 6 and 7	30 A 5 and 6	Authorization to impact surface waters	Renumbered.
30 A 8	30 A 7	Authorization to impact surface waters	Renumbered and revised to delete 'and values' for consistency with other VWP regulations.
30 A 9	30 A 8	Authorization to impact surface waters	Renumbered and revised to add an additional citation and to clarify the applicability of the compensation requirement. <i>Revised "When required, Compensation..." to read "When required, compensation..." Grammatical correction due to addition of the phrase "When required,"</i>
30 C		Authorization to impact surface waters	Citation was corrected and subsection revised for consistency.
30 D		Authorization to impact surface waters	Revised for wording choice.

9VAC25-670 - Summary of All Changes			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
30 E	100 preamble	Authorization to impact surface waters	Stricken, moved to section 100, and revised for wording choice.
30 F	30 E	Authorization to impact surface waters	Renumbered and clarified to reference the correct regulatory citation and new general permit effective date, as well as being revised for wording choice. The last sentence of the subsection was stricken as duplicative of the preceding text. <i>Punctuation – added comma. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
30 G	30 F	Authorization to impact surface waters	Subsection renumbered and revised for wording choice; citation added.
	35	Administrative continuance	New section added to specify how coverage will carry forth if agency fails to reissue a new general permit before a previous one expires.
40 A		Exceptions to coverage	Revised to state coverage is not required if otherwise excluded by 9VAC25-210-60.
40 A 1 and 2; F 6 and 5	40 F 6 and 5	Exceptions to coverage	Original text moved to subsection 40 F; A 2 combined with F 6 regarding threatened and endangered species and revised for wording choice. <i>Deleted ‘or proposed’ as a modifier to species and “proposed or” as a modifier to designated critical habitat. Replaced ‘be the’ with ‘result in a’.</i> Revisions due to public comment on protection of proposed species and habitat. Clarification to improve readability - does not change intent of requirement.
40 F 5 a		Exceptions to coverage	Original text moved and revised to combine with the existing text there regarding threatened and endangered species. <i>Replaced ‘United States’ with ‘U.S.’.</i> Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.
40 F 5 b		Exceptions to coverage	<i>Replaced ‘state-listed’ with ‘state listed’.</i> Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.
40 B		Exceptions to coverage	Replaced ‘authorization’ with ‘coverage’ and revised for wording choice.
40 D		Exceptions to coverage	Revised for wording choice.
40 F, F 1 and F 3		Exceptions to coverage	Revised for wording choice and consistency with 9VAC25-680. Replaced ‘authorization’ with ‘coverage’.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	40 F 7	Exceptions to coverage	Added to clarify VWP general permits are only for activities in nontidal surface waters, consistent with 9VAC25-660.
50 A		Notification	Deleted as inconsistent with revisions proposed in section 80 and 9VAC25-210 regarding timing of notification.
50 B 1	50 A	Notification	Renumbered and revised for wording choice and remove duplication; to replace 'authorization' with 'coverage'; to delete a portion of the second sentence as an out-of-place permit condition; and to delete the last sentence as a duplicative provision and out-of-place permit condition.
50 B 2	50 A 2	Notification	Renumbered, revised for wording choice, and to replace 'authorization' with 'coverage'.
50 B 2 a	50 A 2 a	Notification	Revised for wording choice; to move former c up to a and revise for wording choice; and to add the citation to refer to if compensation is required.
50 B 2 b	50 A 2 b	Notification	Revised for wording choice; to revise the citations for informational items; to add the citation to refer to if compensation is required; and to delete the last sentence as an out-of-place permit condition. <i>Deleted 'that are not subject to subdivision 2 b of this subsection' in the first sentence. Correcting change made by Registrar where deleted text, if left, changes the meaning of proposed text.</i>
50 B 2 c	50 A 2 a	Notification	Deleted and moved to 2 a.
50 C	50 B	Notification	Renumbered and revised to clarify that the acceptable application forms are listed at the end of the regulation rather than listing these out by title, duplicative of FORMS section.
50 D	50 C	Notification	Revised to clarify denial is associated with the application for coverage and to spell out 'DEQ'. <i>Replaced 'United States' with 'U.S.'</i> Deleted 'proposed or' as a modifier to species and habitat. <i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations. Revisions due to public comment on protection of proposed species and habitat.</i>
60 A 1	60 A	Application	Revised for wording choice and to remove duplicated text; to delete A 2, reference to VDOT IACM process; and delete enumeration under A.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
60 B		Application	Entire subsection renumbered and revised for consistency with 9VAC25-210-80 B; revised for wording choice and reorganization. <i>Punctuation – re-inserted comma previously deleted. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
60 B 1		Application	Revised 'name' to 'legal name'.
	60 B 2	Application	Added requirement for property owner information.
60 B 2	60 B 3	Application	Renumbered; punctuation revised.
60 B 3	60 B 4	Application	Renumbered and revised for wording choice.
60 B 4	60 B 5 and 7	Application	Renumbered and revised to retain requirement for the project name; move requirement for project description to renumbered B 7; add project schedule.
60 B 5 through 9	60 B 6	Application	Renumbered and revised to expand on the required information about surface waters; to incorporate information required by original B 6 through 9. <i>Deleted phrase 'if applicable'. Clarification to improve readability - does not change intent of requirement. Removes redundant phrase repeated throughout regulation subsection. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
60 B 6 e		Application	Requirement for location map. Replaced 'United States' with 'U.S.' Moved 'and existing preservation areas on the site or sites' here from f. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations. Revisions due to public comment on GIS shape files.
60 B 6 f		Application	Added requirement for GIS shape files of project boundary unless otherwise waived by DEQ. Deleted f. Revisions due to public comment on GIS shape files.
60 B 10		Application	Deleted, obsolete.
60 B 10 b		Application	Renumbered and revised to clarify the information required about surface water impacts. Added requirement for average stream width and associated item numbering and punctuation. Correction of agency oversight in movement and revision of existing regulation text requiring the same – no intent to purposely delete requirement.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
60 B 10 d		Application	Moved and revised requirement for a jurisdictional determination. <i>Replaced 'if' with 'when'; inserted 'when unavailable, (i)'; inserted '(ii)'. Punctuation – deleted comma. Clarification to improve readability - does not change intent of requirement.</i>
60 B 10 e		Application	Relocated information required for delineation map to 11 e and revised to add GIS shapefile. <i>Enumerated items. Deleted 'if applicable' and 'and GIS compatible shapefile or shape files of the delineation map'. Deleted the last sentence regarding waiver of GIS shape files. Clarification to improve readability - does not change intent of requirement. Revisions due to public comment on GIS shape files.</i>
60 B 11	60 B 8 e and 9	Application	Revised to clarify the information requirements necessary in a plan-view drawing; to add informational requirements necessary for a cross-sectional, and profile drawings if applicable, as originally located in B 11. <i>Punctuation - added commas. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
60 B 12 and 12 a		Application	Deleted, obsolete. Existing text was clarified regarding what is required for a complete application regarding compensation plans. <i>Replaced 'or' with 'and' in language regarding compensation plan for complete application. Revisions due to staff review regarding consistent use of the word 'or' and 'and' when used with acreage, functions. Consistency with existing text elsewhere in the regulations and Code of Virginia.</i>
60 B 13	60 B 10	Application	Renumbered and revised to clarify the information required about surface water impacts. <i>Reinserted 'in accordance with 9VAC25-20'. Revisions due to public comment on citation to Fees for Permits and Certifications regulation.</i>
60 B 14	60 C	Application	Relocated text and revised for consistency with 9VAC25-210-80 C on assessment of wetland functions. <i>Punctuation – added comma. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
60 B 15	60 B 11	Application	Renumbered and revised for wording choice and consistency with 9VAC25-210-115 C regarding alternatives analysis.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
60 B 16	60 B 12	Application	Renumbered and revised regarding compensation plans. Existing text was clarified regarding what is required for a complete application regarding compensation plans and what is required for the protective instrument over compensation sites.
60 B 17	60 B 10 e	Application	Relocated information required for delineation map to 10 e and revised to add GIS shapefile.
60 B 18		Application	Deleted FEMA information, obsolete and to address suggestions made by Citizens Advisory Group.
60 B 19	60 B 13	Application	Renumbered and revised to remove reference to the permit fee regulation. <i>Reinserted "in accordance with 9VAC25-20" - Revisions due to public comment on citation to Fees for Permits and Certifications regulation.</i>
60 B 20	60 B 14	Application	Renumbered and revised to clarify the required information about already protected areas on the project site. <i>Added comma - Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
60 B 21	60 B 15	Application	Renumbered and revised to clarify the application signature requirements.
60 C	60 B 15	Application	Original text moved to subdivision B 15; new text was added describing the requirements for an assessment of wetland functions, consistent with the text in 9VAC25-210-80 C.
60 D, D 1, and D 2		Application	Revised for wording choice and replace 'authorization' with 'coverage'. <i>Punctuation – added comma. Replaced 'the VWP general permit regulation' with 'this chapter'. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
60 E		Application	Revised for consistency with 9VAC25-210-80 E; to clarify the circumstances under which an administrative withdrawal of an application may occur; to change number of days from 180 to 60 after which an incomplete application may be administratively withdrawn; to clarify that an applicant may also request the withdrawal.
70 A		Compensation	Revised and relocated existing text; added citation.
70 B through D		Compensation	Deleted as duplicative of 9VAC25-210-116. Sentence was added that compensatory mitigation will be in accordance with section 70 and 9VAC25-210-116.

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

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
80 B 1 b		Notice of planned changes; modifications to coverage	Revised to clarify how additional impacts may be authorized and the criteria that must be met. <i>Punctuation – added comma and replaced ‘VWP general permit regulation’ with ‘chapter’. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
80 B 1 c		Notice of planned changes; modifications to coverage	Revised to clarify the circumstances in which a modification may apply. <i>Deleted ‘or proposed’ as a modifier to species and “proposed or” as a modifier to designated critical habitat. Replaced ‘be the’ with ‘result in a’. Added last sentence: ‘The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.’ Revisions due to public comment on protection of proposed species and habitat. Clarification to improve readability - does not change intent of requirement.</i>
80 C	80 B 2	Notice of planned changes; modifications to coverage	Renumbered and revised to reflect the requirements for a reduction in impacts, consistent with the text in 9VAC25-210-180.
80 D and F	80 B 3 and 5	Notice of planned changes; modifications to coverage	Renumbered and revised for wording choice and clarify references.
80 E	80 B 4	Notice of planned changes; modifications to coverage	Renumbered and revised to allow substitution of bank or in-lieu fee program credits with any combination of the same, consistent with text in 9VAC25-210-180.
80 G	80 B 1 h	Notice of planned changes; modifications to coverage	Moved. Revised to clarify how additional impacts may be authorized and the criteria that must be met. <i>Punctuation – deleted two commas. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
80 H and I	80 A	Notice of planned changes; modifications to coverage	Moved and combined with existing text except deletion of denial if fish and wildlife resources impacted because impacts to resources are prohibited under section 40.
90		Termination of coverage	Title of section revised. Opening paragraph revised to relocate existing text within the same paragraph, correct citations, replace ‘authorization’ with ‘coverage’, and renumber the existing language as subsection A.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
90 3	90 A 3	Termination of coverage	Revised for wording choice.
90 4 a through c	<i>90 A 4 a through c</i>	Termination of coverage	Revised for wording choice and consistency; to spell out the acronym 'DEQ'; to replace 'authorization' with 'coverage'; and to clarify activities may be unlawful if not otherwise excluded from coverage. <i>Replaced 'cancellation' with 'cancelation'. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
	<i>90 B</i>	Termination of coverage	Subsection added to reference two additional types of termination. One type of termination is existing and the other one is new. Both are also located in section 100 Part III of this regulation and in 9VAC25-210-180 G and H. <i>Replaced '9VAC25-230' with '§ 62.1-44.15:02 of the Code of Virginia'. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
95	27	Transition	Subsection was repealed; existing text regarding application processing in times of general permit transitions replaced by text in section 27.
100		VWP general permit	Applicable to the entire section: The acronym 'DEQ' was spelled out throughout section 100. Introductory paragraph deleted and the section was revised to display the general permit as proposed.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100		VWP general permit	Applicable to the preamble: Title was revised to include the permit number – deleted ‘VWP General Permit No. WP2’. ‘Authorization expiration’ revised to ‘Effective date: August 2, 2016’; ‘Expiration date: August 1, 2031’ added to reflect the specific general permit term, coinciding to time of year when construction activities typically slow. ‘Authorization notes’ was deleted - requirements appear in the coverage letter provided by DEQ to the permittee. First paragraph under the VWP general permit title was revised to clarify that no coverage is being granted in the regulation or in the general permit text and that no specific project is basis of coverage. Second paragraph under the VWP general permit title was revised to clarify connection of authorities. ‘Permittee’, ‘Address’, ‘Activity Location’, ‘Activity Description’, the authorization statement, signature and date blank lines, ‘Director, Department of Environmental Quality’, and ‘Date’ were stricken - this information appears in the coverage letter that is provided by DEQ to the permittee. <i>Expiration year revised from 2031 to 2026 in heading. Revision due to public comment on general permit term length.</i>
100, Part I A 1		VWP general permit	Subdivision Part I A 1 was revised to clarify that no specific project or application was considered in the adoption of the general permit. <i>Added sentence to end of provision: ‘Additional permit requirements as stipulated by the Board in the coverage letter, if any, shall be enforceable conditions of this permit.’ Revisions due to staff comment on coverage requirements to ensure that compliance with the requirements of coverage is an enforceable permit condition and to make this requirement clear to the permittee.</i>
100, Part I A 2		VWP general permit	Subdivision Part I A 2 was revised for wording choice and to clarify how changes to coverage may be processed.
100, Part I A 3		VWP general permit	Subdivision Part I A 3 was revised for wording choice; to clarify that no specific project or application was considered in the adoption of the general permit; and for consistency with revisions in 9VAC25-210-180 regarding temporary impacts.
100, Part I A 4		VWP general permit	Deleted ‘authorization’ modifying compensation.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part I A 5		VWP general permit	Subdivision Part I A 5 was deleted to remove reference to a specific length of authorization.
100, Part I B		VWP general permit	Subdivision Part I B was stricken to correct the options of how coverage may continue, as described in the text of proposed section 27.
100, Part I C	100, Part I B	VWP general permit	Subdivision Part I C was retitled, renumbered as B.
100, Part I C 2	100, Part I B 2	VWP general permit	Existing language in the renumbered Part I B 2 was clarified regarding the requirements for culvert and pipe placement in streams and to relocate existing text within the same subdivision. <i>Punctuation – added comma. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
100, Part I C 3	100, Part I B 3	VWP general permit	Renumbered Part I B 3 was revised for consistency with the other VWP general permit regulations and to allow staff ability to make case-by-case decisions on need for equipment in surface waters. <i>Punctuation – added comma. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
100, Part I C 8	100, Part I B 8	VWP general permit	Renumbered Part I B 8 was revised to allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part I C 10	100, Part I B 10	VWP general permit	Revised to replace 'permitted' with 'authorized'.
100, Part I C 11 and 12	100, Part I B 11 and 12	VWP general permit	Renumbered Part I B 11 and B 12 were revised for wording choice and to include the use of existing topsoil in restoration activities where practicable, per a suggestion from the Citizen Advisory Group and consistency with federal nationwide (general) permit conditions. Acronym 'DCR' was spelled out. Title of plant list updated and allowance inserted for DEQ approval if invasives exist in original or reused soil. <i>Replaced 'if necessary' in fifth sentence with 'any necessary' before 'supplemental'. Agency preference for word choice.</i>
100, Part I B 11	100, Part I B 11	VWP General Permit – Temporary Disturbances – Cover Type	<i>Replaced phrase "(emergent, scrub shrub or forested) with "(i.e., emergent, scrub-shrub, or forested)". Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations. Clarification of requirements Agency preference for wording.</i>

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part I B 15	100, Part I B 15	VWP General Permit – Time of Year Restrictions	Added the word “letter” after “...VWP general permit coverage”. Agency preference for word choice – clarification of requirements.
100, Part I C 15	100, Part I B 15	VWP general permit	Renumbered Part I B 15 was revised to clarify the results of coordination between agencies and DEQ’s related requirements will appear in the coverage granted by DEQ.
100, Part I C 16	100, Part I B 16	VWP general permit	Renumbered Part I B 16 was revised to clarify that no coverage is being granted in the regulation or in the general permit text.
100, Part I C 17	100, Part I B 17	VWP general permit	Renumbered Part I B 17 was revised for wording choice and to allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part I D and D 1	100, Part I C and C 1	VWP general permit	Subdivision Part I D was renumbered to C, and C 1 was revised for wording choice.
100, Part I E and E 1	100, Part I D and D 1	VWP general permit	Subdivision Part I E was renumbered to D. Subdivision D 1 was revised for wording choice and to include the use of existing topsoil in restoration activities where practicable, per a suggestion from the Citizen Advisory Group and to be consistent with federal nationwide (general) permit conditions. The acronym ‘DCR’ was spelled out. Title of plant list updated and allowance inserted for DEQ approval if invasives exist in original or reused soil. Replaced ‘if necessary’ in fifth sentence with ‘any necessary’ before ‘supplemental’. Agency preference for word choice.
100, Part I F and F 7	100, Part I E and E 7	VWP general permit	Subdivision Part I F was renumbered to E. Subdivision E 7 was revised for wording choice.
100, Part I G and G 10	100, Part I F and F 10	VWP general permit	Subdivision Part I G was renumbered to F. Subdivision F 10 was revised to expand devices allowed for dredge material dewatering.
100, Part I H and H 3	100, Part I G and G 3	VWP general permit	Subdivision Part I H was renumbered to G. Subdivision G 3 was revised to replace ‘authorization’ with ‘coverage’ and to clarify alternative when plans not available.
100, Part II A 1 and 5		VWP general permit	Subdivisions Parts II A 1, A 5 were revised for wording choice.
100, Part II A 1	100, Part II A 1	VWP General Permit – Minimum Compensation Requirements	Added the phrase “the coverage letter”. existing requirements – conditions are also contained in the coverage letter. Clarification of requirements.
100, Part II A 2		VWP general permit	Subdivision Part II A 2 was revised to add a citation.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II A 3		VWP general permit	Subdivision Part II A 3 was revised for wording choice and to clarify that no specific project or application was considered in the adoption of the general permit.
100, Part II A 4		VWP general permit	Subdivision Part II A 4 was revised for wording choice; to clarify in-lieu fee program credits rather and contributions are a compensatory mitigation option; and to emphasize need for recording protective mechanism prior to taking impacts.
100, Part II A 5		VWP general permit	Part II A 5 was revised to clarify the applicability of the condition to final compensation plans.
100, Part II A 6	100, Part II A 5 a (2)	VWP general permit	Subdivision Part II A 6 was incorporated into A 5 as “a” and revised to renumber the required information items for providing permittee-responsible wetlands mitigation; and to delete the 120-day timeline for recordation of a final protective instrument and require such prior to implementing project impacts in surface waters, as is consistent with when a final compensation plan must be submitted and approved. Proposed language is consistent with 9VAC25-210-80 and -116. <i>Replaced ‘(if available)’ with ‘if available’.</i> <i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
100, Part II A 7	100, Part II A 5 b	VWP general permit	Subdivision Part II A 7 was incorporated into A 5 as “b” and revised to renumber the required information items for providing permittee-responsible stream mitigation; and to delete the 120-day timeline for recordation of a final protective instrument and require such prior to implementing project impacts in surface waters, as is consistent with when a final compensation plan must be submitted and approved. Proposed language is consistent with 9VAC25-210-80 and -116.
100, Part II A 8 and 9 through 20	100, Part II A 8 and 8 a through k	VWP general permit	Subdivision Part II A 8 was revised to subdivide it into a through k, using the text in existing subdivisions A 9 through 20. The introductory paragraph of A 8 was revised to clarify the list of conditions apply to permittee-responsible mitigation. A portion of the original A 8 sentence was moved to proposed A 8 a and revised to spell out the acronyms USDA and NRCS, and to incorporate the original text from A 12.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II A 9	100, Part II A 6 f and 7	VWP general permit	The original text at Part II A 9 was moved to Part II A 6 and 7. <i>Punctuation – deleted comma. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
100, Part II A 10	100, Part II A 8 b	VWP general permit	Subdivision Part II A 10 was renumbered.
100, Part II A 11	100, Part II A 8 c	VWP general permit	Subdivision Part II A 11 was renumbered and revised to delete notification requirement of 10 days.
100, Part II A 12	100, Part II A 8 a	VWP general permit	Subdivision Part II A 12 moved to A 8 a.
100, Part II A 13	100, Part II A 8 d	VWP general permit	Subdivision Part II A 13 renumbered.
100, Part II A 14	100, Part II A 8 e	VWP general permit	Subdivision Part II A 14 was renumbered.
100, Part II A 15, 16, and 17		VWP general permit	Subdivisions Part II A 15, 16, and 17 deleted due to inaccuracies and disagreement in scientific community as to proper criteria. Criteria will be contained in project-specific compensation plans.
100, Part II A 18, 19, and 20	100, Part II A 8 f, g, and h	VWP general permit	Subdivision Part II A 18, 19, and 20 were renumbered.
100, Part II B 1		VWP general permit	Subdivision Part II B 1 was revised for simplicity.
100, Part II B 1 a		VWP general permit	Subdivision Part II B 1 a was revised to clarify when, where, and how preconstruction photos must be taken.
100, Part II B 1 b	100, Part II B 1 a	VWP general permit	Subdivision Part II B 1 b was revised to delete ortho-rectified photography and combine with the requirements of II B 1 a. New text was added describing the requirements for when, where, and how to conduct site inspections.
100, Part II B 1 c, 2, and 3	100, Part II B 1 a and b	VWP general permit	Subdivisions Part II B 1 c, B 2, and B 3 were stricken. These requirements were simplified in B 1 a and b. <i>Replaced 'on-site' with 'on site'. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
100, Part II B 4	100, Part II B 2	VWP general permit	Subdivision Part II B 4 was renumbered to 2 and revised to correct a citation.
100, Part II B 2 b and c	100, Part II B 2 b and c	VWP General Permit – Monitoring of water quality parameters	<i>Added comma after "pH". Grammatical - Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.</i>
100, Part II C		VWP general permit	Title revised for wording choice.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II D 4		VWP general permit	Subdivision Part II D 4 was revised allow staff ability to make case-by-case decisions on need for equipment in surface waters.
<i>100, Part II D 5</i>		VWP general permit	<i>Replaced 'photo' with 'photo-monitoring'. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation.</i>
<i>100, Part II D 6 a (1), (11) and b (1), (10)</i>		VWP general permit	<i>Replaced 'photo' with 'photo-monitoring'. Replaced ', which' with 'that'. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation.</i>
<i>100, Part II D 6 b (4), (6), (8), and (10)</i>		VWP general permit	<i>Deleted 'An evaluation'; "A discussion"; "A summary"; and 'A corrective' and replace with "Evaluation"; "Discussion"; "Summary" and "Corrective" in the appropriate locations. Replace ", which" with "that". Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation.</i>
100, Part II D 7 and 8		VWP general permit	Subdivisions Part II D 7 and 8 were revised for wording choice.
100, Part II E 1		VWP general permit	Revised to change authorization number to tracking number.
100, Part II E 2		VWP general permit	Subdivision Part II E 2 was revised to delete the 10-day requirement for notification and contents of the notification.
100, Part II E 3 and 3 a through d		VWP general permit	Subdivision Part II E 3 was revised to replace the existing conditions related to the schedule of construction monitoring reports with new requirements for twice per year. E 3 a through d were simplified regarding construction status and subdivisions E 3 e and f were stricken, obsolete.
100, Part II E 4		VWP general permit	Revised for wording choice.
100, Part II E 5		VWP general permit	Subdivision Part II E 5 was revised for wording choice and to delete the 10-day requirement for notification.
100, Part II E 6		VWP general permit	Subdivision Part II E 6 was revised to add a provision for submittal of monitoring reports other than by the date stated and subdivisions E 6 a and b were revised for wording choice.
100, Part II E 9		VWP general permit	Subdivision Part II E 9 was revised to clarify the timeline for notifying DEQ about water quality violations.
	100, Part II E 10	VWP general permit	A new subdivision Part II E 10 was added to specify requirements for notifying DEQ about unauthorized impacts to surface waters.

9VAC25-670 - Summary of All Changes			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II E 10	100, Part II E 11	VWP general permit	Original Part II E 10 was renumbered to 11.
<i>100, Part III A</i>		VWP general permit	Subdivision Part III A was revised for wording choice and to clarify the authorities that apply. <i>Punctuation – added semi-colon and deleted comma. Reinserted ‘and’ before ‘toxic’.</i> <i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation. Correction of change made by Registrar.</i>
100, Part III C		VWP general permit	Subdivision Part III C was revised for wording choice and to clarify the actions taken on an application.
100, Part III E, F and H		VWP general permit	Subdivisions Part III E, F and H were revised for wording choice.
100, Part III G		VWP general permit	Subdivision Part III G was revised for wording choice and to relocate existing text within the same subdivision.
100, Part III H		VWP general permit	Revised for consistency with 9VAC25-210-180.
100, Part III I 1 through 5		VWP general permit	Subdivisions Part III I 1 through 5 were deleted as duplicative of detailed requirements for a notice of planned change and instead, a reference was added to section 80 for those details. Replaced ‘authorization’ with ‘coverage’.
<i>100, Part III J and J 1, 2 and 4</i>		VWP general permit	Subdivision Part III J 1 was revised to clarify that noncompliance may be associated with the coverage or the general permit. Subdivisions J, J 2, and 4 were revised for wording choice. J 5 and 6 were added for consistency with 9VAC25-210-10 et seq. Replaced ‘authorization’ with ‘coverage’ in all. <i>Replaced ‘9VAC25-230’ with ‘§ 62.1-44.15:02 of the Code of Virginia’.</i> <i>Replaced ‘the VWP general permit regulation’ with ‘this chapter’.</i> <i>Replaced period with a semi-colon.</i> <i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation.</i>
	<i>100, Part III K</i>	VWP general permit	A new subdivision Part III K was added to specify the conditions that apply to a termination without cause. This text is consistent with the proposed language in 9VAC25-210-180 H. <i>Replaced ‘9VAC25-230’ with ‘§ 62.1-44.15:02 of the Code of Virginia’.</i> <i>Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation.</i>

9VAC25-670 - Summary of All Changes			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part III K	100, Part III L, L 1, L 3, and L 4 a through c	VWP general permit	Subdivision Part III K was renumbered to L and revised for wording choice. Existing text was relocated within the same subdivision. Renumbered subdivisions Part III L 1 and 3 were revised for wording choice. Certification statements in renumbered subdivisions L 4 a through c were revised for wording choice and to clarify activities may be unlawful if not otherwise excluded from coverage. <i>Replaced 'cancellation' with 'cancelation'. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation.</i>
100, Part III L and M	100, Part III M and N	VWP general permit	Subdivisions Part III L and M were renumbered.
100, Part III N through Q	100, Part III O through R	VWP general permit	Subdivisions Part III N through Q were renumbered to O through R and revised for wording choice. Replaced 'authorization' with 'coverage'.
	100, Part III S	VWP general permit	A new subdivision Part III S was added to specify the requirement to reapply in order to continue authorized activities after the expiration date of a general permit.
FORMS		Forms referenced	Alphabetized list of forms. Revised the effective date of permit application fee form. Revised the title and effective date of the standard joint permit application. Revised the effective date of the Tidewater application. Added the VDOT monthly reporting application. Revised the effective date of the VDOT inter-agency meeting application. <i>Deleted referenced to "Joint Permit Application for Projects in Tidewater Virginia" Correction of forms list – GP does not apply in tidal waters.</i>
DOCUMENTS		Documents referenced	Added classification of wetlands, guideline for disposal sites, and invasive plant list. <i>Punctuation – deleted periods at end of document titles. Deleted parenthetical reference '(Federal Register December 24, 1980)'. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulation.</i>

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will

accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

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

General permit coverage may be an alternative to applying for a VWP individual permit under 9VAC25-210 if the project meets the criteria specified in the applicable general permit regulation. An application fee for coverage under a VWP general permit costs less, and general permit coverage typically can be processed in a shorter timeframe than a VWP individual permit.

The numerous amendments of an editorial nature (e.g., grammar, word choice, corrected citations, etc.) provide improved readability and understanding.