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Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9 VAC25-680
Regulation title(s)	VIRGINIA WATER PROTECTION GENERAL PERMIT FOR LINEAR TRANSPORTATION PROJECTS
Action title	Incorporation of recent policy and guidance specific to the Virginia Water Protection Permit Program.
Date this document prepared	April 15, 2015

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

Brief summary

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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

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

Legal basis

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

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

Purpose

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

The purpose of this proposed regulatory action is to reissue this general permit which expires in 2016 and allow for revisions to correct several administrative procedures; to clarify certain definitions; to revise application and permitting requirements to reflect current guidance and policies; to incorporate certain federal regulatory provisions relative to the program; to increase efficiency; to make the general permit regulation more relevant and useful; and to clarify and correct grammar, spelling, references, and errors. Because the Virginia Water Protection Permit Program Regulation 9VAC25-210-10 et seq. provides authority for this general permit regulation, applicable revisions to that program regulation must also be reflected herein. Other amendments to the regulation may be considered by the Board based on comments received in response to the public comment and participation process.

Substance

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

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

1. Change the organization of the regulation: revising the order in which information is provided; moving existing information to new locations, in whole or in part; adding new sections to expand or clarify existing provisions or incorporate new provisions; deleting sections, in whole or in part, to remove obsolete information and duplication; revising references and/or citations made in the regulation; and correcting sentence structure, grammar, spelling, and typographical errors.
2. Revise, clarify, move, add, and/or delete definitions.
3. Revise and/or clarify the activities in specific water sources that require application for a permit authorization and those activities that are excluded.
4. Revise and/or clarify the application process: the list of administrative and technical information required to achieve a complete permit application, such as applicant contact information, information specific to certain types of activities or to certain types of state waters, compensation plans including avoidance and minimization efforts, monitoring and reporting; the provisions for application review suspension and application withdrawal; and required drawings, diagrams, and maps.
5. Revise and/or clarify the compensatory mitigation requirements, such as the sequencing of acceptable compensatory mitigation actions and compensatory mitigation provisions; the requirements for compensating impacts to open waters; and/or compensation necessary for temporary impacts.
6. Revise, clarify, or delete provisions related to application processing, informational requirements, and/or actions occurring post-permit authorization for coverage, such as modification of permit authorizations and permit authorization revocation and termination.
7. Revise permit authorization transitions between general permit cycles.
8. Delete authorization term of 7 years and provisions for continuation of permit authorization coverage.
9. Revise, clarify, add, and/or delete provisions as necessary to accommodate those revisions made to the VWP program regulation 9VAC25-210 et seq.

Issues

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

1. Provisions for the expiration of general permits and transitioning permit authorizations between general permit cycles: The four VWP general permit regulations expire on August 1, 2016. The VWP general permit regulations are authorized by the Virginia Water Protection Permit Regulation 9VAC25-210-10 et seq., as well as the Code of Virginia.

As the four VWP general permit regulations exist today, each contains a regulation expiration date, a general permit expiration date, and a term for the authorization of coverage, as well as a condition allowing a request for continued coverage with no particular time limit specified. The Department believes that the regulations themselves should not expire, but that the general permit authorization and the general permit term should expire simultaneously in order to simplify the permitting process and be

consistent with the Code limit of 15 years (§62.1-44.15(5a)). The Department proposes to revise all four general permit terms from 10 years to 15 years, making the general permits effective on August 2, 2016 and expire on August 1, 2031; to eliminate the separate authorization period of 3 years for WP1 and 7 years for general permits WP2, WP3, and WP4; and to eliminate the ability for a continuation of coverage.

The advantages identified are: the proposed amendments allow transition between general permit cycles with as little disruption as is possible; the proposed amendments are consistent with the advice received regarding VWP permit limits in the Code of Virginia; applicants have available to them a VWP general permit process that incurs lower application fees and faster processing than the VWP individual process with a similar permit term; the proposed amendments do not change the Department's ability to revise a VWP general permit, either through a reopener action or through a separate regulatory action, should the need arise during the general permit term due to a change in state or federal policy or law regarding activities in surface waters; the proposed amendments do not appear to correlate with any decrease in environmental protection, nor provide any reduced benefit on human health or the environment; and the proposed amendments reduce the frequency in which staff must pursue the regulatory actions that are necessary for VWP general permit reissuance and adoption.

The disadvantages identified are: under the proposed amendments, if permittees cannot complete the authorized impacts within the allotted time of the VWP general permit, reapplication must occur for either subsequent general permit coverage or an individual permit; the proposed amendments have the potential to subject a permittee to a different set of terms and conditions than were previously required should reapplication occur; the proposed amendments may jeopardize project planning or increase development costs; and the proposed VWP permit term of 15 years may cause projects to drag on with no incentive for completion.

2. Adding provisions for administrative continuance: The Department proposes to add the provision for administrative continuance, as allowed by § 62.1-44.15(5a) of the Code of Virginia, but which has not been previously included in the VWP regulations. This provision allows the extension of a general permit past its expiration date, due to no fault of a permittee reapplying for coverage, when the agency cannot process a new general permit before the existing one expires. While the provision exists in other Department regulations, no timeframe exists for agency action. The advantage is that the regulated public is not penalized by the inability of the state to take a permit action. A disadvantage may be that the provision does not include a timeframe for the state to take action.

3. Authorization for coverage modification procedures: The Department proposes to: 1) clarify language related to increases or decreases in the amount of temporary impacts incurred by a permittee once the project begins; 2) add provisions for notifying DEQ prior to taking additional temporary impacts and for DEQ approval of such; 3) reorganize many of the provisions in section 80 for better readability and to clarify program intent, such as for the transfer of VWP general permit coverage from one permittee to another; 4) update the allowable substitution of compensatory mitigation options based on the 2008 Mitigation Rule; and 5) to add a provision to section 90 for the termination of a general permit authorization without cause when there is a substantial change to the nature or existence of the permittee. Advantages include better clarity in what the agency may approve as a modification, better consistency with the 2008 federal Mitigation Rule and other VWP regulations, and better tracking and management of permits. A disadvantage may be the need for applicants to identify or estimate temporary impacts earlier in the project development process.

4. Revise, move, add, and delete definitions: Because 9VAC25-210 is the over-arching program regulation, the Department determined that it is unnecessary to duplicate them in each VWP general permit regulation. Some definitions may be duplicated for ease of reference or emphasis. Other definitions needed to be revised based on current practices, the federal Mitigation Rule, or the literature. Still other definitions have become obsolete over the last ten years, or reflect widely accepted concepts in environmental science and engineering and are no longer needed. The Department proposes to move, revise, and delete various definitions. The advantage is improved clarity and understanding of the agency's intentions. No disadvantage was identified.

5. Consistency between VWP and federal rules governing compensatory mitigation: In 2008, the Corps adopted revised regulation 33 CFR 332 ('2008 Mitigation Rule') regarding compensatory mitigation that essentially reversed the hierarchy of acceptable mitigation practices, thus causing the VWP permit regulations to be opposite that of the Corps' regarding the hierarchy. The Department proposes to align its regulatory language in 9VAC25-210 as close as possible to the 2008 Mitigation Rule considering the existing State Water Control Law and regulatory framework in which the program must operate. Instead of repeating the same language in each VWP general permit regulation, the Department proposes to reference the applicable section or sections of 9VAC25-210 in each general permit regulation. Also, in order to be consistent with the 2008 Mitigation Rule regarding financial assurances and long-term management, the Department also proposes to revise the applicable VWP general permit conditions to allow a third party to hold easement or protection in perpetuity over permittee-responsible compensation sites and thus assume these responsibilities. The advantages are consistency in what the public may reasonably expect regarding compensation requirements when obtaining permits from both the federal and state agencies and ease of reading the general permit regulation. Both agencies retain discretion to approve proposals that do not follow the rule verbatim, which may be a disadvantage when federal and state permits are issued and the permit programs do not concur as to the best course of action regarding compensation.

6. Compensation monitoring success: Section 100 Part II A of each VWP general permit is proposed to be revised to reorganize and clarify existing provisions and to delete provisions regarding specific compensation site monitoring criteria. The later is proposed due to uncertainty in the scientific community about any alternative criteria for monitoring success, such as that for hydrology parameters. The VWP Permit Program intends to continue applying the same requirements for successful permittee-responsible mitigation as it has applied while developing program guidance to address the latest research. An advantage is the appropriate replacement of surface water impacts, when required. A disadvantage may be changing criteria over the next several years.

7. Compensation for open water impacts: Based on studies that suggest too much open water is being created with little environmental benefit as compensation for impacts, the Department proposes to parse out those small open water areas where compensation may not be warranted and to limit the maximum compensation ratio, when required, to a 1:1 ratio. Coordination with sister natural resource agencies on project proposals is expected to continue. An advantage may be reduced costs of compensation to those seeking permits for impacts to surface waters. A disadvantage may be unintentional impacts to aquatic-dependent fauna.

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

9. Permit application requirements: The Department identified a need to receive project location information in a geographic information system (GIS) format to support agency data tracking initiatives and better evaluate compensatory mitigation proposals and proposes to require certain information in a GIS format, unless the requirement is otherwise waived by the Department. The Department also proposes to: 1) reorganize the requirements for a complete application listed in regulation section 60; 2) revise the provisions regarding complete applications to reduce the timeline that these applications may linger; 3) make the application provisions consistent across all VWP regulations; 4) revise the

requirements for notification in section 50, where such requirements are dependent upon the amount of impacts and the applicant; and 5) to revise the VWP complete application requirements to reflect the need for the approved jurisdictional determination when one is available. An advantage of the proposed revisions is clarity in what the agency expects for a complete application, depending upon the applicant, which potentially reduces the amount of time spent by staff to review an application and make a permit decision, as well as time spent by applicants or agents responding to additional informational requests. Disadvantages may include the availability of all required information for some types of projects where minimal engineering takes place; the cost of obtaining the required information for some applicants; or the need to adapt and understand informational requirements beyond what is familiar.

10. Informational requirements: The Department proposes to streamline the regulation language in some places where additional information is requested or required by DEQ, and instead, add a new section entitled "Statewide information requirements". This provision is based in the Code of Virginia and appears in other regulations. The advantage is one location summarizing the responsibility of the VWP applicant or permittee to provide the information required to process an application or permit in a timely manner. No disadvantage was identified.

11. Conditional requirement for assessment of wetland functions: 9VAC25-680 currently requires that applicants who propose to impact one acre or more of wetlands provide an assessment of functions being lost. Historically, such analysis was used at the state and federal to support impact-to-loss ratios calculated for required compensatory mitigation for wetland impacts. The Department proposes to revise the provision to only require an assessment of functions for certain situations, particularly when permittees desire, and can justify, conducting on the ground permittee-responsible compensation instead of purchasing bank or fee program credits. The advantages include less cost for applicants impacting wetlands and less review time by agency staff. A disadvantage may be the perception that adequate compensation is not being required to meet no-net-loss of wetland acreage and functions.

12. Authorized activities: The VWP general permit regulation 9VAC25-680 allows stormwater management activities and the maintenance of structures thereof. The Department proposes to revise the language pertaining to limits of excavation from the facility's 'original contours' to 'original design' to match a similar revision proposed in 9VAC25-210-60 and to clarify what is acceptable when original designs are not available. The advantage is consistency in requirements between the VWP permit regulations. No disadvantage was identified.

13. Prohibited activities: The Department proposes to reorder the list of prohibited activities under each VWP general permit (section 40) and include the prohibition of activities in tidal waters, as is stated in 9VAC25-660-40 but not in the remaining three VWP general permit regulations. Other revisions being proposed include clarifying language in some prohibitions, consolidating some permitting exclusions, and including DEQ discretion in the general permit conditions as to when equipment use may be allowable in streams for restoration purposes, without revising existing conditions prohibiting such activities in wetlands. The Department does not propose to allow surge stone or other materials as temporary or permanent fill in surface waters due to concerns for water quality. Advantages may include a net savings in stream disruption when compared to the existing requirements. A disadvantage may be difficulty in ensuring such in-stream activities are being conducted by experienced entities.

14. Exceptions to coverage: The Department proposes to reference 9VAC25-210-60 as activities that do not require permitting; to reorganize the order of some exceptions to coverage; clarifying language in some exceptions to coverage; and allow Department discretion for use of wet or uncured concrete in state waters. Advantages include improved clarity and readability and possibly some cost savings on construction methods and time to implement such methods. A disadvantage may be difficulty in ensuring such construction methods are being conducted by experienced entities.

15. Monitoring and reporting requirements: In October 2013, the VWP permit program implemented a new Construction Monitoring and Reporting (CMR) initiative that changed how project construction and compensation site monitoring are to be conducted by holders of VWP individual permits. The Department proposes to revise the existing monitoring conditions contained in the VWP general permits to make

these consistent with the implemented requirements for individual permits. The advantages include consistency between requirements for all VWP permits and more useful information being submitted for staff review. A disadvantage may be reduced time spent by permittees on monitoring and compliance activities.

16. Forms and documents: The Department proposes to update, correct, and revise the forms and documents incorporated by reference at the end of the VWP Permit Program Regulation for clarity and to improve readability. No disadvantage was identified.

Requirements more restrictive than federal

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



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

Localities particularly affected

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



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

Public participation

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



In addition to any other comments, the State Water Control Board (SWCB) is seeking comments on the costs and benefits of the proposal; the potential impacts of this regulatory proposal; and any impacts of the regulation on farm and forest land preservation. The Board specifically requests comments on the areas where no consensus was reached by the citizens advisory group, including the length of time allowed for administrative continuances, the term of each general permit, and the new framework of the general permits.

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

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to William K. Norris, Regulatory Analyst, Office of Regulatory Affairs, Virginia Department of Environmental

Quality, P.O. Box 1105, Richmond, VA 23218 – (804) 698-4022 – FAX: (804) 698-4347. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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

Economic impact

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

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>DEQ anticipates absorbing any costs associated with implementing and enforcing the proposed amendments.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>Some expense may be incurred on specific projects to prepare mapping and/or survey-based drawings using GIS technology. However, many localities already have this ability, and a locality may request that DEQ waive the requirement per the proposed regulation language. No specific software or tool is mandated. Based on one internet source, a basic GIS software package typically costs less than \$600; advanced versions are considerably more at \$10-20,000, and incur annual maintenance fees of approximately \$2-3,000. Based on the Department’s inquiries, outsourcing the mapping task could incur professional service fees ranging from approximately \$150 to \$500, depending upon specific project characteristics.</p> <p>The proposed amendments reflect significant changes in the policy and scientific bases on which stream compensation is determined and include revisions to the acceptable mitigation options to mimic the U.S. Army Corps of Engineers’ 2008 Mitigation Rule. This rule has changed the sequence of preferable mitigation options, thus a previous proposal to compensate stream impacts may no longer be among the acceptable options, or may not be in line with the preferred sequence. Permittees with expiring VWP permits and incomplete projects may need to reapply for another individual permit or general permit coverage, subject to today’s standards and</p>

	<p>policies. There is also a potential for additional costs associated with wetland compensation but because changes to policy and science have not been as significant, the likelihood is less.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Any applicant who requires a Virginia Water Protection permit for impacts to surface waters.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The proposed amendments may impact any small business in the Commonwealth that proposes to incur impacts to surface waters. Regulated activities may include physical expansion of facilities or associated appurtenances, new construction, or changes to operational practices.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>The proposed amendments primarily clarify existing requirements (i.e., analysis of alternatives, jurisdictional determinations, assessment of wetland functions, compensatory mitigation options, monitoring/reporting, mapping/drawings) in greater detail and should not add significant new costs.</p> <p>As noted above, smaller businesses may incur an expense for GIS software or professional service fees to produce mapping or drawings. However, no specific software is mandated by the proposed amendments, and several free mapping/drawing tools exist.</p> <p>Because the VWP general permits have a pre-defined effective and expiration date, as mandated by the Code of Virginia and as determined through the regulation adoption process, some applicants may not have enough time to apply for coverage, receive coverage, and complete work before the expiration of the general permit. In these cases, additional fees may apply should the applicant choose to apply for a VWP individual permit instead, which would allow the work to commence on or after the date of individual permit issuance. Application fees for VWP general permit coverage ranges from \$0 to \$2,400 based on acreage or linear feet of impacts, and VWP individual permits range from \$2,400 to \$35,000 based on acreage or linear feet of impacts, and/or project type.</p> <p>Based on the current pool of active VWP permits, approximately 1,300 are identified as associated with commercial or residential activities.</p> <p>The proposed amendments reflect significant changes in the policy and scientific bases on which stream compensation is determined and</p>

	<p>include revisions to the acceptable mitigation options to mimic the U.S. Army Corps of Engineers' 2008 Mitigation Rule. This rule has changed the sequence of preferable mitigation options, thus a previous proposal to compensate stream impacts may no longer be among the acceptable options, or may not be in line with the preferred sequence. Permittees with expiring VWP permits and incomplete projects may need to reapply for another individual permit or general permit coverage, subject to today's standards and policies. There is also a potential for additional costs associated with wetland compensation but because changes to policy and science have not been as significant, the likelihood is less.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>DEQ intends that the proposed amendments offer clarity to many requirements that have not been readily understood by the regulated public, and thus, have expended time and money to resolve over the past 10 to 15 years. Time and money savings is expected for the public who will have a better understanding of the requirements and expectations before applying and receiving VWP permits. Time savings is also expected for DEQ permitting staff and managers.</p> <p>DEQ expects a cost savings to applicants impacting certain open waters, as no permit may be required. Likewise, permittees impacting certain, specified open waters may realize cost savings due to the potential for no compensatory mitigation to be required.</p> <p>DEQ expects cost savings to permittees having general permit coverage due to the amendments proposed for monitoring and reporting on a different frequency than is currently required. These amendments to monitoring and reporting have already been implemented in VWP individual permits.</p> <p>DEQ expects a cost saving for certain applicants who previously would be required to conduct functional assessments of wetland impact areas but that through the proposed amendments would no longer be required to perform such assessments.</p> <p>By requiring a different timeline in which to record a protective mechanism on land to be conserved, such as permittee-responsible compensatory mitigation sites, permittees may realize a cost savings in professional survey and recordation fees.</p>

Alternatives

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

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

A partial regulation revision is one alternative that may allow incorporation of some provisions that currently exist in regulation, policy, or guidance. However, such an action would not address the clarity issues that the full revision would provide, nor would any adopted revisions to the Virginia Water Protection Permit Program Regulation be incorporated.

Since we anticipate the continued use of a general permit for the appropriate regulated activities, reissuance must occur before the regulation expires in 2016, and therefore, the full revision alternative would allow reissuance along with revisions for the reasons previously stated.

Regulatory flexibility analysis

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

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

General permit coverage may be an alternative to applying for a VWP individual permit under 9VAC25-210 if the project meets the criteria specified in the applicable general permit regulation. An application

fee for coverage under a VWP general permit costs less, and general permit coverage typically can be processed in a shorter timeframe than a VWP individual permit.

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

Public comment

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

Commenter	Comment	Agency response
Charles M. Murray, Fairfax Water	“Thank you for the opportunity to comment on the Notice of Intended Regulatory Action for the Virginia Water Protection Permit Regulation (9VAC25-210), published June 2, 2014. Fairfax Water is interested and available to assist in the development of revised regulations through participation in the associated Regulatory Advisory Panel...”	A representative of Fairfax Water was invited to participate on the Advisory Group.
Philip Abraham – VECTRE Corp.	“I am writing on behalf of the Virginia Association for Commercial Real Estate (VACRE) to let you know of VACRE’s strong interest in these wetland regulations and any impact any changes might have on the commercial and industrial development industry in Virginia...VACRE was heavily involved and represented on the Regulatory Advisory Panel created by the Department to provide advice on the major revisions that were adopted in 2001 to these regulations and general permits and would very much like to participate in the upcoming regulatory process as well...Given the importance of these regulations to VACRE members, I am requesting that VACRE be represented on any Regulatory Advisory Panel (RAP) or Technical Advisory Committee (TAC) that is created to consider proposed revisions to these regulations...”	A representative of the Virginia Association for Commercial Real Estate (VACRE) was invited to participate on the Advisory Group.
Stephen E. Begg - VDOT	“The Virginia Department of Transportation (VDOT) is responding to the Notice of	A representative of the Virginia Department of Transportation was invited to participate on the Advisory Group.

Commenter	Comment	Agency response
	<p>Intended Regulatory Action (NOIRA) for upcoming revisions to the Virginia Department of Environmental Quality (DEQ) Virginia Water Protection (VWP) Permit Regulation (9 VAC 25-210), as published in the Virginia Register of Regulations on June 2, 2014. VDOT is requesting to be part of the Regulatory Advisory Panel to assist with development of a proposal for the revised VWP Permit Regulation... We request to be part of the Technical Advisory Committee to assist with the incorporation of recent policy and guidance specific to the VWP Permit Program within the General Permits...”</p>	
<p>Beth Silverman Sprenkle – EEE Consulting, Inc.</p>	<p>“I am interesting in participating in the VWPP revision process as a member of the Technical Advisory Committee. I am a trained ecologist who has worked with the VWPP regulations over the last decade, both as a VWP Permit Writer and as a consultant...I would very much like to be part of the process of integrating guidance and clarifying the text in these sections of the Virginia Administrative Code...”</p>	<p>A representative of EEE Consulting, Inc. was invited to participate on the Advisory Group.</p>
<p>Andrea W. Wortzel – Troutman Sanders/Virginia Manufacturers Association (VMA)</p>	<p>“...The VWP regulation establishes permitting requirements for both wetland impacts and surface water withdrawals. The NOIRA indicates that the amendments will involve the incorporation of policies and guidance, as well as clarifications to the regulatory language. VMA agrees that clarification of the regulatory language would be helpful, particularly where those clarifications are aimed at more clearly differentiating between the requirements that apply to wetland impacts and those that apply to surface water withdrawals...”</p>	<p>DEQ proposes to differentiate between portions of the regulation that pertain to surface water impacts versus those for surface water withdrawals through revisions to VWP regulation 9VAC25-210 et. seq., to consolidate all withdrawal related regulatory language into its own part. DEQ believes this restructuring will clarify the provisions specific to withdrawals from that of the rest of the VWP Permit Program. As part of this restructuring, new regulatory language is proposed to provide additional clarity.</p>
<p>Andrea W. Wortzel – Troutman Sanders/Virginia Manufacturers Association (VMA)</p>	<p>“The NOIRA does not identify the policy and guidance that DEQ is proposing to incorporate into the regulation. VMA looks forward to learning more about the changes that DEQ is considering.”</p>	<p>Policy and guidance are both formal and informal. As such, specific titles and/or reference numbers do not always apply. Not all policy and guidance is proposed to be incorporated into regulation. DEQ believes the regulated community benefits from regulations that reflect current policy. For example, the mitigation hierarchy in the</p>

Commenter	Comment	Agency response
		<p>regulations does not reflect recent changes to compensation requirements as a result of the 2008 USACE and USEPA Mitigation Rule. As part of DEQ’s consideration to open the VWP Permit Program regulations for revisions, current policy and guidance was reviewed. Revising the regulations to reflect current policy will provide greater transparency and clarity as to current requirements and widely accepted practices.</p>
<p>Andrea W. Wortzel – Troutman Sanders/Virginia Manufacturers Association (VMA)</p>	<p>“...VMA requests representation on the Regulatory Advisory Panel (“RAP”) DEQ will be forming to review DEQ’s proposed revisions. VMA nominates Cassidy Rasnick to serve as its representative.”</p>	<p>A representative of the Virginia Manufacturers Association (VMA) was invited to participate on the Advisory Group.</p>
<p>Andrea W. Wortzel – Mission H2O</p>	<p>"...The VWP regulations govern both surface withdrawals and impacts on wetlands. Virginia's water withdrawal permitting program is of significant interest to our members, many of whom rely upon surface water withdrawals as their water source. The NOIRA indicates that changes under consideration include separation of the provisions relating to water withdrawals from those relating to wetlands. Mission H2O supports such changes, as they would bring clarity to the respective programs and help alleviate confusion..."</p>	<p>DEQ believes restructuring the regulation to consolidate regulatory language pertaining to surface water withdrawals into its own part will clarify provisions specific to withdrawals from those specific to other activities regulated under the VWP Permit Program.</p>
<p>Andrea W. Wortzel – Mission H2O</p>	<p>"...The NOIRA also notes that additional changes may be proposed in order to "incorporate guidance." No explanation is provided as to which guidance documents will be incorporated into the regulation. Guidance is not regulation – it is not subject to the Administrative Process Act and is often developed without public input. Mission H2O has reservations about the assumption that guidance will be incorporated into the regulation without some consideration of the input from affected parties."</p>	<p>Policy and guidance are both formal and informal. As such, specific titles and/or reference numbers do not always apply. DEQ believes the regulated community benefits from regulations that reflect current policy. As part of DEQ’s consideration to open the VWP Permit Program regulations for revisions, current policy and guidance was reviewed to learn if any incorporation may be warranted to provide greater transparency in the regulations as to current requirements and widely accepted practices. Proposed regulations will be the result of the cooperative effort of Advisory Group, composed of representatives from interested parties. The public will be provided an opportunity to comment on any draft regulation, including any revisions proposed based upon existing policy and/or guidance.</p>
<p>Andrea W. Wortzel – Mission H2O</p>	<p>"...First, many of our members rely upon grandfathered water withdrawals. Accordingly, changes</p>	<p>DEQ does not propose any revisions to 9VAC25-210-60.B.1 or 2, which pertains to the set of excluded surface water</p>

Commenter	Comment	Agency response
	to the VWP regulations with the potential to impact the interpretation or application of the grandfathering provision would be of significant interest..."	withdrawals commonly referred to as "grandfathered."
Andrea W. Wortzel – Mission H2O	"...Second, our members may have a need to add an additional intake or increase the capacity of their intake structure in the future. Such expansions are often linked to business and job development or other economic benefits to the community. Thus, any changes to the permitting requirements are also of great interest to our members and the local jurisdictions in which they reside..."	DEQ does not propose any revisions to 9VAC25-210-60.B.1 or 2, which pertains to the set of excluded surface water withdrawals commonly referred to as "grandfathered."
Andrea W. Wortzel – Mission H2O	"...Mission H2O requests the opportunity to be represented on the Regulatory Advisory Panel ("RAP") for the proposed amendments to the VWP regulation. MH2O nominates Nina Butler, with RockTenn, to serve as its representative, with 'Andrea Wortzel' as her alternate..."	A requested substitution was made and a representative of Mission H2O is participating on the Advisory Group.
Pamela F. Faggert – Dominion Resources Services, Inc.	"Dominion appreciates the opportunity to submit comments on the Notice of Intended Regulatory Action (NOIRA) for the Virginia Water Protection (VWP) Permit Program Regulation. We also ask that you consider our request to participate on the Department of Environmental Quality (DEQ) regulatory advisory panel..."	A representative of Dominion Resources Services, Inc. was invited to participate on the Advisory Group.
Pamela F. Faggert – Dominion Resources Services, Inc.	"...The agency background document associated with the NOIRA outlines seven general categories of the potential changes to the regulation that will be considered. While specific details of the changes to be considered are not provided in the NOIRA, some of the revisions under consideration appear to be focused on the water withdrawal portions of the regulation. We hold VWP permit for water withdrawals at six of our electric generating stations and operates water withdrawals under the grandfathering provisions of the VWP regulation (9VAC25-210-60 B 1) at another seven of our electric generating stations."	DEQ believes restructuring the regulation to consolidate regulatory language pertaining to surface water withdrawals into its own part will clarify provisions specific to withdrawals from those specific to other activities regulated under the VWP Permit Program. As part of this restructuring, new regulatory language is proposed to provide additional clarity to those provisions. DEQ does not propose any revisions to 9VAC25-210-60.B.1 or 2, which pertains to the set of excluded surface water withdrawals commonly referred to as "grandfathered." Proposed regulations will be the result of the cooperative effort of Advisory Group and in light of any public comments received on the proposed regulation.

Commenter	Comment	Agency response
Pamela F. Faggert – Dominion Resources Services, Inc.	"The agency background document identifies potential changes to the overall organization of the regulation as a type of revisions under consideration. We are supportive of organizational changes to the regulations to clarify and differentiate the water withdrawal permit requirements from those for wetland and stream impact activities."	DEQ proposes to differentiate between portions of the regulation that pertain to surface water impacts versus those for surface water withdrawals through revisions to VWP regulation 9VAC25-210 et.seq. to consolidate all withdrawal related regulatory language into its own part. DEQ believes this restructuring will clarify the provisions specific to withdrawals from that of the rest of the VWP Permit Program. As part of this restructuring, new regulatory language is proposed to provide additional clarity.
Pamela F. Faggert – Dominion Resources Services, Inc.	"The agency background document also identifies potential changes to the activities that are excluded from permit requirements. We have grave concerns about the potential for revisions to the language associated with the water withdrawal grandfathering provision that are inconsistent with the grandfathering language in Virginia Code (62.1-44.15:20). It is important that the regulations remain consistent with the grandfathering language in Virginia Code which specifies that a permit is only required if a new §401 water quality certification is needed to increase the water withdrawal."	DEQ is not proposing any revisions to 9VAC25-210-60.B.1 or 2, which pertains to the set of excluded surface water withdrawals commonly referred to as "grandfathered."
Pamela F. Faggert – Dominion Resources Services, Inc.	"The NOIRA also indicates the regulatory advisory panel may be asked to consider revisions to the requirements for compensating for impacts to open water and temporary impacts. Currently the regulations allow DEQ to require mitigation for open water impacts and temporary impacts but they do not mandate mitigation for these impacts. We recommend that any revisions to the mitigation requirements maintain the flexibility to allow DEQ to determine if mitigation is necessary for these impacts on a site by site basis."	The comments received will be taken into consideration through the Advisory Group participation process.
Pamela F. Faggert – Dominion Resources Services, Inc.	"We request participation as a member on the regulatory advisory panel because revisions to the VWP Permit Program Regulation have the potential to impact a range of our activities in Virginia including water withdrawals for our electric generating stations, construction of new electric	A representative of Dominion Resources Services, Inc. was invited to participate on the Advisory Group.

Commenter	Comment	Agency response
	<p>generating stations, construction activities at existing electric generating stations, construction and maintenance of electric transmission and distribution facilities and construction and maintenance of gas transmission facilities. We felt it is necessary to have energy industry representation in the development of revisions to the regulation. Please accept Jason Ericson for consideration to serve on the regulatory advisory panel..."</p>	
<p>Margaret L. (Peggy) Sanner – Chesapeake Bay Foundation (CBF)</p>	<p>"I write to request the opportunity to participate, on behalf of the Chesapeake Bay Foundation (CBF), in the Technical Advisory Committee(s) formed by the Department of Environmental Quality (DEQ) to assist in connection with possible amendments to several regulations governing the Virginia Water Protection program: 9VAC25-210 (Virginia Water Protection Permit Regulation); 9VAC25-660 (Virginia Water Protection General Permit for Impacts Less Than One-Half Acre); 9VAC25-670 (Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission or Other Utility Line Activities); 9VAC25-680 (Virginia Water Protection General Permit for Linear Transportation Projects); and 9VAC25-690 (Virginia Water Protection General Permit for Impacts from Development Activities)."</p>	<p>A representative of the Chesapeake Bay Foundation (CBF) was invited to participate on the Advisory Group.</p>
<p>Margaret L. (Peggy) Sanner – Chesapeake Bay Foundation (CBF)</p>	<p>"CBF has a longstanding interest in, and commitment to, the preservation of wetlands throughout the Chesapeake Bay watershed and elsewhere in the Commonwealth. Healthy wetlands are crucial to protecting our waterways, including the Chesapeake Bay, from nutrient and sediment pollution. CBF has long supported robust programs</p>	

Commenter	Comment	Agency response
	<p>through, among other tools, effective permitting and regulatory processes, and its long engagement in these programs (through its scientists, lawyers and others) may be of assistance to the TAC."</p>	
<p>William T. (Tom) Walker – U.S. Army Corps of Engineers</p>	<p>"I would be happy to represent the Corps and provide assistance. Much like the assumption workgroup, our role would be limited to providing information and clarification on the Corps administered federal regulatory program and guidance on how the federal and state programs compliment/contrast one another. It would not be appropriate for me to participate in drafting specific language or to endorse or rebuff any viewpoint. In essence, I would be more of an advisor to the group than an active participant."</p>	<p>A representative of the U.S. Army Corps of Engineers was invited to participate on the Advisory Group.</p>
<p>Andrea Wortzel – Mission H2O/Virginia Manufacturers Association</p>	<p>"Cassidy Rasnick would like to substitute Nina Butler as the VMA representative on the VWP RAP...Nina will serve as a representative of both VMA and Mission H2O..."</p>	<p>Substitute accepted – A representative of the VMA and Mission H2O was invited to participate on the Advisory Group.</p>
Commenter	Comment	Agency response
<p>Charles M. Murray, Fairfax Water</p>	<p>"Thank you for the opportunity to comment on the Notice of Intended Regulatory Action for the Virginia Water Protection Permit Regulation (9VAC25-210), published June 2, 2014. Fairfax Water is interested and available to assist in the development of revised regulations through participation in the associated Regulatory Advisory Panel..."</p>	<p>A representative of Fairfax Water was invited to participate on the Advisory Group.</p>

Family impact

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

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

Detail of changes

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

9VAC25-680			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
10		Definitions	Clarified introductory paragraph for consistency with 9VAC25-210-10.
10		Definitions	Deleted “Channelization, “Cross-sectional drawing”, “Impacts”, “Isolated Wetland of Minimal Ecological Value”, “Surface waters”, “Temporary impacts” - already included under the over-arching program regulation 9VAC25-210-10.
	10	Definitions	Added “Coverage” as a result of changes made to the VWP general permit term and transition provisions.

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

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

9VAC25-680			
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.
	25 B	Authorization for coverage under VWP general permit effective August 1, 2006	Specifies that existing authorizations for coverage remain effective until the date specified on the authorization cover page unless otherwise terminated or revoked.
	27	VWP general permit coverage; transition; continuation	Added new section to specify how applications will be processed by DEQ after August 2, 2016 and to address how future transitions will occur.
	27 A	VWP general permit coverage; transition; continuation	Specifies how applications after 2016 will be processed.
	27 B	VWP general permit coverage; transition; continuation	Sets forth the criteria for those applicants who receive coverage under a general permit but who cannot begin or complete the project before the general permit term expires.
	27 C	VWP general permit coverage; transition; continuation	States that application may be made at any time for a VWP individual permit.
30 A		Authorization to impact surface waters	Revised for wording choice and to clarify that no coverage is being granted in the regulation.
30 A 2		Authorization to impact surface waters	Revised for wording choice and to remove the reference to the permit fee regulation, as that regulation is contrary to historic and current program practices for determining certain fees, and in some cases contains erroneous or misleading information. Revision of the permit fee regulation is not included as part of this VWP regulatory action.

9VAC25-680			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
30 A 3		Authorization to impact surface waters	Revised to clarify that applicant may utilize the general permit if comply with the limits and requirements that exist in the general permit, the coverage, the Clean Water Act, State Water Control Law, and regulations pursuant to it.
30 A 4		Authorization to impact surface waters	Deleted and combined with revised A 3.
30 A 5	30 A 4	Authorization to impact surface waters	Renumbered and citation was corrected.
30 A 6 through 8	30 A 5 through 7	Authorization to impact surface waters	Renumbered.
30 A 9	30 A 8	Authorization to impact surface waters	Renumbered and revised to add an additional citation and to clarify the applicability of the compensation requirement.
30 C		Authorization to impact surface waters	Citation was corrected and subsection revised for consistency.
30 D		Authorization to impact surface waters	Revised for wording choice.
30 E	100 preamble	Authorization to impact surface waters	Stricken, moved to section 100, and revised for wording choice.
30 F	30 E	Authorization to impact surface waters	Renumbered and clarified to reference the correct regulatory citation and new general permit effective date, as well as being revised for wording choice. The last sentence of the subsection was stricken as duplicative of the preceding text.
30 G	30 F	Authorization to impact surface waters	Subsection renumbered.

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

9VAC25-680			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
50 A 1	50 A 2	Notification	Revised for wording choice and to remove duplication; to replace 'authorization' with 'coverage'; to delete a portion of the second sentence as proposed to be addressed by new provision in 50 A 1; to delete a portion of the third sentence as an out-of-place permit condition; and to delete the last sentence as a duplicative provision and out-of-place permit condition.
50 A 2	50 A 3	Notification	Former 50 A 2 renumbered to A 3 and revised for wording choice. to replace 'authorization' with 'coverage';
50 A 2 a	50 A 3 a	Notification	Revised for wording choice; to move former c up to a and revise for wording choice; and to add the citation to refer to if compensation is required.
50 A 2 b	50 A 3 b	Notification	Revised for wording choice; to revise the citations for informational items; to add the citation to refer to if compensation is required; and to delete the last sentence as an out-of-place permit condition.
50 A 2 c	50 A 3 a	Notification	Deleted and moved to 3 a.
50 B		Notification	Revised to clarify that the acceptable application forms are listed at the end of the regulation.
50 C		Notification	Revised to clarify denial is associated with the application for coverage and to spell out 'DEQ'.
60 A 1		Application	Revised for wording choice and to remove duplicated text.
60 B		Application	Entire subsection renumbered and revised for consistency with 9VAC25-210-80 B; revised for wording choice and reorganization.
60 B 1		Application	Revised 'name' to 'legal name'.

9VAC25-680			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
	60 B 2	Application	Added requirement for property owner information.
60 B 2	60 B 3	Application	Renumbered; punctuation revised.
60 B 3	60 B 4	Application	Renumbered and revised for wording choice.
60 B 4	60 B 5 and 7	Application	Renumbered and revised to retain requirement for the project name; move requirement for project description to renumbered B 7; add project schedule.
60 B 5 through 9	60 B 6	Application	Renumbered and revised to expand on the required information about surface waters; to incorporate information required by original B 6 through 9.
60 B 10		Application	Deleted, obsolete.
60 B 11	60 B 8 and 9	Application	Revised to clarify the information requirements necessary in a plan-view drawing; to add informational requirements necessary for a cross-sectional, and profile drawing if applicable, as originally located in B 11.
60 B 12	60 B 10	Application	Renumbered and revised to clarify the information necessary in a dredged materials assessment.
60 B 13	60 B 11	Application	Renumbered and revised to clarify the information required about surface water impacts.
60 B 14	60 C	Application	Relocated text from complete application and revised for consistency with 9VAC25-210-80 C on assessment of wetland functions.
60 B 15	60 B 12	Application	Renumbered and revised for wording choice and consistency with 9VAC25-210-115 C regarding alternatives analysis.

9VAC25-680			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
60 B 16	60 B 13	Application	Renumbered and revised regarding compensation plans. Existing text was clarified regarding what is required for a complete application regarding compensation plans and what is required for the protective instrument over compensation sites.
60 B 17	60 B 11 e	Application	Relocated information required for delineation map to 11 e and revised to add GIS shapefile.
60 B 18		Application	Deleted FEMA information, obsolete and to address suggestions made by Citizens Advisory Group.
60 B 19	60 B 14	Application	Renumbered and revised to remove reference to the permit fee regulation.
60 B 20	60 B 15	Application	Renumbered and revised to clarify the required information about already protected areas on the project site.
60 B 21	60 B 16	Application	Renumbered and revised to clarify the application signature requirements.
60 C	60 B 16	Application	Original text moved to subdivision B 16; new text was added describing the requirements for an assessment of wetland functions, consistent with the text in 9VAC25-210-80 C.
60 D, D 1, and D 2		Application	Revised for wording choice and replace 'authorization' with 'coverage'.
60 E		Application	Revised for consistency with 9VAC25-210-80 E; to clarify the circumstances under which an administrative withdrawal of an application may occur; to change number of days from 180 to 60 after which an incomplete application may be administratively withdrawn; to clarify that an applicant may also request the withdrawal.
70 A		Compensation	Revised to relocate existing text; added citation.

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

9VAC25-680			
Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
80 B		Notice of planned changes; modifications to coverage	Revised to remove additional impacts language and make B an introductory statement. Replaced 'authorization' with 'coverage'.
80 B 1	80 B 1 and 1 g	Notice of planned changes; modifications to coverage	Revised to clarify how additional impacts may be authorized and the criteria that must be met, consistent with the text in 9VAC25-210-180 except for the sliding percentage scale of additional impact amounts. The last sentence was moved to -80 B 1 g.
80 C	80 B 2	Notice of planned changes; modifications to coverage	Renumbered and revised to reflect the requirements for a reduction in impacts, consistent with the text in 9VAC25-210-180.
80 D and F	80 B 3 and 5	Notice of planned changes; modifications to coverage	Renumbered and revised for wording choice and clarify references.
80 E	80 B 4	Notice of planned changes; modifications to coverage	Renumbered and revised to allow substitution of bank or in-lieu fee program credits with any combination of the same, consistent with text in 9VAC25-210-180.
80 G	80 B 1 h	Notice of planned changes; modifications to coverage	Moved.
80 H and I	80 A	Notice of planned changes; modifications to coverage	Moved and combined with existing text except deletion of denial if fish and wildlife resources impacted because impacts to resources are prohibited under section 40.
90		Termination of coverage	Title of section revised. Opening paragraph revised to relocate existing text within the same paragraph, correct citations, replace 'authorization' with 'coverage', and renumber the existing language as subsection A.

9VAC25-680			
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	90 A 4 a through c	Termination of coverage	Revised for wording choice and consistency; to spell out the acronym 'DEQ'; to replace 'authorization' with 'coverage'; and to clarify activities may be unlawful if not otherwise excluded from coverage.
	90 B	Termination of coverage	Subsection added to reference two additional types of termination. One type is existing and one is new. Both are also located in section 100 Part III of this regulation and in 9VAC25-210-180 G and H.
95	27	Transition	Subsection was repealed; existing text regarding application processing in times of general permit transitions replaced by text in section 27.
100		VWP general permit	Applicable to the entire section: The acronym 'DEQ' was spelled out throughout section 100. Introductory paragraph deleted and the section was revised to display the general permit as proposed.

9VAC25-680			
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. WP3’. ‘Authorization expiration’ revised to ‘Effective date: August 2, 2016’; ‘Expiration date: August 1, 2031’ added to reflect the specific general permit term, coinciding to time of year when construction activities typically slow. ‘Authorization notes’ was deleted - requirements appear in the coverage letter provided by DEQ to the permittee. First paragraph under the VWP general permit title was revised to clarify that no coverage is being granted in the regulation or in the general permit text and that no specific project is basis of coverage. Second paragraph under the VWP general permit title was revised to clarify connection of authorities. ‘Permittee’, ‘Address’, ‘Activity Location’, ‘Activity Description’, the authorization statement, signature and date blank lines, ‘Director, Department of Environmental Quality’, and ‘Date’ were stricken - this information appears in the coverage letter that is provided by DEQ to the permittee.
100, Part I A 1		VWP general permit	Subdivision Part I A 1 was revised to clarify that no specific project or application was considered in the adoption of the general permit.
100, Part I A 2		VWP general permit	Subdivision Part I A 2 was revised for wording choice and to clarify how changes to coverage may be processed.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part I A 3		VWP general permit	Subdivision Part I A 3 was revised for wording choice; to clarify that no specific project or application was considered in the adoption of the general permit; and for consistency with revisions in 9VAC25-210-180 regarding temporary impacts.
100, Part I A 4		VWP general permit	Deleted 'authorization' modifying compensation.
100, Part I A 5		VWP general permit	Subdivision Part I A 5 was deleted to remove reference to a specific length of authorization.
100, Part I B	25	VWP general permit	Subdivision Part I B was stricken to correct the options of how coverage may continue, as described in the text of proposed section 27.
100, Part I C	100, Part I B	VWP general permit	Subdivision Part I C was retitled, renumbered as B.
100, Part I C 2	100, Part I B 2	VWP general permit	Existing language in the renumbered Part I B 2 was clarified regarding the requirements for culvert and pipe placement in streams and to relocate existing text within the same subdivision.
100, Part I C 3	100, Part I B 3	VWP general permit	Renumbered Part I B 3 was revised for consistency with the other VWP general permit regulations and to allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part I C 8	100, Part I B 8	VWP general permit	Renumbered Part I B 8 was revised to allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part I C 10	100, Part I B 10	VWP general permit	Revised to replace 'permitted' with 'authorized'.

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

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

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
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	VWP general permit	Subdivision Part II A 6 was incorporated into A 5 as “a” and revised to renumber the required information items for providing permittee-responsible wetlands mitigation; and to delete the 120-day timeline for recordation of a final protective instrument and require such prior to implementing project impacts in surface waters, as is consistent with when a final compensation plan must be submitted and approved. Proposed language is consistent with 9VAC25-210-80 and -116.
100, Part II A 7	100, Part II A 5 b	VWP general permit	Subdivision Part II A 7 was incorporated into A 5 as “b” and revised to renumber the required information items for providing permittee-responsible stream mitigation; and to delete the 120-day timeline for recordation of a final protective instrument and require such prior to implementing project impacts in surface waters, as is consistent with when a final compensation plan must be submitted and approved. Proposed language is consistent with 9VAC25-210-80 and -116.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II A 8 and 9 through 20	100, Part II A 8 and 8 a through k	VWP general permit	Subdivision Part II A 8 was revised to subdivide it into a through k, using the text in existing subdivisions A 9 through 20. The introductory paragraph of A 8 was revised to clarify the list of conditions apply to permittee-responsible mitigation. A portion of the original A 8 sentence was moved to proposed A 8 a and revised to spell out the acronyms USDA and NRCS, and to incorporate the original text from A 12.
100, Part II A 9	100, Part II A 6 and 7	VWP general permit	The original text at Part II A 9 was moved to Part II A 6 and 7.
100, Part II A 10	100, Part II A 8 b	VWP general permit	Subdivision Part II A 10 was renumbered.
100, Part II A 11	100, Part II A 8 c	VWP general permit	Subdivision Part II A 11 was renumbered and revised to delete notification requirement of 10 days.
100, Part II A 12	100, Part II A 8 a	VWP general permit	Subdivision Part II A 12 moved to A 8 a.
100, Part II A 13	100, Part II A 8 d	VWP general permit	Subdivision Part II A 13 renumbered.
100, Part II A 14	100, Part II A 8 e	VWP general permit	Subdivision Part II A 14 was renumbered.
100, Part II A 15, 16, and 17		VWP general permit	Subdivisions Part II A 15, 16, and 17 deleted due to inaccuracies and disagreement in scientific community as to proper criteria. Criteria will be contained in project-specific compensation plans.
100, Part II A 18, 19, and 20	100, Part II A 8 f, g, and h	VWP general permit	Subdivision Part II A 18, 19, and 20 were renumbered.
100, Part II B		VWP general permit	Subdivision Part II B 1 was revised for simplicity.
100, Part II B 1 a		VWP general permit	Subdivision Part II B 1 a was revised to clarify when, where, and how preconstruction photos must be taken.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II B 1 b	100, Part II B 1 a	VWP general permit	Subdivision Part II B 1 b was revised to delete ortho-rectified photography and combine with the requirements of II B 1 a. New text was added describing the requirements for when, where, and how to conduct site inspections.
100, Part II B 1 c, 2, and 3	100, Part II B 1 a and b	VWP general permit	Subdivisions Part II B 1 c, B 2, and B 3 were stricken. These requirements were simplified in B 1 a and b.
100, Part II B 4	100, Part II B 2	VWP general permit	Subdivision Part II B 4 was renumbered to 2 and revised to correct a citation.
100, Part II C		VWP general permit	Title revised for wording choice.
100, Part II D 4		VWP general permit	Subdivision Part II D 4 was revised allow staff ability to make case-by-case decisions on need for equipment in surface waters.
100, Part II D 7 and 8		VWP general permit	Subdivisions Part II D 7 and 8 were revised for wording choice.
100, Part II E 1		VWP general permit	Revised to change authorization number to tracking number.
100, Part II E 2		VWP general permit	Subdivision Part II E 2 was revised to delete the 10-day requirement for notification and contents of the notification.
100, Part II E 3 and 3 a through d		VWP general permit	Subdivision Part II E 3 was revised to replace the existing conditions related to the schedule of construction monitoring reports with new requirements for twice per year. E 3 a through d were simplified regarding construction status and subdivisions E 3 e and f were stricken, obsolete.
100, Part II E 4		VWP general permit	Revised for wording choice.
100, Part II E 5		VWP general permit	Subdivision Part II E 5 was revised for wording choice and to delete the 10-day requirement for notification.

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Current Section Number	Proposed New Section Number (if applicable)	Section Content	Proposed Change and Rationale
100, Part II E 6		VWP general permit	Subdivision Part II E 6 was revised to add a provision for submittal of monitoring reports other than by the date stated and subdivisions E 6 a and b were revised for wording choice.
100, Part II E 9		VWP general permit	Subdivision Part II E 9 was revised to clarify the timeline for notifying DEQ about water quality violations.
	100, Part II E 10	VWP general permit	A new subdivision Part II E 10 was added to specify requirements for notifying DEQ about unauthorized impacts to surface waters.
100, Part II E 10	100, Part II E 11	VWP general permit	Original Part II E 10 was renumbered to 11.
100, Part III A		VWP general permit	Subdivision Part III A was revised for wording choice and to clarify the authorities that apply.
100, Part III C		VWP general permit	Subdivision Part III C was revised for wording choice and to clarify the actions taken on an application.
100, Part III E, F and H		VWP general permit	Subdivisions Part III E, F and H were revised for wording choice.
100, Part III G		VWP general permit	Subdivision Part III G was revised for wording choice and to relocate existing text within the same subdivision.
100, Part III H		VWP general permit	Revised for consistency with 9VAC25-210-180.
100, Part III I 1 through 5		VWP general permit	Subdivisions Part III I 1 through 5 were deleted as duplicative of detailed requirements for a notice of planned change and instead, a reference was added to section 80 for those details. Replaced 'authorization' with 'coverage'.

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

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