

9VAC25-210-10. Definitions.

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

"Act (Clean Water Act)" means 33 USC §1251 et seq. as amended 1987.

"Applicant" means an individual, operator or owner filing a joint permit to dredge or fill, or both, or requiring a Federal Energy Regulatory Commission (FERC) permit or conducting other activities which require a permit under this chapter.

"Approval authority" means the executive director of the State Water Control Board.

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

"Board" means the State Water Control Board.

"Certificate" means certification required under §401 of the Clean Water Act (33 USC §1341), provided by the State Water Control Board.

"Composite sample" means a combination of individual samples of sediment or water taken in proportion to the area to be impacted which ensures that a representative sample is obtained.

"Consumptive use" means the withdrawal of surface waters, without recycle of said waters to their source or basin of origin.

"Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of any pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

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

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

"Effluent" means dredged material or fill, including return flow from confined sites.

"Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

"Executive director" means executive director of the State Water Control Board.

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

"Fill material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a water body for any purpose.

"General permit" means a permit issued by the Corps of Engineers, such as Regional or Nationwide Permits or a permit issued by the State Water Control Board (SWCB) authorizing a specified category of activities within a geographic area.

"Nationwide permit" means a permit governing specified activities, issued by the U.S. Army Corps of Engineers, the conditions of which are applicable nationwide.

"Nonpoint source" means a source of pollution, such as a farm, forest or construction site run-off, urban storm water run-off or mine run-off that is not collected or discharged as a point source.

"Permit" means a Virginia Water Protection Permit (VWP) which is the Commonwealth of Virginia's §401 Water Quality Certification.

"Permittee" means an owner or operator who currently has an effective VWP permit issued by the board.

"Person" means any firm, corporation, association, or partnership, one or more individuals, or any governmental unit or agency of it.

"Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. It does not mean water, gas or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for the disposal purposes if approved by the Department of Mines, Minerals and Energy unless the board determines that such injection or disposal will result in the degradation of surface or groundwater resources.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views and comments to the board pursuant to the board's Procedural Rule No. 1.

"Regional permit" means a type of general permit issued by the Corps of Engineers authorizing a specified category of activities within the Commonwealth of Virginia or other specified geographic region and whose conditions are applicable within the geographic area specified.

"Schedule of compliance" means a schedule of remedial measures including a sequence of enforceable actions or operations leading to compliance with the Act, the law, and the board regulations, standards and policies.

"State general permit" means a VWP permit issued by the Commonwealth of Virginia through the State Water Control Board, and applicable statewide, for activities of minimal environmental consequence.

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

"Surface water" means:

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

"Toxic pollutant" means any agent or material including, but not limited to, those listed under §307(a) of the Act (33 USC §1317(a)) which after discharge will, on the basis of available information, cause toxicity. Toxicity means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health or other adverse environmental effects.

"Water quality standards" means water quality standards 9VAC25-260-10 et seq. adopted by the board.

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

9VAC25-210-50. Prohibitions and requirements for permits.

A. No person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, excavate in a wetland, or otherwise alter the physical, chemical or biological properties of surface waters, except as authorized pursuant to a Virginia Water Protection Permit, or as excluded in 9VAC25-210-60.

B. No permit shall be issued for the following:

1. Where the terms or conditions of the permit do not comply with state law;
2. For the discharge of any radiological, chemical or biological warfare agent or high level radioactive material into surface waters;
3. For any discharge which will result in the pollution of surface waters or the violation of standards, regulations or policies adopted by the board pursuant to state law.

9VAC25-210-110. Establishing applicable standards, limitations or other permit conditions.

In addition to the conditions established in 9VAC25-210-90 and 9VAC25-210-100, each permit may include conditions meeting the following requirements where applicable:

1. Instream flow conditions. Subject to the provisions of § 62.1-242 et seq. of the Code of Virginia, and subject to the authority of the State Corporation Commission over hydroelectric facilities contained in § 62.1-80 et seq. of the Code of Virginia, instream flow conditions may include but are not limited to conditions that limit the volume and rate at which water may be

withdrawn at certain times and conditions that require water conservation and reductions in water use.

2. Water quality standards and state requirements. The permit shall include requirements to comply with all appropriate provisions of state laws and regulations.

3. Toxic pollutants.

a. Where the board finds that appropriate limitations may not ensure compliance with the law or state water quality standards the board shall require the permittee to follow a program of biological or chemical toxics monitoring. The requirement may include a permit reopener to allow the imposition of toxicity reduction or elimination measures determined to be necessary as a result of the board's evaluation of the results of the toxic monitoring and other available information. Based upon this determination, appropriate limitations will be included in the permit to ensure the reduction or elimination of toxic pollutants and allow the board to ensure that the proposed project will comply with water quality standards and other appropriate requirements of state law.

b. Limitations will be included in the permit to control all toxic pollutants which the board determines (based on information reported in a permit application or a notification or on other information) are or may be discharged at a level which would adversely affect the beneficial use of the receiving waters.

4. Duration of permits. Virginia water protection permits issued under this regulation shall have an effective and expiration date which will determine the life of the permit.

~~a. Except as authorized in subdivisions b and c below, Virginia water protection permits shall be effective for a fixed term based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not to exceed five fifteen years for any period of construction, monitoring, or other activity and will be specified in the conditions of the permit.~~

~~b. Permits affecting instream flows shall have an effective duration not to exceed 10 years.~~

~~c. All maintenance dredging of navigation projects shall be effective for a fixed term not to exceed 10 years.~~

The term of these permits shall not be extended by modification beyond the maximum duration. Extension of permits for the same activity beyond the maximum duration specified in the original permit will require reapplication and reissuance of a new permit.

5. Monitoring requirements as conditions of permits.

a. All permits shall specify:

- (1) Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate) when required as a condition of the permit;
- (2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring and composite samples;
- (3) Applicable reporting requirements based upon the impact of the regulated activity on water quality.

b. All permits shall include requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once per year.

c. In addition, the following monitoring requirements may be included in the permits:

- (1) Mass or other measurements specified in the permit for each pollutant limited in the permit;
- (2) The volume of effluent discharged; or
- (3) Other measurements as appropriate, including intake water.

6. Best Management Practices (BMPs). The permit may require the use of BMPs to control or abate the discharge of pollutants.

7. Reissued permits. When a permit is renewed or reissued, limitations, standards or conditions must be in conformance with current limitations, standards, or conditions.

8. Reopening permits. Each permit shall have a condition allowing the reopening of the permit for the purpose of modifying the conditions of the permit to meet new regulatory standards duly adopted by the board. Cause for reopening permits include, but are not limited to:

- a. When state law prohibits conditions in a permit which are more stringent than an applicable effluent limitation guideline;
- b. When subsequently promulgated effluent guidelines are modified, and are based on best conventional pollutant control technology; or
- c. When the circumstances on which the previous permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the permit was issued and thereby constitute cause for permit modification or revocation and reissuance.