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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-680
VAC Chapter title(s)	Chapter 680 - Virginia Water Protection General Permit for Linear Transportation Projects
Action title	2026 Reissuance of General Permit – 9VAC25-680
Date this document prepared	August 5, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

This proposed regulatory action is needed to reissue the Chapter 680 - *Virginia Water Protection General Permit for Linear Transportation Projects* that is expiring on August 1, 2026. The general permit is a streamlined permitting approach for impacts to the Commonwealth's surface waters. The proposed action provides efficiency to the permit coverage process for activities having minor impacts to state surface waters, simplifies permit issuance procedures, and makes clarifying amendments for improved understanding of regulatory provisions and permit processes.

The purpose of this proposed regulatory action is to reissue this general permit which expires on August 1, 2026, for another ten-year term and allow for amendments to provide clarity in provisions related to coverage expiration, transition, and continuation; to correct citations and typographical errors; to update forms and reference documents; and to clarify administrative procedures.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

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

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

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

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

VWP stands for Virginia Water Protection.

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

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Section 62.1-44.15:21 (Impacts to wetlands) directs the Board to develop general permits for such activities in wetlands as it deems appropriate, and that the Board shall develop general permit(s) for specific activities. The activities covered by the *Virginia Water Protection General Permit for Linear Transportation Projects* are the construction and maintenance of Virginia Department of Transportation (VDOT) or other linear transportation projects.

Per § 2.2-4017 (periodic review) and § 2.2-4007.1 (small business review) of the *Code of Virginia*, and Executive Order 19 (2022), DEQ conducts once every four years a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form.

Legal Basis

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

“(10) To adopt such regulations as it deems necessary to enforce the general soil erosion control and stormwater management program and water quality management program of the Board in all or part of the Commonwealth, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.”

The basis for this regulatory action is the State Water Control Law (Chapter 3.1 of Title 62.1) with specific provisions in law (Article 2.2., §§ 62.1-44.15:20 - 62.1-44.15:23.1, and Article 2.6, §§ 62.1-44.15:80 – 62.1-44.15:84) mandating certain actions and allowing discretionary authority over certain matters to the promulgating agency. In addition, periodic and small business impact reviews are provided for in § 2.2-4017 (periodic review) and § 2.2-4007.1 (small business review) of the *Code of Virginia*, and Executive Order 19 (2022).

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The existing *Virginia Water Protection General Permit for Linear Transportation Projects*, authorized by Chapter 3.1 of Title 62.1 of the *Code of Virginia*, by Virginia Administrative Code 9VAC25-210 *et seq.*, and by the respective VWP General Permit Regulation (9VAC25-680 *et seq.*), is expiring on August 1, 2026. In conjunction with reissuance of this VWP general permit, the VWP Permit Program seeks to amend the existing VWP General Permit regulation as necessary to implement the general permit. If the existing VWP general permit is not reissued prior to expiration on August 1, 2026, no general permit coverage can be extended to applicants submitting new applications for regulated activities or to existing permittees wishing to continue authorized activities beyond August 1, 2026, and these applicants would be required to wait for reissuance of the next applicable general permit or obtain a VWP individual permit instead.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The Board intends to amend the expiration and effective dates in the *Virginia Water Protection General Permit for Linear Transportation Projects* for another ten-year term. The Board is considering amendments related to transitioning between the expiring VWP general permit and the next consecutive VWP general permit. The potential amendments to the regulation may include provisions related to application forms, form formats, coverage issuance, and continuation of activities. This amendment will include updates to citations, references, form names and dates, as well as correct typographical and grammatical errors.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

The alternative of not providing reissuance of the *Virginia Water Protection General Permit for Linear Transportation Projects* is that the regulated public would be required to follow the lengthier and more resource-consuming process of obtaining a VWP individual permit for activities in state surface waters. Not making minor amendments would perpetuate unclarity and erroneous or outdated text, citations, forms, and references.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

In addition, pursuant to the Office of Regulatory Management (ORM) procedures and § 2.2-4007.1 of the *Code of Virginia*, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board is providing an opportunity for comments on this regulation Chapter 680 - *Virginia Water Protection General Permit for Linear Transportation Projects*, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation. The Board is also 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

In addition, please see the periodic review/small business impact review announcement section above for details on specific comments requested for the periodic review.

A public hearing will be held following the publication of the proposed stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the

Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Dave Davis, DEQ Office of Wetland and Stream Protection, 1111 East Main Street, Suite 1400, Richmond, VA 23219; 804-698-4105; or vwppublicnotices@deq.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Public Hearing at Proposed Stage

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar (<https://commonwealthcalendar.virginia.gov/>).

Technical Advisory Committee

A technical advisory committee will be involved in the development of the proposed regulation.

The Board is using a technical advisory committee to develop a proposal. Persons interested in assisting in the development of a proposal should notify the Department's contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the advisory committee will be sent to all applicants.