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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)	9VAC25-700
VAC Chapter title(s)	Virginia Water Protection (VWP) General Permit for Minimal Surface Water Impacts
Action title	Development of Virginia Water Protection (VWP) General Permit for Minimal Surface Water Impacts
Date this document prepared	August 19, 2026

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).

The purpose of this regulatory action is to develop and issue a new Virginia Water Protection (VWP) General Permit for Minimal Surface Water Impacts (9VAC25-700). Recent federal court decisions have prompted adjustments in federal regulations and permitting requirements, making this action necessary. The new VWP general permit will serve the role historically filled by federal Nationwide Permits (NWPs) for impacts to nontidal wetlands and non-perennial streams. Establishing this new VWP general permit in the Commonwealth will uphold strong environmental protections while preventing unnecessary delays for projects with minimal impacts to state waters.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

Board: State Water Control Board
CFR: Code of Federal Regulations
CWA: Federal Clean Water Act
DEQ (or Department): Department of Environmental Quality
EPA: U.S. Environmental Protection Agency
NWP: Nationwide Permit
VAC: Virginia Administrative Code
VWP: Virginia Water Protection
WOTUS: Waters of the United States

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."

This regulatory action is necessary to establish a new Virginia Water Protection (VWP) general permit regulation to serve the role historically filled by federal Nationwide Permits for projects that have no more than minimal adverse environmental impacts to state waters, providing a streamlined, predictable permitting pathway for activities with minimal impacts that provides continued protection of state waters. The federal Clean Water Act (CWA) authorizes the Secretary of the Army to issue general permits on a nationwide basis for any category of activities involving discharges of dredged or fill material into 'Waters of the United States' (WOTUS). These 'Nationwide Permits' (NWPs) are administered by the United States Army Corps of Engineers and are designed to regulate activities in federally jurisdictional waters and wetlands. Recent federal court rulings, including *Sackett v. EPA*, 598 U.S. 651 (2023), narrowed federal jurisdiction under the federal CWA, and reduced the applicability of federal NWP coverage for certain activities with minimal impacts in nontidal waters. As a result of this ruling and pending federal regulatory amendments to the definition of 'waters of the United States' (WOTUS), numerous nontidal wetlands and non-perennial streams will no longer be federally regulated even though they remain subject to state jurisdiction under Virginia's definition of state waters, which is defined in Section 62.1-44.3 of the Code of Virginia to include "all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands." Projects that occur in state waters that no longer meet the federal definition of WOTUS will still require a permit under Virginia law. This regulatory action will establish a new VWP general permit regulation that will allow the Commonwealth to implement a streamlined permitting pathway for these activities.

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.

Promulgating Agency: State Water Control Board

State Legal Authority for Regulatory Change

Section 62.1-44.15 (3a) of the Code of Virginia grants authority to the State Water Control Board (Board) to establish such standards of quality and policies for any state waters consistent with the general policy set forth in the State Water Control Law. Section 62.1-44.15 (5) grants authority to the Board to issue, revoke, or amend certificates and land-disturbance approvals under prescribed conditions for (a) the discharge of sewage, stormwater, industrial wastes, and other wastes into or adjacent to state waters; (b) the alteration otherwise of the physical, chemical, or biological properties of state waters; (c) excavation in a wetland; or (d) on and after October 1, 2001, the conduct of the following activities in a wetland: (i) new activities to cause draining that significantly alters or degrades existing wetland acreage or functions, (ii) filling or dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant alteration or degradation of existing wetland acreage or functions.

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...”

Section 62.1-44.15:21 of the Code of Virginia further authorizes the Board to develop general permits for activities in wetlands as it deems appropriate.

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.

This regulatory action will establish a new VWP general permit regulation that will serve the role historically filled by federal NWP for impacts to nontidal state waters, providing a streamlined, predictable permitting pathway for activities with minimal impact that provides continued protection of state waters. The federal CWA authorizes the use of general permits on a nationwide basis for any category of activities involving discharges of dredged or fill material into WOTUS. These NWPs, issued by the United States Army Corps of Engineers, are designed to regulate activities in federally jurisdictional waters and wetlands that have no more than minimal adverse environmental effects. NWPs are a type of general permit issued by the United States Army Corps of Engineers and are designed to regulate activities in federally jurisdictional waters and wetlands that have no more than minimal adverse environmental effects (see [33 CFR 330.1\(b\)](#)). The categories of activities authorized by NWPs must be similar in nature, cause only minimal adverse environmental impacts when performed separately, and have only minimal cumulative adverse effect on the environment ([33 U.S.C. 1344\(e\)\(1\)](#)).

Recent federal court rulings, including *Sackett v. EPA*, 598 U.S. 651 (2023), narrowed federal jurisdiction under the federal CWA and reduced the applicability of federal NWP coverage for certain minimal impact activities in nontidal waters. As a result of this ruling and pending federal regulatory amendments to the definition of WOTUS, numerous nontidal wetlands and non-perennial streams will no longer be federally regulated (i.e., will not be required to obtain a NWP) even though they remain subject to state jurisdiction under Virginia's definition of state waters. Virginia law defines state waters as “all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.” Activities occurring in state waters that do not meet the new definition of WOTUS will not require a permit under federal law, but will still require a permit under state law. This new VWP general permit will take the place of certain NWPs for activities in state waters that have minimal adverse environmental impacts.

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 regulatory action establishes a new VWP general permit that will protect water quality in the Commonwealth. The new VWP general permit will include appropriate and necessary permitting requirements for activities with minimal impacts in nontidal state waters.

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.

DEQ considered revising the existing four VWP general permit regulations that may authorize activities with minimal impacts rather than establishing this new VWP general permit. This alternative was rejected because staff reviews of applications under the existing four VWP general permit regulations are more resource intensive for both applicants and DEQ. Developing a new VWP general permit is the least burdensome alternative that still allows DEQ to authorize minimal impacts and track cumulative impacts to state waters. All entities, including small businesses, would benefit from the creation of this new VWP general permit.

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.”

This NOIRA is not being used to announce a periodic review or small business impact review.

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 regulatory proposal, 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.

This NOIRA is not being used to announce a periodic review or a small business impact review.

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 Jeanette Ruiz, Regulatory and Guidance Analyst, DEQ Division of Policy, P.O. Box 1105, Richmond, Virginia 23218, 804-494-9636, and jeanette.ruiz@deq.virginia.gov. 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. 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 DEQ'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 technical advisory committee is to develop recommended regulation amendments for DEQ consideration through the collaborative approach of regulatory negotiation and consensus. Multiple 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 technical advisory committee will be sent to all applicants.