

9 VAC 25-660 Virginia Water Protection General Permit for Impacts Less than One-Half of an Acre.

9VAC25-660-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9VAC25-210-10 et seq.) unless the context clearly indicates otherwise or unless otherwise indicated below.

"Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.

"Bioengineering method" means a biological measure incorporated into a facility design to benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent practicable, for long-term aquatic resource protection and improvement.

"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.

"Conversion" means changing one type of surface water to another type of surface water, either permanently or temporarily. The permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this regulation.

"Cross-sectional drawing" means a graph or plot of ground elevation across a waterbody or a portion of it, usually along a line perpendicular to the waterbody or direction of flow.

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"FEMA" means the Federal Emergency Management Agency.

"Histosols" means organic soils that are often called mucks, peats, or mucky peats. The list of histosols in the Commonwealth includes, but is not limited to, the following soil series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and Rappahannock. Histosols are identified in the Hydric soils list generated by the United States Department of Agriculture's Natural Resources Conservation Service.

"Impacts" means results caused by human-induced activities conducted in surface waters as specified in §62.1-44.15:5 D of the Code of Virginia.

"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.

"Less than one-half of an acre" means 0.00 to 0.49 acre, ~~rounded to the second decimal place~~ (0 to 21,779 square feet).

"Perennial stream" means a ~~stream~~ well-defined channel that has flowing contains water year round ~~in during a typical year of normal rainfall. For the purpose of this chapter, a surface water body (or stream segment) having a drainage area of at least 320 acres (1/2 square mile) is a~~

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~~perennial stream, unless field conditions clearly indicate otherwise.~~ Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permanent impacts" are those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.

"Person" means an individual, corporation, partnership, association, government body, municipal corporation, or any other legal entity.

"Single and complete project" means the total project proposed or accomplished by ~~one~~ a person and which has independent utility. For linear projects, the "single and complete project" (i.e., a single and complete crossing) ~~will~~ may but does not always apply to each crossing of a separate surface water (i.e., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. ~~However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland, lake, etc. are not separate waterbodies.~~
Phases of a project that have independent public and economic utility may each be considered single and complete.

"State programmatic general permit" means a general permit issued by the Department of the Army in accordance with 33 CFR Part 32S that is founded on a state program and is designed to avoid duplication between the federal and state programs.

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"Temporary impacts" are those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface water, or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction contours and elevations, such that previous functions and values are restored.

"Up to 125 linear feet of perennial stream channel" means 0.00 to 125.00 linear feet of perennial stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to 300 linear feet of stream channel" means 0.00 to 300.00 linear feet of any stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to 1500 linear feet of nonperennial stream channel" means 0.00 to 1500.00 linear feet of nonperennial stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to one acre" means 0.00 to 1.00 acre (0 to 43, 560 square feet).

"Up to one-tenth of an acre" means 0.00 to 0.10 acre, ~~rounded to the second decimal place.~~ (0 to 4,356 square feet).

"Up to two acres" means 0.00 to 2.00 acres (0 to 87,120 square feet).

"Utility line" means any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable

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or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term "utility line" does not include activities that drain a surface water to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

Statutory Authority

§§62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001.

Law Reviews

Environmental Law. Finto, et al., 35 U. Rich. L. Rev. 601 (2001).

9VAC25-660-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this ~~chapter~~ regulation is to establish VWP General Permit Number WP1 under the VWP permit program regulation to govern impacts to less than one-half of an acre of nontidal surface waters including up to 125 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board.

B. The director, or his designee, may perform any act of the board provided under this chapter,

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except as limited by §62.1-44.14 of the Code of Virginia.

C. This VWP general permit regulation will become effective on October 1, 2001, and will expire on October 1, 2006.

D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9VAC25-660-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for a maximum of three years.

Statutory Authority

§§62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001.

9VAC25-660-30. Authorization to impact surface waters.

A. Any person governed by this VWP general permit is authorized to impact less than one-half of an acre of surface waters including up to 125 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel, provided that the person submits notification as required in 9VAC25-660-50 and 9VAC25-660-60, remits the required application processing fee (9VAC25-20-10 et seq.), complies with the limits and other requirements of 9VAC25-660-100, receives approval from the board, and provided that:

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1. The applicant shall not have been required to obtain a VWP individual permit under the VWP permit regulation (9VAC25-210-10 et seq.) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another applicable VWP general permit, in lieu of coverage under this VWP general permit.

2. Impacts[, both temporary and permanent,] result from a single and complete project, including all attendant features[~~both temporary and permanent~~].

a. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the board may, at its discretion, require a VWP individual permit.

b. For the purposes of this chapter, when an interchange has multiple crossings of surface waters, the entire interchange shall be considered the single and complete project.

3. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations. ~~Stream channel manipulations (e.g., tie-ins or cleanout) may not exceed 100 linear feet on the upstream or downstream end of a stream crossing.~~

4. ~~Compensatory mitigation~~Compensation for unavoidable impacts is provided in the form of the purchase or use of mitigation bank credits or a contribution to an approved in-lieu fee fund.

B. Only activities in nontidal waters may qualify for coverage under this VWP general permit.

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value as defined in 9VAC25-210-10. Any

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person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.

D. Receipt of this VWP general permit does not relieve any permittee of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

E. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure or structures.

F. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued §401 certification existing as of October 1, 2001, shall constitute coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact. Notwithstanding any other provision, activities authorized under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with 9VAC25-210-130 do not need to obtain coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.

[G. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require individual applications and VWP individual permits rather than approving coverage under this VWP general permit.]

Statutory Authority

§§62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Historical Notes

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Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001.

9VAC25-660-40. Exceptions to coverage.

A. Authorization for coverage under this VWP general permit will not apply in the following areas:

1. Wetlands composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*). Percentages shall be based on either basal area or percent areal cover in the area of impact.

2. Wetlands underlain by histosols.

3. Nontidal wetlands adjacent to tidal waters.

4. 100-year floodplains as identified by FEMA's flood insurance rate maps or FEMA-approved local floodplain maps.

5. Surface waters ~~with~~ where the proposed activity will impact federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. Authorization for coverage under this VWP general permit cannot be used in combination with authorizations for coverage under other VWP general permits in order to impact greater than one-half of an acre of nontidal surface waters, up to 125 linear feet of perennial stream channel, or up to 1,500 linear feet of nonperennial stream channel. More than one authorization

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for coverage under this VWP general permit for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the limits specified ~~in this subsection~~ here.

C. The activity to impact surface waters shall not have been prohibited by state law or regulations, nor shall it contravene applicable Water Quality Standards (9VAC25-260-5 et seq.).

D. The board shall deny coverage under this VWP general permit to any applicant for activities that cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to adversely affect aquatic life, or for activities that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

E. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that cause more than minimal degradation of the water quality of any stream.

F. This VWP general permit may not be used for:

1. Any stormwater management facility that is located in perennial streams or in waters designated as oxygen or temperature impaired;

2. The construction of an irrigation impoundment on a perennial stream;

3. Any water withdrawal activities;

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4. The location of animal feeding operations or waste storage facilities in state waters;
5. The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the area is contained within a cofferdam or the work is performed in the dry;
6. Dredging or maintenance dredging;
7. Return flow discharges from dredge disposal sites;
8. The construction of new ski areas or oil and gas wells;
9. The taking of threatened or endangered species in accordance with the following:
 - a. Pursuant to §29.1-564 of the Code of Virginia: "The taking, transportation, processing, sale or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in §29.1-568."
 - b. Pursuant to §29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any state-listed endangered or threatened species is prohibited except as provided in §29.1-568 of the Code of Virginia.

Statutory Authority

§§62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

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Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001.

Law Reviews

Tragedy of the Wetlands Commons: What the Virginia Nontidal Wetlands Resources Act Says About the Future of Environmental Regulations. Caleb A. Jaffe, 20 Va. Env'tl. L.J. 329 (2001).

9VAC25-660-50. Notification.

A. Notification to the board will be required prior to construction, as follows:

1. An application for authorization for proposed permanent wetland impacts greater than one-tenth of an acre of surface waters or for proposed permanent stream channel impacts greater than 300 linear feet shall be submitted via an registration statement application that includes all information pursuant to 9VAC25-660-60.

2. Proposed, permanent surface water impacts up to one-tenth of an acre, which may include up to 300 linear feet of stream channel, shall be reported via an registration statement application that includes only the following information: subdivisions 1 through 8, 13, 15 and 20 of 9VAC25-660-60 B.

B. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) may shall serve as ~~the registration statement provided that all information required pursuant to 9VAC25-660-60 is~~

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~~included and that the first page of the form is clearly marked indicating the intent to have the form serve as the registration statement for this VWP general permit.~~ an application under this regulation.

C. The board will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Game and Inland Fisheries regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this general permit.

Statutory Authority

§§62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001.

9VAC25-660-60. ~~Registration statement~~Application.

A. ~~Registration statements~~Applications shall be filed with the board as follows:

1. The applicant shall file a complete ~~registration statement~~application as described in 9VAC25-660-50 for a VWP General Permit WP1 for impacts to surface waters of less than one-half of an acre, including up to 125 linear feet of perennial stream channel and up to 1,500 linear feet of

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nonperennial stream channel, which will serve as a notice of intent for coverage under this VWP general permit.

2. ~~Any applicant proposing an activity under this VWP general permit is advised to file the required registration statement at least 45 days prior to the date planned for the commencement of the activity to be regulated by the VWP general permit. The VDOT may use its monthly IACM process for submitting registration statements~~applications.

B. The required ~~registration statement~~application shall contain the following information[, if applicable to the project]:

1. The applicant's name, mailing address, telephone number ~~and, if applicable, fax number~~;
2. The authorized agent's (if applicable) name, mailing address, telephone number and, if applicable, fax number and electronic mail address;
3. The existing VWP permit number (if applicable);
4. The name of the project, narrative description of project purpose of project, and a description of the proposed activity in surface waters;
5. The name of the water body or water bodies or receiving stream, as applicable;
6. The hydrologic unit code (HUC) for the project area;
7. The name of the city or county where the project is located;
8. Latitude and longitude (to the nearest second) from a central location within the project limits;

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9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the project area, including the project boundary. The map ~~should~~shall be of sufficient detail such that the site may be easily located for site inspection;

10. ~~The appropriate appendices from the JPA~~(Reserved);

11. The project plan view. All plan view sketches ~~should~~shall include, at a minimum, north arrow, scale, existing structures, existing contours, proposed contours (if available), limit of surface water areas, direction of flow, ordinary high water, impact limits, and location and dimension of all proposed structures in impact areas. Cross-sectional or profile drawings~~sketches~~, as appropriate, with the information in this subdivision, ~~may~~shall be required ~~for certain projects~~as appropriate to demonstrate minimization of impacts;

12. (Reserved.)

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, ~~and~~ the areal extent[of the impact (area of wetland in square feet and acres; area of stream, length of stream, and average width)], [the] location ([by] latitude and longitude [at the center of the impact, or at the center of each impact for linear projects]) and [the] type of [the] impact [area (of wetland in square feet, linear feet orand acres; area of stream, length of stream, and average width)]. Wetland impacts ~~should~~shall be quantified [according to [theirthe] Cowardin classification or similar terminology~~]~~];

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14. (Reserved.)

15. A description of the specific, on-site measures considered or taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable ~~as required by 9VAC25-210-115 A;~~

16. A ~~description of~~ conceptual plan for the intended compensation for unavoidable impacts, including:

a. Any applicant proposing compensation plan ~~proposing to include~~ involving contributions to an in-lieu fee fund shall ~~include proof~~ state such as their conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior to issuance of this VWP general permit authorization; and

b. Any applicant proposing compensation plan ~~proposing~~ involving the purchase or use of mitigation banking credits shall include as their conceptual compensation plan:

(1) The name of the proposed mitigation bank and the HUC in which it is located;

(2) The number of credits proposed to be purchased or used; and

(3) Certification from the bank owner of the availability of credits;

17. A delineation map of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9VAC25-210-45, including the wetlands data sheets, ~~and the latitude and~~

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~~longitude (to the nearest second) of the center of the wetland impact area.~~ Wetland types ~~should~~shall be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, shall also be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review. The delineation map ~~should~~shall also include the location of ~~all impacted and non-impacted~~ streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) ~~should~~shall be shown on the map, as other state or local requirements may apply if the project is located within an RPA.

18. A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map for the project site;

19. The appropriate application processing fee for a VWP general permit (9VAC25-20-10 et seq.); and

20. The following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information

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including the possibility of fine and imprisonment for knowing violations."

C. The ~~registration statement~~ application shall be signed in accordance with 9VAC25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of an ~~complete registration statement~~ application by the appropriate DEQ office, the board has 15 days to review the application and either determine the information requested in section 60B of this regulation is complete, or to inform the applicant that additional information is required to make the application complete. Coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days of receipt of a complete application. If the board fails to act within 45 days on a complete application, coverage under this VWP general permit shall be deemed approved.

1. In evaluating the ~~registration statement~~ application, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts.

Coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve authorization under this VWP general permit. However, these conditions must be consistent with the VWP permit program regulation ~~and may not override or conflict with the existing conditions of this VWP general permit related to impacts and compensatory mitigation.~~

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E. Incomplete ~~registration statement~~application. Where an ~~registration statement~~application is incomplete, the board may require the submission of additional information and ~~may~~shall suspend processing the application until such time as the applicant has supplied the missing or deficient information and the ~~registration statement~~application is complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from an ~~registration statement~~application, or submitted incorrect information in an ~~registration statement~~application or in any report to the board, he shall immediately submit such facts or the correct information. Such application with new information shall be deemed a new application[, but shall not require an additional permit application fee].

Statutory Authority

§§62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001.

9VAC25-660-70. ~~Mitigation~~Compensation.

A. For the purposes of this VWP general permit, the board shall assume that the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund is ecologically preferable to practicable on-site or other off-site ~~individual compensatory mitigation~~compensation options, and no further demonstration is necessary.

B. ~~Compensatory mitigation~~Compensation for unavoidable wetland impacts ~~is~~shall be provided

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at a 2:1 replacement to ~~loss~~impact ratio.

C. ~~Compensatory mitigation~~Compensation for unavoidable stream impacts ~~is~~shall be provided at a ~~1:1 replacement to loss ratio~~ through the purchase [or use] of stream mitigation bank credits or contribution to an in-lieu fee fund that includes watershed enhancements. [~~The amount of One factor determining the~~] required compensation [~~will~~shall] be [~~determined based on~~] an analysis of stream impacts utilizing a [~~scientifically based~~] stream impact assessment methodology approved by the board.

D. Compensation for open water impacts [other than to streams] may be required, as appropriate, at a 1:1 replacement to impact ratio to protect state waters and fish and wildlife resources from significant impairment.

E. Compensation for conversion impacts [to wetlands] shall be required at a 1:1 replacement to impact ratio, when such conversion results in a permanent alteration of the functions and values of the [surface water wetland].

~~EF.~~ In order for contribution to an in-lieu fee fund to be an acceptable form of ~~compensatory mitigation~~compensation, the fund must be approved for use by the board according to the provisions of 9VAC25-210-115 E.

~~FG. The use of mitigation~~In order for purchase [or use] of banks for compensating project impacts shall be deemed appropriate if credits to be an acceptable form of compensation, the bank isshall be operating in accordance with the provisions of §62.1-44.15:5 E of the Code of

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Virginia and 9VAC25-210-115 and 4F. The applicant ~~shall provide verification proof of purchase[, use,] or debit to the board of purchase or debiting of the required amount of credits~~ DEQ [prior to commencing activities in impact areas].

Statutory Authority

§§62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001.

9VAC25-660-80. Notice of planned changes.

A. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional permanent wetland and/or stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. In no case can this authorization be modified to exceed the general permit threshold for use.

B. Authorization under this VWP general permit may be modified after issuance if the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals. [DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases, mitigation bank usage, or in-lieu fee

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fund contributions.]

C. Authorization under this VWP general permit may be modified after issuance for a change in project plans that does not result in a change in project impacts.

D. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased[or used], provided that the same amount of credits are purchased [or used] and all criteria for use in 9 VAC 25-210-115 are met.

E. Authorization under the VWP general permit may be modified after issuance for typographical errors.

F. A Notice of Planned Change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and [they are the area is] restored to pre-existing conditions in accordance with Part I.C.11 of this general permit. In no case can the additional temporary impacts exceed the general permit threshold for use.

BG. The permittee shall notify the board in advance of the planned change, and the ~~modification~~ planned change request shall be reviewed according to all provisions of this regulation.

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Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001.

9VAC25-660-90. ~~Notice of~~ Termination of Authorization by Consent.

When all permitted activities requiring notification under 9VAC25-660-50 A 1 have been completed, or if the authorized impacts will not occur, the permittee shall submit a ~~notice of request for~~ termination within 30 days of ~~final project~~ completion or project cancellation. The director may accept this termination of authorization on behalf of the board. The ~~notice~~ permittee shall ~~contain~~ submit the following information:

1. Name, mailing address and telephone number ~~of the permittee~~;
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. One of The the following certifications:

a. For project completion:

"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination~~[-that]~~ I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from

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liability for any violations of this VWP general permit authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

[c. For Events Beyond Permittee Control, the Permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that all activities authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."]

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Statutory Authority

§§62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001.

9VAC25-660-100. VWP general permit.

Any applicant whose ~~registration statement~~application has been accepted by the board shall be subject to the following requirements:

VWP General Permit No. WP1

Authorization effective date:

Authorization expiration date:

Authorization Note(s):

VWP GENERAL PERMIT FOR IMPACTS LESS THAN ONE-HALF OF AN ACRE UNDER
THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER
CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with §401 of the Clean Water Act as amended (33 USC §1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable

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assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to impact less than one-half of an acre of nontidal surface waters including up to 125 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel.

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I--Special Conditions, Part II--~~Mitigation~~Mitigation Compensation, Monitoring, and Reporting, and Part III--Conditions Applicable to All VWP General Permits, as set forth herein.

Director, Department of Environmental Quality Date

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Part I. Special Conditions.

A. Authorized activities.

1. This permit authorizes impacts to less than one-half of an acre of nontidal surface waters, including up to 125 linear feet of perennial stream channel, and up to 1,500 linear feet of nonperennial stream channel, according to the information provided in the ~~applicant's approved registration statement~~ application.

2. Any ~~additional~~ changes to the authorized permanent impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9VAC25-660-80, or another VWP permit application.

3. Any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to pre-existing conditions in accordance with the conditions of this permit authorization.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals.

35. The activities authorized by this VWP general permit must commence and be completed within three years of the date of this authorization.

B. ~~Reapplication~~ Continuation of Coverage. ~~A~~ Reapplication for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the

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authorized activities or any VWP general permit requirement has not been completed within three years of the date of authorization. ~~Application consists of an updated or new registration statement.~~ The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if continuation of the VWP general permit authorization is necessary.

C. Overall project conditions.

1. The ~~construction or work~~ activities authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in §62.1-10(b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. [The requirement to countersink does not apply to extensions or maintenance of existing culverts that are not countersunk, to floodplain culverts being placed above ordinary high water, to culverts being placed on bedrock, or to culverts required to be placed on slopes 5% or greater.] No activity may cause more than minimal adverse effect on navigation.

Furthermore, the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters. Excess or waste concrete shall not be disposed of in [flowing] surface waters or washed [out] into

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[flowing] surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Any exposed slopes and streambanks ~~must~~shall be stabilized immediately upon completion of ~~the project work at~~in each water body permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter ~~flowing~~[surfaceflowing] waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily impacted ~~wetland areas~~[surface waterswetland areas] shall be placed on mats, geotextile fabric, or other suitable ~~measures~~material to minimize soil disturbance

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to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters within 50 feet of any permitted activities and within the project or right-of-way limits ~~that are within 50 feet of any clearing, grading, or filling activities~~ shall be clearly flagged or marked for the life of the construction activity ~~within~~ at that area ~~location to preclude any unauthorized disturbances to these surface waters during construction.~~ The permittee shall notify all contractors that these marked areas are surface waters where no activities are to occur.

11. Temporary disturbances to ~~wetlands~~ surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to pre-construction conditions within 30 days of completing work, which shall include re-establishing pre-construction contours, and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation ~~by~~ through the second year post-disturbance. All temporarily ~~fills~~ impacted streams [and streambanks] shall be ~~removed in~~ restored to their entirety and the affected area returned to pre-existing contours ~~original~~ [elevation contours] within 30 days following the construction at that stream segment, and the banks seeded or planted with [native the same] vegetation [cover type originally present along the streambanks], [and supplemented by including supplemental], [and supplemented by including supplemental] erosion control grasses [(crown vetch, orchard grass, or weeping lovegrass) when stabilizing steep

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slopes if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list].

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, ~~stabilized~~ restored within 30 days following removal of the stockpile, and restored ~~to the original~~ with [native vegetated state or a seed mix comprised of native the same] vegetation [and cover type originally present, including supplemental] erosion control grasses [(crown vetch, orchard grass, or weeping lovegrass) when stabilizing steep slopes if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list].

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with any time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission, and shall ensure that all contractors are aware of any time-of-year restrictions imposed.

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16. ~~Immediately downstream of the construction area, w~~Water quality standards shall not be violated as a result of the construction activities, unless allowed by this permit authorization.

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters, unless allowed by this permit authorization. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

18. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. [The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology.] The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

D. Road crossings.

1. Access roads and associated bridges or culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable ~~and to follow as near as possible preconstruction contours and elevations.~~ Access roads constructed above preconstruction

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contours and elevations in surface waters must be properly bridged or culverted to maintain surface flows.

~~[2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the re-establishment of a natural stream bottom and to maintain a low flow channel. For multiple celled culverts, only those cells situated within the limits of ordinary high water shall be countersunk. Countersinking is shall not be required for existing pipes or culverts that are being maintained or extended.]~~

[32]. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other similar structures.

~~4. All state waters temporarily affected by the construction of a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.~~

~~5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted~~

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~~stream flow must be fully established before construction activities in the old streambed can begin.~~

E. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and ~~stabilized~~ restored within 30 days of completing work in the area, unless otherwise authorized by this VWP general permit.

[Restoration shall be the seeding or planting of the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.]

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

F. ~~Bank stabilization~~ Stream Modification and Stream Bank Protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

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2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the ~~shoreline~~stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank ~~erosion~~protection control structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. ~~All~~No material removed from the stream ~~substrate~~bottom shall be disposed of in ~~an approved~~upland area surface waters [, unless authorized by this permit].

G. Stormwater management facilities.

1. Stormwater management facilities shall be ~~designed~~installed in accordance with best management practices and watershed protection techniques (i.e., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

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2. ~~Compensatory mitigation~~Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance ~~excavation~~activities within stormwater management facilities shall not require additional permit authorization, or compensation, provided that the maintenance activities do not shall not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan.

4. ~~Maintenance within stormwater management facilities will not require mitigation provided that the maintenance is accomplished in designated maintenance areas as indicated in the maintenance plan.~~

Part II. ~~Mitigation~~Compensation, Monitoring, and Reporting.

A. ~~Compensatory mitigation~~Compensation.

1. The permittee shall provide appropriate and practicable ~~compensatory mitigation~~compensation for all impacts meeting the conditions outlined in this VWP general permit.

2. The types of ~~compensatory mitigation~~compensation options that may be considered under this VWP general permit include:

4a. Purchases [or use] of credits from approved mitigation banks meeting the requirements of 9VAC25-210-115 F in accordance with 9VAC25-660-70 and provided that all impacts are compensated at a 2:1 ratio; or

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2b. Contributions to an in lieu fee fund approved in accordance with 9VAC25-210-115 E and dedicated to the achievement of no net loss of wetland acreage and function, provided that [~~all~~wetland] impacts are compensated at a 2:1 ratio.

3. A written statement that conveys the applicant's proposal to use a mitigation bank or in-lieu fee fund for compensation shall be submitted with the application and shall constitute the compensation plan for the approved project. A site change will require a modification to the authorization.

~~B4.~~ The permittee shall ~~submit~~not initiate work in permitted impact areas until documentation ~~within 60 days of VWP general permit issuance that the USACE has debited the required mitigation credits from the mitigation bank ledger~~of the mitigation bank credit purchase [or usage] or that the fund contribution has been submitted to and received by DEQ.

5. The compensation plan shall be approved by the board prior to any construction activity in permitted impact areas. The board shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensation plan as approved by the board shall be an enforceable requirement of this VWP general permit authorization. Any deviations from the approved plan must be submitted and approved in advance by the board.

~~CB.~~ [Impact Site] Construction monitoring.

~~1. Photo stations shall be established to document the e~~Construction aspects of project activities within impact areas as authorized by this permit that are within impact areas shall be monitored

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~~[through photographic documentation and documented]. Photographs should~~ The [photographic] monitoring shall document the pre-construction conditions, activities during construction, and post-construction conditions ~~within one week after completion of construction.~~ [Photographic monitoring Monitoring] shall consist of one of the following options:

a. Photographs shall be taken during construction at the end of the first, second and ~~twelfth~~ third months of construction and then semi-annually for the remainder of the construction project. Photographs are not necessary, except during periods of no activity within impact areas.; or

b. An ortho-rectified photograph shall be taken prior to construction, and annually thereafter until all impacts are taken, and [all photos] shall clearly show the delineated surface waters and authorized impact areas.

[c. In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months of construction in impact areas, and then semi-annually for the remainder of the construction activities in impact areas, except during periods of no activity within the impact areas.]

2. ~~The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities. As part of construction monitoring,~~ photographs taken at the photo stations [or the narrative]shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls;

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condition of adjacent non-impact surface waters; flagged non-impact surface waters;

construction access and staging areas; filling, excavation, and dredging activities; culvert

installation; dredge disposal; and site stabilization, grading, and associated restoration activities.

With the exception of the pre-construction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.

~~3. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.~~Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

4. Monitoring of water quality parameters shall be conducted during ~~rerouting of the live~~permanent relocation of perennial streams through the new channels in the following manner:

a. A sampling station shall be located upstream and immediately downstream of the relocated channel;

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken ~~once every half hour~~30 minutes for at least ~~three readings~~two hours at each station prior to opening the new

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channels; and immediately before opening new channels.

c. ~~After opening the new channel, t~~Temperature, pH and D.O. readings shall be taken ~~once~~after ~~opening the channels and every half hour~~30 minutes for at least three ~~readings~~hours at each station ~~within 24 hours of opening the new channel.~~

[5d]. The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II.E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

DC. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality (DEQ) office. The VWP general permit authorization number shall be included on all correspondence.

2. ~~The board~~DEQ shall be notified in writing ~~by certified letter~~ at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include ~~identification of the impact area at which work will occur and a~~ projected schedule for ~~completing~~initiation and completion of work at each permitted impact area.

3. ~~After construction begins, e~~Construction monitoring reports shall be submitted to ~~the~~

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~~board~~DEQ within 30 days of eachnot later than the 10th day of the month following the month in which the monitoring event specified in Part II.B takes place[, unless otherwise specified below].

The reports shall include, ~~at a minimum,~~ the following, as appropriate:

a. For each permitted impact area, Aa written statement regarding whennarrative stating whether work ~~started in the identified impact area, where work was performed~~ during the monitoring period[.], what ~~[and if]~~ work was performed, a description of the work performed, when the work was initiated, and what work was completedexpected date of completion.

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, a brief description, and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.). The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in any permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration.

c. Summary of activities conducted to comply with the permit conditions.

d. Summary of permit non-compliance events or problems encountered, subsequent notifications, and corrective actions.

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e. Summary of anticipated work to be completed during the next monitoring period[\bar{z}] and an estimated date of construction completion at all impact areas.

f. Labeled site map depicting all impact areas and photo stations.

4. ~~The permittee shall submit a notice of termination~~DEQ shall be notified in writing within 30 days of final completion in accordance with 9VAC25-660-904 following the completion of all activities in all permitted impact areas authorized under this permit.

5. The permittee shall notify ~~the board~~DEQ in writing when unusual or potentially complex conditions are encountered that require debris removal or involve a potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by ~~the board~~DEQ.

6. The permittee shall report any fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate DEQ regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

7. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

8. All submittals required by this VWP general permit shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my

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direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization termination for cause, VWP general permit authorization revocation, or denial of a ~~renewal application~~ continuation of coverage request.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the

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permittee show material and substantial change since the time the VWP general permit authorization was issued and thereby constitute cause for VWP general permit authorization revocation and reissuance.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by §510 of the Clean Water Act.

E. Property rights. Coverage under this VWP general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

F. Severability. The provisions of this VWP general permit authorization are severable.

G. Right of entry. The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;
2. To inspect any facilities, operations or practices (including monitoring and control equipment)

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regulated or required under the VWP general permit;

3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit authorization. This VWP general permit authorization may be transferred to another person by a permittee if:

1. The current permittee notifies the board ~~within 30 days~~ of the transfer of the title to the facility or property;

2. The notice to the board includes a written agreement between the existing and new permittee containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and

3. The board does not notify the existing and new permittee of its intent to modify or revoke and reissue the VWP general permit authorization within ~~the 30-15 days~~ time period.

On the date of the VWP general permit authorization transfer, the transferred VWP general permit authorization shall be as fully effective as if it had been issued directly to the new

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permittee.

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance if: (1) the permittee determines that additional permanent wetland and/or stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated/compensated; (2) the project results in less wetland or stream impacts, in which case, compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals; (3) there is a change in the project plans that does not result in a change in project impacts; (4) there is a change in the mitigation bank at which credits are purchased [or used], provided that the same amount of credits are purchased [or used] and all criteria for use are met, as detailed in 9 VAC 25-210-115; or (5) typographical errors need to be corrected. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to pre-existing conditions in accordance with Part I.C.11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and the ~~modification~~ planned change request will be reviewed according to all provisions of this regulation.

J. VWP general permit authorization termination for cause. This VWP general permit authorization is subject to termination for cause by the board; after public notice and opportunity

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for a hearing. Causes/Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit authorization;
2. The permittee's failure in the application or during the VWP general permit authorization issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order; and
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by a VWP general permit authorization modification/planned change or termination for cause.

K. VWP general permit authorization termination by consent. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9VAC25-690-50 A 1 have been completed, when the authorized impacts [~~do~~will] not occur, or when a planned change occurs that involves substituting a specified, approved mitigation bank(s) with another specified, approved mitigation bank. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. The director may accept this termination of authorization on behalf of the board. The request for termination by consent shall contain the following information:

1. Name, mailing address and telephone number of the permittee;
2. Name and location of the activity;

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3. The VWP permit authorization number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

[c. For Events Beyond Permittee Control, the Permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

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"I certify under penalty of law that all activities authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

~~KL~~. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

~~LM~~. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §311 of the Clean Water Act or §§62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

~~MN~~. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

~~NO~~. Duty to provide information.

1. The permittee shall furnish to the board any information which the board may request to

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determine whether cause exists for modifying, revoking, reissuing and terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

2. Plans, ~~specifications~~, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

OP. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include, as appropriate:

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- a. The date, exact place and time of sampling or measurements;
- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

PQ. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
4. On and after October 1, 2001, conduct the following activities in a wetland:

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a. New activities to cause draining that significantly alter or degrade existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

FORMS

Department of Environmental Quality Water Division Permit Application Fee (eff. 8/01~~July 1,~~
2004).

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (rev. 10/02[~~April 1, 2004~~October 2004]).

[Tidewater Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (October 2004)]

~~Virginia Water Protection General Permit Registration Statement (eff. 8/01).~~

Virginia Department of Transportation Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. January 1, 2004).

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DOCUMENTS INCORPORATED BY REFERENCE

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.

Certified True and Accurate: _____

Robert G. Burnley, Director, DEQ

Date: _____