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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Approving authority name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9 VAC 25-670-10 et seq.
<b>Regulation title</b>	Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities
<b>Action title</b>	Review and Reissue Virginia Water Protection General Permit WP-2
<b>Document preparation date</b>	August 16, 2005

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of this proposed regulatory action is to consider whether this General Permit should be extended or repealed after incorporation of these provisions into WP-4 (development and certain mining activities), due to limited use of WP-2. Should the renewal proceed, the purpose is to allow for the renewal of the above-referenced general permit regulation and allow revisions regarding administrative procedures; permit and application requirements; definitions and terminology; compensatory mitigation; permit usage thresholds; permit conditions; and typographical and grammatical errors. Since implementation of this regulation in October 2001, and subsequent interim revisions, which became effective January 26, 2005, it has become evident that these corrections are needed to improve the overall application process, to improve the protection of resources under an authorization, to improve the processing and coordination of authorizations, both for the public, DEQ, and other agencies.

## Legal Basis

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The basis for this regulation is provided for in Sections 62.1-44.15(10), 62.1-44.15(16), and 62.1-44.15:5 of the Code of Virginia, as well as in 9 VAC 25-210-10 et seq. (Virginia Water Protection Permit Program Regulation).

## Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

The VWP general permits are intended to simplify and streamline the permitting process for activities in state waters that have a minor individual and cumulative impact to the environment. The proposed renewal and revisions will allow for a more efficient and understandable application process, submittal and review process, and authorization issuance process, and thus, a greater consistency and predictability for the public. Also, the proposed renewal of this general permit or incorporation of its provisions into WP-4 is needed because this general permit is scheduled to expire on October 1, 2006. The proposed renewal and revision of this general permit or its incorporation into WP-4 is not intended to lessen the current level of protection afforded to state waters.

## Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

As this VWP general permit regulation expires on October 1, 2006, the entire regulation will be open to public comment. However, the Virginia Water Protection Program will be focusing on particular issues, including, but not limited to:

1. the need for the VWP General Permit WP2 regulation; consider moving WP2 activities to VWP General Permit WP4 regulation
2. permit authorization thresholds for use of a particular VWP general permit
3. differentiation between perennial and intermittent as these terms apply to stream channels
4. concept of single and complete as this term applies to crossings of surface waters
5. informational requirements for a complete application
6. procedures for processing incomplete applications, application suspension, application withdrawals, Notices of Planned Change, authorization terminations, project notifications, and application processing and issuance of authorizations during time period between existing regulation expiration date and replacement regulation effective date
7. definitions related to stream restoration, development activities, compensation limits, and impact types

8. compensation requirements as related to impacts under one-tenth acre, stream impacts, open water impacts, compensation plans, compensation site monitoring and reporting requirements, types of compensation, and amounts of compensation
9. project monitoring and reporting requirements
10. the authorized activities covered by this VWP general permit regulation
11. the VWP general permit process as it relates to the State Program General Permit (SPGP-01)
12. clarifications to the VWP general permit special conditions

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.*

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The alternative of not following through with the renewal and revisions, or the incorporation of utilities into WP-4, is not feasible, as the current regulation will expire on October 1, 2006. Also, the revisions will clarify the application and permitting processes and further expedite the review and processing of permit applications.

## Public Participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a public meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate that the date, time and place of the meeting may be found in the calendar of events section of the Virginia Register of Regulations.*

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The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this notice or other alternatives, and 3) impacts of the regulation on farm and forest land preservation. Anyone wishing to submit written comments for the public comment file may do so by mail; by email; or by fax to: Catherine Harold, Virginia Department of Environmental Quality, 629 E. Main Street, 9<sup>th</sup> Floor, Richmond, VA 23219 (fax 804-698-4347; email: [cmharold@deq.virginia.gov](mailto:cmharold@deq.virginia.gov)), and must include the name and address of the commenter. In order to be considered, all comments must be received by 4:00 p.m. on the date established as the close of the comment period.

## Participatory Approach

*Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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The Board is using the participatory approach to develop a proposal. The Board will reconvene the Technical Advisory Committee, representative of various stakeholders and established in 2004 for the purposes of an interim regulatory review and revision.

## Impact on family

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

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This regulation will have no affect on the institution of the family or family stability.