

**9 VAC 25-660-10 et seq. - VIRGINIA WATER
PROTECTION GENERAL PERMIT FOR WETLAND IMPACTS
LESS THAN ONE-HALF OF AN ACRE**

9 VAC 25-660-10. Definitions.

The words, terms, and provisions used in this regulation 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 (9 VAC 25-210-10 et seq.) unless the context clearly indicates otherwise or unless indicated below.

“Cross-sectional sketch” 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.

“FEMA” means 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 USDA Natural Resources Conservation Service.

“Impacts” means results caused by human-induced activities conducted in surface waters, such as filling, dumping, dredging, excavating, permanent flooding or impounding or any other new activities on or after October 1, 2001, including draining, that significantly alter or degrade existing acreage or functions of

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the surface waters.

“Perennial stream” means a stream that has flowing water year round in a typical year. For the purpose of this regulation, a surface water body (or stream segment) having a drainage area of at least 320 acres (1/2 square mile) is a perennial stream, unless field conditions clearly indicate otherwise.

“Registration statement” means a form of pre-construction application or notification.

“Single and complete project” means the total project proposed or accomplished by one person. For linear projects, the “single and complete project” (i.e. – a single and complete crossing) will apply to each crossing of a separate water of the United States (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. 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.

"State programmatic general permit" means a type of general permit issued by the Department of the Army and founded on an existing state, local or Federal agency program that is designed to avoid duplication with another Federal, state or local program provided it has been determined that the environmental consequences of the action

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are individually and cumulatively minimal.

“Less than one-half of an acre” means 0.00 to 0.49 acre, rounded to the second decimal place.

“Up to one-tenth of an acre” means 0.00 to 0.10 acre, rounded to the second decimal place.

9 VAC 25-660-20. Purpose; delegation of authority; effective date of VWP general permit.

- A. The purpose of this regulation is to establish VWP General Permit Number WP1 under the VWPP regulation to govern activities that impact less than one-half of an acre of surface waters (including wetlands), with a maximum of 125 linear feet of perennial 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 an authorized representative, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code.
- C. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure(s).
- D. This VWP general permit regulation will become effective on _____ and will expire three

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years after the effective date. For any covered activity, this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-660-30 and the receipt of this VWP general permit.

- E. For each individual activity requiring notification, coverage will continue for a maximum of three years from the date of authorization of coverage under this VWP general permit to an individual person or applicant.

9 VAC 25-660-30. 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 wetlands), with a maximum of 125 linear feet of perennial stream channel, provided that the person submits notification as required in 9 VAC 25-660-50 and 9 VAC 25-660-60, remits the required application processing fee (9 VAC 25-20-10, et seq.), complies with the limits and other requirements of 9 VAC 25-660-100, receives approval from the board, and provided that:

1. The applicant shall not have been required to obtain a VWP individual permit under the VWP permit regulation (9 VAC 25-210-10 et seq.) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another VWP general permit, in lieu of coverage under this VWP general permit.

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2. Impacts, including all attendant features both temporary and permanent, are part of a single and complete project.
 3. Compensatory mitigation 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.
 4. Compensatory mitigation for unavoidable impacts is provided at a 2:1 replacement to loss ratio.
- B. Only activities in non-tidal 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 9 VAC 25-210-10.
- 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. Coverage under a Nationwide or Regional permit promulgated by the U.S. Army Corps of Engineers, and for which the board has issued or waived § 401 certification existing as of the effective date of this regulation, shall constitute coverage under this VWP general permit until such time as a state programmatic general permit is approved for the covered activity or impact.

9 VAC 25-660-40. Prohibitions

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A. This VWP general permit will not apply in the following areas:

1. Wetland areas 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 may be based on percent aerial cover.
2. Wetland areas underlain by histosols.
3. Non-tidal 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 federal or state-listed or -proposed threatened or endangered species or proposed or designated critical habitat.

B. This VWP general permit cannot be used in combination with other VWP general permits to impact greater than one-half of an acre of non-tidal surface waters, including 125 linear feet of perennial stream channel. The use of more than one VWP General Permit WP1 for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the

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above-mentioned limit.

C. The activity to impact surface waters shall not have been prohibited by state law, regulations or policies, nor shall it contravene the Water Quality Standards, as amended or adopted by the board.

D. The board shall deny coverage under this VWP general permit to any applicant conducting activities which the board determines 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 which the board determines 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 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.
4. The location of animal feeding operations or waste storage facilities in State waters.

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5. Restoration, creation or any fill in perennial streams in association with the establishment of a mitigation bank.
6. The pouring of wet concrete or the use of tremie concrete or grout bags in State waters, unless the concrete or grout bags is contained within a cofferdam(s).
7. Dredging or maintenance dredging.
8. Disposal of dredge materials or the return flow discharges from dredge disposal sites.
9. _____The construction of new ski areas or oil and gas wells.
10. The construction of marine railways.
11. The taking of threatened or endangered species.
 - a. Pursuant to §29.1-564 of the Code: "Taking, transportation, sale, etc., of endangered species is prohibited. 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 U.S. Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or

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amendments thereto, is prohibited except as provided in 29.1-568."

- b. Pursuant to §29.1-566 of the Code and 4 VAC 15-20-130 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.

9 VAC 25-660-50. Notification.

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

1. Proposed impacts greater than one-tenth of an acre of surface waters shall be reported by the applicant to DEQ via the entire registration statement (9 VAC 25-660-60).
2. For impacts up to one tenth of an acre, items 1-9, 11, 15, 16, 17 and 20 of the registration statement (9 VAC 25-660-60 B) shall be provided.

B. All notifications shall include documentation from the Virginia Department of Game and Inland Fisheries, and the Virginia Department of Conservation and Recreation's Division of Natural Heritage indicating the presence of any federal or state-proposed or -listed threatened and endangered species or proposed or designated critical habitat.

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C. The DEQ will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation and the Virginia Department of Game and Inland Fisheries.

9 VAC 25-660-60. Registration statement.

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

1. The person shall file a complete registration statement as described in 9 VAC 25-660-50 for a VWP General Permit WP1 for impacts to surface waters for less than one-half an acre, including a maximum of 125 linear feet of perennial stream channel, which will serve as a notice of intent for coverage under this VWP general permit.
2. Any person proposing an activity under this VWP general permit shall 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.
3. Any person conducting an activity without a VWP permit, who qualifies for coverage under this VWP general permit, shall file the registration statement immediately upon discovery of the unpermitted activity.

B. The required registration statement shall contain the following information:

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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.
3. The existing VWP permit number (if applicable).
4. The name of the project, purpose of project, and a description of the activity.
5. The name of water body(ies) 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.
9. A detailed location map (e.g. - a United States Geologic Survey topographic quadrangle map) of the project area. The map should be of sufficient detail such that the site may be easily located for site inspection.
10. The appropriate appendices from the Joint Permit Application.
11. Project plan view. All plan view sketches should include, at a minimum, north arrow, scale, existing structures, existing contours, proposed contours (if available), limit of jurisdictional areas, direction of flow, ordinary high water, impact limits, location and dimension of all proposed structures in impact areas. Cross sectional drawings, with the above information, may be required for certain projects to demonstrate minimization of impacts.
12. Wetland Impact Information for both permanent and temporary impacts, including a description of the impact, the impact area (in square feet or acres), and the wetland classification based on Cowardin classification system or similar terminology.

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13. A description of the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable, as required by 9 VAC 25-210-115A.
14. A description of the intended compensation for unavoidable impacts, including:
 - a. Any wetland compensation plan proposing to include contributions to in-lieu fee programs shall include proof of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated.
 - b. Any wetland compensation plan proposing the purchase of wetland banking credits shall include:
 - i) The name of the proposed wetland mitigation bank within the same or adjacent hydrologic unit code within the same river watershed with available credits;
 - ii) The number of credits proposed to be purchased; and
 - iii) Certification from the bank owner of the availability of credits.
15. An aerial photo or scale map which clearly shows the property boundaries, location of surface waters including all wetland boundaries, limits of Chesapeake Bay Resource Protection Area(s) (RPAs), if applicable, and all surface water impacts at the site. A copy of the Corps of Engineers' delineation confirmation, including wetland data sheets, shall also be provided at the time of application. If written confirmation is not available at the time of application, verbal confirmation must be provided and the written confirmation submitted during the VWP general permit review. Additional state or local requirements may apply if the project is located within an RPA.
16. A copy of the FEMA Flood Insurance Rate Map or FEMA-approved local floodplain map for

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the project site.

17. Documentation from the Virginia Department of Game and Inland Fisheries, and the Virginia Department of Conservation and Recreation's Division of Natural Heritage regarding the presence of any federal or state-proposed or -listed threatened and endangered species or proposed or designated critical habitat.
 18. The appropriate application processing fee for a VWP general permit (9 VAC 25-20-10 et seq.).
 19. The following certification:
 20. "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 including the possibility of fine and imprisonment for knowing violations."
- C. The registration statement shall be signed in accordance with 9 VAC 25-210-100. 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 a complete registration statement, coverage under this VWP general permit shall be approved, approved with conditions, or denied within forty-five (45) days. If the board fails to act

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within 45 days, coverage under this VWP general permit shall be deemed approved.

1. In evaluating the registration statement, 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 the use of this VWP general permit. However, these conditions must be consistent with the VWPP regulation and may not override or conflict with the existing conditions of this VWP general permit related to impacts and compensatory mitigation.

E. Incomplete registration statement. Where a registration statement is considered incomplete, the board may require the submission of additional information after a registration statement has been filed, and may suspend processing of any registration statement until such time as the applicant has supplied missing or deficient information and the board considers the registration statement complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a registration statement, or submitted incorrect information in a registration statement or in any report to the board, he shall immediately submit such facts or the correct information.

9 VAC 25-660-70. Mitigation.

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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 and/or off-site individual compensatory mitigation options.

B. Credits or units of wetland mitigation shall be calculated according to the following ratios:

1. One mitigation bank credit equals one unit of wetland mitigation
2. The monetary equivalent of one acre of wetland creation or restoration in the form of a payment to a wetland trust fund equals one unit of wetland mitigation.

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

E.

D. The use of mitigation banks for mitigating project impacts shall be deemed appropriate if the bank is operating in accordance with the provisions of § 62.1-44.15:5 E. and 9 VAC 25-210-115, and the applicant provides verification to DEQ of purchase or debiting of the required amount of credits.

9 VAC 25-660-80. Modification

Authorization under this VWP general permit may be modified, provided the total impacts to surface waters for a single and complete project are less than one-half of an acre, including 125 linear feet of

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perennial stream channel, when any of the following developments occur:

1. When additions or alterations have been made to the project which require the application of VWP general permit conditions that differ from those of the existing VWP general permit or are absent from it;
2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at the time of VWP general permit coverage and would have justified the application of different VWP permit conditions at that time;
3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;
5. When changes occur which are subject to "reopener clauses" in the VWP general permit;

9 VAC 25-660-90. Notice of Termination

When all permitted activities requiring notification under 9 VAC 25-660-50 A. 1 have been completed, the permittee shall submit a Notice of Termination within 30 days of final completion. The notice shall contain the following information:

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1. Name, mailing address and telephone number of the applicant;
2. Name and location of the activity;
3. The VWP Permit Authorization Number;
4. The following certification:

"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 wetlands in accordance with the VWP general permit, and that performing activities in wetlands 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."

9 VAC 25-660-100. VWP General permit.

Any applicant whose registration statement is accepted by the board will receive the following VWP general permit and shall comply with the requirements in it and be subject to all requirements of the VWP permit regulation, 9 VAC 25-210-10 et seq.:

VWP General Permit No. WP1

Effective date:

Expiration date:

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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 Section 401 of the Clean Water Act as amended (33 USC 1251 et seq.) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable 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.

_____ In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, citizens of the Commonwealth of Virginia are authorized to impact less than one-half of an acre of surface waters (including wetlands), with a maximum of 125 linear feet of perennial stream channel, within the boundaries of the Commonwealth of Virginia, except in those areas specifically named or excluded in board regulations or policies which prohibit such impacts.

Permittee:

Address:

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Activity Location:

Activity Description:

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

Director, Department of Environmental Quality

Date

Part I. SPECIAL CONDITIONS.

A. Authorized Activities

1. Any additional impacts to surface waters associated with this project may require modification of this VWP general permit and additional compensatory mitigation.
2. The activities authorized by this VWP general permit must commence and be completed within three years of the date of this authorization.

B. Reapplication

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Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the 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.

C. Overall Project Conditions

1. The construction or work 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.
2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body. 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.
4. No fill in surface waters may consists of unsuitable materials (e.g. trash, debris, car bodies, asphalt). All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all Department of Environmental Quality (DEQ) Regulations.

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5. Erosion and sedimentation controls shall be designed in accordance with the current Virginia Department of Conservation and Recreation (DCR) Erosion and Sediment Control Handbook. 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 stabilizes.
6. Any exposed slopes and streambanks must be stabilized immediately upon completion of the project at each water body. All denuded areas shall be properly stabilized in accordance with the current DCR Erosion and Sedimentation Control Handbook.
7. All construction, construction access (e.g. -cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in such a manner that minimizes construction and/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 waters, unless authorized by this VWP general permit.
9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures, to minimize soil disturbance to the maximum extent practicable.

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10. All non-impacted wetlands within the project or right-of-way limits that are within 50 feet of any clearing, grading, and/or filling activities shall be clearly flagged or marked for the life of the construction activity within that area. The permittee shall notify all contractors that these marked areas are wetlands where no excavation or filling is to occur.

11. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to pre-construction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall ensure that all temporarily disturbed wetland areas revegetate with wetland vegetation by the second year post-disturbance. All temporary fills shall be removed in their entirety and the affected area returned to the pre-existing contours.

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 within 30 days following removal of the stockpile, and restored to the original vegetated state.

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

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

15. Time-of-year restrictions imposed by the Department of Game and Inland Fisheries of the Virginia Marine Resources Commission shall be strictly adhered to.

16. Immediately downstream of the construction area, Water Quality Standards shall not be violated as a result of the construction activities.

D. Road Crossings

1. Access roads must be constructed so that the length of the road minimizes the adverse effects on surface waters to the maximum extent practicable and is as near as possible to preconstruction contours and elevations. Access roads constructed above preconstruction contours and elevations in surface waters must be properly bridged or culverted to maintain surface flows.

2. At crossing(s) 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 a low flow channel. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

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3. Installation of pipes and road crossing(s) shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other means acceptable to DEQ.

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 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 such a manner as to minimize disturbance, and the area must be returned to its original contours and stabilized, unless

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authorized by this VWP general permit.

2. Material resulting from trench excavation may be temporarily sidecast (up to three months) into wetlands, provided the material is not placed in a manner such that it is dispersed by currents or other forces. DEQ may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate.

3. The trench for a utility line cannot be constructed in such a manner as to drain wetlands (e.g. backfilling with extensive gravel layers creating a french drain effect).

4. Untreated stormwater runoff shall be prohibited from directly discharging into any State waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into State waters.

E. Shoreline Stabilization

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the most recent edition of the Virginia Department of Conservation and Recreation's Sediment and Erosion Control Handbook.

2. Riprap apron for all outfalls shall be designed in accordance with the most recent edition of the Virginia Department of Conservation and Recreation's Sediment and Erosion Control

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3. For shoreline protection activities, the area (in square feet) of surface water impact may not exceed four times the length (in linear feet) of the activity (e.g. – a maximum of 400 square feet in surface waters for a 100 foot long bulkhead).
4. Bulkhead repair and replacement shall not exceed 4 feet channelward of existing functional bulkheads. The filling of wetlands behind freestanding bulkheads is prohibited.
5. For shoreline protection activities, the structure and backfill shall be placed as close to the shoreline as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.
6. All shoreline erosion structures shall be located so as to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.
7. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

G. Stormwater Management Facilities

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1. The stormwater management facilities shall be designed 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.

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

3. Maintenance excavation shall be in accordance with an approved maintenance plan and shall not exceed the original contours of the facility, as approved and constructed.

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, MONITORING AND REPORTING.

- A. In order to qualify for this VWP general permit, appropriate and practicable compensatory mitigation will be required for all wetland impacts meeting the conditions outlined in this VWP

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general permit. The types of compensatory mitigation options that may be considered under this

VWP general permit include:

1. Purchases of credits from approved wetland mitigation banks are in accordance with 9 VAC 25-660-70 and provided that all impacts are compensated at a 2:1 ratio.
 2. Contributions to an in lieu fee program approved by DEQ and dedicated to the achievement of no net loss of wetland acreage and function, provided that all impacts are compensated at a 2:1 ratio.
- B. 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.
- C. The permittee shall submit documentation within 60 days of VWP general permit issuance that the Corps of Engineers has debited the required mitigation credits from the mitigation bank ledger or that the fund contribution has been received.
- D. DEQ shall be notified in writing by certified letter at least ten days prior to the start of any activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

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- E. The permittee shall notify DEQ in writing when unusual or potentially threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.
- F. 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 AM to 5:00 PM Monday through Friday, DEQ shall be notified at *(Insert appropriate DEQ office phone number:)* otherwise, the Department of Emergency Services shall be notified at 1-800-468-8892.
- G. Written communications required by this VWP general permit shall be submitted to *(insert the appropriate DEQ office address.)* Please include the VWP general permit number on all correspondence.
- H. 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 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,

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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 PERMITS.

A. Duty to Comply

The permittee shall comply with all conditions of the VWP 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 permit non-compliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of a VWP permit renewal application.

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 may be reopened to modify the conditions of the VWP general permit when

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the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the Department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for VWP general permit modification or 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 Section 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.

E. Severability

The provisions of this VWP general permit are severable.

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G. Right of Entry

The applicant and/or permittee shall allow authorized state and federal representatives, 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) 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 permits

This VWP general permit may be transferred to another person by a permittee if:

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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 proposed permittee containing a specific date of transfer of VWP general permit responsibility, coverage and liability between them, or that the seller 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 within the 30 day time period notify the existing and proposed permittee of the board's intent to modify or revoke and reissue the VWP general permit.

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

I. VWP Permit Modification

The permittee shall notify Department of Environmental Quality of any modification of this activity and shall demonstrate in a written statement to the Department that said modification will not violate any conditions of this VWP general permit. If such demonstration cannot be made, the permittee shall apply for a modification of this VWP general permit. This VWP general permit may be modified when any of

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the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP general permit conditions that differ from those of the existing VWP general permit or are absent from it, provided the total project impacts for a single and complete project are less than one-half of an acre and are fully mitigated;
2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at VWP general permit issuance and would have justified the application of different permit conditions at the time of VWP general permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the CWA;
5. When changes occur which are subject to "reopener clauses" in the VWP general permit;

I. VWP Permit Termination

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This VWP general permit authorization is subject to termination. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit;

2. The permittee's failure in the application or during the VWP general permit 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;

4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit modification or termination.

K. Civil and Criminal Liability

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

L. Oil and Hazardous Substance Liability

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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 Section 311 of the Clean Water Act or Sections 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

M. 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, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; or
4. On and after October 1, 2001, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage

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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.