



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	State Water Control Board
VAC Chapter Number:	9 VAC 25-660 et seq. 9 VAC 25-670 et seq. 9 VAC 25-680 et seq. 9VAC 25-690 et seq. 9 VAC 25-700 et seq. 9 VAC 25-710 et seq.
Regulation Title:	Virginia Water Protection Permit (VWPP) General Permit Regulations
Action Title:	660- General Permit for wetland impacts less than one-half acre 670- General Permit for wetland impacts related to facilities and activities of utility and public service companies regulated by FERC and SCC 680-General Permit for wetland impacts from linear transportation projects 690- General Permit for wetland impacts from development activities 700-General Permit for wetland impacts from mining activities 710-General Permit for wetland restoration and creation activities
Date:	XXXX

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose*

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the proposed action is to develop General Permits for activities in wetlands as specified in changes to the Code of Virginia § 62.1-44.15:5 relating to wetlands as mandated by the General Assembly in Senate Bill 648 and House Bill 1170. The new regulations are needed to expedite and streamline the wetland permitting process in Virginia

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The basis for this regulation is Section 62.1-44.2 et seq. of the Code of Virginia. Specifically, Section 62.1-44.15 authorizes the Board to adopt rules governing the issuance of water quality permits. Section 62.1-44.15:5 authorizes the Board to issue a Virginia Water Protection Permit consistent with the provisions of the Clean Water Act and to protect instream beneficial uses.

Section 401 of the Clean Water Act (33 USC 1251 et seq.) requires state certification of federal permits for discharges into navigable waters.

Need*

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

Pursuant to the actions of the 2000 General Assembly, Virginia Water Protection Permit General Permits are to be developed in accordance with changes to the Code of Virginia § 62.1- 44.15:5 relating to wetlands. General Permits are to be developed for such activities in wetlands as the Board deems appropriate, and are to include such terms and conditions as the Board deems necessary to protect state resources and fish and wildlife resources from significant impairment. The adoption of general permits for wetland impacts is essential to protect the health, safety and welfare of citizens because they will streamline the permitting process, allowing agencies and applicants to save time and money.

Substance*

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed.

The proposed regulatory action is to develop a series of Virginia Water Protection Permit General Permits in response to the requirements of new legislation. These General Permits are for classes of similar activities with minimal environmental consequence. The Board shall develop general permits for: 1. Activities causing wetland impacts of less than one-half of an acre; 2. Facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or State Corporation Commission; 3. Coal, natural gas, and coal bed methane gas mining activities authorized by the Department of Mines, Minerals and Energy, and for sand mining activities; 4. Virginia Department of Transportation or other linear transportation projects; and 5. Activities governed by nationwide or regional permits approved by the Board and issued by the U.S. Army Corps of Engineers. Conditions contained in the general permits shall include, but not be limited to, filing with the Board copies of any preconstruction notification, postconstruction report and certificate of compliance required by the U.S. Army Corps of Engineers. The permits will contain specific thresholds for use and mitigation ratios for compensation for unavoidable wetland impacts.

Alternatives*

Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered and will be considered to meet the need, and the reasoning by which the agency has rejected any of the alternatives considered.

The alternative of not developing these General Permits is not feasible as the proposed changes are mandated by action of the General Assembly. The alternative of developing these permits will clarify and streamline the permitting process and help alleviate duplicative requirements of state and federal programs.

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 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 where information on the public meeting (i.e., date, time and place) may be found.

The Board is seeking comments on the intended regulatory action, including ideas to assist in the development of General Permits. An informational public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of

Regulations. In addition, a Technical Advisory Committee has been formed to assist in the development of the General Permits; notice of the meeting dates can be found in the Calendar of Events section of the Virginia Register of Regulations.

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.

The Board is using the participatory approach in the development of these regulations.

Family Impact Statement

Please provide a preliminary analysis of 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.

It is not anticipated that these regulation amendments will have a direct impact on families.