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Final Regulation
Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-210
Regulation title(s)	VIRGINIA WATER PROTECTION PERMIT PROGRAM REGULATION
Action title	Incorporation of policies, guidance, regulations, and clarifications specific to the Virginia Water Protection Permit Program

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

In support of the purpose of this regulatory action, the regulation has sustained numerous, minor amendments and at least one detailed amendment to incorporate new provisions that resulted from General Assembly actions over the last decade or more, including those related to surface water withdrawals. The last comprehensive amendment of this regulation was in 2001. The Virginia Water Protection Permit Program has since implemented many policy and guidance decisions that should be incorporated into the regulation. Portions of overarching federal regulations also need to be incorporated. There are also places that sentence structure and grammar make the agency's intent difficult to interpret. Therefore, the regulation format was re-organized, and the necessary amendments for clarity and accuracy were made. Concurrently, the associated Virginia Water Protection general permit regulations are also being amended to match any amendments made to this regulation, as necessary, and because the general permit regulations are due to expire in 2016. Separate Notices of Intended Regulatory Action (NOIRAs) were prepared for the applicable general permit regulations. The amendments will protect public health, safety and welfare of citizens as they are designed to clarify, update and streamline the

regulation to protect the Commonwealth's wetland and surface water resources, which are important for maintaining water quality, flood control and providing fish and wildlife habitat.

Acronyms and definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

401 certification: the process by which a state or tribe grants, grants with conditions, denies, or waives certification of the issuance of a permit or license by a federal agency under §401 of the Clean Water Act for an activity that may result in a discharge to waters of the U.S. in that state or tribal jurisdiction.

Compensatory Mitigation: sequentially avoiding and minimizing surface water impacts to the extent practicable, and then compensating for remaining unavoidable impacts of a proposed action.

State waters: all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

Statement of final agency action

Please provide a statement of the final action taken by the agency including:1) the date the action was taken;2) the name of the agency taking the action; and 3) the title of the regulation.

The State Water Control Board adopted the amendments to 9VAC25-210 VIRGINIA WATER PROTECTION PERMIT PROGRAM REGULATION at its meeting on April 1, 2016.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Section 62.1-44.15(10) of the Code of Virginia sets forth the Board's authority for the adoption of regulations deemed necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth. The basis for this regulatory action is the State Water Control Law (Chapter 3.1 of Title 62.1) with specific provisions in law (§§ 62.1-44.15:20 - 62.1-44.15:23.1) mandating certain actions and allowing discretionary authority over certain matters to the promulgating agency.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this regulatory action is to change the overall organization of the regulation such that it may be more reader-friendly; to incorporate policies and guidance developed in recent years; to incorporate certain federal regulatory provisions relative to the program; and to clarify and correct grammar, spelling, references, and errors. Other amendments to the regulation may be considered by the Board based on comments received in response to the public comment and participation process.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The following amendments have been made to the regulation:

1. Consolidated surface water withdrawal-specific provisions under a new Part V.
2. Reorganized the regulation by: revising the order in which information is provided; moving existing information to new locations, in whole or in part; adding new sections to expand or clarify existing provisions or incorporate new provisions; deleting sections, in whole or in part, to remove obsolete information and duplication; revising references and/or citations made in the regulation; and correcting sentence structure, grammar, spelling, and typographical errors.
3. Revised, clarified, moved, added, and/or deleted definitions. Deleted the definition of "public water supply safe yield" in response to comments.
4. Revised, clarified, added, and/or deleted the activities that require application for a permit and those activities that are excluded from the need to obtain a permit.
5. Revised and/or clarified exclusion requirements for surface water withdrawals to remove outdated language related to data required to be submitted by 2008. Revised and consolidated requirements that exclude withdrawals from permitting based upon volume and use to reduce confusion regarding this set of exclusions. The meaning or content of the exclusions are not changed by these amendments.
6. Revised and/or clarified the application process regarding the list of administrative and technical information required to achieve a complete permit application. Added items such as applicant contact information, information specific to certain types of activities or to certain types of state waters, information in compensation plans, and information contained in drawings, diagrams, maps. Items proposed for addition but deleted due to public comment included GIS shape files and riparian landowner information. Amended an oversight by reinserted a requirement for the average stream width and area in the application, as this is currently required by regulation and in the Joint Permit Application.
7. Revised and/or clarified the application process regarding the provisions for application review suspension and incomplete application withdrawal.
8. Revised and/or clarified the compensatory mitigation requirements, such as the sequencing of acceptable compensatory mitigation actions and compensatory mitigation provisions; the requirements necessary for mitigation banks and in-lieu fee funds to become operational; the requirements for compensating impacts to open waters; and/or compensation necessary for temporary impacts.
9. Revised the evaluation of project alternatives provisions in section of 9 VAC 25-210-360 by clarifying that certain requirements apply to all surface water withdrawals, and by clarifying which requirements apply or do not apply to non-public water supply surface water withdrawals.
10. Revised and/or clarified the process, informational requirements, and/or provisions for permit actions that occur after initial permit issuance: modification of permits and general permit coverage, elimination of continuation of coverage under general permits, reissuance of permits, and permit and permit coverage revocation, termination, and/or transition. Increased the limits under which additional impacts may be processed via a minor modification was removed and the original limits were retained. Clarified the type of permit revisions that can occur on surface water withdrawal-related

activities under major versus minor modification processes. Added examples of water use types to which the criteria apply. Clarified that changes to a project include increasing the storage capacity for the withdrawal.

11. Revised, clarified, added, and/or deleted VWP general permit coverage provisions as necessary to accommodate those revisions made to each of the existing VWP general permit regulations.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1. Reorganization of Chapter 210: The Department identified a lack of clarity in the existing regulation, particularly for provisions for surface water withdrawal activities, that stems from the current structure of Chapter 210. The Department consolidated the surface water withdrawal provisions in a new Part V and reordered provisions within other sections of the regulation. Further clarification was provided in response to public comments on the project alternatives section for surface water withdrawals to clarify which provisions apply to non-public water supply projects. Advantages for the regulated community and general public are improved clarity and ease of reading. The disadvantage, for some, may be temporary difficulty in finding language that has been relocated and determining old from new language.

2. Definition of Beneficial Uses: Amendments have been made to the definition to conform the definition included in the regulation to that used in Section 62.1-44.3 under Chapter 3.1 State Water Control Law, which is the same chapter under which the VWP Permit Program obtains its authority. The Department believes it is appropriate to use the definition for beneficial uses that is used in the State Water Control Law of the Code of Virginia. One disadvantage may be the a lack of understanding by some in the regulated community that the Commonwealth's water policy, as set forth in the State Water Control Law, requires the Department to balance existing and proposed uses through exercising its judgment to ensure that such uses be protected, not in an absolute sense and at the cost of rejecting any proposed uses, but within a reasoned perspective in view of competing statutory considerations.

3. Definition of Public Water Supply Safe Yield: DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began publishing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day. The definition has been deleted in response to comments due to perception the proposal results in a significant change in current practice and impacts grandfathered surface water withdrawals (those in existence on July 1, 1989). This revision by no means represents the Department's agreement with those comments, that the Department has no legitimate role in the safe yield determination process, or that we will discontinue exercising our role in that process. One disadvantage of removing the definition of safe yield from these amendments is that the regulated community will continue to operate as if their VDH water works operations permit guarantees them a quantity of available water from a source which may not be available taking into consideration the needs of downstream beneficial uses. The regulated community also appears to have a lack of understanding of some fundamental concepts related to water use such as water rights, grandfathering, and safe yield that could result in the acceptance of unnecessary potential risk to the public health, safety and welfare. To ensure that a common understanding can be developed work should be done to further clarify these terms with the water supply industry in conjunction with VDH.

4. Exclusions for surface water withdrawal activities: Amendments have been made to the exclusion requirements for surface water withdrawals initiated between July 1, 1989, and July 25, 2007, to provide clarity and to remove informational sunset provisions that have since passed. The requirements that exclude withdrawals from permitting based upon volume and use were consolidated and reorganized to reduce confusion, such as the exclusion for withdrawals from tidal waters. The meaning or content of the exclusions are not changed by these amendments. The advantage is improved readability and reduced confusion regarding the Department's intent. No disadvantage is expected.

5. Exclusions for other activities: Language was added to require applicants to demonstrate that any of the exclusions contained in 9VAC25-210-60 apply to his or her project. The Department clarified that certain impacts to open waters not only may be excluded from the need to obtain a VWP permit, but also from the need for compensation. Other amendments include reorganizing the order of some exclusions; clarifying language in some exclusions; consolidating some exclusions; and moving and revising the exclusions related to surface water withdrawal activities to a new Part in the regulation. Advantages include improved clarity and readability; time and resource savings for the Department; and savings on project expenses for applicants. A disadvantage may be the perception that the agency is excluding more activities from permitting than before.

6. Application informational requirements for surface water withdrawals: The informational requirements have been consolidated and organized into one detailed list for a complete application that are necessary to conduct a review of any withdrawal, other than those for an emergency Virginia Water Protection Permit. This revision removes the distinction between minor surface water withdrawal and major surface water withdrawal, which was found to be only a regulatory distinction and not reflective of the case by case differences in permit review. Previously, while the regulations required the same information for both types of withdrawals, this was not clear and led to confusion and longer processing timeframes because of the need to request the additional information after submission of an application. Other amendments to this section include the addition of informational requirements that addressed recent statutory changes and recent revisions to the Joint Permit Application. A new section has been added under Part V to address reissuance of permits for the continuation of a surface water withdrawal. This amendment was needed to identify the informational requirements required for a permittee to apply for reissuance, including use of information (that continues to be accurate) submitted as part of a previous application. Some advantages are that the regulation now provides clarity, reduces confusion to both staff and the regulated public, facilitates application review, and ensures statutory intent can be met in the protection of downstream beneficial uses. One disadvantage may be a continued perception that the Department is removing a streamlined application process for smaller surface water withdrawals.

7. Application informational requirements for other activities: The Department reorganized the requirements for a complete application listed in regulation section 80; revised the provisions regarding complete applications to reduce the timeline that these applications may linger; made the application provisions consistent across all VWP regulations; updated the manuals and methods used in the process of delineating surface waters as a result of changes in federal regulations governing activities in waters of the United States; and revised the VWP complete application requirements to reflect the need for the approved jurisdictional determination when one is available. The Department identified a need to receive project location information in a geographic information system (GIS) format to support agency data tracking initiatives and better evaluate compensatory mitigation proposals and the need for applicants to submit riparian landowner information to expedite application review and landowner notification. While the Department proposed these provisions, they were deleted based on public comment and/or the economic impact analysis performed for this regulatory action. An advantage of the proposed revisions is clarity in what the agency expects for a complete application, potentially reducing the amount of time for staff to review an application and make a permitting decision. Disadvantages may include the cost to some applicants in obtaining or providing certain information.

8. Modification criteria for surface water withdrawals: Previously, the regulation only had one general provision that addressed modifications of surface water withdrawals. Part V now identifies the circumstances for which a permit for a surface water withdrawal may be modified. These amendments

provide more specificity and clarity as to the representative types of changes that may qualify under each class of permit modifications. No disadvantage was identified.

9. Permit modification procedures for other activities: The Department reorganized many of the provisions in section 180 for better readability and to clarify program intent, such as for the transfer of a VWP individual permit from one permittee to another; updated the allowable substitution of compensatory mitigation options based on the 2008 Mitigation Rule; moved and clarified an existing provision for extending a VWP individual permit term if originally set at less than 15 years; added a provision for the termination of an individual permit without cause when there is a substantial change to the nature or existence of the permittee; and clarified language related to the modification of permits for increases, or decreases, in the amount of temporary impacts incurred by a permittee once the project begins. While the Department proposed to revise the existing additional impacts limits that may be approved via the minor modification process, the amendment was deleted due to public comment. The original limits remain in the regulation. Advantages include earlier identification of temporary impacts for staff review; better clarity of what the agency may approve as a project modification; better consistency with the 2008 federal mitigation rule; better tracking and management of permits; and additional opportunities for public involvement. One disadvantage may be increased staff time to process relatively small additional impacts.

10. Consistency between VWP and federal rules governing compensatory mitigation: While the Commonwealth has an independent nontidal wetlands regulatory program, it works closely with the U.S. Army Corps of Engineers (Corps) in its management of that program, including the required compensatory mitigation for impacts to surface waters, including wetlands. In 2008, the Corps adopted revised regulation 33 CFR 332 ('2008 Mitigation Rule') regarding compensatory mitigation that essentially reversed the hierarchy of acceptable mitigation practices, thus causing the VWP permit regulations to be opposite that of the Corps' regarding the hierarchy. The Department aligned its regulatory language as close as possible to the 2008 Mitigation Rule considering the existing State Water Control Law and regulatory framework in which the program must operate. The advantage is consistency in what the public may reasonably expect regarding compensation requirements when obtaining permits from both the federal and state agencies. It remains possible that the two agencies occasionally make conflicting mitigation demands on applicants or permittees due to exercising discretionary authority.

11. Compensation for open water impacts: Studies were noted to suggest that too much open water is being created with little environmental benefit as compensation for impacts. The existing regulations allow for discretion when requiring compensation for open water impacts. However, the Department amended the requirement to specifically reduce compensation in specific circumstances for clarity. Coordination with sister natural resource agencies on project proposals is expected to continue. An advantage may be reduced costs of compensation to those seeking permits for impacts to surface waters. Disadvantages may be unintentional impacts to aquatic-dependent fauna and temporary unavailability of banking credits if and when compensation if required.

12. Compensation plans: The Department clarified what is required for a complete application regarding compensatory wetland and stream mitigation plans, including a draft of the intended protective mechanism to be placed over any permittee-responsible compensation site(s). The Department deleted the 120 day requirement and made the deadline to be prior to initiating impacts in surface waters that are authorized by the permit. Advantages identified are: more time to record for some compensation options, where 120 days have proven inadequate; less confusion on the timeline in which to record in those cases where local planning and permitting requirements overlap the Department's; and clarity regarding what information is required to be submitted and when. A disadvantage may be a delay in project commencement due to availability of surveying professionals at the required time.

13. Approval of in-lieu fee programs as compensatory mitigation option: The Department updated the regulation to use of the term 'program' instead of 'fund' in reference to in-lieu fee funds, to be consistent with the 2008 Federal Mitigation Rule choice of language. Other amendments include changing the language to mimic the Rule; change the amount of time for which an approval is valid from the existing

five years to 10 years; revise the language to address the new Wetland and Stream Replacement Fund that was mandated by the Virginia General Assembly in 2012; and revisions for wording choice, to remove duplicative language, and reorganize the language. The advantages include better clarity and understanding for the regulated pubic; bringing the regulation more in line with the Rule; and saving time and staff resources. No disadvantages were identified.

14. Conditional requirement for assessment of wetland functions: 9VAC25-210 currently requires that applicants who propose to impact one acre or more of wetlands provide an assessment of functions being lost. The Department revised the provision to only require as assessment of functions for certain situations, particularly when permittees desire, and can justify, conducting on the ground permittee-responsible compensation instead of purchasing bank or fee program credits. Credits include agency consideration of whether functions are replaced, but through the process of bank or fund approval rather than through the permitting process, which would be duplicative of effort. The advantages include less cost for applicants impacting wetlands and less review time by agency staff. A disadvantage may be the perception that adequate compensation is not being required.

15. Reissuance of a permit for surface water withdrawals: A new section has been added under Part V to address reissuance of permits for the continuation of a surface water withdrawal, including the timeframe in which to submit a request for reissuance to enable the Department to conduct an adequate review. This amendment was needed to identify the deadline to submit the request prior to the permit expiration date and the informational requirements required for a permittee to apply for continued operation of an established withdrawal (reissuance). In order to streamline the review process, the provision reduces the submission of information (that continues to be accurate) that is already in the Department's possession as submitted as part of a previous application. The advantage is the regulation provides clarity and reduces confusion as to the informational requirements necessary to reapply for a permit reissuance for a surface water withdrawal. One disadvantage may be that a permittee will be required to submit the information earlier than anticipated to ensure qualification for an administrative continuance.

16. Adding provisions for administrative continuance: The Department added a provision for administrative continuance, as allowed by § 62.1-44.15(5a) of the Code of Virginia, but which has not been previously included in the VWP regulations. Clarifications were made as a result of public comment. No time limit measured in days was placed on the provision, which would make the provision inconsistent with other DEQ water program regulations and possibly conflict with the Administrative Process Act requirements. A new section has been added under Part V that includes a reference for allowance of an administrative continuance of a permit if a complete application for a surface water withdrawal is filed in a timely manner. The advantage is that the regulated public is not penalized by the inability of the state to take a permit action. A disadvantage may be that a non-complying project is allowed to continue until the DEQ enforcement process becomes engaged.

17. Revised, moved, added, and deleted definitions: Because 9VAC25-210 is the over-arching program regulation, the Department reorganized definitions both within and external to this regulation. Some definitions were revised based on current practices, the federal Mitigation Rule, or the scientific literature. The Department received support for these changes during the Citizen Advisory Group process. Still other definitions were deleted as obsolete. The advantage is improved clarity and understanding of the agency's intentions. No disadvantage was identified.

18. Statewide informational requirements: The Department streamlined the regulation language in some places where additional information is requested or required by DEQ, by adding a new section entitled "Statewide information requirements" as a replacement for other language of a similar nature. This provision is based in the Code of Virginia and appears in other regulations. The advantage is less repetitive language for improved understanding. No disadvantage was identified.

19. General permits: The Department amended the language in section 130 of the regulation to clarify the discussion of general permit terms and streamline provisions regarding compensation, both advantages of the proposed revisions. No disadvantage was identified.

20. Forms and documents: The Department updated, corrected, and revised the forms and documents incorporated by reference at the end of the regulation for clarity and to improve readability. No disadvantage was identified.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The Department did not find any amendments or new provisions to be more restrictive than applicable federal requirements, where such federal requirements exist.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected as the regulation amendments apply to all areas of Virginia.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

9VAC25-210 Changes since proposed			
Section Number	**Requirement at proposed stage**	**What has changed**	**Rationale for Change**
10	*Amended definitions 'cross-sectional drawing', 'plan view drawing', and 'profile drawing'*	*Deleted introductory phrase "For purposes of this regulation/chapter, objects…" and replaced with "Objects…"*	*Unnecessary wording*
10	*Amended definition 'temporary impacts'*	*Punctuation – delete comma*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
10	*Revised "Ecologically preferable" to use phrases 'wetland*	*Replaced 'or' with 'and' in the definition of "Ecologically preferable"*	*Revisions due to staff review regarding consistent use of the word 'or' and 'and' when used*

9VAC25-210 Changes since proposed			
Section Number	**Requirement at proposed stage**	**What has changed**	**Rationale for Change**
	acreage or functions' and 'functions ~~and values~~' more consistently and for better consistency with language in Code § 62.1-44.15:20		*with acreage, functions. Consistency with existing text elsewhere in the regulations and Code of Virginia.*
45 B	*Added subsection B to address delineation of waters under state jurisdiction.*	*Replaced 'applicable' with 'present'*	*Agency preference for word choice*
50 B 1	*Existing prohibitions*	*Punctuation – added commas*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
60 5	*Existing text in subdivision 9 regarding maintenance revised to clarify intent of maintenance and moved to new subdivision 5.*	*Moved clarifying clause to new location in same paragraph*	*Agency preference on word choice*
60 8	*Existing exclusion for agricultural activities*	*Punctuation – replaced commas with semi-colons and deleted comma*	*Use of semi-colon clarifies but does not change intent. Comma inserted by Registrar was deleted due to change in meaning of existing text.*
60 8 c (3) (e)	*Existing exclusion for agricultural activities*	*Replaced 'regulation' with 'chapter'*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
65	*Added new section to address provision in Code allowing staff to continue the terms and conditions of an issued permit when circumstances occur that prevent staff from processing a new or modified permit. Included time frames at suggestion of Citizens Advisory Group.*	*Reinserted 'expires' after 'individual permit' in first sentence. Punctuation: deleted comma after 'permit' in the first sentence. Replaced 'may' with 'shall'. Inserted 'or the date on which the board denies the application'.*	*Correction of change made by Registrar. Punctuation change for readability. Revision due to public comment on word choice. Staffs comment on oversight to complete the sentence where the additional language was inserted.*
80 A	*Reference to minor surface water withdrawal deleted from subsection A. Acronym 'DEQ' was spelled out. Reference to public water supply emergency inserted.*	*Replaced 'the VWP permit program regulation' with '9VAC25-210'*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*

9VAC25-210 Changes since proposed			
Section Number	**Requirement at proposed stage**	**What has changed**	**Rationale for Change**
	'Authorization' revised to 'coverage'.		
80 B 1	*Amended introductory language for list of items necessary for complete application*	*Added phrase 'if applicable to the project' after 'following information'*	*Clarification to improve readability - does not change intent of requirement – not everything in the list will apply to all projects. Removes redundant phrase repeated throughout regulation subsection. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.*
80 B 1 a	*Revised 'name' to 'legal name'.*	*Changed 'Legal name' to 'The applicant's legal name' and deleted 'of applicant' at end*	*Agency preference on word choice*
80 B 1 e	*Existing text in B 1 e moved to B 1 e.*	*Deleted phrase 'if applicable' at end*	*Agency preference on word choice; unnecessary, considering change made to 80 B 1*
80 B 1 e (5)	*Existing requirement for location map moved here*	*Replaced 'United States' with 'U.S.' Moved 'and existing preservation areas on the site or sites' here from (6).*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations. Revisions due to public comment on GIS shape files.*
80 B 1 e (6)	*Added requirement for GIS shape files of project boundary unless otherwise waived by DEQ*	*Deleted (6)*	*Revisions due to public comment on GIS shape files.*
80 B 1 h (1)	*Moved the requirement for description of surface water alterations to B 1 h and combine with existing text requesting the amount of impacts*	*Punctuation – semi-colon and comma added*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
80 B 1 h (2)	*Moved the requirement for description of surface water alterations to B 1 h and combine with existing text requesting the amount of impacts*	*Added requirement for average stream width and associated item numbering and punctuation. Replaced 'united' with 'unified'.*	*Correction of agency oversight in movement and revision of existing regulation text requiring the same – no intent to purposely delete requirement. Correct agency oversight on 'unified'.*
80 B 1 h (4)	*Existing text in B 1 k (4) regarding surface water delineation confirmations and maps was moved to*	*Deleted 'if' and 'the'; added clarifying item numbers; deleted comma*	*Clarification to improve readability - does not change intent of requirement*

9VAC25-210 Changes since proposed			
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	B 1 i (4) as part of the required plan view map information, to B 1 h (4) as part of the description of impacts		
80 B 1 h (5)	*Added B 1 h (5) to require GIS shape files of delineated surface waters unless otherwise waived by DEQ*	*Deleted 'through' and 'if applicable' and added clarifying item numbers. Deleted 'and GIS compatible shapefile or shape files of the delineation map' and the last sentence regarding waiver of GIS shape files.*	*Clarification to improve readability - does not change intent of requirement. Revisions due to public comment on GIS shape files.*
80 B 1 i (5)	*Existing text in B 1 k (4) regarding location of preservation areas was moved to B 1 i (5) and revised to clarify the requirements and applicability of the requested information*	*Punctuation – comma added and comma deleted*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
80 B 1 l	*Existing text in B 1 k (3) requiring information on threatened and endangered species moved to B 1 l*	*Replaced 'or' with 'and'*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
80 B 1 m and m (1)	*Existing text regarding compensation plans was moved to B 1 m and revised to clarify which provisions apply to which type of proposed compensation; to clarify what is required for a complete application regarding compensation plans*	*Replaced 'or' with 'and' in language on compensation plans for a complete application*	*Revisions due to staff review regarding consistent use of the word 'or' and 'and' when used with acreage, functions. Consistency with existing text elsewhere in the regulations and Code of Virginia.*
80 B 1 m (3)	*Existing text regarding compensation plans was moved to B 1 m and revised to clarify which provisions apply to which type of proposed compensation*	*Replaced '7100' with '1700'*	*Correction of change made by Registrar*
80 B 1 o	*Added requirement for applicant to provide riparian owner information DEQ's ability to waive requirement*	*Deleted requirement for applicant to provide riparian owner information as part of a complete application*	*Revisions due to public comment on DEQ's authority to require submittal of riparian owner information*

9VAC25-210 Changes since proposed			
Section Number	**Requirement at proposed stage**	**What has changed**	**Rationale for Change**
80 B 1 q	*Existing text in B 1 n regarding permit application fee moved to B 1 q and revised to remove reference to 9VAC25-20*	*Reinserted 'in accordance with 9VAC25-20'*	*Revisions due to public comment on citation to Fees for Permits and Certifications regulation*
80 B 2	*Not applicable*	*Added '2. (Reserved.)'*	*Efficient correction of section 80 numbering*
80 C 1 b and C 2 b	*Existing text in B 1 k (1) requiring a functional assessment was moved to -80 C and revised to clarify when the assessment is necessary*	*Added 'for' in front of forest, scrub-shrub, and emergent*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
116 B 1	*Subdivision B 1 was clarified to incorporate and revise text from original B 2 and better describe the requirements for analysis to demonstrate permittee-responsible mitigation*	*Punctuation - replaced semi-colon with comma*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
116 B 2	*Text added for requirement to provide a protective mechanism(s) for all permittee-responsible compensation.*	*Replaced '1700' with '1009' and replaced '1009' with '1700'*	*Correction of change made by Registrar*
116 C 1	*Existing text in C 1 was revised to state the preferred type of compensatory mitigation by the program but that other options may apply.*	*Punctuation – commas deleted in first sentence*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
116 C 2	*Existing text in C 2 was revised to list wetland mitigation options in a preferred sequence that is consistent with the 2008 Federal Mitigation Rule*	*Replaced 'or' with 'and' in language on compensation options*	*Revisions due to staff review regarding consistent use of the word 'or' and 'and' when used with acreage, functions. Consistency with existing text elsewhere in the regulations and Code of Virginia.*
116 C 2 g	*C 2 g was revised to add consistency with subsection 116 A and correct a citation*	*Punctuation – replaced semi-colon with period*	*Correction of change made by Registrar*
116 C 3	*Existing text in C 3 was revised to list stream mitigation options in a preferred sequence that is consistent with the*	*Punctuation – deleted period*	*Correction of change made by Registrar*

9VAC25-210 Changes since proposed			
Section Number	**Requirement at proposed stage**	**What has changed**	**Rationale for Change**
	2008 Federal Mitigation Rule, but that states staff evaluation may determine the ultimate options.		
116 C 4	*Existing language in C 4 was deleted as obsolete. Compensation for open water was moved here from 9VAC25-210-80 B 1 k (5) (d) and a condition was added regarding compensation for open waters in karst regions of VA.*	*Replaced 'except' with 'but compensation may be required'*	*Revisions due to public comment on when open water compensation may be required*
116 D 3 a, d, e	*Original text was revised to use phrase 'wetland acreage or functions' for better consistency with language in Code and match preferred sequencing in 116 C*	*Replaced 'or' with 'and' in language for approval of in-lieu fee programs*	*Revisions due to staff review regarding consistent use of the word 'or' and 'and' when used with acreage, functions. Consistency with existing text elsewhere in the regulations and Code of Virginia.*
116 F 1	*Text regarding recording protective mechanisms was revised to delete the 120-day timeline for recordation of a final protective instrument and require such prior to implementing project impacts in surface waters, as is consistent with when a final compensation plan must be submitted and approved, and for consistency with existing provisions in the VWP general permit conditions.*	*Replaced '(if available)' with ', if available'*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
130 F	*Subsection F was revised to change 'notice of termination' to 'notice of project completion'*	*Added reference to Section 90 A of the VWP applicable general permit regulation at the end of the sentence*	*Revisions due to staff review regarding the connection between the 210 regulation and the applicable portion of each VWP general permit regulation*
130 H 3	*H 3 was revised to use phrase 'wetland acreage or functions' for better consistency with language in Code*	*Replaced 'or' with 'and' in language regarding general permits*	*Revisions due to staff review regarding consistent use of the word 'or' and 'and' when used with acreage, functions. Consistency with existing text elsewhere in the regulations*

9VAC25-210 Changes since proposed			
Section Number	**Requirement at proposed stage**	**What has changed**	**Rationale for Change**
			and Code of Virginia.
140 C 9	*Not applicable*	*Replaced 'e-mail' with 'email'*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
Part IV	*Amend title*	*Deleted 'VWP Permit Variances'*	*Correction of change made by Registrar*
180 E 7 b	*E 7 b was added to specify the quantity of additional wetland impacts that are allowed under a minor modification*	*Deleted 'proposed' as a modifier to species and habitat. Replaced 'to be a the' with 'result in a'. Added last sentence: 'The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.'*	*Revisions due to public comment on protection of proposed species and habitat. Clarification to improve readability - does not change intent of requirement.*
180 E 7 c	*E 7 c was added to specify the quantity of additional stream impacts that are allowed under a minor modification*	*Replaced 'the greater of either (i) 0.25 acre or (ii) 10% of the acres of originally permitted permanent wetland or open water impacts, not to exceed 1.00 acre' with 'one-quarter of an acre (0.25 acre or 10,890 square feet)'*	*Revisions due to public comment on amount of additional impacts processed under a minor modification. Consistency with existing text elsewhere in the regulations.*
180 E 7 d	*E 7 d was added to require documentation on avoidance and minimization of additional impacts*	*Replaced 'the greater of either (i) 100 linear feet or (ii) 10% of the linear feet of originally permitted permanent stream impacts, not to exceed 1,500 linear feet' with '100 linear feet'*	*Revisions due to public comment on amount of additional impacts processed under a minor modification. Consistency with existing text elsewhere in the regulations.*
180 E 7 g	*Added requirement for additional temporary impacts to be restored and include a timeframe for DEQ review and response to request for minor modification for additional temporary impacts*	*Punctuation – delete comma*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
180 H	*New subsection H was added to authorize board may terminate the permit without cause when the*	*Reinserted 'completion' at end of first sentence*	*Correction of change made by Registrar*

9VAC25-210 Changes since proposed			
Section Number	**Requirement at proposed stage**	**What has changed**	**Rationale for Change**
	permittee is no longer a legal entity due to death, dissolution, or when a company is no longer authorized to conduct business in the Commonwealth		
180 H 1	*Not applicable*	*Punctuation – added comma*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
230 A 4	*Revised to use phrase 'wetland acreage or functions' for better consistency with language in Code*	*Replaced 'or' with 'and' in language regarding denial of permit application*	*Revisions due to staff review regarding consistent use of the word 'or' and 'and' when used with acreage, functions. Consistency with existing text elsewhere in the regulations and Code of Virginia.*
230 A 8	*Revised to correct citation*	*Replaced '9VAC25-210-80 B 1 q' with '9VAC25-210-80 B 1 g'*	*Correction of change made by Registrar*
300	*Added new section to provide clarity in the meaning of terms or consistency with other similar DEQ programs*	*Removed definition of "public water supply safe yield" from the final amendments of this particular regulatory action.*	*This proposed change received significant comment and the definition is being removed from the final regulatory amendments. While the Department has agreed to remove the definition from this particular regulatory action, this does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. The Department will continue to exercise its long-standing role.*
310 A	*Moved subsection addressing exclusions from permitting*	*Punctuation – deleted commas and added comma*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*

9VAC25-210 Changes since proposed			
Section Number	**Requirement at proposed stage**	**What has changed**	**Rationale for Change**
310 A 1	*Moved subdivision exclusion for pre-1989 surface water withdrawal activities*	*Replaced 'that' with 'and the withdrawal'*	*Clarification to improve readability - does not change intent of requirement*
310 A 2	*Moved subdivision exclusion for post-1989 surface water withdrawal activities*	*Punctuation – deleted comma; replaced ', with respect to' with 'that authorized the'; replaced 'withdrawal; however' with 'withdrawal. However'*	*Clarification to improve readability - does not change intent of requirement*
310 A 3 and 3 a	*Moved subdivision exclusion for surface water withdrawals initiated between July 1, 1989 and July 25, 2007*	*Punctuation – deleted commas*	*Correction of change made by Registrar*
340 A	*Added new subsection stating requirement for permit in certain cases*	*Replaced 'FERC' with 'Federal Energy Regulatory Commission (FERC)'*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
340 B	*Moved informational requirements*	*Added 'informational' before 'requirements' and '-80.B and if applicable, 9VAC25-210-80.C' after 'requirements of 9VAC25-210"*	*Correction to specifically reference the applicable informational requirements under 9VAC25-210-80.*
340 B 1	*Moved informational requirements regarding project purpose*	*Punctuation – comma added*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
340 B 5 a	*Moved informational requirements regarding beneficial uses*	*Punctuation – replaced semi-colons with commas*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
340 B 6	*Moved informational requirements regarding project need and water use*	*Punctuation – deleted comma; replaced 'address' with 'addresses'*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations. Grammar correction.*
340 B 7	*Moved informational requirements regarding intake structure*	*Punctuation – deleted comma*	*Correction of change made by Registrar that affects meaning of requirement*
340 C 1	*Moved informational requirements for a complete application that are necessary to conduct a review of any*	*Replaced 'applications' with 'application'*	*Grammar correction*

9VAC25-210 Changes since proposed			
Section Number	**Requirement at proposed stage**	**What has changed**	**Rationale for Change**
	withdrawal under emergency situations		
340 C 1 a	*Moved informational requirements for a complete application that are necessary to conduct a review of any withdrawal under emergency situations*	*Replaced 'Name' with 'The applicant's legal name'; deleted phrase 'of applicant' at end*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
340 C 1 c and h	*Moved informational requirements for a complete application that are necessary to conduct a review of any withdrawal under emergency situations*	*Punctuation – deleted commas*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
350 A	*Added new section to include a reference for allowance for an administrative continuance of a permit if a complete application is filed in a timely manner*	*Punctuation – added comma*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
360 A	*Moved and revised subdivision to address informational requirements needed for an alternatives analysis*	*Replaced 'local water supply need' with 'need for water to meet the project purpose' and deleted 'local' near end of sentence*	*Revision in response to public comments to clarify that the requirement applies to all surface water withdrawals*
360 A 1 b	*Moved and revised subdivision to address informational requirements needed for an alternatives analysis*	*Added 'public water supply' before 'safe yield'*	*Revision in response to public comments to add the term 'public water supply' before the term 'safe yield' to clarify the traditional usage of the term with public water supplies*
360 A 2 a	*Moved and revised subdivision to address informational requirements needed for an alternatives analysis*	*Added 'if applicable' before 'or' at the end of the sentence*	*Revision in response to public comments to add 'if applicable' to clarify that this informational requirement may not apply to non-public water supply surface water withdrawals*
360 A 2 b	*Moved and revised subdivision to address informational requirements needed for an alternatives analysis*	*Added 'if applicable' before 'or' at the end of the sentence*	*Revision in response to public comments to add 'if applicable' to clarify that this informational requirement may not apply to non-public water supply surface water withdrawals*
360 A 3 c (5)	*Moved and revised subdivision to address informational requirements needed for*	*Added 'public water supply' before 'safe yield'*	*Revision in response to public comments to add the term 'public water supply' before the term 'safe yield' to clarify the*

9VAC25-210 Changes since proposed			
Section Number	**Requirement at proposed stage**	**What has changed**	**Rationale for Change**
	an alternatives analysis		*traditional usage of the term with public water supplies*
360 A 3 c (9) (d)	*Moved and revised subdivision to address informational requirements needed for an alternatives analysis*	*Replaced '3 (c) (9)' with '3 c (9)'*	*Correction of change made by Registrar that affects meaning of requirement*
360 A 4	*Moved and revised subdivision to address informational requirements needed for an alternatives analysis*	*Replaced 'all applicable items included in subdivision 3 of this section' with 'the following items of subdivision 3 of this section: 3 a (3) through (4) and 3 c. The analysis shall also include applicable items of subdivision 3 a (1) through (2) and 3 b'*	*Revision in response to public comments to clarify the requirements of the previous subsection (-360 A 3) that apply to non-public water supply surface water withdrawals*
370 B 4	*Moved and revised subdivision on instream flow conditions*	*Punctuation – deleted comma and added comma*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
380 A 4	*Added new section to identify the types of developments for which a permit for a surface water withdrawal may be modified.*	*Added the following sentence at the end of the subdivision 'Examples of uses include, but are not limited to, agricultural irrigation, golf course irrigation, public water supply, manufacturing, and electricity generation.'*	*Revision in response to public comments to provide examples of water use types to clarify the modification criterion*
380 B 3	*Added new section to identify the types of developments for which a permit for a surface water withdrawal may be modified.*	*Added the following phrase ', including increasing the storage capacity for the surface water withdrawal,' after 'Changes to the permitted project'*	*Revision to address the public comment regarding changes in storage capacity*
610 A and B	*Moved and revised subsections addressing transition of regulation*	*Replaced '(insert effective date of regulation)' with 'August 2, 2016'*	*Necessary for regulation to become effective on preferred date*
FORMS	*Alphabetized list of forms. Revised the title and effective date of several forms*	*Revised effective dates on three forms*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*

9VAC25-210 Changes since proposed			
Section Number	**Requirement at proposed stage**	**What has changed**	**Rationale for Change**
DOCUMENTS	*Alphabetized list of documents. Added Corps regional supplement for eastern mountains and piedmont. Added Corps regional supplement for Atlantic and coastal plain. Added hydric soils of the United States. Added Virginia drought assessment and response plan.*	*Deleted periods at the end of document titles*	*Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Comments on the Proposed 9VAC25-210 regulation have been organized first into the overall type of provisions and then by topic, including those comments in support of the proposed regulation provisions. In some cases, a summary precedes the individual comments received.

1. Traditional wetlands/streams/open water provisions:

Consistency
Many of the recommended amendments to the Proposed regulation were generated from the review of the text by the Virginia Registrar's office, and then the subsequent review by Department staff. The amendments include adding back missing words/phrases; striking words/phrases that were not stricken as the Department intended; inconsistent use of words/phrases; and correcting citations or adding missing citations. All amendments for consistency are noted within the 'Changes made since the proposed stage' section of this form. No public comments were received about consistency in this regulation.
The following amendment was made based on Department staff review of the Proposed regulation: The Department added a requirement for average stream width, as this is currently required by regulation and in the Joint Permit Application, but was unintentionally left out of the Proposed regulation. In the same provision, staff revised punctuation and corrected the word 'united' to 'unified'.

Administrative continuance of permits
All comments pertaining to the administrative continuance of permits in this regulation and staff responses are listed below.

Commenter	Comment	Agency response

Commenter	Comment	Agency response
Virginia Department of Transportation	Replace 'may be administratively continued' with 'will be administratively continued' to provide permittee with assurance that they will not be held in abeyance if DEQ does not act in a timely manner. 75-day period for timely application was eliminated - VDOT prefers 40 days for VDOT and 60 days for everyone else.	The Department recommends that an amendment be made to 9VAC25-210-65 to replace 'may' with 'shall' and to add a clarifying statement to complete the first sentence o subsection B. The Department does not recommend amending the amount of days for a timely application as this is consistent with the amount of time necessary for application evaluation in many cases, especially at the end of the typical permit term of 15 years. The Department is proposing the administrative continuance provision as it is afforded this authority from the Code, albeit the provision has gone missing from the regulations in previous amendment cycles. Similar language is contained in the Virginia Pollutant Discharge Elimination System regulations.
Chesapeake Bay Foundation	Oppose changes in terms and administrative continuance. Provisions…generally allow DEQ to administratively continue any permit which expired at the end of the 15 year term without DEQ having been able to finalize a new permit. Net effect of changes is to reduce DEQ's current opportunities to assess project compliance and urge completion; and reduce frequency of updating permit requirements...over long term will weaken the protections provided by Virginia's wetlands program.	The Department recommends that an amendment be made to 9VAC25-210-65 to replace 'may' with 'shall' and add a clarifying statement to complete the first sentence o subsection B. The Department is proposing the administrative continuance provision as it is afforded this authority from the Code, albeit the provision has gone missing from the regulations in previous amendment cycles. Similar language is contained in the Virginia Pollutant Discharge Elimination System regulations.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support addition of administrative continuance	The Department thanks you for your support.

Comments on application requirements

All comments pertaining to application requirements in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	Support this section [on functional assessment] as written	The Department thanks you for your support.
Virginia Department of Transportation	Delete reference to least environmentally damaging practicable alternative. Concerned deq will now make its own LEDPA decision when they are not a NEPA authority. No statutory authority for the SWCB to make LEDPA decisions.	The Department does not recommend deleting the reference to the 'least environmentally damaging practicable alternative'. This language is not new, but rather was moved from 9VAC25-210-115 C to -210-80 B 1 g and -210-360 3 c. There is no intent for the Department to apply the provision differently due to its movement in the regulation.
Virginia Department of Transportation	Delete last portion of last sentence 'shall require submittal of an additional permit application fee and may be subject to additional noticing requirements.' - concerned that this could allow deq staff latitude to change applicants unwarranted additional permit fees.	The Department does not recommend deleting the referenced phrase, as withdrawal of an application renders that application null and void, and resubmittal of a new application - of similar content or not - requires a new permit application fee in the amount detailed in 9VAC25-20. The proposal is consistent with existing language in the VWP general permit regulations. There is no intent to change the procedures used to determine permit applications fees in accordance with 9VAC25-20 until such time that the program may desire to initiate a regulatory action to revise said regulation.
Virginia Department of Transportation	Keep 'if available' after existing and proposed topographic or bathymetric contours. This information is not always available or necessary.	The Department does not recommend inserting 'if available' back into the reference about 'existing and proposed topographic or bathymetric contours'. This language proposed and agreed to through collaboration with the Citizen Advisory Group to ensure consistent requirements for all VWP permits. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns with providing this information on VDOT projects.

Commenter	Comment	Agency response
Virginia Department of Transportation	Keep 'for unavoidable permanent impacts to wetlands' so it is clear that compensation is not required for temporary impacts.	The Department does not recommend reinserting this phrase for clarification. A compensatory mitigation plan should not be needed if an impact meets the definition of temporary impacts, as these should already be restored to previous condition without further agency approval, with the exception of when the impact is not identified prior to occurring or where restoration is required as part of an enforcement action.
Virginia Department of Transportation	Remove ebb and flood or direction of flow if applicable. Cannot be represented in a two-dimensional cross-section. Object to requirement to provide thalweg - we do not have this information for most projects and may extend off of VDOT's right of way.	The Department does not recommend revising the ebb and flood or thalweg language in 9VAC25-210-80 B 1 j. Providing the flow direction with graphic arrows or with text is acceptable. The Department would not expect VDOT to provide this information beyond the project limits. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns with providing this information on VDOT projects.
Virginia Transportation Construction Alliance	If a new application fee is being required then should it not be 180 days versus the shorter period of 60 days. As we saw through the recession, many projects were put on hold in the middle of a project, and it took time for project to be re-initiated as companies re-organized, determined the need for a project etc., or needed the additional time to develop an adequate response to satisfy the comment posed by VDEQ.	The Department does not recommend revising the amount of days after which an incomplete application can be withdrawn. The Department experiences extensive delays in responses at times when the project applicants have not completed enough design or obtained the necessary funding to actually complete a project, thus requiring staff to 'track' lingering projects beyond that which is reasonable. This change was discussed through the Citizen Advisory Group and identified as an acceptable time period.

Commenter	Comment	Agency response
Townes Engineering	The proposed language puts many highly qualified survey groups at a disadvantage. ...In low flow conditions, [thalweg] can be easily identified, however, during periods of high flow, its location can be challenging. Most field survey groups are not familiar with this term, much less how to correctly identify [it]. Standard engineering convention for site plans only requires that the centerline of the associated stream channel be identified and depicted on plans and profiles. ...will adversely affect the time and budget of projects involving road crossings, bridges, trail crossings, and stormwater management. ...will also force survey firms to hire a stream scientist to be onsite to ensure that the thalweg is correctly identified in the field. ...the language...should be revised to state: "Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed centerline, or shall provide spot elevations of the stream centerline at the beginning and end of the pipe or culvert extending to a minimum of 10 feet beyond the limits of the proposed impact."	The Department does not recommend revising the thalweg language in 9VAC25-210-80 B 1 j. The Department finds that the majority of firms working in the environmental field are experienced in creating longitudinal profiles that often identify the thalweg of a stream, particularly when proposing a stream restoration project. The Department acknowledges that high flows can pose a challenge, but typically these are a temporary challenge. The Department does not believe there is a need for any specifically-licensed or -educated individual in order to determine the thalweg. Several resources exist on-line to assist with educating staff in conducting longitudinal profiles, including the thalweg, such as but not limited to manuals, training programs, and internet tools created by the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service.
Chesapeake Bay Foundation	New rule would require functional assessment only where applicant proposes permittee-responsible mitigation. DEQ justifies the change through the use of standard mitigation ratios, but these plainly will not take into account myriad site-specific conditions that determine wetland functions...tools cannot reasonably be said to be consistent with statutory command to ensure not loss of wetlands functions. Oppose this change.	The Department does not recommend revising this provision because the provision as proposed continues to meet the statutory obligation of no net loss of existing wetland acreage and function and continues to be managed in accordance with program guidance for standard mitigation ratios. While the program is moving toward the use of better tools to assess compensatory mitigation needs and inform compensatory mitigation decisions, the methods historically used for functional analysis are still valid, albeit not particularly informative. The provision as currently proposed is a compromise between eliminating the requirement altogether and reducing the circumstances under which such analysis is required to those situations where ambiguity is most often encountered, such as in on-the-ground compensation projects.

Commenter	Comment	Agency response
Virginia Department of Transportation	Make this requirement for protective mechanisms a specific permit condition and delete from regulation. Protective mechanisms should not need to be addressed to this level as part of the application process.	The Department does not recommend deleting the requirement in regulation to provide a mechanism of protection in perpetuity as part of an application or compensation plan. This requirement is not a new requirement but has been relocated in the regulation text. This requirement only applies for permittee-responsible compensation and is an integral part of the conceptual compensation plan for unavoidable impacts at the application stage so that the Department can determine if the proposed compensation is viable. Later in the permitting stage, the permittee works to finalize the protective mechanism as part of the final compensation plan.
Virginia Department of Transportation	Delete, state water control law appears to require deq to provide information for downstream riparian landowners and not authorize deq to delegate this task to applicant	The Department recommends removing the provision requesting riparian property owner information from the list of requirements for a complete application. The Department believes that the Code provides the Board with broad authority to request specific types of information in an application, and is specific as to the role of DEQ in notifying riparian owners and to the role of localities to provide the information if requested; however, the Code appears less specific about who must collect the information in the first place.
Virginia Department of Transportation	Object to requirement for GIS-compatible shape files and recommends these be provided if available	The Department recommends replacing the GIS shapefile with a map for the required information by combining 9VAC25-210-80 B 1 e (5) and (6), and striking the GIS language in 9VAC25-210-80 B 1 h, based on public comment and the assessment of economic impacts.

Commenter	Comment	Agency response
Virginia Transportation Construction Alliance	Proposed regulation will have a broader effect on the regulated community, in the form of the cost of the GIS software ($3,500 to 11,000 per single license and $5,000 to $40,000 for a server license, where functionality is limited at the lower cost levels), the cost of new hardware to run the software as it has different requirements from the standard AutoCAD software that most firms operate, as well as the many man-hours needed to become proficient with the GIS software. Most firms work in AutoCAD, which is more proficient with engineering for a given project and providing construction plans. The estimation of cost has been greatly underestimated by the Commonwealth of Virginia. ...Without the specificity, the VDEQ would not be able to use the data in the manner in which they intend, and this may be an obstacle to deeming a permit application complete.	The Department recommends replacing the GIS shapefile with a map for the required information by combining 9VAC25-210-80 B 1 e (5) and (6), and striking the GIS language in 9VAC25-210-80 B 1 h, based on public comment and the assessment of economic impacts.

<u>Comments on compensatory mitigation</u>

All comments pertaining to compensatory mitigation in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	Consider keeping original language as VDOT needs to fully utilize capacity of its multi-project sites in future	The Department does not recommend reinserting language recognizing multi-project compensation sites as this option for providing compensatory mitigation is extremely unlikely to be approved after implementation of the 2008 Federal Mitigation Rule. Thus, the associated language was removed from the regulation to reduce confusion as to the acceptable compensatory mitigation options available to VWP permittees. The Department does not intend to require VDOT or any private entity to revise and update existing multi-project compensation plans or instruments to meet the current Rule standards, as these sites are few in number and in some cases are close to being exhausted.
Chesapeake Bay Foundation	Support amendments regarding compensatory mitigation hierarchy with evaluation on case-by-case basis	The Department thanks you for your support.

Commenter	Comment	Agency response
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support changes made to mitigation hierarchy	The Department thanks you for your support.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support changes that allow deq discretion on need for open water compensation	The Department thanks you for your support.
Dominion Resources Services, Inc.	Support [these] provisions: exempting some open water impacts from permitting and compensation requirements; allowing administrative continuances; requiring functional assessment only for certain projects with non-standard mitigation ratios.	The Department thanks you for your support.
Virginia Mitigation Banking Association c/o Troutman Sanders LLP	Supports changes to the mitigation hierarchy	The Department thanks you for your support.

Comments on definitions related to activities in surface waters
All comments pertaining to definitions as specified and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	**Construction Site**: new definition may cause need to identify staging, borrow, and disposal areas for contractors…application occurs before these areas identified. Potentially adds further time constraints on project development.	The Department does not recommend amending the definition of Construction site. The Department disagrees that the definition may constrain project development. The 'construction site' definition was moved from original 9VAC25-210-60 A 11 to the definitions section. In its original location, the definition also included 'any other land areas which involve land disturbing excavation activities'. The definition clarifies a new exclusion 9VAC25-210-60 A 7 that was developed using language from original 9VAC25-210-60 A 11 as well. Movement of the definition does not change the intent of the definition or how it is applied.

Commenter	Comment	Agency response
Virginia Department of Transportation	**Conversion**: suggest eliminating reference to aquatic resources. Not our preference to have to mitigate for other aquatic resources, such as open water features that we are not currently required to provide compensation for.	The Department does not recommend amending the definition of conversion. The definition was developed through collaboration with the Citizen Advisory Group based on a suggestion made during that process to clarify differences between permanent and temporary impacts. The definition supports the program's current practices regarding permanent impacts. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address compensation requirements for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	**Multi-project mitigation site**: definition was deleted but VDOT must still be able to use our multi-use sites for compensation. Keep definition.	The Department does not recommend reinserting a definition for multi-project compensation sites in order to reduce confusion as to the acceptable compensatory mitigation options available to VWP permittees. The definition has no bearing on how these facilities are regulated or managed. The Department does not intend to require VDOT or any private entity to revise and update existing multi-project compensation plans or instruments to meet the current Rule standards, as these sites are few in number and in some cases are close to being exhausted.
Virginia Department of Transportation	**Undesirable plant species**: last portion of definition can make it too restrictive, as the original site condition may be undesirable or of lower quality than that which is desired	The Department does not recommend revising the proposed definition as this wording reflects the program's practice on what is considered to be unacceptable or undesirable plant species, particularly in restoring temporary impacts.

<u>Comments on modifications to permits</u>
All comments pertaining to modifications of permits in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	Change the amount of time to 15 days instead of 90 days prior to expiration date - it is not often known or clear whether an extension will be needed that far ahead	The Department does not recommend revising the amount of days necessary prior to the expiration of a less-than-15-yr-term individual permit to apply for an extension. Ninety days represents a compromise between the originally suggested 180 days and another suggestion of 30 days made by participants of the Citizens Advisory Group. This timeframe is consistent with current experience in processing requests for minor modifications.

Commenter	Comment	Agency response
Virginia Department of Transportation	Review time should be 5 days instead of 10 - could result in significant cost and scheduling delays	The Department does not recommend revising the amount of days provided to staff for responding to notice of additional temporary impacts. Ten days represents a compromise between five and 15 days, both suggestions made by participants of the Citizens Advisory Group. This length of time allows for the consideration of weekends and state holidays, as well as potential coordination inside and outside of the Department. Staff makes every effort to respond in a timely manner.
Chesapeake Bay Foundation	Oppose amendment allowing an increase in wetland impacts by a percentage under a minor modification process. The treatment of up to one acre as 'largely insignificant' squarely contradicts Virginia wetland policy and use of the minor modification process avoids public notice and comment.	The Department recommends removing the proposed change of percentage additional impacts under the minor modification process and reverting to the existing limits allowable under a minor modification, as set forth in the current regulation. While the Department believes that this change will result in more program staff time spent on the processing major modifications, we appreciate the public's need to be informed and to participate in the process.
Virginia Transportation Construction Alliance	Proposed threatened or endangered species are not listed species under the Endangered Species Act, thus are not afforded the same protections as listed threatened or endangered species - reference to proposed should be removed, as well as reference to federal species as the Commonwealth of Virginia does not have jurisdiction over federal T&E species, and this has to be handled through U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service. These two items are listed in order of importance.	The Department recommends an amendment to Section 180 E 7 b to strike 'proposed' but to also add a statement suggesting that permittee verifies that the project will not impact proposed species or habitat. The Department does not recommend deleting 'federally listed' in relation to threatened or endangered species. Original language containing 'federally listed' was revised and moved from Section 80 B 1 k to Section 80 B 1 l and copied to Section 180 E 7 b and from Section 115 C 2 c (6) to Section 360 3 c (3). In accordance with 9VAC25-210-50 B 2, no VWP permit shall be issued where terms and conditions of such permit do not comply with state law, including Chapter 5 of Title 29.1, which authorizes Virginia to adopt the federal list, as well as modifications and amendments thereto, and to declare by regulation that species *not appearing* on the federal lists are endangered or threatened species in Virginia.

Miscellaneous comments
All comments pertaining to miscellaneous items in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	All existing language was stricken - was this intentional or an error?	Section 120 has not been proposed for deletion. The Registrar does not print in the Town Hall web site or in the Virginia Register any sections where no edits are proposed.
Virginia Department of Transportation	Object to inclusion of new language that seems to give DEQ ability to request information on a case-by-case basis beyond what is required for a complete application. DEQ could use this section to deem application incomplete and keep review clock from starting.	The Department does not recommend deleting Section 55. This section replaces the original Section 90 E 1 and multiple other locations in the regulation where reference is made to the Department requesting additional information. Similar language is used in multiple other Department regulations and is reflective of authority provided in the Code of Virginia. The stand-alone Section 55 does not provide any authority to make informational requests beyond that which is already afforded the Department.

2. Surface Water Withdrawal Provisions

Below summarizes staff responses, organized by topic, to comments received during the public comment period that pertain to provisions related to surface water withdrawals and to Part V for Surface Water Withdrawals.

Consolidation of Surface Water Withdrawal Provisions
All comments pertaining to consolidation of withdrawal provisions and staff responses are listed below.

Commenter	Comment	Agency response
Andrea Wortzel, Mission H20	Mission H20 agrees with the [DEQ's] proposal to separate out the surface water withdrawal permitting provisions from the wetland-related provisions.	Staff appreciates the comment.
Pamela Faggert, Dominion Resources Services, Inc.	We are supportive of the proposed organizational changes to the regulations to clarify and differentiate the water withdrawal permit requirements from those for wetland and stream impact activities.	Staff appreciates the comment.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	VMA supports the administrative changes both to the individual sections and to the separation of the wetland permitting provisions from the surface water withdrawal permitting provisions.	Staff appreciates the comment.

Beneficial Uses Definition
All comments pertaining to the definition of beneficial use and staff responses are listed below.

Commenter	Comment	Agency response

Steve Edgemon and Charles Murray, Fairfax Water	The proposed definition of beneficial use in 9 VAC 25-210-10 directly conflicts with the Code of Virginia (see § 62.1-10). The Code of Virginia states the importance of water supply and sets a framework for the effective use of water resources for all beneficial uses, with human use as the highest priority in the ordered hierarchy(§ 62.1-10(b)). We recommend this part of the definition be incorporated into the VWP definition in 9 VAC 25-210-10.	The definition for beneficial uses is repeated several times in the Code of Virginia, with some variations to identify or clarify a use. The Department's proposal is to conform the definition of beneficial use included in the regulation to that used in Section 62.1-44.3 under Chapter 3.1 State Water Control Law, which is the same chapter under which the VWP Permit Program obtains its authority.
Kristen Lentz, City of Norfolk	The rules of statutory interpretation require that these two statutory definitions [of beneficial uses found under Sections 62.1-10 and 62.1-44.3 of the Code of Virginia] be read together so as to avoid direct conflict. As such, it is imperative to include this statement [*Public water supply uses for human consumption shall be considered the highest priority*] in the regulatory definition.	The definition included in the VWP regulations is from Section 62.1-44.3 under Chapter 3.1 State Water Control Law, which is the same chapter under which the VWP Permit Program obtains its authority. The Department believes it is appropriate to use the definition for beneficial uses that is used in the State Water Control Law of the Code of Virginia. The General Assembly has considered the issue several times, most recently after the 2007 VWP amendments and did not make the change (Acts of Assembly, Chapter 659). The implementation of this definition has been recognized by the courts as a balancing process by the Department. These definitions and statutory directives in the State Water Control Law reflect the General Assembly's recognition that the many uses of water may at times be conflicting. The Commonwealth's water policy, as set forth in the Water Control Law, requires the Department to balance existing and proposed uses, with the directive that domestic and other existing beneficial uses shall be considered the highest priority uses (Code § 62.1-44.15:22(A)). In considering a water protection

		permit, the Department is required to balance the various uses, and the statutory directive that the Board "protect" existing instream beneficial uses must be viewed in this context. That directive requires the Department to exercise its judgment to ensure that such uses be protected, not in an absolute sense and at the cost of rejecting any proposed uses, but within a reasoned perspective in view of competing statutory considerations. (see Supreme Court of Virginia. 270 Va. 423, 447, 621 S.E.2d 78, 91 (2005)).
Andrea Wortzel, Mission H20	DEQ is proposing to amend the definition of 'beneficial use' to read as follows: *both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for the purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, and cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic uses (including public water supply), agricultural uses, electrical power generation, commercial uses, and industrial uses*…Because DEQ is adding 'preservation of instream flows' to this definition, at a minimum DEQ should further include documented water rights by grant…and should be included as a beneficial use protected against future withdrawal decisions…Likewise, grandfathered withdrawal are protected by statue…should also be recognized within this definition.	The Department's proposal is to conform the definition of beneficial use included in the regulation to that used in Section 62.1-44.3 under Chapter 3.1 State Water Control Law, which is the same chapter under which the VWP Permit Program obtains its authority. Grandfathered withdrawals are off-stream beneficial uses and are recognized by the definition. Grandfathered withdrawals are off-stream beneficial uses and are already recognized by the definition. We believe it appropriate to use the statutory definition identified above. We do not believe it is appropriate to add this suggested additional language because it is an accepted legal principle that administrative programs do not grant or modify common law water rights. State Water Control Law does not, and could not, authorize the Board to adjudicate any private rights (see Supreme Court of Virginia. 270 Va. 423, 447, 621 S.E.2d 78, 91 (2005)).
Robert Steidel, City of Richmond	DEQ is proposing to change the definition of beneficial use to add the underlined language below: *'Beneficial use' means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for the*	The Department's proposal is to conform the definition of beneficial use included in the regulation to that used in Section 62.1-44.3 under Chapter 3.1 State Water Control Law, which is the same chapter under which the VWP Permit Program obtains its authority. Grandfathered

	purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, and cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic uses (including public water supply), agricultural uses, electrical power generation, commercial uses, and industrial uses…As Virginia moves forward to identify and protect both instream uses and withdrawals for beneficial offstream uses, all water rights…should be explicitly recognized, as well as grandfathered withdrawals…DEQ should afford the rights protection as a beneficial use in the VWP surface water withdrawal permitting process…grandfathered withdrawals should be recognized as a beneficial use that should be accounted for in the VWP permitting process.	withdrawals are off-stream beneficial uses and are recognized by the definition. We believe it appropriate to use the statutory definition identified above. We do not believe it is appropriate to add this suggested additional language because administrative programs do not grant or modify common law water rights. State Water Control Law does not, and could not, authorize the Board to adjudicate any private rights (see Supreme Court of Virginia. 270 Va. 423, 447, 621 S.E.2d 78, 91 (2005)).

Public Water Supply Safe Yield Definition

All comments pertaining to the definition of public water supply safe yield and staff responses are listed below.

Commenter	Comment	Agency response
Steve Edgemon and Charles Murray, Fairfax Water	The [public water supply] definition used in the proposed regulation is inconsistent with existing Waterworks regulation – definition that is vital to enabling the VDH Office of Drinking Water to fulfill its mission…The proposed definition is a sweeping shift in regulatory practice and a major change in public policy…These [waterworks] systems are authorized by a VDH-issued waterworks permit, the conditions of which could be jeopardized by potential conflicts with DEQ's proposed definition…This lack of clarity and uncertain timing for any changes may pose a significant problem to many existing, expanding, and new Waterworks in Virginia…We suggest DEQ delete the proposed definition…from the regulation and leave the existing definition..in the Waterworks Regulations.	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. A safe yield included in a VDH permit is not an authorization, guarantee, or right to a specified amount of water from a water body. The State Water Control Board began publishing safe yield

		determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.
Craig Rice, Metropolitan Washington Council of Governments (COG)	The proposed 'safe yield' definition is inconsistent with existing Waterworks Regulation (12 VAC 5-590-830)…[VDH] permit conditions for communities and utilities…could be put at risk, creating an unknown economic impact.	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.
Kristen Lentz, City of Norfolk	The purpose of the safe yield determination…is to ensure that the sources of water for a waterworks system can provide sufficient water to meet the demonstrated need of the system to supply water to its customers…This analysis has nothing to do with water resource protection, but only with reliability of the waterworks system…DEQ's role with respect to safe yield calculations…is limited in scope to an evaluation (in cooperation with VDH) of the capability of the system to provide adequate water…recognized that DEQ has the separate authority to issue regulations that are protective of water resources…by including the term 'safe yield' in the VWP permit regulation, it confuses this authority with the more limited authority it is granted to consult on issuance of VDH permits…Given the great confusion caused by the use of the term 'safe yield' by the two agencies [DEQ and VDH] in	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise

	separate but related contexts, the term…should be removed from the proposed regulation. If DEQ and VDH wish to clarify DEQ's role in connection with VDH's safe yield determination, this should be addressed in VDH's waterworks regulation.	known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.
Kristen Lentz, City of Norfolk	…in the VDH context, as historically referenced in its waterworks regulation and permits issued there under, safe yield describes the source capacity of a public water supply system. It is separate and distinct from, and particularly in the case of conjunctive use systems that utilize multiple surface water and groundwater sources, broader than the safe yield concept as defined and utilized in the proposed DEQ regulation.	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day. While some systems may be excluded from VWP permitting, the methodology of calculating a complex system using multiple sources can be and has been done before by the agency. DEQ has, since 1985, evaluated the water available to a given water system from multiple sources of supply, including for conjunctive systems.
Andrea Wortzel, Mission H20	DEQ's appropriation of the term [safe yield] and application in the VWP surface water withdrawal regulation removes it from the context of the reliability of a waterworks system...Applying the term outside of that context creates confusion and adds another layer to the water withdrawal permitting	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public

	program for non-waterworks systems…makes it a tool of environmental protection rather than…for the protection of public health…Changing the focus from human health to the environment makes is unclear what the term will mean or how it will be evaluated in the VDH waterworks permitting process.	water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.
Andrea Wortzel, Mission H20	…unclear how and when the safe yield calculation will apply to grandfathered withdrawals.	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.
Andrea Wortzel, Mission H20	…there is no clear understanding of how and whether the term 'safe yield' will continue to be used in the VDH waterworks permitting context…If the term is going to continue to be	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department

	used by VDH, but with a new definition, there is uncertainty about the impact this will have on the VDH permitting program.	agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.
Scott Dewhirst, City of Newport News	The DEQ definition [of safe yield] does not account for safe yield as it is applied to more complex water systems like Newport News Waterworks…the DEQ definition seems to only apply to simple single source withdrawals…	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.

		The methodology of calculating a complex system using multiple sources can be and has been done before by the agency. DEQ has, since 1985, evaluated the water available to a given water system from multiple sources of supply, including for conjunctive systems.
Scott Dewhirst, City of Newport News	We need a better understanding of how VDH might use DEQ's determination of an individual water supply's safe yield will be translated to a system's safe yield and thus the systems' ability to meet customer demands during the most limiting water supply conditions… We believe that removing the determination of 'safe yield' from the VDH regulations without some understanding of how their regulations will be applied leaves us wondering how we might fully assess the impact of the changes.	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.
Pamela Faggert, Dominion Resources Services, Inc.	We support the clarification of the term 'public water supply safe yield' to clarify that the term…applies only to drinking water suppliers and not industrial permit holders. We request that 'public water supply' be added to the term 'safe yield' throughout Part V….	The Department revised the regulatory language under Part V where instances of "safe yield" appear to add "public water supply" to identify that the term applies to public water supply projects. These changes were limited to the project alternatives section under 9VAC25-210-360.
Robert Steidel, City of Richmond	Removing the term [safe yield] from the context of the reliability of a waterworks system and placing it in the water withdrawal permitting provision might create the impression that safe yield is now a limit on the amount of water that may be withdrawn based only on environmental conditions…term historically has represented the amount that can be withdrawn safely during a drought	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is

	condition...the proposed 'transfer'…has caused significant confusion about how the term would be used in the future.	ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.
Robert Steidel, City of Richmond	…the City is also concerned about the implications of moving the safe yield calculation to DEQ…If a requirement to provide a safe yield calculation continues to existing in the VDH waterworks regulation, but safe yield is defined and calculated by DEQ in the water withdrawal program, the impression will be that DEQ will in effect be regulating grandfathered withdrawals.	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.
Robert Steidel, City of Richmond	…the City suggests that DEQ delay the substantive changes [regarding safe yield]…so that the proposed changes can be reviewed in conjunction with the expected and announced regulatory changes to the VDH waterworks regulation…requests that the	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the

	definition…not be included in VWP regulation…or that a decision on changes to the definition and location of the term be deferred for further discussion.	determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.
Dean Dickey, Virginia Water and Waste Authorities Association (VWWAA)	VWWAA's biggest concern with the VWP Regulation proposal is its potential to impact grandfathered water rights by its move of the definition of 'safe yield' from the [VDH] Regulations to the VWP Regulation…The purpose of the safe yield definition is to ensure an adequate quantity of water is available…DEQ wants to move this definition into the VWP Regulation and include it as part of setting of instream flow conditions….	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.
Dean Dickey, Virginia Water and Waste	VWWAA requests that the proposed definition of 'safe yield' not be included in the VWP Regulation and that VDH remain the primary	This definition will be removed from the final amendments of this particular regulatory action. This

Authorities Association (VWWAA)	agency that determines the safe yield number.	does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.

Effect of "Public Water Supply Safe Yield" Definition on Grandfathered Water Withdrawals
All comments pertaining to the affect of amendments on grandfathered water withdrawals and staff responses are listed below.

Commenter	Comment	Agency response
Steve Edgemon and Charles Murray, Fairfax Water	By eliminating the definition of safe yield from the Waterworks [Regulation]…and replacing it with a new definition, all Waterworks permits in Virginia are impacted by the proposed definition…even if they are grandfathered in VWP regulation…The Commonwealth should consider developing a list of water systems and manufacturing facilities that would be affected if current grandfathered water-withdrawal rights granted within the Virginia Code were to be altered or denied.	Section 62.1-44.15:22.B of the Code of Virginia excludes from permitting requirements any water withdrawal in existence on July 1, 1989. A change to the exclusion status of this set of water users cannot be made without a statutory change, which is not a proposal put forth by the Department. In addition, the exclusion from permitting requirements does not grant a water right to those users. A safe yield determination or reported intake capacity for a waterworks also does not grant a volume of water to which the user is entitled. A safe yield included in a VDH permit is not an authorization, guarantee, or right to a specified amount of water from a water body. The grandfathering provision of the VWP statute simply defines the trigger for an increase in a water

		withdrawal that would require the withdrawal to be permitted. It is a misnomer to characterize them as "water rights." The Department believes the definition of public water supply safe yield does not and cannot impact water rights because water rights may not be determined through an administrative or permitting process.
Craig Rice, Metropolitan Washington Council of Governments (COG)	…a new [safe yield] definition could create a situation where grandfathered water-withdrawal rights granted within the Virginia Code may be altered or denied.	Section 62.1-44.15:22.B of the Code of Virginia excludes from permitting requirements any water withdrawal in existence on July 1, 1989. A change to the exclusion status of this set of water users cannot be made without a statutory change, which is not a proposal put forth by the Department. In addition, the exclusion from permitting requirements does not grant a water right to those users. A safe yield determination or reported intake capacity for a waterworks also does not grant a volume of water to which the user is entitled. The grandfathering provision of the VWP statute simply defines the trigger for an increase in a water withdrawal that would require the withdrawal to be permitted. It is a misnomer to characterize them as "water rights." The Department believes the definition of public water supply safe yield does not and cannot impact water rights because water rights may not be determined through an administrative or permitting process.
Dean Dickey, Virginia Water and Waste Authorities Association (VWWAA)	VWWAA is concerned that DEQ could use this provision [safe yield] to limit grandfathered withdrawals through the setting of a safe yield by DEQ that is lower than the grandfathered withdrawal amounts…we could support clarifying language that expressly states that DEQ's safe yield determination should not limit any grandfathered water rights.	Section 62.1-44.15:22.B of the Code of Virginia excludes from permitting requirements any water withdrawal in existence on July 1, 1989. A change to the exclusion status of this set of water users cannot be made without a statutory change, which is not a proposal put forth by the Department. In addition, the exclusion from permitting requirements does not grant a water right to those users. A safe

		yield determination or reported intake capacity for a waterworks also does not grant a volume of water to which the user is entitled. The grandfathering provision of the VWP statute simply defines the trigger for an increase in a water withdrawal that would require the withdrawal to be permitted. It is a misnomer to characterize them as "water rights." The Department believes the definition of public water supply safe yield does not and cannot impact water rights because water rights may not be determined through an administrative or permitting process.
Scott Dewhirst, City of Newport News	We are concerned that a move of defining safe yield to DEQ from VDH could create a lever for limiting withdrawal of grandfathered systems.	Section 62.1-44.15:22.B of the Code of Virginia excludes from permitting requirements any water withdrawal in existence on July 1, 1989. A change to the exclusion status of this set of water users cannot be made without a statutory change, which is not a proposal put forth by the Department. In addition, the exclusion from permitting requirements does not grant a water right to those users. A safe yield determination or reported intake capacity for a waterworks also does not grant a volume of water to which the user is entitled. The grandfathering provision of the VWP statute simply defines the trigger for an increase in a water withdrawal that would require the withdrawal to be permitted. It is a misnomer to characterize them as "water rights." The Department believes the definition of public water supply safe yield does not and cannot impact water rights because water rights may not be determined through an administrative or permitting process.
Thomas Leahy, City of Virginia Beach	Virginia Beach joins with Norfolk in opposing any new regulations that would encroach on to this [grandfathered withdrawal] statutory exemption, or decrease the rated safe yield of either system.	Section 62.1-44.15:22.B of the Code of Virginia excludes from permitting requirements any water withdrawal in existence on July 1, 1989. A change to the exclusion

		status of this set of water users cannot be made without a statutory change, which is not a proposal put forth by the Department. In addition, the exclusion from permitting requirements does not grant a water right to those users. A safe yield determination or reported intake capacity for a waterworks also does not grant a volume of water to which the user is entitled.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	VMA supports the statutory exemption expressed in Va. Code § 62.1-246 for the grandfathered surface water withdrawals, and appreciates DEQ's explicit recognition of the protection afforded to such withdrawals in the Agency Background Document.	Staff appreciates the comment.
Pamela Faggert, Dominion Resources Services, Inc.	Virginia Code § 62.1-44.15:22 specifies that VWP permits are not required for water withdrawals established before July 1, 1989…we support the retention of the unchanged regulatory language in 9 VAC 25-210-310.	Staff appreciates the comment.

Variance Definition

One comment received pertaining to the definition of a variance and staff response is listed below.

Commenter	Comment	Agency response
Pamela Faggert, Dominion Resources Services, Inc.	We request removal of 'during a drought' in the definition of variance…would provide flexibility to address non-drought emergencies.	The conditions under which a variance may be granted from a permit condition for a surface water withdrawal is identified in 9VAC25-210-390. This section explicitly states that relief from any condition of a VWP permit may only be granted during a drought. Therefore, removing the phrase "during a drought" from the definition of "variance" does not enable the Department to grant a variance during non-drought events under that section of regulation. The Department appreciates the underlying concern that the regulations do not provide a process for a permittee to seek relief from a permit condition outside of drought events. The variance action was created to enable the Department to grant a permittee relief during a drought,

		but only once the permittee has taken steps to avoid need of a variance through implementing conservation measures. This requirement was established by the 2003 Acts of Assembly (Chapter 399) and the 2007 Acts of Assembly (Chapter 659), which established that alterations to permit conditions during drought must meet certain conditions. Development of a process to address non-drought events would necessitate revising the regulation to broaden the applicability of a variance beyond what was originally contemplated, which the Department considers a substantive change to the intent of a variance. The Department believes relief from permit conditions during non-drought events is best addressed through a condition of the permit to enable such condition to be project specific, such as ability to immediately cease releases from a reservoir to aid in search and rescue efforts for a missing person in areas downstream of such a facility.

Permit Exclusions

One comment pertaining permit exclusions and staff responses is listed below.

Commenter	Comment	Agency response
Scott Dewhirst, City of Newport News	…we noticed under Section 9 VAC 25-210-310.A.3.a, withdrawals initiated between July 1, 1989 and July 1, 2007 would be limited to the highest withdrawal during a 12-consecutive month period during the 10 years prior to July 25, 2007…it gives us concern that there might not be a good understanding of how a more complex water supply system works and further concerns us that such a limitation may eventually be applied to 'grandfathered' systems…We strongly believe that historical withdrawals should not be used to set a permit limit. It is likely that a situation requiring higher withdrawals will occur in the future…The established installed capacity should be the limiting factor in setting withdrawal limits.	The exclusion provision that pertains to withdrawals initiated after July 1, 1989, and before July 1, 2007, remains unchanged in the proposed regulation. The only revisions to this section (9VAC25-210-310.A.2) are to clarify existing language and remove sunset provisions that have passed. The exclusion requirements that pertain to any existing lawful unpermitted surface water withdrawal initiated after July 1, 1989 and before July 1, 2007, establishes a limit for which that withdrawal is excluded from VWP permitting requirements. This provision only applies to those unpermitted withdrawals that needed a permit after the inception of the program in 1989 but before

		the 2007 amendments. The limit is based upon the largest 12-consecutive month withdrawal that occurred in the 10 years prior to July 25, 2007, which is the effective date of the regulation in which the provision was adopted. Establishing an initial permit or excluded volume based upon historical use has been the Department's practice for multiple decades in its water withdrawal programs. During the 2007 amendments, it was agreed that a limit established using the historical volume from the preceding 10 year timeframe, which encompassed the drought of record for the majority of the Commonwealth, represents a volume at which the excluded user may reasonably expect to continue their established operations. This action followed past precedent used by the Department in the Groundwater Withdrawal Permit Program. However, should the user modify their operations such that an increase in withdrawal above the excluded limit is needed, the user may request a higher volume through submittal of an application for a VWP permit.

Coordinated Review
All comments pertaining to coordinated review and staff responses are listed below.

Commenter	Comment	Agency response
Andrea Wortzel, Mission H20	Proposed Section 9 VAC 25-210-[330] provides for the coordinated review with the Virginia Marine Resources Commission for surface water withdrawals. For public water supply withdrawals, coordination with VDH should also be referenced.	The Department does coordinate with VDH on every VWP permit application in accordance with Section 62.1-44.15:20 of the Code of Virginia, which requires the Department to consult with and give full consideration to the written comments of state agencies, including VDH. The Department believes that this level of coordination is what is authorized at this time. The intent of 9VAC25-210-330 is to provide a process to carry out the statutory requirement of Section 62.1-44.15:5.01 of the Code of Virginia (2005 Acts of Assembly,

		Chapter 49). The statute requires DEQ coordinate with VMRC during the review of an application for a surface water withdrawal when both agencies' review the same application under their respective permitting program. This coordination is intended to ensure consistency, prevent conflicting requirements from state agencies, and inform the public of both agencies' review. This requirement solely addresses VMRC and DEQ.
Robert Steidel, City of Richmond	…the City believes that the proposed Section 9 VAC 25-210-[330] be modified to require that applications for public water supply withdrawals be reviewed and coordinated with VDH.	The Department does coordinate with VDH on every VWP permit application in accordance with Section 62.1-44.15:20 of the Code of Virginia, which requires the Department to consult with and give full consideration to the written comments of state agencies, including VDH. The Department believes that this level of coordination is what is authorized at this time. The intent of 9VAC25-210-330 is to provide a process to carry out the statutory requirement of Section 62.1-44.15:5.01 of the Code of Virginia (2005 Acts of Assembly, Chapter 49). The statute requires DEQ coordinate with VMRC during the review of an application for a surface water withdrawal when both agencies' review the same application under their respective permitting program. This coordination is intended to ensure consistency, prevent conflicting requirements from state agencies, and inform the public of both agencies' review. This requirement solely addresses VMRC and DEQ.

Evaluation of Project Alternatives

All comments pertaining to the evaluation of project alternatives and staff responses are listed below.

Commenter	Comment	Agency response
Andrea Wortzel, Mission H20	It is unclear whether proposed 9 VAC 25-210-360 applies to all water withdrawals or only to public water supply withdrawals…unclear how…text relating to 'local water supply need' applies in the context of a withdrawal by an industrial or agricultural users…Many of the	The informational requirements under 9VAC25-210-360.A applies to all surface water withdrawals, with the possible exception of two items that pertain to projected demand contained in a local or

	other provisions in this section would appear inapplicable to private withdrawers.	regional water supply plan and population growth trends. In response to comments, the Department revised "local water supply need" to "need for water to meet the project purpose" under 9VAC25-210-360.A to provide clarity to this section. Additionally, "if applicable" was included at the end of the sentences under 9VAC25-210-360.A.2.a and b.
Andrea Wortzel, Mission H20	Such a general statement [in 9 VAC 25-210-360.A.4] does not provide sufficient guidance to private withdrawers as to the level and components of the required alternatives analysis. Clarification is needed about the demonstration of need required for industrial and agricultural water users.	In response to comments, the Department revised the regulatory language to specifically identify the applicable provisions.
Pamela Faggert, Dominion Resources Services, Inc.	The proposal includes the language that an applicant for a water withdrawal permit must demonstrate that the project meets a 'local water supply need'…could imply that a project must be associated with public water supplies or be identified in the state or local water supply plans. We request clarifying language be added to address this potential misinterpretation. Potential language could be replace 'local water supply need' with need of water to meet the project purpose.'	The informational requirements under 9VAC25-210-360.A applies to all surface water withdrawals, with the possible exception of two items that pertain to projected demand contained in a local or regional water supply plan and population growth trends. In response to comments, the Department revised "local water supply need" to "need of water to meet the project purpose" under 9VAC25-210-360.A to provide clarity to this section.
Pamela Faggert, Dominion Resources Services, Inc.	Provision 9 VAC 25-210-360.2 requires two pieces of information that will not apply to all water withdrawals…we request including the term 'If applicable' [to subsections (a) and (b)].	In response to comments, "if applicable" was included at the end of the sentences under 9VAC25-210-360.A.2.a and b.
Pamela Faggert, Dominion Resources Services, Inc.	The regulation should identify the subsections in 9 VAC 25-210-360.3 that will not apply to water withdrawals that are not public water supplies….	In response to comments, the Department revised the regulatory language to specifically identify the applicable provisions.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	VMA requests that DEQ revise proposed 9 VAC 25-210-360 to clarify that non-public water supply withdrawal projects do not need to demonstrate that the project meets a local water supply need.	In response to comments, the Department revised "local water supply need" to "need for water to meet the project purpose" under 9VAC25-210-360.A to provide clarity to this section.
Andrea Wortzel and Brooks	…the evaluations of projects alternatives section in Proposed 9 VAC 25-210-360	In response to comments, the Department revised the regulatory

Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	includes a vague requirement that alternatives analysis for surface water withdrawals other than for public water supply 'shall include all applicable items included in this subdivision 3 of this section,' which is the section applicable to public water supply alternatives analyses…a more appropriate approach would be for DEQ to identify and articulate in subsection 4 which alternatives analysis requirements apply to non-public water supply withdrawers.	language to specifically identify the applicable provisions.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	In order to add additional clarity to this portion of the regulations, DEQ should revise Proposed 9 VAC 25-210-360.1.b to read 'The public water supply safe yield and lowest daily flow of record' and likewise with 9 VAC 25-210-360.3.c.5, which should be revised to read 'Evaluation of alternative public water supply safe yields.'	In response to comments, the Department revised the regulatory language under Part V where instances of "safe yield" appear to add "public water supply" to identify that the term applies to public water supply projects. These changes were limited to the project alternatives section under 9VAC25-210-360.

Permit Modifications

All comments pertaining to permit modifications and staff responses are listed below.

Commenter	Comment	Agency response
Steve Edgemon, Fairfax Water	...changes that trigger the need for a permit modification…are highly subjective in nature. Of particular concern is need for a permit modification for changes in "operational" permit requirements. It is unclear whether mere changes to intake screens, pump operations and other operation and maintenance activities would necessitate a VWP permit modification.	Modifications to a VWP permit are limited to changes in activities that necessitate a revised permit condition or increase the impact to instream flow under the jurisdiction of the VWP Permit Program. Therefore, changes that are operational or administrative in nature only trigger a permit modification if the change is to an aspect of the project that is covered by a condition of the permit or may negatively affect instream flow. For instance, if a permitted project has a permit condition that pertains to intake screens, any change to the intake screens that do not comply with the permit require a permit modification. Additionally, a permit modification may be necessary to address any change to a plan required by the permit, such as a water conservation plan or withdrawal operations plan, which alters the requirements for the plan as set forth in the permit. The Department believes the new section provides clarity and certainty that was previously

		unavailable to permittees and staff.
Craig Rice, Metropolitan Washington Council of Governments (COG)	The proposed new section on permit modifications for surface water withdrawal permits…creates uncertainty about whether relatively minor operational or administrative activities might trigger the need for a VWP permit modification.	The Department believes that greater uncertainty exists today and will continue without the proposed change. The Department believes the new section provides clarity and certainty that was previously unavailable to permittees and staff. Modifications to a VWP permit are limited to changes in activities that necessitate a revised permit condition or increase the impact to instream flow under the jurisdiction of the VWP Permit Program. Therefore, changes that are operational or administrative in nature only trigger a permit modification if the change is to an aspect of the project that is covered by a condition of the permit or may negatively affect instream flow. For instance, if a permitted project has a permit condition that pertains to intake screens, any change to the intake screens that do not comply with the permit require a permit modification. Additionally, a permit modification may be necessary to address any change to a plan required by the permit, such as a water conservation plan or withdrawal operations plan, which alters the requirements for the plan as set forth in the permit.
Andrea Wortzel, Mission H20	The terms used to describe the [modification] changes [for surface water withdrawals] are subjective in natures…As drafted, the provision creates a situation where permitted withdrawer would need to consult with DEQ before making any changes to ensure that a formal modification is not needed.	The Department believes that greater subjectivity exists today and will continue without the proposed change. Currently, the regulations are silent as to the changes specific to surface water withdrawal activities that may be considered under a minor modification and only provide one generic provision for change under a major modification. This results in uncertainty for permittees, the public, and staff as to the type of changes specific to withdrawals that may be appropriate under a minor modification versus a major modification of the permit. As part of the reorganization of the regulation, the Department included a section under the new Part V that establishes criteria, which is

		consistent with DEQ's other permitting programs, for when minor and major modifications of the permit may occur that are specific to surface water withdrawal activities. The criteria are based upon staff's experience modifying permits to incorporate changes requested following permit issuance. Some subjectivity is inherent in the process as the case by case review of any modification relates to a particular withdrawal and its unique set of impacts. Criteria were developed to strike a balance between broadness and specificity to best cover a variety of potential changes that may occur after permit issuance. The Department believes the new section provides clarity and certainty that was previously unavailable to permittees and staff regarding the possible changes that may be considered under either a major or minor modification of a VWP permit for surface water withdrawals.
Andrea Wortzel, Mission H20	A change in the type of [water] use should not necessitate a major permit modification unless the new use results in greater consumptive use of the resource.	The intent of this criterion is to address situations when the basis upon which the permit was issued is altered. A change in use type results in a different project purpose and a different methodology for determining need and projecting water demand because these items are use type specific. For instance, the project purpose, water need and demand projection for public water supply differs than that for electrical generation or for golf course irrigation. Furthermore, available project alternatives may differ based upon the use type. Therefore, this type of change necessitates a reevaluation of the authorized activity. Examples of such primary uses would be agricultural irrigation, golf course irrigation, public water supply, manufacturing, electricity generation, etc. The type of primary use for which a permitted withdrawal is authorized, and

		therefore a change in that use would result in a modification, is clearly identified as a condition in VWP permits issued in the last five years. However, the Department appreciates the concern voiced and recognizes that older VWP permits do not have the withdrawal's authorized use clearly identified as a condition in the permit. Therefore, in response to the comment, the regulatory language was revised under 9VAC25-210-380.A.4 to include some examples of use types.
Andrea Wortzel, Mission H20	It is unclear whether mere changes to intake screens, pump operations and other maintenance would necessitate a minor modification. This lack of clarity creates confusion…Requiring a permit modification for changes that are operational or administrative in nature would be unduly burdensome.	Modifications to a VWP permit are limited to changes in activities that necessitate a revised permit condition or increase the impact to instream flow under the jurisdiction of the VWP Permit Program. Therefore, changes that are operational or administrative in nature only trigger a permit modification if the change is to an aspect of the project that is covered by a condition of the permit or may affect water resources. For instance, if a permitted project has a permit condition that pertains to intake screens, any change to the intake screens that do not comply with the permit require a permit modification. Additionally, a permit modification may be necessary to address any change to a plan required by the permit, such as a water conservation plan or withdrawal operations plan, which alters the requirements for the plan as set forth in the permit.
Andrea Wortzel, Mission H20	The timing and approval process that applies to both major and minor modifications is unclear.	As standard for other DEQ permitting programs for individual permits, timeframes to process a modification is not laid out in regulations but may be addressed in guidance. This is due to the variability in the type of requests received and the different levels of due diligence necessary by the Department to conduct an adequate review. However, the major modification process is clarified for the VWP Permit Program under 9VAC25-210-180.C.

Andrea Wortzel, Mission H20	If the purpose of the separation [consolidation of surface water withdrawal provisions under Part V] is to make the applicable requirements more clear, this [modification] section should constitute a stand-alone provision governing modification to surface water withdrawal permits.	The consolidation of the surface water withdrawal provisions under Part V was designed to house all surface withdrawal related provisions in one location to provide clarity to the provisions that apply specifically to that type of activity. The intent outlined by the NOIRA was not to duplicate the entire VWP Permit Program regulation in addition to those activity specific provisions under Part V. Doing so would create more confusion and give the appearance there are two separate programs. Linkages between the two sections are clearly provided within the relevant sections to assist the reader. Modifications to permits not specific to surface water withdrawals, such as the transfer of permits, are addressed under 9VAC25-210-180.
Andrea Wortzel, Mission H20	The new surface water withdrawal section does not address the transfer of permits. Such provisions should be included in the event of a change in ownership.	The transfer of a permit from an existing permittee to a new permittee is addressed under 9VAC25-210-180.E.4 of the VWP regulation.
Pamela Faggert, Dominion Resources Services, Inc.	We request that the phrase 'including increasing the storage capacity for the surface water withdrawal' be removed from 9 VAC 25-210-380.3. In some cases increasing storage capacity will not increase the maximum withdrawal rate or volume…Increasing storage capacity should not be a default trigger for a major modification.	The regulatory language was revised under 9VAC25-210-380.B.3 in response to the comment.
Pamela Faggert, Dominion Resources Services, Inc.	Provision 9 VAC 25-210-380.4 requires a major modification for new uses or modifications of existing uses where the new or modified use is no longer consistent with what was presented in the permit application or in the permit conditions…To clarify that the intent is to capture major changes in water use type we request that the provision include examples of water use types including public water supply, irrigation, electricity generation and others as appropriate.	In response to the comment, the regulatory language was revised under 9VAC25-210-380.A.4 to include some examples of use types.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	The proposed changes do not include a permit transfer provision for surface water withdrawal permit. Such a provision should be provided.	The transfer of a permit from an existing permittee to a new permittee is addressed under 9VAC25-210-180.E.4 of the VWP regulation.

Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	DEQ should clarify the VWP permit modification process in the final regulation.	The major modification process is clarified for the VWP Permit Program under 9VAC25-210-180.C.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	Proposed Section 9 VAC 25-210-380 incorporates by reference the requirements for a modification via the wetlands provisions in 9 VAC 25-210-180. This creates confusion and appears inconsistent with the purpose of separating out surface water withdrawal provisions in the revised regulations.	The consolidation of the surface water withdrawal provisions under Part V was designed to house all surface water withdrawal related provisions in one location to provide clarity to the provisions that apply specifically to that type of activity. The intent outlined by the NOIRA was not to duplicate the entire VWP Permit Program regulation in addition to those activity specific provisions under Part V. Doing so would create more confusion and give the appearance there are two separate programs. Linkages between the two sections are clearly provided within the relevant sections to assist the reader. Modifications to permits not specific to surface water withdrawals, such as the transfer of permits, are addressed under 9VAC25-210-180.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	…the language regarding minor modifications is unclear, and suggests that some traditional administrative and maintenance work associated with surface water withdrawals would now be subject to a DEQ approval process.	Modifications to a VWP permit are limited to changes in activities that necessitate a revised permit condition or affect water resources under the jurisdiction of the VWP Permit Program. Therefore, changes that are operational or administrative in nature only trigger a permit modification if the change is to an aspect of the project that is covered by a condition of the permit or may affect water resources. For instance, if a permitted project has a permit condition that pertains to intake screens, any change to the intake screens that do not comply with the permit require a permit modification. Additionally, a permit modification may be necessary to address any change to a plan required by the permit, such as a water conservation plan or withdrawal operations plan, which alters the requirements for the plan

		as set forth in the permit.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	…changes in the major modification sections state that a change in the use of the water requires a major modification. Given that there is no explicit permit transfer provision, it is unclear whether 9 VAC 25-210-380.A.4 is meant to serve that purpose. Additional clarification of this section is needed.	The intent of this criterion is to address situations when the basis upon which the permit was issued is altered. A change in use type results in a different project purpose and a different methodology for determining need and projecting water demand because these items are use type specific. For instance, the project purpose, water need and demand projection for public water supply differs than that for electrical generation or for golf course irrigation. Furthermore, available project alternatives may differ based upon the use type. Therefore, this type of change necessitates a reevaluation of the authorized activity. Examples of such primary uses would be agricultural irrigation, golf course irrigation, public water supply, manufacturing, electricity generation, etc. The type of primary use for which a permitted withdrawal is authorized, and therefore a change in that use would result in a modification, is clearly identified as a condition in VWP permits issued in the last five years. However, the Department appreciates the concern voiced and recognizes that older VWP permits do not have the withdrawal's authorized use clearly identified as a condition in the permit. Therefore, in response to the comment, the regulatory language was revised under 9VAC25-210-380.A.4 to include some examples of use types. The transfer of a permit from an existing permittee to a new permittee is addressed under 9VAC25-210-180.E.4 of the VWP regulation.
Robert Steidel, City of Richmond	The proposed permit modification section (9 VAC 25-210-90) is confusing for two reasons…cross-references the permit modification process for wetland permits…clearer if located in one place…[and] criteria for major and minor modifications are vague....	The consolidation of the surface water withdrawal provisions under Part V was designed to house all surface withdrawal related provisions in one location to provide clarity to the provisions that apply specifically to that type of activity.

		The intent outlined by the NOIRA was not to duplicate the entire VWP Permit Program regulation in addition to those activity specific provisions under Part V. Doing so would create more confusion and give the appearance there are two separate programs. Linkages between the two sections are clearly provided within the relevant sections to assist the reader. Modifications to permits not specific to surface water withdrawals, such as the transfer of permits, are addressed under 9VAC25-210-180. The criteria are based upon staff's experience modifying permits to incorporate changes requested following permit issuance. Some subjectivity is inherent in the process as the case by case review of any modification relates to a particular withdrawal and its unique set of impacts. Criteria were developed to strike a balance between broadness and specificity to best cover a variety of potential changes that may occur after permit issuance. The Department believes the new section provides clarity and certainty that was previously unavailable to permittees and staff regarding the possible changes that may be considered under either a major or minor modification of a VWP permit for surface water withdrawals.
Robert Steidel, City of Richmond	…proposed 9 VAC 25-210-380.A.4 would require a major permit modification for new uses of the withdrawn water not identified in the permit application. As written, would the section require a public water supplier to obtain a major modification…prior to arranging to sell water to a new industry...? Or, is the proposed section really aimed more at addressing the transfer o[f] water withdrawal permits….	The intent of this criterion is to address situations when the basis upon which the permit was issued is altered. This is most likely to occur during a transfer of permits. A change in use type results in a different project purpose and a different methodology for determining need and projecting water demand because these items are use type specific. For instance, the project purpose, water need and demand projection for public water supply differs than that for electrical generation or for golf course irrigation. Furthermore, available project alternatives may differ

		based upon the use type. Therefore, this type of change necessitates a reevaluation of the authorized activity. Examples of such primary uses would be agricultural irrigation, golf course irrigation, public water supply, manufacturing, electricity generation, etc. The type of primary use for which a permitted withdrawal is authorized, and therefore a change in that use would result in a modification, is clearly identified as a condition in VWP permits issued in the last five years. Public water supplies by their nature serve a diverse set of uses and it is not the intent to address normal changes in the service area use base of a public water supply. Therefore, in response to the comment, the regulatory language was revised under 9VAC25-210-380.A.4 to include some examples of use types. The transfer of a permit from an existing permittee to a new permittee is addressed under 9VAC25-210-180.E.4 of the VWP regulation.
Robert Steidel, City of Richmond	…proposed regulation requires approval of a minor permit modification for 'minor' changes to operational permit requirements…would appear to create a requirement for operators to obtain DEQ approval before undertaking basic operational and administrative changes…DEQ approval for such minor changes should not be required, particularly where such changes have no adverse impacts on the volume of water withdrawn.	Modifications to a VWP permit are limited to changes in activities that necessitate a revised permit condition or negatively affect instream flow under the jurisdiction of the VWP Permit Program. Therefore, changes that are operational or administrative in nature only trigger a permit modification if the change is to an aspect of the project that is covered by a condition of the permit or may negatively affect instream flow. For instance, if a permitted project has a permit condition that pertains to intake screens, any change to the intake screens that do not comply with the permit require a permit modification. Additionally a permit modification may be necessary to address any change to a plan required by the permit, such as a water conservation plan or withdrawal operations plan, which

		alters the requirements for the plan as set forth in the permit.

Administrative Continuance
All comments pertaining to administrative continuance and staff responses are listed below.

Commenter	Comment	Agency response
Andrea Wortzel, Mission H20	The proposed regulation includes a specific time period of 270 days for applying to renew a surface water withdrawal permit…seems unduly lengthy…should be 180 days...consistent with the renewal application process for [VPDES] permits.	The 270 day deadline to submit a reissuance application for a VWP permit for a surface water withdrawal was selected to be consistent with the Department's Groundwater Withdrawal Permitting Program (9VAC25-610-96) which has comparable levels of effort required by the Department in review of a permit. VPDES permits are issued every five years which limits the amount of information to be reviewed. The VWP permit is a fifteen year permit and includes projections of information not only for each year of the permit term but also for a 30-50 year period to evaluate the sizing of water supply storage and consistency with local and regional water supply plans. Reviews of withdrawal applications can be lengthy and 180 days is often insufficient time for staff to conduct the review prior to the permit expiration date.
Pamela Faggert, Dominion Resources Services, Inc.	As proposed, the timeframe for applying for a permit reissuance for water withdrawals will increase from the standard 180 days to 270 days…Given that the proposed revisions will allow administrative continuances of expiring permits (9 VAC 25-210-65), the standard 180 day time period for reapplication is adequate. To the extent the proposal remains unchanged…request that a statement be added clarifying that this requirement only applies to permits issued after the effective date of the regulation.	The 270 day deadline is necessary as the VWP permit is a fifteen year permit and includes projections of information not only for each year of the permit term but also for a 30-50 year period to evaluate the sizing of water supply storage and consistency with local and regional water supply plans. Reviews of withdrawal applications can be lengthy and 180 days is often insufficient time for staff to conduct the review prior to the permit expiration date. The Department does not believe further clarifying language is needed as the provision would only apply to new permits or reissuances that file a complete application after the effective date of the regulation, in accordance with the 9VAC25-210-610, which governs the

		transition between the current and revised regulation.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	The application renewal period for surface water withdrawals should be consistent with the 180 days used in other DEQ programs such as the VPDES permit program, rather than 270 days as proposed by DEQ.	The 270 day deadline to submit a reissuance application for a VWP permit for a surface water withdrawal was selected to be consistent with the Department's Groundwater Withdrawal Permitting Program (9VAC25-610-96) which has comparable levels of effort required by the Department in review of a permit. VPDES permits are issued every five years which limits the amount of information to be reviewed. The VWP permit is a fifteen year permit and includes projections of information not only for each year of the permit term but also for a 30-50 year period to evaluate the sizing of water supply storage and consistency with local and regional water supply plans. Reviews of withdrawal applications can be lengthy and 180 days is often insufficient time for staff to conduct the review prior to the permit expiration date.
Robert Steidel, City of Richmond	…the City supports applying for a renewal 180 days in advance [instead of 270 days]. The 180-day timeframe would be consistent with other regulatory timeframes, and would provide sufficient time to evaluate renewal applications.	The 270 day deadline to submit a reissuance application for a VWP permit for a surface water withdrawal was selected to be consistent with the Department's Groundwater Withdrawal Permitting Program (9VAC25-610-96) which has comparable levels of effort required by the Department in review of a permit. VPDES permits are issued every five years which limits the amount of information to be reviewed. The VWP permit is a fifteen year permit and includes projections of information not only for each year of the permit term but also for a 30-50 year period to evaluate the sizing of water supply storage and consistency with local and regional water supply plans. Reviews of withdrawal applications can be lengthy and 180 days is often insufficient time for staff to conduct the review prior to the permit expiration date.

<u>Permit Transition</u>
All comments pertaining to permit transition and staff responses are listed below.

Commenter	Comment	Agency response
Andrea Wortzel, Mission H20	This section [9VAC25-210-610 that governs transitions] should include a complementary provision that safe yield determinations made prior to the effective date of the regulation, whether by DEQ or VDH, likewise remain in full force and effect until such permits expire or are revoked or terminated.	The Department is unable to bind another agency, such as VDH, through DEQ's regulation. Any regulatory requirement of VDH regarding public water safe yield determinations falls within the regulatory authority of VDH, whose prior permit actions are not impacted by any regulatory change in DEQ's VWP regulation.
Robert Steidel, City of Richmond	The proposed regulation includes a transition provision explaining how the new changes would be implemented….transition provision…should address implementation of this change [safe yield] as well…at a minimum, the regulation should make clear that safe yield determinations made prior to the effective date of the regulation, whether by DEQ or VDH, will remain in full force and effect until such permits later expire or are revoked or terminated.	The Department is unable to bind another agency, such as VDH, through DEQ's regulation. Any regulatory requirement of VDH regarding public water safe yield determinations falls within the regulatory authority of VDH, whose prior permit actions are not impacted by any regulatory change in DEQ's VWP regulation.

<u>General and Over-arching Comments</u>
All general and over-arching comments and staff responses are listed below.

Commenter	Comment	Agency response
Steve Edgemon and Charles Murray, Fairfax Water	The proposed changes to the regulation and their implications on all water withdrawals in Virginia extend well beyond the nature of the changes that were advertized in the NOIRA. The new regulatory language is better characterized as nearly a complete re-work of the existing regulation, with major substantive changes….DEQ should consider convening a Regulatory Advisory Panel to focus solely on the surface water withdrawal provisions of the regulation.	The Department believes the changes do not go beyond the changes contemplated by the NOIRA. While there was significant reorganization of the regulation very few changes to content have been made. The Department believes the review and discussion was sufficient through the Citizen Advisory Group (CAG) held for the current amendments as the group encompassed representatives for surface water withdrawal projects from the public works sector, industrial sector and agricultural sector and separate meetings were held solely to discuss amendments proposed to surface water withdrawal provisions. The Department anticipates the need for future discussion on this topic.
Andrea Wortzel, Mission H20	Mission H20 respectfully requests that all other substantive changes to the surface water withdrawal provisions be held in abeyance pending the formation of a new	The Department believes the review and discussion was sufficient through the Citizen Advisory Group (CAG) held for the current

	[Citizen Advisory Group] to review and discuss the proposed changes.	amendments as the group encompassed representatives for surface water withdrawal projects from the public works sector, industrial sector and agricultural sector and separate meetings were held solely to discuss amendments proposed to surface water withdrawal provisions. The Department anticipates the need for future discussion on this topic.
Andrea Wortzel, Mission H20	…there was inadequate representation of the stakeholders most directly affected by the changes to the surface water withdrawal provisions...The scope of existing and protected water withdrawals, including riparian rights, water rights by grant, and prescriptive water rights, needs to be better understood in the permitting process…before any further regulatory changes occur.	The Department believes there was adequate representation of stakeholders as the group encompassed representatives for surface water withdrawal projects from the public works sector, industrial sector and agricultural sector.
Andrea Wortzel, Mission H20Mission H20	…some of the changes to the surface water withdrawal provisions [example provided was safe yield]…are related to changes expected to be made to the waterworks permitting provisions of [VDH]. In order to avoid confusion and ensure that the changes are complementary…Holding substantive changes to the DEQ surface water provisions so they coincide with the VDH waterworks permitting changes enables this to occur.	While this suggestion may be the ideal, both regulations are not on the same timeline anymore. The most contentious issue related to removal of the safe yield definition from the VDH regulation and adding it to these VWP amendments is being addressed so that both agencies use a common definition. The Department anticipates the need for future discussion on this topic.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	…VMA would support tabling the substantive changes to the surface water withdrawal provisions to allow for greater coordination with these studies [relating to water resource management] and other water supply related discussion.	The Department believes the review and discussion was sufficient through the Citizen Advisory Group (CAG) held for the current amendments as the group encompassed representatives for surface water withdrawal projects from the public works sector, industrial sector and agricultural sector and separate meetings were held solely to discuss amendments proposed to surface water withdrawal provisions.
Robert Steidel, City of Richmond	The City supports the comment of Mission H20, and encourages DEQ to table the substantive changes to the VWP surface water withdrawal provisions to enable more dialogue and greater participation in reviewing the proposed changed.	The Department believes the review and discussion was sufficient through the Citizen Advisory Group (CAG) held for the current amendments as the group encompassed representatives for surface water withdrawal projects from the public works sector, industrial sector and agricultural sector and separate meetings were

		held solely to discuss amendments proposed to surface water withdrawal provisions.
Steve Edgemon and Charles Murray, Fairfax Water	The regulatory tools for addressing conflicts among water users are clearly established in the Code of Virginia (see § 62.1-245). The proposed regulatory changes for surface water withdrawals represent a stark deviation from the intent of the Code…Unless appropriately revised, the proposed regulatory changes by DEQ will undercut the key basic principles upon which communities have planned and invested to meet the water needs of their citizens. These regulatory changes also have the potential to negatively affect manufacturing and economic development in the Commonwealth. The Virginia Department of Planning and Budget Economic Impact Analysis…fails to adequately evaluate the economic impacts of the proposed regulatory changes…we strongly recommend that implementation of any non-emergency regulatory changes be suspended until an economic study of surface water withdrawal regulations is completed and the cumulative impacts are better understood.	The referenced section of the Code (§ 62.1-245) is a part of the Surface Water Management Act and only applies within a designated Surface Water Management Area according to the criteria outlined in statute. No Surface Water Management Areas have been designated to date. The Department makes every effort to pursue regulatory changes that represent the least burdensome to implement and minimize economic impact to the regulated community. Economic impact evaluations are required by the regulations under the Administrative Process Act and are conducted by the Department of Planning and Budget (DPB). The Department believes delaying implementation of the changes is a disservice to the regulated public as the revisions provide greater clarity and accurately portray current policies and practices. In addition, both the House and Senate versions of the 2016 Budget Bill include language requesting JLARC shall (i) identify and report a list of the water systems and other water dependent facilities that could be affected by changes, including those that may related to current "grandfathering" provisions, to the state's water protection permit regulations pursuant to 9 VAC 25-210, and (ii) describe the nature and magnitude of the impact on affected water systems and other water dependent facilities.
Craig Rice, Metropolitan Washington Council of Governments (COG)	We are concerned that changes…have the potential to negatively affect the region's economy and infrastructure investments already completed, underway, or planned across the region…the CBPC recommends delaying any non-emergency regulatory changes at this time until after a comprehensive economic analysis is completed.	The Department does not believe existing grandfathered users (withdrawals in existence prior to July 1, 1989) will be impacted by this regulatory change beyond what they are today without a statutory change as these users are not subject to VWP permitting requirements until a new 401 certificate is needed to increase the withdrawal beyond what it was in

		July 1, 1989. Expanding and new users who are subject to VWP permitting requirements may be affected by this change as these users must comply with existing laws and regulations and the Department may only issue a permit is consistent with the provisions of the Clean Water Act and the State Water Control Law and will protect instream beneficial uses. The Department believes delaying implementation of the changes is a disservice to the regulated public as the revisions provide greater clarity and accurately portray current policies and practices. In addition, both the House and Senate versions of the 2016 Budget Bill include language requesting JLARC shall (i) identify and report a list of the water systems and other water dependent facilities that could be affected by changes, including those that may related to current "grandfathering" provisions, to the state's water protection permit regulations pursuant to 9 VAC 25-210, and (ii) describe the nature and magnitude of the impact on affected water systems and other water dependent facilities.
Steve Edgemon and Charles Murray, Fairfax Water	Changes…to withdrawal regulations have the potential to negatively impact the effective management of the Potomac River system…Considerations must be given to the current obligations of water utilities…that are in effect pursuant to binding agreements already undertaken.	The proposed changes, including those related to safe yield that are being removed, do not negatively impact the effective management of the Potomac River. The Commonwealth and the Board are signatories to the Low Flow Allocation Agreement. In this agreement, the Commonwealth reserved the right to use its regulatory authority, as appropriate, to implement effective management of the Potomac River through state law. It also agreed to ensure that this agreement would be implemented through its regulatory programs such as the VWP.
Craig Rice, Metropolitan Washington Council of Governments	…the [COG's] CBPC [Chesapeake Bay and Water Resources Policy Committee] is concerned that the proposed regulatory changes, such as changing the definition of 'safe yield', may have the potential to	The proposed changes, including those related to safe yield that are being removed, do not negatively impact the cooperative regional principles used for effective

(COG)	destabilize the cooperative regional principles upon which utilities and communities in the Metropolitan Washington Region have planned and invested to meet the water needs of the entire region for more than 35 years.	management of the Potomac River. However, these utilities and localities must base their agreements on a firm foundation. A safe yield determination in a VDH permit or reported intake capacity for a waterworks also does not grant a volume of water to which the user is entitled. The existing exclusion from permitting requirements does not grant a water right to those users. The grandfathering provision of the VWP statute simply defines the trigger for an increase in a water withdrawal that would require the withdrawal to be permitted.
Thomas Leahy, City of Virginia Beach	…I share her [Ms. Kristen Lentz, Director of Utilities, City of Norfolk] concerns and support her reasoning. Please consider her comments as if I had co-signed the letter [dated January 28, 2016] with Ms. Lentz.	Please see the Department's responses to comments submitted by the City of Norfolk.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation.

Items in italicized font indicate an amendment since the Proposed stage, as noted in the table above entitled 'Changes made since the proposed stage'.

9VAC25-210 - Summary of All Changes			
Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
10		Definitions	Revised introductory paragraph to add sentence referring reader to additional definitions in proposed section 300 for surface water withdrawal activities. Added additional citation to the Statutory Authority footnote.
10		Definitions	Deleted definition for "Act" and used full title/name in regulation text instead.
	10	Definitions	Added definition for "Administratively withdrawn" to clarify provisions about processing incomplete

9VAC25-210 - Summary of All Changes			
Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			applications.
10		Definitions	Replaced 'authorization' with 'coverage' in "Applicant".
10		Definitions	Revised "Beneficial use" to conform the definition used in the regulation to that used in Code of Virginia § 62.1-44.3 under Chapter 3.1 State Water Control Law, which is the same chapter under which the VWP Permit Program obtains its authority.
10		Definitions	Revised "Board" to include noncapitalized version of word.
10		Definitions	Revised "Channelization" for better consistency with program guidance.
10		Definitions	Revised "Compensation" or "compensatory mitigation" for better consistency with 2008 Federal Mitigation Rule and address suggestions made by Citizen Advisory Group.
10		Definitions	Revised "Compensation" or "compensatory mitigation" for better consistency with 2008 Federal Mitigation Rule and address suggestions made by Citizen Advisory Group.
60	10	Definitions	Relocated and revised the definition of "Construction site" from section 60 for better consistency with existing VPDES program definitions.
	10	Definitions	Added "Coverage" as a result of changes made to the VWP general permit term and transition provisions.
60	10	Definitions	Moved "Conversion" from section 60 and revised to insert 'permanently change' to address Citizens Advisory Group suggestion.
10		Definitions	Revised "Cross-sectional" to replace 'sketch' with 'drawing' and replace 'waterbody' with 'water body'.
10		Definitions	Revised "Discharge" to remove last part of definition because

9VAC25-210 - Summary of All Changes			
Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			definition of state waters includes the concept of all state jurisdictional waters.
10		Definitions	Revised "Ecologically preferable" to use phrases 'wetland acreage or functions' and 'functions ~~and values~~' more consistently and for better consistency with language in Code § 62.1-44.15:20.
9VAC25-690-10; 9VAC25-680-10; 9VAC25-670-10; 9VAC25-660-10	10	Definitions	Moved "Emergent wetland" from VWP general permit regulations and revised for better consistency with Corps wetland delineation supplements.
10		Definitions	Revised "Enhancement" to delete 'or values' for better consistency with language in Code § 62.1-44.15:20.
9VAC25-690-10; 9VAC25-680-10; 9VAC25-670-10; 9VAC25-660-10	10	Definitions	Moved "Forested wetland" from VWP general permit regulations and revised for better consistency with Corps wetland delineation supplements. Replaced 6m/20 ft with 'approximately 20 feet (6 meters) tall or taller and 3 inch (7.6 centimeter) or larger diameter breast height (DBH)' and 'characterized' with 'dominated'.
10		Definitions	Deleted "General permit" and combined with "VWP general permit" definition.
10		Definitions	Deleted "Geographic area of delineated wetland", obsolete.
	10	Definitions	Added "Hydrologic regime" to clarify use of term in sections 60 and 370.
10		Definitions	Revised "Impacts" for simplification purposes.
10		Definitions	Revised "Impairment" to use phrases 'acreage or functions of wetlands' and 'functions of state waters' for better consistency with language in Code § 62.1-44.15:20.
	10	Definitions	Added "Independent utility" as

9VAC25-210 - Summary of All Changes			
Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			copied from VWP general permit regulations.
10		Definitions	Revised "In-lieu fee fund" to "In-lieu fee program" for better consistency with 2008 Federal Mitigation Rule.
	10	Definitions	Added "Legal name" to clarify who the permittee is.
10		Definitions	Deleted "Major surface water withdrawal", "Minor surface water withdrawal", and "surface water supply project" – obsolete in conjunction with other revisions.
10		Definitions	Revised "Mitigation banking" to delete reference to use of credits, obsolete.
10		Definitions	Deleted "Multi-project mitigation site", obsolete for majority of regulated public, already considered a type of permittee-responsible mitigation by DEQ.
10		Definitions	Corrected citation in "Nationwide permit" and "Regional permit".
10		Definitions	Added "Nontidal wetland" to clarify which provisions apply to which regulated aquatic resources.
	10	Definitions	Added "Notice of project completion" as a result of changes made to the VWP general permit term and transition provisions.
9VAC25-690-10; 9VAC25-680-10; 9VAC25-670-10; 9VAC25-660-10	10	Definitions	Moved "Open water" from VWP general permit regulations.
	10	Definitions	Added "Ordinary high water" or "ordinary high water mark" for better consistency with Corps' definition and to clarify delineation provisions in section 45.
10		Definitions	Revised "Out-of-kind mitigation to "Out-of-kind compensatory mitigation" or "out-of-kind mitigation" to clarify provisions in sections 80 and 116.

9VAC25-210 - Summary of All Changes			
Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
	10	Definitions	Moved "Perennial stream" from VWP general permit regulations.
10		Definitions	Revised "Permanent impacts" to use phrases 'acreage or functions of a wetland' and 'functions ~~and values~~' for better consistency with language in Code § 62.1-44.15:20.
	10	Definitions	Added "Permittee-responsible compensatory mitigation" or "permittee-responsible mitigation" for better consistency with 2008 Federal Mitigation Rule; to clarify sections 80 and 116; and to address Citizens Advisory Group suggestions.
10		Definitions	Revised "Person" for simplification purposes.
9VAC25-690-10	10	Definitions	Added "Phased development" as copied from VWP general permit regulations as companion definition to 'independent utility' and 'single and complete'.
10		Definitions	Revised "Pollution" to match Code § 62.1-44.3.
10		Definitions	Revised "Profile sketch" to replace 'waterbody' with 'water body'.
10		Definitions	Revised "Public hearing" to correct Code citation.
10		Definitions	Deleted "Schedule of compliance", obsolete.
9VAC25-690-10; 9VAC25-680-10; 9VAC25-670-10; 9VAC25-660-10	10	Definitions	Moved "Scrub-shrub wetland" from VWP general permit regulations and revised for better consistency with Corps wetland delineation supplements. Replaced 6m/20 ft with 'excluding woody vines, approximately 3 to 20 feet (1 to 6 m)'. Replaced 'characterized' with 'dominated'.
	10	Definitions	Added "Single and complete" as copied from VWP general permit regulations as companion definition to

9VAC25-210 - Summary of All Changes			
Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			'independent utility'.
9VAC25-690-10; 9VAC25-680-10; 9VAC25-670-10; 9VAC25-660-10	10	Definitions	Moved "Stream bed" or "stream channel" from VWP general permit regulations and revised to add 'along each side of a stream' referring to ordinary high water mark location.
10		Definitions	Revised "Surface water" to replace 'ground water' with 'groundwater'.
	10	Definitions	Added "Suspend" or "suspension" to clarify provisions about processing applications. As used in the context of the regulation, it applies to a decision made by the board.
10		Definitions	Revised "Temporary impacts" to delete 'cumulatively' and add 'permanent' in front of alteration; revised functions and values to 'acreage and functions'; added 'with topsoil from the impact area where practicable' based on Citizen Advisory Group suggestions.
	10	Definitions	Added "Tidal wetland" to clarify which provisions apply to which regulated aquatic resources.
10		Definitions	Revised "Toxic pollutant" to clarify the Act citation.
10		Definitions	Revised "Undesirable plant species" for clarification based on suggestions made by Citizen Advisory Group and to associate the term with restoration of temporary impacts.
10		Definitions	Deleted "USACE", spelled out acronym in regulation text.
10		Definitions	Deleted "VMRC", spelled out acronym in regulation text.
10		Definitions	Revised "VWP general permit" to combine with deleted "general permit" definition.
10		Definitions	Revised "Water quality standards", spelled out acronym in regulation text and clarified the Act citation.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
	10	Definitions	Added "Watershed approach" to clarify compensation provisions; derived from Corp's definition.
10	300	Definitions	Moved definitions specific to surface water withdrawals to a new Part (V) to consolidate provisions. Terms moved and revised for clarity and consistency within the regulation or with other DEQ programs: "Consumptive Use", "Drought", "Intake structure", "Public surface water supply withdrawal", "Surface water withdrawal", "Withdrawal System". Terms moved but not revised: "Affected stream reach", "Agriculture surface water withdrawal", "Emergency Virginia Water Protection Permit", "Potomac River Low Flow Allocation Agreement", "Public water supply emergency", "Section for Cooperative Water Supply Operations on the Potomac (CO-OP) Coordination Agreement", "Water supply coordination agreement".
45		Delineation of surface waters	Revised the section title to "surface water delineations" to address clarification suggestions from Citizens Advisory Group.
45	45 A	Delineation of surface waters	Revised original, single paragraph to update reference to federal manuals, to clarify which aquatic resources apply, to allow use of additional technical resources.
	45 B	Delineation of surface waters	Added subsection B to address delineation of waters under state jurisdiction.
50 A		Delineation of surface waters	Revised 'surface waters' to 'state waters' and made grammatical revisions.
	55	Statewide information	Added new section to explicitly state authority of board to request information as needed

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			to make permitting decisions or for other reasons in carrying out authority under Chapter 3.1; derived from Code 62.1-44.15:21 and -44.21. Replaces a similar statement in subsection 80 E.
60		Permit exclusions	Reorganized the order of some subdivisions in this section.
60 A	60	Permit exclusions	Deleted subsection A letter designation and added provision that applicant must demonstrate the project qualifies for an exclusion.
60 A 2	60 9	Permit exclusions	Existing text in subdivision 2 moved to subdivision 9.
60 A 3; 60 A 4	60 2	Permit exclusions	Existing text in subdivision 3 revised and combined with some of the existing text in subdivision 4; combined text was moved and renumbered as subdivision 2 for clarity.
60 A 4		Permit exclusions	Existing text in subdivision 4 deleted.
60 A 5		Permit exclusions	Existing text in subdivision 5 deleted, as portions of activities are not excluded from VWP permitting or section 401 certification.
60 A 6	60 3	Permit exclusions	Existing text in subdivision 6 revised to clarify Code citation and subdivision renumbered as 3.
60 A 7	60 4	Permit exclusions	Existing text in subdivision 7 revised for better consistency with Code .15:21.G and subdivision renumbered as 4.
60 A 9	60 5	Permit exclusions	Existing text in subdivision 9 revised to clarify intent of maintenance and moved to new subdivision 5.
	60 6	Permit exclusions	Added new subdivision 6 to exclude impacts to open waters that do not have a detrimental effect on uses.
60 A 11	60 7	Permit exclusions	Existing text in subdivision 11 revised to clarify which structures and associated activities are excluded, moved,

9VAC25-210 - Summary of All Changes			
Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			and renumbered as new subdivision 7.
60 A 12	60 11	Permit exclusions	Subdivision 12 renumbered to 11. Moved and revised "construction site" to section 10 definitions- derived from DEQ stormwater regulations.
60 B; 60 C	310	Permit exclusions	Moved to new section 310 and revised to consolidate provisions for surface water withdrawals.
	65	Administrative continuance of a permit	Added new section to address provision in Code allowing staff to continue the terms and conditions of an issued permit when circumstances occur that prevent staff from processing a new or modified permit.
75	320	Preapplication for surface water withdrawal projects	Section repealed. Existing text in section moved to new section 320 and revised to consolidate provisions specific to surface water withdrawals.
80 A		Application requirements	Reference to minor surface water withdrawal deleted from subsection A. Acronym 'DEQ' was spelled out. Reference to public water supply emergency inserted. 'Authorization' revised to 'coverage'.
80 B		Application requirements	Reference to minor surface water withdrawal deleted from introductory paragraph in subsection B. Existing text in introductory paragraph clarified to identify where to find requirements for each type of application and incorporate existing language from subdivision B 2. Reorganized order of some subdivisions in subsection B. Revised 'board shall' to 'board may'.
80 B 1 a		Application requirements	Revised 'name' to 'legal name'.
80 B 1 b		Application requirements	Revised 'name' to 'legal name'. Added email address.
80 B 1 d; 80 B 1 e	80 B 1 e (2)	Application requirements	Existing text in B 1 d moved to B 1 e (2). Existing text in B 1 e moved to B 1 e (1) and revised to clarify that subdivision

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			applies to permittee-responsible mitigation, as the info requested would not be necessary for a credit purchase.
80 B 1 f; 80 B 1 g	80 B 1 h; 80 B 1 h (1) through (3)	Application requirements	Revised existing text in B 1 f to move the requirement for description of surface water alterations to B 1 h and combine with existing text requesting the amount of impacts in B 1 g; and to move 'conversion' to definitions section 10. Existing text in B 1 g requiring description of wetland, stream, and open water impacts was combined with B 1 f, surface water alteration and moved to B 1 h (1), (2), and (3), respectively.
80 B 1 h	80 B 1 k	Application requirements	Moved existing text in B 1 h regarding materials assessment requirements to B 1 k.
80 B 1 i	80 B 1 d	Application requirements	Moved existing text from B 1 i regarding proposed construction schedule to B 1 d.
	80 B 1 i	Application requirements	Added as B 1 i the map requirement for submitting any existing protected areas that may be located on the project site.
80 B 1 j	80 B 1 p	Application requirements	Moved existing text in B 1 j regarding required signature(s) to B 1 p and revised to clarify who can sign.
80 B 1 k	80 B 1 e (3) and (4)	Application requirements	Existing text in B 1 k introductory paragraph regarding lat/long and hydrologic unit moved to B 1 e (3) and (4). Hydrologic code was revised from USGS 8-digit to 4th order as defined in the National Watershed Boundary Dataset.
80 B 1 k (1)	80 C	Application requirements	Existing text in B 1 k (1) requiring a functional assessment was moved to -80 C and revised to clarify when the assessment is necessary, and to separate requirements for less than one acre from

9VAC25-210 - Summary of All Changes			
Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			those for greater than one acre. Intent was to require the assessment for non-standard and out-of-kind compensation proposals of where greater than minimal impacts occurring to wetlands.
80 B 1 k (2)	340 B 5	Application requirements	Existing text in B 1 k (2) requiring information on beneficial uses was moved to new subdivision 340 B 5 and reworded for clarity.
80 B 1 k (3)	80 B 1 l	Application requirements	Existing text in B 1 k (3) requiring information on threatened and endangered species moved to B 1 l.
80 B 1 k (4)	80 B 1 i (4) and (5); 80 B 1 h (4) and (5)	Application requirements	Existing text in B 1 k (4) regarding surface water delineation confirmations and maps was moved to B 1 i (4) as part of the required plan view map information, to B 1 h (4) as part of the description of impacts, and to B 1 h (5) based on edits proposed to section 45. Existing text in B 1 k (4) regarding location of preservation areas was moved to B 1 i (5) and revised to clarify the requirements and applicability of the requested information.
80 B 1 k (5) (a); 115 C 1	80 B 1 g	Application requirements	Existing text in B 1 k (5) (a) regarding avoidance and minimization was combined with existing language in subdivision 115 C 1 and moved to 80 B 1 g.
80 B 1 k (5) (b) and (c)	80 B 1 m (3)	Application requirements	Existing text in B 1 k (5) (b) and (c) regarding protective mechanism for compensation was moved to and revised to contain all the info necessary for the protective mechanism, including the plan and assurance language, and to allow an option for government agencies.
80 B 1 k (5) (b), (c), and (e) through (h)	80 B 1 m	Application requirements	Existing text regarding compensation plans was

9VAC25-210 - Summary of All Changes			
Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			moved to B 1 m and revised to clarify which provisions apply to which type of proposed compensation; to clarify what is required for a complete application regarding compensation plans; and what is required for the protective instrument over compensation sites.
80 B 1 k (5) (d)	116 C 4	Application requirements	Compensation for open water was moved to section 116 for clarity.
80 B 1 l	80 B 1 e (5)	Application requirements	Existing text in B 1 l regarding the project location moved to B 1 e (5) and revised to expand on the information required.
80 B 1 m	80 B 1 i and j	Application requirements	Moved B 1 m regarding plan view, cross-sectional view, and profile view drawings to B 1 i and j, respectively and revised to clarify requirements for each. Same language proposed in general permit regulations as condition of the general permit.
80 B 1 n	80 B 1 q	Application requirements	Existing text in B 1 n regarding permit application fee moved to B 1 q and revised to remove reference to 9VAC25-20.
	80 B 1 n	Application requirements	Added as new B 1 n the narrative requirement for submitting any existing protected areas that may be located on the project site or on a permittee-responsible compensation site for consistency with the VWP general permit regulations, and in order to inform the application review.
80 B 2 a through i	340 B	Application requirements	Moved B 2 a through i to new subsection 340 B and revised to reorganize and consolidate provisions specific to surface water withdrawals.
80 C 1 through 10		Application requirements	Existing text in C 1 through 10 deleted to remove distinction between minor surface water withdrawal and major surface water withdrawal, which was

9VAC25-210 - Summary of All Changes			
Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			found only to be a regulatory distinction and does not reflect a difference in the level of permit review.
80 D 1 and 2	340 C	Application requirements	Existing text in D 1 and 2 moved to new subsection 340 C and revised to reorganize and consolidate provisions specific to surface water withdrawals.
80 E	80 D	Application requirements	Existing text in E revised from 'shall' to 'may' and subsection renumbered to D.
80 F	80 E	Application requirements	Existing text in F revised to clarify the circumstances under which an administrative withdrawal of an application may occur; to change number of days from 180 to 60 after which an incomplete application may be administratively withdrawn; to clarify that an applicant may also request the withdrawal; to add existing language as copied from 9VAC25-690; and to renumber subsection to E.
90 A		Conditions applicable to all VWP permits	Revised for better consistency with 9VAC25-690-100.
90 C		Conditions applicable to all VWP permits	Subsection C was revised to insert 'VWP' in front of 'permit'.
90 E 1 and 2		Conditions applicable to all VWP permits	Existing text in E 1 deleted, obsolete. Deleted numbering of E 2.
90 F 3		Conditions applicable to all VWP permits	Subdivision F 3 was revised to reword 'permit expiration'.
	90 G	Conditions applicable to all VWP permits	Added new provision stating requirement to reapply at the end of a permit term if permittee desires to continue authorized activities.
110		Standards, limitations, and permit conditions	Introductory paragraph was revised to add citation for the section where additional permit conditions pertaining to surface water withdrawals can be found (9VAC25-210-370)
110 A	370	Standards, limitations, and permit conditions	Subsection A pertaining to surface water withdrawals

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			moved to new section 370 and revised.
110 B through G	110 A through F	Standards, limitations, and permit conditions	Subsections were renumbered.
115	80 B 1 g; 360	Project alternatives	Section repealed. 115 A, B, C 2, and 3 regarding evaluation of project alternatives for surface water withdrawals moved to section 360. Existing text in 115 C 1 regarding avoidance and minimization was combined with existing language in subdivision B 1 k (5) (a) and moved to B 1 g.
116		Compensation	Throughout section, 'in-lieu fee fund' was replaced with 'in-lieu fee program' for better consistency with the 2008 Federal Mitigation Rule.
116 B 1		Compensation	Subdivision B 1 was clarified to incorporate and revise text from original B 2 and better describe the requirements for analysis to demonstrate permittee-responsible mitigation. *Punctuation - replaced semi-colon with comma. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.*
116 B 2		Compensation	Existing text in B 2 regarding the requirements of analysis for off-site our out-of-kind compensation was moved to B 1 and revised to clarify acceptable means my which to conduct the analysis. Text added for requirement to provide a protective mechanism(s) for all permittee-responsible compensation. *Replaced '1700' with '1009' and replaced '1009' with '1700'. Correction of change made by Registrar.*
116 C 1		Compensation	Existing text in C 1 was revised to state the preferred type of compensatory mitigation by the program but that other options

9VAC25-210 - Summary of All Changes			
Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			may apply. *Punctuation – commas deleted in first sentence. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.*
116 C 2		Compensation	Existing text in C 2 was revised to list wetland mitigation options in a preferred sequence that is consistent with the 2008 Federal Mitigation Rule, but that states staff evaluation may determine the ultimate options. *Replaced 'or' with 'and' in language on compensation options. Revisions due to staff review regarding consistent use of the word 'or' and 'and' when used with acreage, functions. Consistency with existing text elsewhere in the regulations and Code of Virginia.*
116 C 2 a		Compensation	C 2 a was revised from wetland creation to mitigation bank credits.
116 C 2 b		Compensation	C 2 b was revised from wetland restoration to in-lieu fee program credits.
116 C 2 c		Compensation	C 2 c was revised from bank credits to permittee-responsible mitigation, watershed approach.
116 C 2 d		Compensation	C 2 d was revised from in-lieu fee contribution to permittee-responsible mitigation, onsite/in-kind.
116 C 2 e		Compensation	C 2 e was revised from in-lieu fee contribution to permittee-responsible mitigation, off-site/out-of-kind.
116 C 2 f		Compensation	C 2 f was revised to insert 'or preservation' after restoration to match Code 62.1-44.15:21, change state waters to wetlands, and correct a citation.
116 C 2 g		Compensation	C 2 g was revised to add consistency with subsection 116 A and correct a citation. *Punctuation – replaced semi-colon with period. Correction of*

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			change made by Registrar.
116 C 3		Compensation	Existing text in C 3 was revised to list stream mitigation options in a preferred sequence that is consistent with the 2008 Federal Mitigation Rule, but that states staff evaluation may determine the ultimate options. *Punctuation – deleted period. Correction of change made by Registrar.*
116 C 3 a		Compensation	C 3 a was revised from stream channel restoration or enhancement to mitigation bank stream credits.
116 C 3 b		Compensation	C 3 b was revised from riparian buffer restoration or enhancement to in-lieu fee program credits.
116 C 3 c		Compensation	C 3 c was revised from riparian buffer preservation to permittee-responsible mitigation, watershed approach.
116 C 3 d		Compensation	C 3 d was revised from in-lieu fee contribution to permittee-responsible mitigation, onsite/in-kind.
116 C 3 e		Compensation	C 3 e was revised from bank credits to permittee-responsible mitigation, off-site/out-of-kind.
116 C 3 f		Compensation	C 3 f for restoration or preservation of upland buffers adjacent to streams was added per Code 62.1-44.15:21.
116 C 3 g		Compensation	C 3 g for preservation of stream channels and adjacent riparian buffers was added.
116 C 4; 80 B 1 k (5) (d)	*116 C 4*	Compensation	Existing language in C 4 was deleted as obsolete due to proposed revisions to C 1 through 3. Compensation for open water was moved here from 9VAC25-210-80 B 1 k (5) (d) and a condition was added regarding compensation for open waters in karst regions of VA. *Replaced 'except' with 'but compensation may be required'. Revisions due to public comment on when open*

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			water compensation may be required.
116 D 1		Compensation	Original text in D 1 was deleted as repetitive of text in D 3 and 4. New text was added that combined original text from D 2, and D 5.
116 D 2 a and b	116 D 1	Compensation	Original text D 2 was revised and moved to D 1 to clarify how DEQ approves a program, and combined with a portion of revised text from D 5 to include requirement for public comment.
	116 D 2	Compensation	New provision added to allow use of a program in permitting or enforcement cases where the program is state-sponsored, mandated by the Code of Virginia, and approved by the US Army Corps of Engineers.
116 D 3		Compensation	D 3 was revised for wording choice.
116 D 3 a		Compensation	Original text was revised to use phrase 'wetland acreage or functions' for better consistency with language in Code and match preferred sequencing in 116 C. *Replaced 'or' with 'and' in language for approval of in-lieu fee programs. Revisions due to staff review regarding consistent use of the word 'or' and 'and' when used with acreage, functions. Consistency with existing text elsewhere in the regulations and Code of Virginia.*
116 D 3 b		Compensation	D 3 b was revised to clarify agency approves a program site.
116 D 3 c		Compensation	Inserted modifier 'compensatory' before 'mitigation'.
116 D 3 d		Compensation	D 3 d was revised to use phrase 'wetland acreage or functions' for better consistency with language in Code. *Replaced 'or' with 'and' in language for approval of in-lieu*

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			fee programs. Revisions due to staff review regarding consistent use of the word 'or' and 'and' when used with acreage, functions. Consistency with existing text elsewhere in the regulations and Code of Virginia.
116 D 3 e		Compensation	D 3 e was revised to use phrase 'wetland acreage or functions' for better consistency with language in Code and delete reference to fund contributions, obsolete. *Replaced 'or' with 'and' in language for approval of in-lieu fee programs. Revisions due to staff review regarding consistent use of the word 'or' and 'and' when used with acreage, functions. Consistency with existing text elsewhere in the regulations and Code of Virginia.*
116 D 4		Compensation	D 4 was revised to change the years from 5 to 10 that DEQ may approve a bank or in-lieu fee program. This value was the mid-point between two suggestions of 'leave at 5' and 'change to 20' made by Citizens Advisory Group participants. Original text regarding mitigation options deleted as duplicative of original text in D 3, and instead, new text added directing reader to D 3.
116 D 5	116 D 1	Compensation	Portion of original text revised and moved to D 1 and portion was deleted due to inconsistency with publication procedures for VA Register.
116 E		Compensation	The introductory paragraph in subsection E was revised for wording choice.
116 E 3		Compensation	E 2 was deleted, obsolete and duplicative of C 1.
116 E 3 through 5	116 E 2 through 4	Compensation	Renumbered. Timeline for purchase was clarified in E 3. E 4 was revised to include an

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			applicability date for the provisions; to add a requirement for long-term management; and to add a caveat that staff would not be required to reopen and revise older permits.
116 F		Compensation	F was revised to clarify the applicability to permittee-responsible mitigation and revise a citation.
116 F 1 and 2		Compensation	Text regarding informational requirements for developing protective mechanisms was revised and moved to 80 B 1 m. Text regarding recording protective mechanisms was revised to delete the 120-day timeline for recordation of a final protective instrument and require such prior to implementing project impacts in surface waters, as is consistent with when a final compensation plan must be submitted and approved, and for consistency with existing provisions in the VWP general permit conditions. *Replaced '(if available)' with ', if available'. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.*
130 B 2		VWP general permits	Replaced 'authorization' with 'coverage'.
130 B 3		VWP general permits	Deleted 'regulation or authorization', obsolete.
130 B 4		VWP general permits	Revised for wording choice and replaced 'authorization' with 'coverage'.
130 C		VWP general permits	Replaced 'authorization' with 'coverage'.
130 E		VWP general permits	Replaced 'authorization' with 'coverage'.
130 F		VWP general permits	Subsection F was revised to change 'notice of termination' to 'notice of project completion'. *Added reference to Section 90 A of the VWP applicable*

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			general permit regulation at the end of the sentence. Revisions due to staff review regarding the connection between the 210 regulation and the applicable portion of each VWP general permit regulation.
130 G		VWP general permits	G was revised to refer the reader to each general permit regulation to determine the valid term of the general permit and to delete provisions pertaining to the extension of coverage.
130 H 3		VWP general permits	H 3 was revised to use phrase 'wetland acreage or functions' for better consistency with language in Code. *Replaced 'or' with 'and' in language regarding general permits. Revisions due to staff review regarding consistent use of the word 'or' and 'and' when used with acreage, functions. Consistency with existing text elsewhere in the regulations and Code of Virginia.*
130 H 4 and 5		VWP general permits	Text detailing mitigation options was deleted from H 4 and H 5 and replaced with the citation to section 116 – was duplicative of 116.
140		Public notice, permits	The title of section 140 was revised to clarify applicability of the section to individual permit actions.
140 A	330	Public notice, permits	Subsection A was moved to new section 330 to consolidate provisions specific to surface water withdrawals.
140 B through F	140 A through E	Public notice, permits	Renumbered. Subsection B was clarified for applicability to individual permits. 'will' was changed to 'shall' in renumbered E.
	140 C 9	Public notice, permits	*Replaced 'e-mail' with 'email'. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the*

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			regulations.
150		Public access to information	Paragraph revised to include vwp general permit authorizations in addition to individual permits and strike incorrect reference to trade secrets.
160 A through C		Public comments, hearing	Subsections were clarified for applicability to individual permits and revised to correct Code citation.
170 C 8		Public notice, hearing	Subdivision C 8 was revised to spell out the acronym 'DEQ'.
170 D		Public notice, hearing	Subsection D was revised for clarity and to correct Code citation.
Part IV		VWP Permit Modification, Revocation and Reissuance, Transfer, Termination and Denial	*Amended title to delete 'VWP Permit Variances'. Correction of change made by Registrar.*
175	390	Variance	Section repealed, moved to new section 390 consolidate provisions specific to surface water withdrawal activities and to revise citations.
180		Permit modification, revocation and reissuance, extension, transfer, termination	Title of the section was revised to clarify applicability to individual permits.
180 A		Permit modification, revocation and reissuance, extension, transfer, termination	Subsection A was revised to clarify applicability to individual permits; change 'shall' to 'may'; add 'extended'; and clarify the whole or just part of the permit may be acted upon.
180 B	180 A	Permit modification, revocation and reissuance, extension, transfer, termination	Subsection B was deleted and moved to be combined with A.
180 C		Permit modification, revocation and reissuance, extension, transfer, termination	Text from existing -180 C was deleted as duplicative of section 185.
180 D	180 B	Permit modification, revocation and reissuance, extension, transfer, termination	D was renumbered to B and revised to clarify language and circumstances under which permits may be modified.
180 D 1		Permit modification,	D 1 deleted, obsolete and

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
		revocation and reissuance, extension, transfer, termination	duplicative of reopener provision.
180 D 2, 3, 5 and 6	180 B 1 through 4; 380	Permit modification, revocation and reissuance, extension, transfer, termination	Renumbered. D 2 revised to include project additions and alterations as part of new information, incorporating original D 1 concept here. Existing text moved from D 6 to new section 380 and new text added directing reader to that section.
180 D 4		Permit modification, revocation and reissuance, extension, transfer, termination	Deleted, obsolete to VWP process.
	180 C	Permit modification, revocation and reissuance, extension, transfer, termination	Added to address modifications as a result of changes to the project; to request additional information if necessary; and indicate the process if the board decides to modify a permit.
	180 D	Permit modification, revocation and reissuance, extension, transfer, termination	Added to clarify that only portions pertaining to the request will be modified versus re-evaluating the entire project.
180 E and E 1 through 4	180 F 4	Permit modification, revocation and reissuance, extension, transfer, termination	Existing text regarding permit transfer in subsection E and subdivisions E 1 through 4 was moved to the existing subdivision F 4 and clarified as to the criteria for such a transfer to occur under a minor modification action.
180 E 1, 2, and 4	180 E 4 a	Permit modification, revocation and reissuance, extension, transfer, termination	Relocated and combined text from the existing E 1, E 2, and E 4 – deleted 30 days.
180 E 3	180 E 4 b	Permit modification, revocation and reissuance, extension, transfer, termination	Relocated and revised text from the existing E 3 – 30 days changed to 15 days.
180 F 1 through 10	180 E 1 through 10	Permit modification, revocation and reissuance, extension, transfer, termination	Existing F was renumbered as E, and the introductory paragraph regarding minor modifications was revised to add citations for the public participation sections of the regulation. New text was added requiring requests for

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			minor modification to be in writing and allow board to request additional information as necessary. Clarifications were made to the existing text regarding when a modification subject to public comment may be warranted.
180 F 3	180 E 3	Permit modification, revocation and reissuance, extension, transfer, termination	Existing F 3 was revised to clarify that if the reason for modification is a change in a compliance date that it cannot result in a no-net-loss of wetland acreage or functions.
180 F 4	180 E 4	Permit modification, revocation and reissuance, extension, transfer, termination	Existing F 4 was revised to clarify change in permittee rather than ownership; and revised to add the original text at E.
180 F 5	180 E 5	Permit modification, revocation and reissuance, extension, transfer, termination	Existing F 5 was revised to correct citations.
180 F 6 and 9	180 E 6	Permit modification, revocation and reissuance, extension, transfer, termination	Existing text in F 6 deleted, obsolete. Text from existing F 9 relocated to F 6 and revised for clarity.
180 F 7 and 8	180 E 7	Permit modification, revocation and reissuance, extension, transfer, termination	Existing text in F 7 deleted, obsolete. Text from existing F 8 relocated in part.
	180 E 7 a	Permit modification, revocation and reissuance, extension, transfer, termination	E 7 a was added to clarify where additional impacts must be located.
	180 E 7 b	Rules for modification, revocation and reissuance, extension, transfer, and termination of VWP individual permits	E 7 b was added to specify the quantity of additional wetland impacts that are allowed under a minor modification. *Deleted 'proposed' as a modifier to species and habitat. Replaced 'to be a the' with 'result in a'. Added last sentence: 'The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.' Revisions due to public comment on protection of*

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			proposed species and habitat. Clarification to improve readability - does not change intent of requirement.
	180 E 7 c	Rules for modification, revocation and reissuance, extension, transfer, and termination of VWP individual permits	E 7 c was added to specify the quantity of additional stream impacts that are allowed under a minor modification. *Replaced 'the greater of either (i) 0.25 acre or (ii) 10% of the acres of originally permitted permanent wetland or open water impacts, not to exceed 1.00 acre' with 'one-quarter of an acre (0.25 acre or 10,890 square feet)'. Revisions due to public comment on amount of additional impacts processed under a minor modification. Consistency with existing text elsewhere in the regulations.*
	180 E 7 d	Permit modification, revocation and reissuance, extension, transfer, termination	E 7 d was added to require documentation on avoidance and minimization of additional impacts. *Replaced 'the greater of either (i) 100 linear feet or (ii) 10% of the linear feet of originally permitted permanent stream impacts, not to exceed 1,500 linear feet' with '100 linear feet'. Revisions due to public comment on amount of additional impacts processed under a minor modification. Consistency with existing text elsewhere in the regulations.*
180 F 8	180 E 7 e	Permit modification, revocation and reissuance, extension, transfer, termination	Existing text regarding compensation for additional impacts in F 8 was moved to E 7 e.
	180 E 7 f	Permit modification, revocation and reissuance, extension, transfer, termination	E 7 f was added to require additional temporary impacts to be restored and include a timeframe for DEQ review and response to request for minor modification for additional temporary impacts.
	180 E 7 g	Permit modification, revocation and reissuance, extension,	Added requirement for additional temporary impacts to be restored and include a

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
		transfer, termination	timeframe for DEQ review and response to request for minor modification for additional temporary impacts. *Punctuation – delete comma. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.*
180 F 10	180 E 8	Permit modification, revocation and reissuance, extension, transfer, termination	Existing text in F 10 was moved to E 8 and revised to allow substitution of a portion of the prior authorized permittee-responsible mitigation with a purchase or use of mitigation credits that meet the same mitigation requirement.
	180 E 9	Permit modification, revocation and reissuance, extension, transfer, termination	New text was added to allow a minor modification for an extension of an individual permit term where that term was originally issued for less than 15 years.
	180 E 10	Permit modification, revocation and reissuance, extension, transfer, termination	Text added to direct the reader to the new section 380 for situations that may warrant a modification related to surface water withdrawal activities.
180 G		Permit modification, revocation and reissuance, extension, transfer, termination	Subsection G revised to correct Code citation.
180 H	180 I	Permit modification, revocation and reissuance, extension, transfer, termination	Revised to better match language in VWP general permit regulations.
	180 H	Permit modification, revocation and reissuance, extension, transfer, termination	New subsection H was added to authorize board may terminate the permit without cause when the permittee is no longer a legal entity due to death, dissolution, or when a company is no longer authorized to conduct business in the Commonwealth. *Reinserted 'completion' at end of first sentence. Correction of change made by Registrar.*
	180 H 1	Permit modification, revocation and	*Punctuation – added comma. Consistency with existing text*

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
		reissuance, extension, transfer, termination	*elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
180 I	65	Permit modification, revocation and reissuance, extension, transfer, termination	Existing text at I was deleted and moved to the new section 65 on administrative continuance.
180 I 3		Permit modification, revocation and reissuance, extension, transfer, termination	Revised to delete 'authorization' as this section applies to individual permits.
180 I 4 a		Permit modification, revocation and reissuance, extension, transfer, termination	Revised to change 'requested' to 'required' and to add caveat 'unless otherwise excluded from permitting'.
180 I 4 b and c		Permit modification, revocation and reissuance, extension, transfer, termination	Revised to add caveat 'unless otherwise excluded from permitting'.
185 and 185 A	185	Duration of individual permits	Revised the section title to clarify applicability to individual permits; eliminate subsection A subtitle; for wording choice; to delete a reference to conditions that contain the permit term.
185 B		Duration of individual permits	Existing text at subsection B deleted as obsolete.
220 A and C		Waiver of permit or certification	Revised for word choice purposes.
230 A 4		Denial of permit or variance	Revised to use phrase 'wetland acreage or functions' for better consistency with language in Code. *Replaced 'or' with 'and' in language regarding denial of permit application. Revisions due to staff review regarding consistent use of the word 'or' and 'and' when used with acreage, functions. Consistency with existing text elsewhere in the regulations and Code of Virginia.*
230 A 8		Denial of permit or variance	Revised to correct citation. *Replaced '9VAC25-210-80 B 1 q' with '9VAC25-210-80 B 1 g'. Correction of change made by Registrar.*
230 D		Denial of permit or	Revised to correct Code

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
		variance	citation.
240	500	Enforcement	Repealed and moved in whole to new section 500.
250	600	Delegation of authority	Repealed and moved in whole to new section 600.
260	610	Transition	Repealed. Existing text moved in part to new section.
260 A and B	610 A and B	Transition	Revised to insert placeholder for new regulation effective date.
260 C		Transition	Deleted, obsolete as provided for in 610 A.
260 D	610 C	Transition	Renumbered existing text.
10	*300*	Definitions for surface water withdrawals	Added new section. Moved definitions related to surface water withdrawals. Definitions were added or revised to provide clarity in the meaning of terms or to provide consistency with other similar Department programs. Following definitions added: “Drought of Record”, “Human consumption”, “Instream flow”, “Major river basin”, “Nonconsumptive use”, “Variance”, and “Water supply plan”. *Removed definition of “public water supply safe yield” from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source.*
60 B	310	Exclusions for surface water withdrawals	Added new section. Moved requirements specific to surface water withdrawals to provide clarity as to the provisions for surface water withdrawals. Section revised, where applicable, to update citations and provide consistency with revised definitions. The meaning or content of the exclusions are not changed by these amendments.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
60 B	*310 A*	Exclusions for surface water withdrawals	Moved subsection addressing exclusions from permitting. *Punctuation – deleted commas and added comma. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations*
60 B 1	*310 A 1*	Exclusions for surface water withdrawals	Moved subdivision exclusion for pre-1989 surface water withdrawal activities. *Replaced 'that' with 'and the withdrawal'. Clarification to improve readability - does not change intent of requirement.*
60 B 2	*310 A 2*	Exclusions for surface water withdrawals	Moved subdivision exclusion for post-1989 surface water withdrawal activities. *Punctuation – deleted comma; replaced ', with respect to' with 'that authorized the'; replaced 'withdrawal; however' with 'withdrawal. However'. Clarification to improve readability - does not change intent of requirement.*
60 B 3	*310 A 3 and 3 a*	Exclusions for surface water withdrawals	Moved subdivision exclusion for surface water withdrawals initiated between July 1, 1989, and July 25, 2007, to provide clarity and to remove sunset provisions, that passed in 2008, on the submission of certain information. The meaning or content of the exclusions are not changed by these amendments. *Punctuation – deleted commas. Correction of change made by Registrar.*
60 B 4 through 15	310 A 4 through 11	Exclusions for surface water withdrawals	Moved, consolidated and reorganized requirements that exclude withdrawals from permitting based upon volume and use to reduce confusion regarding this set of exclusions. The meaning or content of the exclusions are not changed by these amendments.
75	320	Preapplication for	Moved and revised section.

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
		surface water withdrawals	Section revised, where applicable, to update citations and provide consistency with revised definitions.
140 A	330	Coordinated review with VMRC for surface water withdrawals	Moved and revised subsection to new section. The amendments to this section include the addition of a reference to the section of Code that directs coordinated reviews between DEQ and VMRC and to provide detail for clarification of the joint public notice requirement. Section revised, where applicable, to update citations and provide consistency with revised definitions.
80 B 1 k (2), 80 B 2, 80 C 5, 80 D, 115 A	340	Application requirements for surface water withdrawals	Added new section. The informational requirements for a complete application have been consolidated and organized into one detailed list of information necessary to conduct a review of any non-emergency withdrawal. This revision also removes the distinction between minor surface water withdrawal and major surface water withdrawal, which was found to be only a regulatory distinction and not reflective of the case by case differences in permit review. Previously, while the regulations required the same information for both types of withdrawals, this was not clear in practice and led to confusion and longer processing timeframes because of the need to request the additional information after the application was submitted. Other amendments to this section include the addition of informational requirements that address recent statutory changes and recent revisions to the Joint Permit Application.
	340 A	Application requirements	Added new subsection stating

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
		for surface water withdrawals	requirement for permit in certain cases. *Replaced 'FERC' with 'Federal Energy Regulatory Commission (FERC)'. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.*
80 B 2 and C	*340 B*	Application requirements for surface water withdrawals	Moved informational requirements. *Added 'informational' before 'requirements' and '-80.B and if applicable, 9VAC25-210-80.C' after 'requirements of 9VAC25-210". Correction to specifically reference the applicable informational requirements under 9VAC25-210-80.*
115 A	*340 B 1*	Application requirements for surface water withdrawals	Moved informational requirements regarding project purpose. *Punctuation – comma added. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.*
80 B 1 k (2)	*340 B 5 a*	Application requirements for surface water withdrawals	Moved informational requirements regarding beneficial uses. *Punctuation – replaced semi-colons with commas. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.*
80 B 2 g	*340 B 6*	Application requirements for surface water withdrawals	Moved informational requirements regarding project need and water use. *Punctuation – deleted comma; replaced 'address' with 'addresses'. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations. Grammar correction.*
80 C 5	*340 B 7*	Application requirements for surface water withdrawals	Moved informational requirements regarding intake structure. *Punctuation – deleted*

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			comma. Correction of change made by Registrar that affects meaning of requirement.
80 D 1	*340 C 1*	Application requirements for surface water withdrawals	Moved informational requirements for a complete application that are necessary to conduct a review of any withdrawal under emergency situations. *Replaced 'applications' with 'application'. Grammar correction.*
80 D 1 a	*340 C 1 a*	Application requirements for surface water withdrawals	Moved informational requirements for a complete application that are necessary to conduct a review of any withdrawal under emergency situations. *Replaced 'Name' with 'The applicant's legal name'; deleted phrase 'of applicant' at end. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.*
80 D 1 c and h	*340 C 1 c and h*	Application requirements for surface water withdrawals	Moved informational requirements for a complete application that are necessary to conduct a review of any withdrawal under emergency situations. *Punctuation – deleted commas. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.*
	350	Duty to reapply for a permit for the continuation of a surface water withdrawal	Added new section to address the reissuance of permits for the continuation of a surface water withdrawal. This amendment was needed to identify the informational requirements required for a permittee to apply for continued operation of an established withdrawal (reissuance). In order to streamline the review process, the provision reduces the submission of information (that continues to be accurate) that is already in the

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			Department's possession as submitted as part of a previous application. The section includes a reference for allowance of an administrative continuance for a permit if a complete application is filed in a timely manner.
	350 A	Duty to reapply for a permit for the continuation of a surface water withdrawal	Added new section to address the reissuance of permits for the continuation of a surface water withdrawal. *Punctuation – added comma. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.*
115 A, B and C 2 and 3	360	Evaluation of project alternatives for surface water withdrawals	Added new section. Moved informational requirements for an evaluation of project alternatives specific to surface water withdrawals. Section revised, where applicable, to update citations and provide consistency with revised definitions.
115 B	*360 A*	Evaluation of project alternatives for surface water withdrawals	Moved and revised subdivision to address what information is needed for an alternatives analysis. *Replaced 'local water supply need' with 'need for water to meet the project purpose' and deleted 'local' near end of sentence in -360 A. Revision in response to public comments to clarify that the requirement applies to all surface water withdrawals.*
115 B 1 b	*360 A 1 b*	Evaluation of project alternatives for surface water withdrawals	Moved and revised subdivision to address what information is needed for an alternatives analysis. *Added term 'public water supply' before the term 'safe yield'. Revision in response to public comments to add 'public water supply' to clarify the traditional usage of the term with public water supplies.*
115 B 2 a	*360 A 2 a*	Evaluation of project	Moved and revised subdivision

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Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
		alternatives for surface water withdrawals	to address what information is needed for an alternatives analysis. *Added 'if applicable' after the informational requirement. Revision in response to public comments to clarify that this informational requirement may not apply to non-public water supply surface water withdrawals.*
115 B 2 b	*360 A 2 b*	Evaluation of project alternatives for surface water withdrawals	Moved and revised subdivision to address what information is needed for an alternatives analysis. *Added 'if applicable' after the informational requirement. Revision in response to public comments to clarify that this informational requirement may not apply to non-public water supply surface water withdrawals.*
115 C 2 c (5)	*360 A 3 c (5)*	Evaluation of project alternatives for surface water withdrawals	Moved and revised subdivision to address what information is needed for an alternatives analysis. *Added term 'public water supply' before the term 'safe yield'. Revision in response to public comments to add 'public water supply' to clarify the traditional usage of the term with public water supplies.*
115 C 2 c (9) (d)	*360 A 3 c (9) (d)*	Evaluation of project alternatives for surface water withdrawals	Moved and revised subdivision to address what information is needed for an alternatives analysis. *Replaced '3 (c) (9)' with '3 c (9)'. Correction of change made by Registrar that affects meaning of requirement.*
115 C 3	*360 A 4*	Evaluation of project alternatives for surface water withdrawals	Moved and revised subdivision to address the informational requirements needed for an alternatives analysis. *Replaced 'all applicable items included in subdivision 3 of this section' with 'the following items of subdivision 3 of this section: 3 a (3) through (4) and 3 c. The analysis shall also include applicable items of subdivision*

9VAC25-210 - Summary of All Changes			
Current Section Number	**Proposed New Section Number (if applicable)**	**Section Content**	**Proposed Change and Rationale**
			3 a (1) through (2) and 3 b'. Revision in response to public comments to clarify the requirements of the previous subsection (-360 A 3) that apply to non-public water supply surface water withdrawals.
110 A	370	Permit conditions applicable to surface water withdrawals	Added new section. Moved and revised subdivision applicable to surface water withdrawals. Section amended to provide clarity as to the conditions that may be part of a permit and the criteria for which a permit may be issued. Section revised, where applicable, to update citations and provide consistency with revised definitions.
110 A 1 d	*370 B 4*	Permit conditions applicable to surface water withdrawals	Moved and revised provision on alternate sources of water supply. *Punctuation – deleted comma and added comma. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.*
	380	Modifications to permit for surface water withdrawals	Added new section to identify the circumstances under which a permit for a surface water withdrawal may be modified. Previously, the regulation only had one general provision (-180 D 6) that addressed modifications of surface water withdrawals. This resulted in uncertainty and subjectivity by both staff and permittees as to what type of permit changes would be considered major or minor permit modifications. These amendments provide more specificity and clarity regarding the representative types of changes that may qualify under each class of permit modifications.
	380 A 4	Modifications to permit for surface water	Added new section to identify the circumstances under which

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		withdrawals	a permit for a surface water withdrawal may be modified. *Added the following sentence at the end of the subdivision 'Examples of uses include, but are not limited to, agricultural irrigation, golf course irrigation, public water supply, manufacturing, and electricity generation. Revision in response to public comments to provide examples of water use types to clarify the modification criterion.*
	380 B 3	Modifications to permit for surface water withdrawals	Added new section to identify the circumstances under which a permit for a surface water withdrawal may be modified. *Added the following phrase ', including increasing the storage capacity for the surface water withdrawal,' after 'Changes to the permitted project'. Revision to address the public comment regarding changes in storage capacity.*
175	390	Variance from surface water withdrawal permit conditions	Moved section to consolidate provisions specific to surface water withdrawals to provide clarity as to the provisions specific to this activity. Section revised, where applicable, to update citations and provide consistency with revised definitions.
	610 A and B	Transition	Moved and revised subsections addressing transition of regulation. *Replaced '(insert effective date of regulation)' with 'August 2, 2016'. Necessary for regulation to become effective on preferred date.*
FORMS		Forms referenced	Alphabetized list of forms. Revised the title and effective date of permit application fee form. Revised the effective date of the Tidewater application. Revised the title of monthly reporting of impacts form.

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			Revised the effective date of the standard joint permit application. Revised the title of the VDOT inter-agency meeting application. Deleted the DEQ application for minor withdrawals, obsolete. *Revised effective dates on three forms. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.*
DOCUMENTS		Documents referenced	Alphabetized list of documents. Added Corps regional supplement for eastern mountains and piedmont. Added Corps regional supplement for Atlantic and coastal plain. Added hydric soils of the United States. Added Virginia drought assessment and response plan. *Deleted periods at the end of document titles. Consistency with existing text elsewhere in the regulations or with changes made by Registrar elsewhere in the regulations.*

Family impact

Please assess the impact of this 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.

This regulatory action is unlikely to increase or decrease the disposable income available to a family-run business that is subject to the provisions of the Virginia Water Protection Permit Program regulation because the law on which the regulation is based in not being amended, but rather, only the implementation and interpretation of the law is being considered for amendment.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The amendments apply to existing regulations that apply to businesses across the state who incur impacts to surface waters, including the withdrawal of surface water. The amendments will improve permit application and processing for all projects through improved clarity and understanding of DEQ's expectations. Of the amendments, DEQ does not anticipate any to have an adverse impact on small business, but may incur additional effort or expense as noted in the Economic Impact section of this form. DEQ has attempted to provide additional flexibility for certain requirements, as the agency recognizes that some applicants or permittees may be burdened to provide information or information in a certain format or on a certain timeline. An additional permitting exclusion for open waters was added to the existing exclusions and would be applicable to all applicants.

Related to this regulatory action is the reissuance of the four, expiring VWP general permits, by separate regulatory actions, which are given authority under 9VAC25-210. General permit coverage may be an alternative to applying for a VWP individual permit under 9VAC25-210 if the project meets the criteria specified in the applicable general permit regulation. An application fee for coverage under a VWP general permit costs less, and general permit coverage typically can be processed in a shorter timeframe than a VWP individual permit.

The numerous amendments of an editorial nature (e.g., grammar, word choice, corrected citations, etc.) provide improved readability and understanding, and the reorganization of several provisions lends to better understanding of those provisions applicable to surface water withdrawal activities.