

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
DRAFT Agenda**

**Technical Advisory Committee Meeting
Virginia Water Protection (VWP) General Permit for
Minimal Surface Water Impacts, 9VAC25-700**

1:00 PM October 14, 2026

**DEQ Piedmont Regional Office
4949-A Cox Road
Glen Allen, VA 23060**

- 1:00 PM Welcome
- Introductions and review of purpose, regulatory process, and FOIA reminders
 - Background and goals of the regulatory action
 - Review **Draft** Proposed Regulatory Language (9VAC25-700) (*see Attachment A*)
 - 10-minute break
 - Review Draft Proposed Regulatory Language (9VAC25-700) (*see Attachment A*)
 - Open committee discussion
 - Public forum
- Adjournment

If you need more information regarding this regulatory action, please call or contact Jeanette Ruiz, Regulatory and Guidance Analyst, DEQ Division of Policy, P.O. Box 1105, Richmond, Virginia 23218, 804-494-9636, jeanette.ruiz@deq.virginia.gov or Brenda Winn at (804) 659-2675 or brenda.winn@deq.virginia.gov.

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State Water Control Board

Virginia Water Protection General Permit for Minimal Surface Water Impacts

9VAC25-700-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) unless a different meaning is required by the context or is indicated below.

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

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Coverage" means authorization to conduct a project in accordance with a VWP general permit.

"DEQ" or "department" means the Department of Environmental Quality.

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

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

"Single and complete project" means the total project proposed or accomplished by a person, which also has independent public or economic utility, as defined in this section. For linear projects, the "single and complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single water body) and to multiple crossings of the

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same water body at separate and distinct locations. Phases of a project that have independent public or economic utility may each be considered single and complete.

“State programmatic general permit (SPGP)” means a general permit that is issued by the Department of the Army in accordance with 33 USC § 1344 and 33 CFR 325.5(c)(3) and that is founded on a state program. The SPGP is designed to avoid duplication between the federal and state programs.

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

“Up to 300 linear feet” means 300.00 linear feet or less as measured along the center of the main channel of the stream segment.

“Up to one-half acre” means 0.50 acre (21,780 square feet) or less.

“Up to one-tenth acre” means 0.10 acre (4,356 square feet) or less.

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

“VWP” means Virginia Water Protection.

9VAC25-700-15. Statewide information requirements.

The department may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's discharge on the quality of state waters or (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any applicant, owner, permittee, or person notifying the department in accordance with this chapter shall provide the information requested by the department.

9VAC25-700-20. Purpose.

The purpose of this chapter is to establish VWP general permit WP5 pursuant to 9VAC25-210 et seq. to govern impacts to surface waters as provided in section 30 of this chapter.

Notifications qualifying for this VWP general permit shall comply with the conditions specified in 9VAC25-700-100. Notifications accepted by the department shall constitute coverage under

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the VWP general permit, and the activities described in notifications so accepted shall follow all provisions in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each VWP general permit action is exempt.

9VAC25-700-27. VWP general permit coverage expiration, transition, and continuation.

A. This VWP general permit (9VAC25-700-100) is effective (insert the effective date of the regulation), and expires August 1, 2036. All notifications submitted pursuant to this chapter and received on or after (insert the effective date of the regulation), shall be processed in accordance with this regulation. If there is not adequate time to process a notification received by the department, the applicant shall do one of the following prior to conducting activities in surface waters: i) resubmit such notification under the next consecutive VWP general permit; ii) submit an application for coverage under a different VWP general permit; or iii) apply for a VWP individual permit. Submittals and applications must include payment of a permit application fee when required.

B. Any coverage that is granted pursuant to this chapter shall remain in full force and effect until 11:59 p.m. on August 1, 2036, unless VWP general permit coverage is terminated or revoked on or before this date. Where a permittee that has received VWP general permit coverage desires to continue or complete the authorized activities beyond August 1, 2036, the permittee shall submit a new notification for VWP general permit coverage, or an application for coverage under a different VWP general permit or a VWP individual permit, including payment of any required permit application fee. Activities in surface waters requiring a permit shall not commence or continue until authorized by a VWP general permit coverage or a VWP individual permit.

C. In any case where an existing permittee has submitted a timely and complete notification for coverage under the next consecutive VWP general permit in accordance with this chapter, and the board, through no fault of the permittee, does not issue the next consecutive VWP general permit with an effective date on or before the expiration date of the expiring VWP general permit, the conditions of that expiring VWP general permit shall continue in force until the effective date of the next consecutive VWP general permit.

9VAC25-700-30. Authorization to impact surface waters.

A. Any person granted coverage under the VWP general permit (9VAC25-700-100) effective (insert the effective date of the regulation), may impact nontidal wetlands, nontidal open water, and nontidal stream channel, in accordance with this chapter and 9VAC25-210 et seq., provided that:

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1. Impacts do not exceed any of the following limits:

a. Up to one-tenth (0.10) acre (4,356 square feet) of permanent wetland or permanent open water impacts per single and complete project, or per single and complete crossing for linear projects, including permanent conversion.

b. Up to 300 linear feet of permanent stream channel impacts per single and complete project, or per single and complete crossing for linear projects, for all components of the project, including structures and stream channel manipulations.

c. Up to one-half (0.50) acre (21,780 square feet) of temporary wetland or temporary open water impacts per single and complete project, or per single and complete crossing for linear projects.

d. Up to 300 linear feet of temporary stream channel impacts per single and complete project, or per single and complete crossing for linear projects, for all components of the project, including structures and stream channel manipulations.

2. Limits specified in subdivision 1 of this subsection shall not be exceeded individually or cumulatively.

3. The applicant submits notification as required in this chapter using DEQ-approved forms of notification.

4. The applicant complies with the limitations and other requirements of the VWP general permit in 9VAC25-700-100, as applicable to the proposed activities and impacts; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.

5. The applicant has not been required to obtain a VWP individual permit under 9VAC25-210 et seq. for the proposed project impacts. Applicants may seek a VWP individual permit or coverage under another applicable VWP general permit in lieu of coverage under this VWP general permit.

6. All impacts result from a single and complete project, including all attendant features.

a. Where a road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters, the department may, at its discretion, require a VWP individual permit.

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

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B. Pursuant to § 62.1-44.15:21 D of the Code of Virginia, the board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon request by the department, any person claiming this waiver shall demonstrate to the satisfaction of the department that the proposed activity qualifies for the waiver.

C. Coverage under this VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statutes, ordinances, or regulations.

D. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the department has granted general § 401 certification as of (insert the effective date of the regulation), may constitute coverage under this VWP general permit unless a state programmatic general permit (SPGP) verification is issued for the activity or impact.

E. When the department determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the department may require coverage under a different VWP general permit or a VWP individual permit in accordance with 9VAC25-210-130 B rather than accepting notification for coverage under this VWP general permit.

9VAC25-700-40. Exceptions to coverage.

A. Coverage under this VWP general permit is not required if the activity is excluded from permitting in accordance with 9VAC25-210-60 or § 62.1-44.15:21 of the Code of Virginia.

B. Coverage under this VWP general permit cannot be used in combination with coverage under other VWP general permits in order to exceed the impact limits in section 30.

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

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

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

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F. The following activities shall not qualify for coverage under this VWP general permit:

1. Any activity in tidal waters.
2. Construction of a stormwater management facility in nontidal perennial stream channels or nontidal open water designated as oxygen-impaired or temperature-impaired.
3. The construction of an irrigation impoundment in a nontidal perennial stream channel.
4. Any surface water or groundwater withdrawal activities, including the installation or maintenance of spring boxes, French drains, or other similar structures for the continuous flow of perennial springs.
5. The pouring of wet or uncured concrete into state waters. Exceptions include when the area is contained *within or behind* a cofferdam or the work is performed in the dry.
6. Return flow discharges from dredge disposal sites.
7. Any activity in wetlands composed of 10% or more, singularly or in combination, based upon either basal area or percent areal cover in the area of impact, in a vegetative stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*).
8. Any activity in nontidal wetlands underlain by histosols.
9. Any activity in nontidal surface waters that will impact federal or state listed threatened or endangered species or designated critical habitat or result in a taking of threatened or endangered species in accordance with the following:
 - a. As pursuant to § 29.1-564 of the Code of Virginia, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568 of the Code of Virginia.
 - b. As pursuant to § 29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any state listed endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.
10. Impacts to state waters for the construction of any natural gas transmission pipeline that is greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 USC § 717f(c)).

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9VAC25-700-50. Notification for VWP general permit coverage.

A. Notification to the department shall be required prior to commencing construction. Applicants for projects meeting the criteria listed below shall submit a signed *Notification for VWP General Permit WP5 Coverage* to the department. The notification shall verify that the following criteria apply to the proposed activities and shall include the following information:

1. The project name and proposed project schedule.
2. The applicant's legal name, mailing address, telephone number, and if applicable, electronic mail address.
3. If different from the applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address of the property owner.
4. If applicable, authorized agent's name, mailing address, telephone number, and if applicable, and electronic mail address.
5. A map of all state surface water boundaries identified on the proposed project site, including boundaries of wetlands, stream channels, and open waters, and the amount of permanent and temporary impacts shown on the map, as follows:
 - a. Wetland impacts shall be identified according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested); and for each classification, the individual impacts shall be quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.
 - b. Individual stream impacts shall be quantified by length in linear feet to the nearest whole number and by average width in feet to the nearest whole number and shall be quantified in square feet to the nearest whole number.
 - c. Open water impacts shall be identified according to their Cowardin classification, and for each type, the individual impacts shall be quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.
6. Statement that the project boundaries are not under a deed restriction, conservation easement, declaration of restrictive covenant, or other land use protective instrument (i.e., "protected areas") implemented as the result of a federal or state permit action.

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7. The following certification statement, dated and signed by the applicant in accordance with 9VAC25-210-100: "By signing this notification, I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

B. Applicants for projects that do not meet the criteria of this VWP general permit shall submit an application for coverage under a different VWP general permit or a VWP individual permit prior to conducting activities in surface waters, unless the proposed activities are otherwise excluded or waived from a VWP permitting action per applicable Virginia Water Protection Permit Program regulations or the Code of Virginia.

C. In any case where the information and verification detailed in subdivision B of this section is not addressed by an applicant, coverage shall not be issued by the department.

9VAC25-700-70. Restoration of temporary impacts.

All temporary, nontidal surface water impacts shall be restored to preexisting conditions in accordance with the VWP general permit in 9VAC25-700-100.

9VAC25-700-80. Modifications.

Notifications accepted by the department shall not be modified. The permittee shall notify the department in advance of any changes to the authorized activities that cause the impact limits detailed in section 30 of this chapter to be exceeded. Should project activities authorized by this VWP general permit change, such that any limit is exceeded, application shall be made to DEQ for a different VWP general permit coverage or VWP individual permit prior to continuing or commencing activities in surface waters, unless the proposed activities are otherwise excluded or waived from a VWP permitting action per applicable Virginia Water Protection Permit Program regulations or applicable provisions in the Code of Virginia.

9VAC25-700-90. Termination.

VWP general permit coverage may be terminated for cause in accordance with 9VAC25-210-180 F.

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9VAC25-700-100. VWP general permit.

VIRGINIA WATER PROTECTION (VWP) GENERAL PERMIT NO. WP5 FOR MINIMAL
SURFACE WATER IMPACTS

Effective date: (insert the effective date of the regulation)

Expiration date: August 1, 2036

In compliance with the Clean Water Act, as amended (33 USC § 1251 et seq.), and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that this VWP general permit will comply with water quality requirements, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

Part I.

Authorized activities.

A. Any person granted coverage under the VWP general permit (9VAC25-700-100) effective (insert the effective date of the regulation), may impact nontidal wetlands, nontidal open water, and nontidal stream channel, in accordance with this chapter and 9VAC25-210 et seq., provided that impacts do not exceed any of the following limits:

1. Up to one-tenth (0.10) acre (4,356 square feet) of permanent wetland or open water impacts per single and complete project, or per single and complete crossing for linear projects, including permanent conversion.

2. Up to 300 linear feet of permanent stream channel impacts per single and complete project, or per single and complete crossing for linear projects, for all components of the project, including structures and stream channel manipulations.

3. Up to one-half (0.50) acre (21,780 square feet) of temporary wetland or open water impacts per single and complete project, or per single and complete crossing for linear projects.

4. Up to 300 linear feet of temporary stream channel impacts per single and complete project, or per single and complete crossing for linear projects, for all components of the project, including structures and stream channel manipulations.

B. Limits specified in subsection A of this section shall not be exceeded individually or cumulatively.

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C. Notifications accepted by the department shall not be modified. The permittee shall notify the department in advance of any changes to the authorized activities that cause the impact limits detailed in 9VAC25-700-30 to be exceeded. Should project activities authorized by this VWP general permit change, such that any limit is exceeded, application shall be made to DEQ for a different VWP general permit coverage or VWP individual permit prior to continuing or commencing activities in surface waters, unless the proposed activities are otherwise excluded or waived from a VWP permitting action per applicable Virginia Water Protection Permit Program regulations or applicable provisions in the Code of Virginia.

D. Coverage under this VWP general permit cannot be used in combination with coverage under other VWP general permits in order to exceed the impact limits in 9VAC25-700-30.

Part II.

Special conditions.

A. All activities.

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

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert. The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. Pipes and culverts of 24 inches or less inside diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts of greater than 24 inches inside diameter shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained *within or behind* a cofferdam or the work is performed in the

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dry. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

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

5. Erosion and sedimentation controls shall be designed to comply with the requirements of the Virginia Erosion and Stormwater Management Regulation (9VAC25-875). If required, these controls shall be placed prior to clearing and grading; maintained in good working order to minimize impacts to state waters; and shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized to comply with the requirements of the Virginia Erosion and Stormwater Management Regulation (9VAC25-875), if applicable.

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

8. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

9. All nonimpacted surface waters within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

10. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within seven days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote

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and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second-year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within seven days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List, September 2024, shall not be used to the maximum extent practicable.

11. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within seven days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within seven days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List, September 2024, shall not be used to the maximum extent practicable.

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

13. Water quality standards shall not be violated as a result of the construction activities.

14. If stream channelization or relocation is required, all work in surface waters shall be done in the dry and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

B. Road crossing activities.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable.

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Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

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

C. Utility line activities.

1. All utility line activities in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within seven days of completing work in the area. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List, September 2024, shall not be used to the maximum extent practicable.

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

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

D. Stream modification and streambank protection.

1. Riprap bank stabilization and riprap aprons for outfalls shall be of an appropriate size and design to comply with the requirements of the Virginia Erosion and Stormwater Management Regulation (9VAC25-875).

2. For streambank protection activities, the structure and backfill shall be placed as close to the streambank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

3. All streambank protection control structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

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

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

6. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

E. Stormwater management facility activities.

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

2. Maintenance activities within stormwater management facilities shall not require additional permit coverage provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and are accomplished in designated maintenance areas as indicated in the facility maintenance or design plan.

Part III.

General Conditions.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, or (iv) denial of notification or application for coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

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

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

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substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

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

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

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

G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the department or any duly authorized agent of the department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of ensuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained in this VWP general permit shall make an inspection time unreasonable during an emergency.

H. Transferability of coverage. Should project activities authorized by this VWP general permit transfer to a different permittee, a notification shall be submitted to the department by the new permittee in accordance with 9VAC25-700 et seq. prior to continuing or commencing activities in surface waters. The transferred VWP general permit coverage shall be fully effective upon confirmation that the notification is accepted by the department.

I. Termination. VWP general permit coverage may be terminated for cause in accordance with 9VAC25-210-180 F.

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

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

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

M. Duty to provide information.

1. The permittee shall furnish to the department information that the department may request to determine compliance with the VWP general permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

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

N. Monitoring and records requirements.

1. When applicable, monitoring of parameters, other than pollutants, shall be conducted at a frequency sufficient to yield data that are representative of the monitored activity and may include, when appropriate, continuous monitoring and composite samples. Analysis of pollutants will be conducted according to 40 CFR Part 136 as published in the July 1, 2024, update, Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. The permittee shall retain records of all applicable monitoring information, including all calibration and maintenance records, all original strip chart or electronic recordings for continuous monitoring instrumentation, and records of all data used to complete the notification for coverage under the VWP general permit, for a period of at least three years after the VWP general permit expiration.

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

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

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- 511 f. The results of such analyses; and
- 512 g. Chain of custody documentation.
- 513 O. Unauthorized discharge of pollutants. Except in compliance with 9VAC25-700 et seq. and
- 514 this VWP general permit, it shall be unlawful for the permittee to:
- 515 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or
 - 516 deleterious substances;
 - 517 2. Excavate in a wetland;
 - 518 3. Otherwise alter the physical, chemical, or biological properties of state waters and make
 - 519 them detrimental to the public health, to animal or aquatic life, or to the uses of such waters
 - 520 for domestic or industrial consumption, for recreation, or for other uses; or
 - 521 4. On and after October 1, 2001, conduct the following activities in a wetland:
 - 522 a. New activities to cause draining that significantly alter or degrade existing wetland
 - 523 acreage or functions;
 - 524 b. Filling or dumping;
 - 525 c. Permanent flooding or impounding; or
 - 526 d. New activities that cause significant alteration or degradation of existing wetland
 - 527 acreage or functions.
- 528 P. Duty to renotify. Any permittee desiring to continue a previously authorized activity after the
- 529 expiration date of the VWP general permit shall comply with the provisions in 9VAC25-700-27.
- 530 FORMS (9VAC25-xxx)
- 531 Notification for VWP General Permit WP5 Coverage (insert the effective date of the regulation)
- 532 DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-700)
- 533 Classification of Wetlands and Deepwater Habitats of the United States, adapted from
- 534 Cowardin, Carter, Golet, and LaRoe (1979), Wetlands Subcommittee, Federal Geographic Data
- 535 Committee, August 2013
- 536 Virginia Invasive Plant Species List, Division of Natural Heritage, Department of Conservation
- 537 and Recreation, September 2024