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Proposed Regulation Agency Background Document

Approving authority name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-690-10 <i>et seq.</i>
Regulation title	Virginia Water Protection General Permit for Impacts from Development Activities
Action title	Virginia Water Protection General Permit WP-4
Document preparation date	June 22, 2004

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

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The purpose of this proposed regulatory action is to revise the above referenced general permit regulation to correct several administrative procedures, clarify application and permitting requirements and allow for a more efficient application review process. Since implementation of this regulation in October 2001, it has become evident that these minor corrections are needed to improve applications for coverage, timeframes for issuance of authorizations, and coordination with the U.S. Army Corps of Engineers State Program General Permit (SPGP-01). No change to the upper thresholds of coverage under this regulation is being proposed.

Basis

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

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

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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 VWP general permits are intended to simplify and streamline the permitting process for activities in state waters that have a minor individual and cumulative impact to the environment. The proposed changes will allow for a more efficient and understandable application submittal and review and authorization issuance process. In turn, this will allow for greater consistency and predictability for the public.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

Changes to the regulation are being proposed, as follows:

1. clarification of what is needed to decide that an application is complete, including informational and time requirements;
2. allow for payments to mitigation bank or in-lieu fee funds to be linked to the start of work in jurisdictional areas rather than to the date of authorization issuance;
3. modify the procedure for pre-construction notification;
4. allow the permittee to decrease impacts and associated compensation without having to terminate and reissue their authorization;
5. clarify the section on protection of non-impacted wetlands on the project and mitigation sites;
6. allow for termination of authorizations without penalty when the project does not go forward;
7. clarify exceptions to coverage section for consistency;
8. specify a timeframe for requests for extension or renewal of general permit authorizations;
9. clarify requirements for avoidance, minimization and compensation alternatives;

10. clarify that 2:1 compensation ratio applies to wetland but not stream impacts, which are compensated at a 1:1 ratio;
11. clarify limits to use of multiple general permit authorizations for the same project;
12. clarify requirements concerning threatened and endangered species;
13. clarify the distinctions between temporary and permanent impacts and conversion impacts;
14. clarify lower threshold for reporting only authorizations to include up to one-tenth acre of surface waters, but not more than 300 linear feet of stream channel, to maintain consistency with the U.S. Army Corps of Engineers SPGP-01 requirements;
15. clarify that no conceptual or final compensation plan is needed when compensation is via purchase of bank credits or contribution to an in-lieu fee fund;
16. modify certain construction monitoring requirements;
17. make minor grammatical changes for clarity.

At this time, no changes are being proposed to the upper thresholds for coverage specified in this general permit regulation.

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.

The primary advantage to the proposed regulation changes is to increase the usefulness of the general permit to the public. These clarifications will simplify and streamline the permitting process for activities in State waters that have a minor individual and cumulative impact to the environment. Further, the proposed regulation changes will allow for greater consistency and predictability for the public. There are no disadvantages to the public from the proposed regulation changes.

Requirements More Restrictive Than Federal

Please identify and describe any requirement of the proposal which are 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.

There are no requirements of this proposed regulation, which are more restrictive than appropriate federal requirements.

Locality 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.

The regulation applies statewide; however, the majority of coverage issued under this general permit is located in the Tidewater and Piedmont areas of Virginia, and Northern Virginia.

Public Participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest land preservation.

The proposed changes to the regulations have been developed with advice from a Technical Advisory Committee (TAC). TAC members included environmental advocacy groups, municipalities, utility companies, VDOT, mining industries, home builder associations, state and federal natural resource agencies, environmental consulting groups, and VIMS. In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and on any impacts of the regulation on farm and forestland preservation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email or fax to Ellen Gilinsky, 629 East Main Street, 9th Floor, Richmond, VA 23219; 804-698-4375, 804-698-4347 (fax); or egilinsky@deq.state.va.us. Written comments must include the name and address of the commentor. In order to be considered comments must be received by 5:00 p.m. on the date established as the close of the comment period.

A public hearing will be held and notice of the public hearing can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Financial impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:

These proposed changes to the regulation will not increase, and may actually decrease, the financial costs listed below.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a	No Change
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delineation of one-time versus on-going expenditures	
Projected cost of the regulation on localities	No Change
Description of the individuals, businesses or other entities likely to be affected by the regulation including specific information on the impact on small businesses as defined in § 2.2-2279	No Change
Agency’s best estimate of the number of such entities that will be affected	No Change
Projected cost of the regulation for affected individuals, businesses, or other entities	No Change

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The alternative of not following through with the proposed changes is not feasible, as the current regulation is not clear in terms of application submittals and staff review and issuance of authorizations for coverage. In addition, some of the requirements of the existing regulation conflict with the U.S. Army Corps of Engineers State Program General Permit (SPGP-01).

Public comment

Please summarize all public comment received during 30-day period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response

Impact on family

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

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

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Changed to the title of this general permit to “Virginia Water Protection General Permit for Impacts from Development Activities and Certain Mining Activities”

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9 VAC 690-10	N/A	Definitions	Added 3 definitions; deleted 1 definition; and modified 4 definitions for clarity.
9 VAC 690-20	N/A	Purpose and Delegation of Authority	Minor clarification of instructional language.
9 VAC 690-30	N/A	Authorization to Impact Surface Waters	Added mining facilities as an authorized activity under this general permit with certain restrictions; differentiated between requirements for wetlands and streams; clarified requirement language.
9 VAC 690-40	N/A	Exceptions to Coverage	Clarification of requirement language.
9 VAC 690-50	N/A	Notification	Differentiated between requirements for wetlands and streams; clarified instructional language.
9 VAC 690-60	N/A	Registration Statement	Changed section title; added language to clarify complete application requirements; deleted requirements for unnecessary information; differentiated between requirements for wetlands and streams.
9 VAC 690-70	N/A	Mitigation	Differentiated between requirements for wetlands and streams; clarified mitigation requirement language.
9 VAC 690-80	N/A	Notice of Planned Change	Added language to define a planned change, and under what circumstances such procedures can be used.

9 VAC 690-90	N/A	Notice of Termination	Changed section title; added language to allow a permittee to cancel an authorization; minor clarification of instructional language.
9 VAC 690-100	N/A	VWP Permit and Conditions	Added, deleted, and modified language to clarify general conditions, special conditions, and mitigation and reporting requirements.