



Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-670
Regulation title	Virginia Water Protection General Permit WP2 for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Commission or the State Corporation Commission and Other Utility Line Activities
Action title	Revisions and Renewal of 9 VAC 25-670
Final agency action date	June 1, 2006
Document preparation date	May 4, 2006

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 21 (02) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Virginia Water Protection (VWP) General Permit WP2 will expire on October 1, 2006. The proposed revisions include minor changes to improve the processing and coordination of authorizations, both for the public, DEQ, and other agencies. These VWP general permit regulations generally reduce the permitting burden to the public and minimizes the amount of agency duplication in processing permit authorizations and it is in the interest of all to continue to provide this level of service through the renewal of this general permit.

The substance of the revisions included the addition, clarification, and deletion of definitions; minor grammatical changes; formatting, consolidating and reordering of text to improve readability; clarification of existing requirements; requiring a complete application and compensatory mitigation for impacts to wetlands, open waters and streams which are protected by deed restrictions or similar protective covenants; extending the life of the general permit regulations to 10 years instead of the current 5 years; extending the permit authorization period to up to 7 years; reiteration of provisions in the main VWP

regulation for purposes of emphasis; clarified the project extent for a Notice of Planned Change; and amending the thresholds of coverage for wetlands and open waters and stream impacts, which were previously combined together as “surface waters.” Due to limited interest expressed in the discussions among the Technical Advisory Committee, considerations for repealing this general permit and incorporating its provisions into WP4 have been dropped. The proposed revisions to General Permit WP2 govern the permanent and temporary impacts up to one acre of nontidal wetlands or open water, and up to 1,500 linear feet of nontidal stream bed.

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.

On June 1, 2006, the State Water Control Board voted unanimously to allow the Virginia Department of Environmental Quality to finalize the proposed revisions to 9 VAC 25-670 - Virginia Water Protection General Permit WP2 for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Commission or the State Corporation Commission and Other Utility Line Activities.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

The proposed general permit will have no impact on the institution of the family and family stability.

Summary Of Public Comments and DEQ Responses

Proposed Revisions to Virginia Water Protection General

Permit WP2

9 VAC 25-670

The public comment period for the proposed regulation action noted above was from January 9, 2006 through March 10, 2006.

One public hearing was held at the DEQ Piedmont Regional Office in Glen Allen, Virginia on Monday, February 6, 2006. Mr. E. Bryson Powell with the State Water Control Board officiated. Five members of the public and three DEQ staff attended the hearing, and one citizen provided oral comments.

A total of twelve written comments, including email and facsimile correspondence, were received by the comment period deadline. Written comments were received from government agencies, representatives of various business and trade advocacy organizations, and citizens.

All of the written and oral (audio tape) comments will be kept in the public record for this proposed rulemaking. The public comments presented below have been summarized and grouped by the topic for brevity and includes the proposed regulation citation, if applicable. A list of acronyms and abbreviations used in this summary is provided at the end.

9 VAC 25-670

1. *Kimberly Vanness Larkin, Northern Virginia Building Industry Association (NVBIA):*
 - a. -10 Definitions: same as -660.
 - b. -30 Authorization: same as -660; clarify F to clearly state applies to all utility projects; recommend rewording to “coverage under a USACE Nationwide or Regional Permit for which DEQ has issued 401 certification shall constitute coverage under this VWP until such time a SPGP is approved for the qualifying activity. When the SPGP is approved it will supersede the NW or RP.”
 - c. -40 Exceptions: and/or language does not match -680-30; revised and/or language throughout regulation; add ‘new’ before stormwater management in F1; F6 is too broad and at minimum recommend deleting ‘other land use protective easement’.
 - d. -50 Notification: same as -660
 - e. -60 Application: same as -660
 - f. -70 Compensation: recommend removing ‘minimum’ as it relates to mitigation ratios; if there is a need to require higher ratios, project should not qualify for GP; add ‘unless utilizing out of kind mitigation, then the ratios shall be determined on a project specific basis’.
 - g. -80 Notice of planned change: same as -660
 - h. -100 VWP general permit:
 - revise and/or language in paragraph IA1
 - IC5 does not allow for the clearing required for E&S controls, so add ‘primary site’ before clearing, or add ‘clearing for placement of E&S controls should be minimized to the max. extent practicable’
 - add ‘existing’ before compensatory in IC10
 - do not include ‘other interested and affected agencies’ in IC15, as this should only apply to agencies with regulatory authority/jurisdiction
 - remove IC17, as complying with DCR standards should be enough, or if keeping it, start with wording ‘Untreated stormwater ...’, so that permittee is not responsible for stormwater runoff generated offsite and out of their control
 - disagree with adding ‘minimum’ to IIA, as whole point of GP is to minimize time and standardize requirements for minimal impacts
 - in IIE3b add ‘or at approved photo stations’ after site and before prior in second sentence
 - in IIE3f, and/or language
 - in IIE6a9, add ‘as appropriate’ after reference site
 - in IIII1, and/or language

DEQ Response:

- The definition of Conversion is inclusive of other types of impacts such as those resulting from impounding water. The definition will be stricken from Section 10 of each regulation, as proposed, and incorporated into in Section 70 J, as proposed. No changes are being made to the proposed regulation.
- The definition of Isolated Wetland of Minimal Ecological Value in Section 10 is consistent with the VWP Permit Program Regulation 9 VAC 25-210. No changes are being made to the proposed regulation.
- The definition of Riprap in Section 10 is being added to WP1 and WP2 to be consistent with its inclusion in WP3 and WP4. The definition includes all purposes for riprap in surface waters. No changes are being made to the proposed regulation.
- The definition of Stream Bed in Section 10 of each regulation will be clarified as to not exclude channelized surface waters.
- The definition of Temporary Impacts in Section 10 of each regulation states that conditions, contours, or elevations must be restored, provided that functions and values are restored. For example, it is not acceptable to replace forest functions and values with emergent functions and values. However, since the functions and values of a mature forest cannot be replaced *immediately*, the acceptable compensation plan will replace the functions and values associated with a forested system, even if planting of immature trees and woody material may be necessary at first. Therefore, no change is being made to the proposed regulation.
- The intent of Sections 20, 30, 40, 50, 80, and 100 is to allow authorization of a project that impacts up to one acre of wetlands, or up to one acre of open water, or any combination of wetlands and open water that is up to one acre, in addition to impacting up to 1,500 linear feet of stream bed. The impacts can be permanent, temporary, or a combination of both, provided that the one acre and 1,500 linear foot-limits are not exceeded. No change to the wording is proposed.
- The usage thresholds for each regulation will remain as proposed, based on a compromise between the various positions of the TAC members. No change is proposed.
- DEQ considers each Corps' Nationwide Permit and Regional Permit as it is issued or reissued to determine whether or not Section 401 Certification will be granted by DEQ. Therefore, no change is proposed.
- The intent of Section 40 is to prohibit the construction, redesign, expansion, or placement of a stormwater management facility in the specified waters, whether a new or an existing facility. Therefore, no change is proposed.
- The proposed language in Section 40 is inclusive of the various types of protective instruments that are commonly used and does not exclude other instruments not listed in the regulation text. Therefore, no change is proposed.
- The requirement in Section 60 for disclosure of surface waters in protected areas was the outcome of TAC discussions during the development of the proposed regulation language. DEQ needs to ensure that protected areas are not impacted without the proper revisions to such protective easements and without the necessary compensation. No change is proposed.

- All four regulations include “and”, which provides for a more robust accounting of all avoidance and minimization measures taken. No change is proposed to Section 60 B 15.
- Since DEQ requires a permit application fee to cover staff time and other agency resources, a fee for the second review of an application for the same project, especially after 180 days has passed, would cover the additional time for staff review. Likewise, if new impacts exceed the 1/10 acre or 300 linear feet, additional staff time is required to consider the effect of the impacts and proposed compensation. Therefore, no change is proposed to Sections 60 and 80.
- DEQ is authorized to protect surface water functions and values and receive compensation for lost functions and values. A Virginia Water Protection permit may not be issued if significant impacts occur to surface waters. Since functions and values include fish and wildlife habitat, no change is proposed to Section 80.
- To the best of our knowledge, DEQ has not cited permit violations for clearing associated with placement of E&S controls when related to project construction. If E&S controls are designed in accordance with the Virginia Erosion and Sediment Control Handbook, and that handbook includes a ‘clearing’ activity in order to install the control, then that particular clearing activity is authorized by the permit. Regardless, if clearing is not part of the handbook practice, the clearing would still be considered as a temporary impact that must be reported in the application and restored. Therefore, no change is proposed to Section 100.
- The intent of Section 100, Part I C 10 is to protect existing or proposed compensation sites, especially when existing wetlands or streams are present. Therefore, no change is proposed.
- DEQ intends to delete Section 100, Part I C 17 in order to clarify the regulation of stormwater management activities in upland areas versus surface waters.
- The TAC consensus was to revise the title of Section 100, Part II A. Therefore, no change is proposed to Section 100.
- Section 100, Part II A 8 will be revised to replace “stream” with “riparian”.
- No change is proposed to Section 100, Part II E 3 b since photo stations are not required to be approved for construction monitoring.
- No change is proposed to Section 100, Part II E 6 a (9) since the 6a section includes the language “as applicable”.
- The inclusion of other affected agencies is authorized by the State Water Control Law (§ 62.1-44.15:5. Virginia Water Protection Permit (F)), and the TAC consensus was to include this language. Therefore, no change is proposed to Section 100.

2. *Sam Hollins, Virginia Transportation and Construction Association (VCTA): -70*
 Compensation: match ratio wording in E to other three general permit

DEQ Response: Each general permit regulation contains specific ratios based on the type of activities covered by the regulation and the required compensation, and therefore, no change to the ratio numbers will be made to each proposed regulation. No change is proposed.

3. *Tracey Harmon and Richard Woody, Virginia Department of Transportation (VDOT):*
 - a. -60 Application: in B17, delete requirement for RPA on transportation and utility delineations maps, as this information is not available to VDOT staff and it clutters plans
 - b. -80 Notice of planned change: in B, permittee should be able to add impacts through a plan-change regardless of their location to previously authorized impacts as long as the impact amounts are within the limits allowed and the permit has logical termini

DEQ Response:

- The requirement to submit Resource Protection Area (RPA) boundaries on application plans or drawings will remain as proposed in each regulation in order to inclusive of all types of projects. VDOT and DEQ guidance will clarify this requirement to respective staff members. No change is proposed.
- DEQ proposes to change the language of Section 80 to include the road project-specific boundaries of “logical termini”.

List of Acronyms and Abbreviations

A&M	Avoidance and minimization
BMP	Best Management Practice
DCR	Department of Conservation and Recreation
DEQ	Department of Environmental Quality
DGIF	Department of Game and Inland Fisheries
E&S	Erosion and sediment
GP	DEQ General Permit
IWOMEV	Isolated wetland of minimal ecological value
NWP	USACE Nationwide Permit
NVBIA	Northern Virginia Building Industry Association
RP	USACE Regional Permit
RPA	Resource Protection Area
RSA	Rapidan Service Authority
SICAM	Stream Incremental Compensation and Assessment Method
SPGP	State Program General Permit
SWCB	State Water Control Board
TAC	Technical Advisory Committee
T&E	Threatened and Endangered (Species)
USACE	U.S. Army Corps of Engineers
VAC	Virginia Administrative Code
VDACS	Virginia Department of Agricultural and Consumer Services
VDOT	Virginia Department of Transportation
VWP	Virginia Water Protection (referring to the Permit Program)
VWPP	Virginia Water Protection Permit
WP	Water Protection (as in WP1 through WP4)