
FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

STATE WATER CONTROL BOARD

REGISTRAR'S NOTICE: The following regulations filed by the State Water Control Board are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 12 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 9-6.14:7.1 B; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 9-6.14:7.1 F; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9 VAC 25-660-10 et seq. Virginia Water Protection General Permit for Impacts Less than One-Half of an Acre.**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Effective Date: October 1, 2001.

Summary:

The regulation addresses a new requirement in § 62.1-44.15:5 of the Code of Virginia to develop a general permit for activities causing wetland impacts of less than one-half acre. Numerous changes have been made throughout the final regulation. Most of these involve clarification of definitions, the distinction between the general permit regulation and an authorization approved under the general permit, and that the permits do not apply to tidal waters. The procedures for data searches pertaining to threatened and endangered species have been modified. Certain exclusions, special conditions, and a limit on impacts to intermittent stream channels have been added to conform to the other general permits. The evaluation of compensatory mitigation options, including compensation ratios, have been clarified. A notice of planned change section has been added, and the section on general permit modification has been deleted, to establish the correct procedure for modifying general permit authorizations.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375 or e-mail egilinsky@deq.state.va.us.

CHAPTER 660.

VIRGINIA WATER PROTECTION GENERAL PERMIT FOR IMPACTS LESS THAN ONE-HALF OF AN ACRE.

9 VAC 25-660-10. Definitions.

The words [, and] terms [~~and provisions~~] 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 (VWP) Permit Regulation (9 VAC 25-210-10 et seq.) unless the context clearly indicates otherwise or unless [otherwise] indicated below.

["Bank 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.

"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.

"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.]

"Cross-sectional [~~sketch~~ drawing]" means a graph or plot of ground elevation across a waterbody or a portion of it, usually along a line perpendicular to the waterbody or direction of flow.

"FEMA" means [the] Federal Emergency Management Agency.

"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 list generated by [~~USDA~~ the United States Department of Agriculture's] Natural Resources Conservation Service.

"Impacts" means results caused by human-induced activities conducted in surface waters [~~, such as filling, dumping, dredging, excavating, permanent flooding or impounding or any other new activities on or after October 1, 2001, including draining, that significantly alter or degrade existing acreage or functions of the surface waters~~ as specified in § 62.1-44.15:5 D of the Code of Virginia] .

["Independent 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 multi-phase project that depend

Final Regulations

upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.]

"Less than one-half of an acre" means 0.00 to 0.49 acre, rounded to the second decimal place.

"Perennial stream" means a stream that has flowing water year round in a typical year. For the purpose of this chapter, a surface water body (or stream segment) having a drainage area of at least 320 acres (1/2 square mile) is a perennial stream, unless field conditions clearly indicate otherwise.

["~~Registration statement~~" means a form of preconstruction application or notification.]

"Single and complete project" means the total project proposed or accomplished by one person [and which has independent utility]. For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate [surface] water [of the United States] (i.e., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland, lake, etc. are not separate waterbodies. [~~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 multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.~~]

"State programmatic general permit" means a [~~type of~~] general permit issued by the Department of the Army [~~and founded on an existing state, local or federal agency program that is designed to avoid duplication with another federal, state or local program provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal in accordance with 33 CFR Part 32S that is founded on a state program and is designed to avoid duplication between the federal and state programs~~].

"Up to one-tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place.

["Utility line" means any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable or slurry substance, for any purpose, and any 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.]

9 VAC 25-660-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this chapter is to establish VWP General Permit Number WP1 under the [~~VWPP~~ VWP permit program] regulation to govern [~~activities that impact~~ impacts to] less than one-half of an acre of [nontidal] surface waters [{ } including [~~wetlands~~], with a maximum up to] 125 linear

feet of perennial stream channel [and up to 1,500 linear feet of nonperennial stream channel]. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board.

B. The director, or [~~an authorized representative~~ his designee], may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

[~~C. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure(s).~~

~~D. C.] This VWP general permit regulation will become effective on [October 1, 2001,] and will expire [three years after the effective date. For any covered activity, this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-660-30 and the receipt of this VWP general permit on October 1, 2006].~~

[~~E. For each individual activity requiring notification, coverage will continue for a maximum of three years from the date of authorization of coverage under this VWP general permit to an individual person or applicant.~~

D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-660-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for a maximum of three years.]

9 VAC 25-660-30. Authorization to impact surface waters.

A. Any person governed by this VWP general permit is authorized to impact less than one-half of an acre of surface waters [{ } including [~~wetlands~~], with a maximum of up to] 125 linear feet of perennial stream channel [and up to 1,500 linear feet of nonperennial stream channel], provided that the person submits notification as required in 9 VAC 25-660-50 and 9 VAC 25-660-60, remits the required application processing fee (9 VAC 25-20-10 et seq.), complies with the limits and other requirements of 9 VAC 25-660-100, receives approval from the board, and provided that:

1. The applicant shall not have been required to obtain a VWP individual permit under the VWP permit regulation (9 VAC 25-210-10 et seq.) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another [applicable] VWP general permit, in lieu of coverage under this VWP general permit.

2. Impacts [result from a single and complete project], including all attendant features both temporary and permanent [~~, are part of a single and complete project~~].

[a. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the board 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.

3. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations. Stream channel manipulations (e.g., tie-ins or cleanout) may not exceed 100 linear feet on the upstream or downstream end of a stream crossing.]

[~~3. 4.] Compensatory mitigation for unavoidable impacts is provided in the form of the purchase or use of mitigation bank credits or a contribution to an approved in-lieu fee fund.~~

[~~4. Compensatory mitigation for unavoidable impacts is provided at a 2:1 replacement to loss ratio.]~~

B. Only activities in nontidal waters may qualify for coverage under this VWP general permit.

C. 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 9 VAC 25-210-10. [Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.]

D. Receipt of this VWP general permit does not relieve any permittee of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

[E. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure or structures.]

[~~E. F.] Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers [(USACE)], and for which the board has issued [or waived] § 401 certification existing as of [~~the effective date of this chapter~~ October 1, 2001], shall constitute coverage under this VWP general permit [~~until such time as unless~~] a state programmatic general permit is approved for the covered activity or impact. [Notwithstanding any other provision, activities authorized under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with 9 VAC 25-210-130 do not need to obtain coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.]~~

9 VAC 25-660-40. [Prohibitions Exceptions to coverage].

A. [Authorization for coverage under] this VWP general permit will not apply in the following areas:

1. [~~Wetland areas~~ Wetlands] composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*). Percentages [~~may shall~~] be based on [either basal area or] percent [~~areal~~ areal] cover.

2. [~~Wetland areas~~ Wetlands] underlain by histosols.

3. Nontidal wetlands adjacent to tidal waters.

4. 100-year floodplains as identified by FEMA's flood insurance rate maps or FEMA-approved local floodplain maps.

5. Surface waters with federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. [Authorization for coverage under] this VWP general permit cannot be used in combination with [authorizations for coverage under] other VWP general permits to impact greater than one-half of an acre of nontidal surface waters, [including up to] 125 linear feet of perennial stream channel [or up to 1,500 linear feet of nonperennial stream channel]. [~~The use of~~] More than one [authorization for coverage under this] VWP [~~General Permit WP4~~ general permit] for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the [~~above mentioned limit~~ limits specified in this subsection].

C. The activity to impact surface waters shall not have been prohibited by state law [, or] regulations [~~or policies~~], nor shall it contravene [~~the applicable~~] Water Quality Standards (9 VAC 25-260-5 et seq.) [, ~~as amended or adopted by the board~~].

D. The board shall deny coverage under this VWP general permit to any applicant [~~conducting for~~] activities [~~which the board determines 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 adversely affect aquatic life, or for activities [~~which the board determines~~] 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, increase flooding, or cause more than minimal degradation of the water quality of any stream.]

[~~E. F.] This VWP general permit may not be used for:~~

1. Any stormwater management facility that is located in perennial streams or in waters designated as oxygen or temperature impaired;

2. The construction of an irrigation impoundment on a perennial stream;

3. Any water withdrawal activities;

4. The location of animal feeding operations or waste storage facilities in state waters;

[~~5. Restoration, creation or any fill in perennial streams in association with the establishment of a mitigation bank.~~

~~6. 5.] The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the [concrete or grout bags is contained within a cofferdam(s) area is contained within a cofferdam or the work is performed in the dry];~~

[~~7. 6.] Dredging or maintenance dredging;~~

Final Regulations

~~[8. Disposal of dredge materials or the~~ 7.] Return flow discharges from dredge disposal sites;

~~[9. 8.]~~ The construction of new ski areas or oil and gas wells;

~~[10. The construction of marine railways.~~

11. 9.] The taking of threatened or endangered species [- in accordance with the following:]

a. Pursuant to § 29.1-564 of the Code of Virginia: "~~[Taking, transportation, sale, etc., of endangered species is prohibited.]~~ 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 [U.S. 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."

b. Pursuant to § 29.1-566 of the Code of Virginia and 4 VAC 15-20-130 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.

9 VAC 25-660-50. Notification.

A. Notification to the board will be required prior to construction, as follows:

1. [An application for] proposed impacts greater than one-tenth of an acre of surface waters shall be [reported by the applicant to DEQ submitted] via [the entire a] registration statement [{that includes all information pursuant to } 9 VAC 25-660-60 [}].

2. [For Proposed] impacts up to one-tenth of an acre [, items shall be reported via a registration statement that includes only the following information: subdivisions] 1 through [9, 11 8, 13], 15 [, 16, 17] and [19 20] of [the registration statement - (9 VAC 25-660-60 B []) shall be provided] .

~~[B. All notifications shall include documentation from the Virginia Department of Game and Inland Fisheries, and the Virginia Department of Conservation and Recreation's Division of Natural Heritage indicating the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat.~~

B. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) may serve as the registration statement provided that all information required pursuant to 9 VAC 25-660-60 is included and that the first page of the form is clearly marked indicating the intent to have the form serve as the registration statement for this VWP general permit.]

C. The [DEQ board] will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and

Recreation [, the Virginia Department of Agriculture and Consumer Services] and the Virginia Department of Game and Inland Fisheries [regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this general permit].

9 VAC 25-660-60. Registration statement.

A. Registration statements shall be filed with the board as follows:

1. The [person applicant] shall file a complete registration statement as described in 9 VAC 25-660-50 for a VWP General Permit WP1 for impacts to surface waters [for of] less than one-half [of] an acre, including [a maximum of up to] 125 linear feet of perennial stream channel [and up to 1,500 linear feet of nonperennial stream channel], which will serve as a notice of intent for coverage under this VWP general permit.

2. Any [person applicant] proposing an activity under this VWP general permit [shall is advised to] file the required registration statement at least 45 days prior to the date planned for the commencement of the activity to be regulated by the VWP general permit. [VDOT may use its monthly IACM process for submitting registration statements.]

~~[3. Any person conducting an activity without a VWP permit, who qualifies for coverage under this VWP general permit, shall file the registration statement immediately upon discovery of the unpermitted activity.]~~

B. The required registration statement shall contain the following information:

1. The applicant's name, mailing address, telephone number and, if applicable, fax number;

2. The authorized agent's (if applicable) name, mailing address, telephone number and, if applicable, fax number;

3. The existing VWP permit number (if applicable);

4. The name of the project, purpose of project, and a description of the activity;

5. The name of [water body(ies) the water body or water bodies] or receiving stream, as applicable;

6. The hydrologic unit code (HUC) for the project area;

7. The name of the city or county where the project is located;

8. Latitude and longitude (to the nearest second) from a central location within the project limits;

9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the project area. The map should be of sufficient detail such that the site may be easily located for site inspection;

10. The appropriate appendices from the [Joint Permit Application JPA];

11. [~~The~~] project plan view. All plan view sketches should include, at a minimum, north arrow, scale, existing structures, existing contours, proposed contours (if available), limit of [~~jurisdictional~~ surface water] areas, direction of flow, ordinary high water, impact limits, [and] location and dimension of all proposed structures in impact areas. Cross-sectional drawings, with the [~~above~~] information [in this subdivision], may be required for certain projects to demonstrate minimization of impacts;

12. [~~Wetland Impact Information for both permanent and temporary impacts, including a description of the impact, the impact area (in square feet or acres), and the wetland classification based on Cowardin classification system or similar terminology. (Reserved.)~~]

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, and the impact area (in square feet, linear feet or acres). Wetland impacts should be quantified according to their Cowardin classification or similar terminology;

14. [~~This subdivision intentionally left blank; (Reserved.)~~]

[~~43.~~ 15.] A description of the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable as required by 9 VAC 25-210-115 A;

[~~44.~~ 16.] A description of the intended compensation for unavoidable impacts, including:

a. Any [~~wetland~~] compensation plan proposing to include contributions to [an] in-lieu fee [~~programs fund~~] shall include proof of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated [; and]

b. Any [~~wetland~~] compensation plan proposing the purchase of [~~wetland mitigation~~] banking credits shall include:

(1) The name of the proposed [~~wetland~~] mitigation bank [~~within the same or adjacent hydrologic unit code within the same river watershed with available credits~~];

(2) The number of credits proposed to be purchased; and

(3) Certification from the bank owner of the availability of credits;

[~~15. An aerial photo or scale map that clearly shows the property boundaries, location of surface waters including all wetland boundaries, limits of Chesapeake Bay Resource Protection Area(s) (RPAs), if applicable, and all surface water impacts at the site. A copy of the Corps of Engineers' delineation confirmation, including wetland data sheets, shall also be provided at the time of application. If written confirmation is not available at the time of application, verbal confirmation must be provided and the written confirmation submitted during the VWP general permit review. Additional state or local requirements may apply if the project is located within an RPA.~~]

17. A delineation map of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9 VAC 25-210-45, including the wetlands data sheets, and the latitude and longitude (to the nearest second) of the center of the wetland impact area. Wetland types should be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, shall also be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review. The delineation map should also include the location of all impacted and non-impacted streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) should be shown on the map, as other state or local requirements may apply if the project is located within an RPA.]

[~~46.~~ 18.] A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map for the project site;

[~~17. Documentation from the Virginia Department of Game and Inland Fisheries, and the Virginia Department of Conservation and Recreation's Division of Natural Heritage regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat.~~]

~~48.~~ 19.] The appropriate application processing fee for a VWP general permit (9 VAC 25-20-10 et seq.) [; and]

[~~49.~~ 20.] The following certification:

"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 violations."

C. The registration statement shall be signed in accordance with 9 VAC 25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of a complete registration statement, coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days. If the board fails to act within 45 days, coverage under this VWP general permit shall be deemed approved.

1. In evaluating the registration statement, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to

Final Regulations

a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve ~~[the use of authorization under]~~ this VWP general permit. However, these conditions must be consistent with the VWP ~~[P permit program]~~ regulation and may not override or conflict with the existing conditions of this VWP general permit related to impacts and compensatory mitigation.

E. Incomplete registration statement. Where a registration statement is ~~[considered]~~ incomplete, the board may require the submission of additional information ~~[after a registration statement has been filed,]~~ and may suspend processing ~~[of any registration statement]~~ until such time as the applicant has supplied ~~[the]~~ missing or deficient information and the ~~[board considers the]~~ registration statement ~~[is]~~ complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a registration statement, or submitted incorrect information in a registration statement or in any report to the board, he shall immediately submit such facts or the correct information.

9 VAC 25-660-70. Mitigation.

A. For the purposes of this VWP general permit, the board shall assume that the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund is ecologically preferable to practicable on-site ~~[and/or or]~~ off-site individual compensatory mitigation options ~~[, and no further demonstration is necessary]~~.

~~[B. Credits or units of wetland mitigation shall be calculated according to the following ratios:~~

~~1. One mitigation bank credit equals one unit of wetland mitigation.~~

~~2. The monetary equivalent of one acre of wetland creation or restoration in the form of a payment to a wetland trust fund equals one unit of wetland mitigation.~~

B. Compensatory mitigation for unavoidable wetland impacts is provided at a 2:1 replacement to loss ratio.

C. Compensatory mitigation for unavoidable stream impacts is provided at a 1:1 replacement to loss ratio.

D. Compensation for open water impacts may be required, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.]

~~[C. E.]~~ In order for contribution to an in-lieu fee fund to be an acceptable form of compensatory mitigation, the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.

~~[D. F.]~~ The use of mitigation banks for ~~[mitigating compensating]~~ project impacts shall be deemed appropriate if the bank is operating in accordance with the provisions of § 62.1-44.15:5 E ~~[of the Code of Virginia]~~ and 9 VAC 25-210-115 ~~[F]~~ and the applicant provides verification to ~~[DEQ the board]~~ of purchase or debiting of the required amount of credits.

9 VAC 25-660-80. [Modification Notice of planned changes].

~~[A.]~~ Authorization under this VWP general permit may be modified ~~[provided the total impacts to surface waters for a single and complete project are less than one-half of an acre, including 125 linear feet of perennial stream channel, when any of the following developments occur:~~

~~1. When additions or alterations have been made to the project which require the application of VWP general permit conditions that differ from those of the existing VWP general permit or are absent from it;~~

~~2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at the time of VWP general permit coverage and would have justified the application of different VWP permit conditions at that time;~~

~~3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;~~

~~4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;~~

~~5. When changes occur which are subject to "reopener clauses" in the VWP general permit;~~

subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated.

B. The permittee shall notify the board in advance of the planned change, and the modification request shall be reviewed according to all provisions of this regulation.]

9 VAC 25-660-90. Notice of termination.

When all permitted activities requiring notification under 9 VAC 25-660-50 A 1 have been completed, the permittee shall submit a notice of termination within 30 days of final completion. The notice shall contain the following information:

1. Name, mailing address and telephone number of the ~~[applicant]~~ permittee];

2. Name and location of the activity;

3. The VWP permit authorization number; ~~[and]~~

4. The following certification:

"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in ~~[wetlands surface waters]~~ in accordance with the VWP general permit, and that performing activities in ~~[wetlands surface waters]~~ is unlawful where the activity

is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit."

9 VAC 25-660-100. VWP general permit.

Any applicant whose registration statement [is has been] accepted by the board [will receive the following VWP general permit and shall comply with the requirements in it and be subject to all requirements of the VWP permit regulation, 9 VAC 25-210-10 et seq, shall be subject to the following requirements]:

VWP General Permit No. WP1

[Authorization] effective date:

[Authorization] expiration date:

VWP GENERAL PERMIT FOR IMPACTS [OF] LESS THAN ONE-HALF OF AN ACRE UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC §1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

[In compliance with Subject to] the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, [citizens of the Commonwealth of Virginia are the permittee is] authorized to impact less than one-half of an acre of [nontidal] surface waters [{ } including [wetlands], with a maximum of up to] 125 linear feet of perennial stream channel [and up to 1,500 linear feet of nonperennial stream channel] [, within the boundaries of the Commonwealth of Virginia, except in those areas specifically named or excluded in board regulations or policies which prohibit such impacts].

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I - Special Conditions, Part II - Mitigation, Monitoring and Reporting, and Part III - Conditions Applicable to All VWP [General] Permits, as set forth herein.

Director, Department of Environmental Quality

Date

Part I. Special Conditions.

A. Authorized activities.

[~~1. Any additional impacts to surface waters associated with this project may require modification of this VWP general permit and additional compensatory mitigation.~~

2. 1. This permit authorizes impacts to less than one-half of an acre of nontidal surface waters, including up to 125 linear feet of perennial stream channel, and up to 1,500 linear feet of nonperennial stream channel, according to the information provided in the applicant's approved registration statement.

2. Any additional impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-660-80, or another VWP permit application.

3.] The activities authorized by this VWP general permit must commence and be completed within three years of the date of this authorization.

B. Reapplication. Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP general permit requirement has not been completed within three years of the date of authorization. Application consists of an updated or new registration statement.

C. Overall project conditions.

1. The construction or work authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact 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. Culverts placed in streams must be installed to maintain low flow conditions]. No activity may cause more than minimal adverse effect on navigation. Furthermore, the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters.

4. [~~No fill in surface waters may consist of unsuitable materials (e.g., trash, debris, car bodies, asphalt).~~] All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all [Department of Environmental Quality (DEQ) Regulations applicable laws and regulations].

5. Erosion and sedimentation controls shall be designed in accordance with the [current] Virginia [Department of Conservation and Recreation (DCR)] Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area stabilizes.

Final Regulations

6. Any exposed slopes and streambanks must be stabilized immediately upon completion of the project at each water body. All denuded areas shall be properly stabilized in accordance with the [~~current DCR~~ Virginia] Erosion and Sediment Control Handbook, Third Edition, 1992.

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

8. No machinery may enter flowing waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures to minimize soil disturbance to the maximum extent practicable.

10. All nonimpacted [~~wetlands~~ surface waters] within the project or right-of-way limits that are within 50 feet of any clearing, grading, [~~and/or~~] filling activities shall be clearly flagged or marked for the life of the construction activity within that area. The permittee shall notify all contractors that these marked areas are [~~wetlands~~ surface waters] where no [~~excavation or filling~~] activities are] to occur.

11. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to pre-construction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall [~~ensure that all~~] take all appropriate measures to promote revegetation of] temporarily disturbed wetland areas [~~revegetate~~] with wetland vegetation by the second year post-disturbance. All temporary fills shall be removed in their entirety and the affected area returned to [~~the~~] pre-existing contours.

12. All 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 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures [~~approved by DEQ~~].

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

15. [The permittee shall conduct his activities in accordance with any] time-of-year restrictions [~~imposed~~ recommended] by the Department of Game and Inland

Fisheries [~~of~~ or] the Virginia Marine Resources Commission [~~shall be strictly adhered to~~].

16. Immediately downstream of the construction area, water quality standards [~~(9 VAC 25-260-5 et seq.)~~] shall not be violated as a result of the construction activities.

[17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.]

D. Road crossings.

1. Access roads [~~must shall~~] be constructed [~~so that the length of the road minimizes~~ to minimize] the adverse effects on surface waters to the maximum extent practicable and [~~is to follow~~] as near as possible [~~to~~] preconstruction contours and elevations. Access roads constructed above preconstruction contours and elevations in surface waters must be properly bridged or culverted to maintain surface flows.

2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the re-establishment of a natural stream bottom and a low flow channel. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

3. Installation of [~~pipes and~~] road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other [~~means acceptable to DEQ~~ similar structures].

4. All state waters temporarily affected by the construction of a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, 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 new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

E. Utility lines.

1. All utility line work in surface waters shall be performed in [~~such~~] a manner [~~as to minimize that minimizes~~] disturbance, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

2. Material resulting from trench excavation may be temporarily sidecast [~~(up to three months)~~] 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. [~~DEQ may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate.~~]

3. The trench for a utility line cannot be constructed in [such] a manner [~~as to drain that drains~~] wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect).

[~~4. Untreated stormwater runoff shall be prohibited from directly discharging into any state waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.~~]

F. [~~Shoreline~~ Bank] stabilization.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the [~~most recent edition of the~~] Virginia [~~Department of Conservation and Recreation's Sediment and~~] Erosion [~~and Sediment~~] Control Handbook [, Third Edition, 1992].

2. Riprap apron for all outfalls shall be designed in accordance with the [~~most recent edition of the~~] Virginia [~~Department of Conservation and Recreation's Sediment and~~] Erosion [~~and Sediment~~] Control Handbook [, Third Edition, 1992].

[~~3. For shoreline protection activities, the area (in square feet) of surface water impact may not exceed four times the length (in linear feet) of the activity (e.g., a maximum of 400 square feet in surface waters for a 100-foot long bulkhead).~~

~~4. Bulkhead repair and replacement shall not exceed four feet channelward of existing functional bulkheads. The filling of wetlands behind freestanding bulkheads is prohibited.~~

5. 3.] For [~~shoreline~~ bank] protection activities, the structure and backfill shall be placed as close to the shoreline as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

[~~6. 4.] All [~~shoreline~~ bank] erosion [control] structures shall be located [~~so as~~] to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.~~

[~~7. 5.] Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.~~

[~~6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.~~

7. All material removed from the stream substrate shall be disposed of in an approved upland area.]

G. Stormwater management facilities.

1. [~~The~~] Stormwater management facilities shall be designed in accordance with best management practices and watershed protection techniques (i.e., 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. Compensatory mitigation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance excavation shall [~~be in accordance with an approved maintenance plan and shall~~] not exceed the original contours of the facility, as approved and constructed.

4. Maintenance within stormwater management facilities will not require mitigation provided that the maintenance is accomplished in designated maintenance areas as indicated in the maintenance plan.

Part II. Mitigation, Monitoring and Reporting.

A. [~~In order to qualify for this VWP general permit, Compensatory mitigation. The permittee shall provide] appropriate and practicable compensatory mitigation [~~will be required~~] for all [~~wetland~~] impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include:~~

1. Purchases of credits from approved [~~wetland~~] mitigation banks [~~are~~ meeting the requirements of 9 VAC 25-210-115 F] in accordance with 9 VAC 25-660-70 and provided that all impacts are compensated at a 2:1 ratio [; ; or]

2. Contributions to an in lieu fee [~~program fund~~] approved [~~by DEQ in accordance with 9 VAC 25-210-115 E~~] and dedicated to the achievement of no net loss of wetland acreage and function, provided that all impacts are compensated at a 2:1 ratio.

B. The permittee shall [~~make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities submit documentation within 60 days of VWP general permit issuance that the USACE has debited the required mitigation credits from the mitigation bank ledger or that the fund contribution has been received] .~~

[~~C. The permittee shall submit documentation within 60 days of VWP general permit issuance that the Corps of Engineers has debited the required mitigation credits from the mitigation bank ledger or that the fund contribution has been received.~~

~~D. DEQ shall be notified in writing by certified letter at least 10 days prior to the start of any activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.~~

~~E. The permittee shall notify DEQ in writing when unusual or potentially threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.~~

Final Regulations

~~F. The permittee shall report any fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m. Monday through Friday, DEQ shall be notified at (insert appropriate DEQ office phone number;) otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.~~

~~G. Written communications required by this VWP general permit shall be submitted to (insert the appropriate DEQ office address.) Please include the VWP general permit number on all correspondence.~~

C. Construction monitoring.

1. Photo stations shall be established to document the construction aspects of project activities within impact areas as authorized by this permit. Photographs should document the pre-construction conditions, activities during construction, and post-construction conditions within one week after completion of construction. Photographs shall be taken during construction at the end of the first, second and twelfth months of construction and then annually for the remainder of the construction project. Photographs are not necessary during periods of no activity within impact areas.

2. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

3. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.

4. Monitoring of water quality parameters shall be conducted during rerouting of the live streams through the new channels in the following manner:

- a. A sampling station shall be located upstream and immediately downstream of the relocated channel;
- b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels; and
- c. After opening the new channel, temperature, pH and D.O. readings shall be taken once every half hour for at least three readings at each station within 24 hours of opening the new channel.

D. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality (DEQ) office. The VWP general permit authorization number shall be included on all correspondence.

2. The board shall be notified in writing by certified letter at least 10 days prior to the start of construction activities

authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

3. After construction begins, construction monitoring reports shall be submitted to the board within 30 days of each monitoring event. The reports shall include, at a minimum, the following:

- a. A written statement regarding when work started in the identified impact area, where work was performed, what work was performed, and what work was completed.
- b. Properly labeled photographs (to include date and time, name of the person taking the photograph, a brief description, and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.).

4. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-660-90.

5. The permittee shall notify the board in writing when unusual or potentially complex conditions are encountered that require debris removal or involve a potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by the board.

6. The permittee shall report any fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate DEQ regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

7. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

H. 8.] All submittals required by this VWP general permit shall contain the following signed certification statement:

"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."

Part III. Conditions Applicable to All VWP [General] Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP [general] permit. 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. Any VWP [general] permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP [general] permit [authorization] termination, revocation, [~~modification,~~] or denial of a [~~VWP permit~~] renewal application.

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

C. Reopener. This VWP general permit [authorization] may be reopened to modify [~~the its~~] conditions [~~of the VWP general permit~~] when the circumstances on which the previous VWP general permit [authorization] was based have materially and substantially changed, or special studies conducted by the [~~department~~ board] or the permittee show material and substantial change since the time the VWP general permit [authorization] was issued and thereby constitute cause for VWP general permit [~~modification or~~ authorization] revocation and reissuance.

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 any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

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

G. Right of entry. The [~~applicant and/or~~] permittee shall allow [~~authorized state and federal representatives~~ the board or its agents], upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter 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;
2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;
3. To sample or monitor any substance, parameter or activity for the purpose of assuring 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 herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP [~~permits~~ general permit authorization]. This VWP general permit [authorization] may be transferred to another person by a permittee if:

1. The current permittee notifies the board within 30 days of the transfer of the title to the facility or property;
2. The notice to the board includes a written agreement between the existing and [~~proposed~~ new] permittee containing a specific date of transfer of VWP general permit [authorization] responsibility, coverage and liability [~~between them~~ to the new permittee], or that the [~~seller~~ existing permittee] will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
3. The board does not notify the existing and [~~proposed~~ new] permittee of [~~the board's~~ its] intent to modify or revoke and reissue the VWP general permit [authorization] within the 30-day time period.

On the date of the VWP general permit [authorization] transfer, the transferred VWP general permit [authorization] shall be as fully effective as if it had been issued directly to the new permittee.

[~~1. VWP permit modification. The permittee shall notify Department of Environmental Quality of any modification of this activity and shall demonstrate in a written statement to the department that said modification will not violate any conditions of this VWP general permit. If such demonstration cannot be made, the permittee shall apply for a modification of this VWP general permit. This VWP general permit may be modified when any of the following developments occur:~~

- ~~1. When additions or alterations have been made to the affected facility or activity which require the application of VWP general permit conditions that differ from those of the existing VWP general permit or are absent from it, provided the total project impacts for a single and complete project are less than one-half of an acre and are fully mitigated;~~
- ~~2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at VWP general permit issuance and would have justified the application of different permit conditions at the time of VWP general permit issuance;~~
- ~~3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;~~
- ~~4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the CWA; and~~
- ~~5. When changes occur that are subject to "reopener clauses" in the VWP general permit.~~

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase

Final Regulations

in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation.]

J. VWP [general] permit [authorization] termination. This VWP general permit authorization is subject to termination. Causes for termination are as follows:

- 1. Noncompliance by the permittee with any condition of the VWP general permit;*
- 2. The permittee's failure in the application or during the VWP general permit [authorization] issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;*
- 3. The permittee's violation of a special or judicial order; and*
- 4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit [authorization] modification or termination.*

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

L. 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.

M. [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 for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

N. Duty to provide information.

- 1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing and terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.*
- 2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.*

O. Monitoring and records requirements.

- 1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.*

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include:

- 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;*
- f. The results of such analyses; and*
- g. Chain of custody documentation.*

P.] Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

- 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;*
- 2. Excavate in a wetland;*
- 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or*
- 4. On and after October 1, 2001, conduct the following activities in a wetland:*
 - a. New activities to cause draining that significantly alter or degrade existing wetland acreage or functions;*
 - b. Filling or dumping;*
 - c. Permanent flooding or impounding; or*
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.*

DOCUMENTS INCORPORATED BY REFERENCE

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.

NOTICE: The forms used in administering 9 VAC 25-660-10 et seq. Virginia Water Protection General Permit for Impacts Less than One-Half of an Acre are not being published due to the number of pages; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

[*Department of Environmental Quality Water Division Permit Application Fee (eff. 8/01).*

[*Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 8/01).*

[*Virginia Water Protection General Permit Registration Statement (eff. 8/01).*]

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