

**9 VAC 25-670-10 et seq. - ~~GENERAL VIRGINIA WATER PROTECTION~~
~~GENERAL PERMIT FOR WETLAND IMPACTS RELATED TO FACILITIES AND~~
~~ACTIVITIES OF UTILITIES AND PUBLIC SERVICE COMPANIES~~
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9 VAC 25-670-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9 VAC 25-210-10 et seq.) unless the context clearly indicates otherwise or unless indicated below.

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

“Emergent wetland” means a class of wetlands characterized by erect, rooted, herbaceous plants growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content, excluding mosses and lichens. This vegetation is present for most of the growing season in most years and are usually dominated by perennial plants.

"FEMA" means Federal Emergency Management Agency.

“Forested wetland” means a class of wetlands characterized by woody vegetation that is 6 meters (20 feet) tall or taller. These areas normally possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

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~~“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 Natural Resources Conservation Service and registered on the World Wide Web (<http://www.statlab.iastate.edu/soils/hydric/va.html>).~~

~~“Impacts” means results caused by human-induced activities conducted in state waters 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 state waters surface waters.~~

~~“Less than one tenth of an acre” means 0.00 to 0.09 acre (or 3920 square feet).~~

~~“Permanent impact” means the filling of a wetland or surface water such that it becomes an upland; the draining of a wetland such that it becomes an upland; or the permanent flooding of a vegetated wetland. This includes, for example, such activities as the construction of access roads or the construction of foundations for substations buildings or the placement of utility lines in surface waters or wetlands at a grade above the original ground surface.~~

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“Registration statement” means a form of pre-construction application or notification.

“Scrub-shrub wetland” means a class of wetlands dominated by woody vegetation less than 6 meters (20 feet) tall. The species include tree shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions.

“Single and complete project” means the total project proposed or accomplished by one person. For linear projects, the “single and complete project” (i.e. – a single and complete crossing) will apply to each crossing of a separate 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

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are individually and cumulatively minimal.

“Temporary impact” means construction activities in wetlands and surface waters in which the ground is restored to its pre-construction contours and elevations, without significantly affecting wetland functions and values.

“Up to two acres” means 0.00 to 2.0 acres, rounded to the second decimal place.

“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 which drain a wetland 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 25-670-20. Purpose; delegation of authority; effective date of VWP general permit.

The purpose of this regulation is to establish VWP ~~the general~~ [General permit-Permit Number WP23](#)
[under the VWP permit regulation](#) to govern impacts related to the construction and operation of utility

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lines. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board.

~~B.A.~~ The Director, or an authorized representative, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

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

C. This VWP ~~general~~ permit regulation will become effective on _____ and will expire five years after the effective date. For any covered activity, this VWP ~~general~~ permit is effective upon compliance with all the provisions of 9 VAC 25-670-30 and the receipt of this VWP general permit.

D. ~~For~~ 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.

9 VAC 25-670-30. Authorization to impact ~~State waters~~ Surface waters for facilities and activities of utilities and public service companies regulated by the Federal Energy

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Regulatory Commission or the State Corporation Commission and other utility line activities.

~~A.A.~~ Any person governed by this VWP general permit is authorized to impact up to one acre of ~~State waters~~ ~~surface waters~~ (including wetlands) for facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and other utility line activities provided that the person submits notification as required in 9 VAC 25-670-50 and 9 VAC 25-670-60, remits the required application processing fee (9 VAC 25-20-10, et seq.), complies with the limitations and other requirements of 9 VAC 25-670-100, receives approval from the board, and provided that associated with:

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 VWP general permit in lieu of this VWP general permit;~~

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

a. ~~Activities authorized include:~~

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i. ~~The construction, maintenance or repair of utility lines, including outfall structures and the excavation, backfill or bedding for utility lines provided there is no change in preconstruction contours;~~

ii. ~~The construction, maintenance or expansion of a substation facility or pumping station associated with a power line or utility line;~~

3. ~~The construction or maintenance of foundations for overhead utility line towers poles or anchors, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a single pad) are used where feasible;~~

iii. ~~4.~~

~~The construction of access roads for the construction or maintenance of utility lines including overhead power lines and utility line substations, provided the activity in combination with any substation does not exceed the threshold limit of this VWP general permit;~~

iv.

~~Provided that the owner submits files the registration statement in provides =670-9 VAC 25-670-60, remits the required application processing fee, if applicable,, complies with the limitations and other requirements of 9 VAC 25-670-100, receives approval from the Board, and provided that:~~

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~~1.B. — The owner shall not have been required to obtain an individual permit under the VWP Permit regulation (9 VAC 25-210-10 et seq.) for the proposed project impacts;~~

~~C. — Impacts, including all attendant features both temporary and permanent, are part of a single and complete project;~~

~~a. Where a utility line has multiple crossings of State waters Surface waters (several single and complete projects) with more than minimal impacts, the Board may at its discretion require an individual VWPP for the project;~~

b. Where a utility line has multiple crossings of Surface waters (several single and complete projects) with more than minimal impacts, the board may at its discretion require an individual VWPP for the project.

~~D.3. Permanent impacts from a single and complete project are no more than do not exceed 2 one acre of State waters Surface waters in total; and~~

~~E4. — Compensatory mitigation is provided for unavoidable permanent impacts whenever the permanent impact for any single and complete project is greater than one tenth of an acre.~~

~~5. Compensatory mitigation for unavoidable impacts is provided in the form of any one or combination of the following: creation, restoration, the purchase or use of mitigation bank credits,~~

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~~or a contribution to an approved in-lieu fee fund. Preservation of wetlands or preservation or restoration of upland buffers adjacent to state waters may be acceptable when utilized in conjunction with creation, restoration or mitigation bank credits.~~

~~6. Compensatory mitigation for unavoidable impacts of one-tenth of an acre or greater is provided at the following compensation to loss ratios:~~

- ~~_____ Emergent Wetlands _____ 1:1~~
- ~~_____ Scrub/Shrub Wetlands _____ 1.5:1~~
- ~~_____ Forested Wetlands _____ 2:1~~
- ~~_____ Open water (ponds, lakes, etc.) _____ 1:1 (in-kind or out-of-kind)~~

~~E.5. _____ Compensatory mitigation for unavoidable permanent loss of wetlands or surface waters is provided at a 2:1 replacement to loss ratio, for forested wetland impacts, a 1.5:1 replacement to loss ratio, for scrub shrub wetland impacts, a 1:1 replacement to loss ratio, for emergent wetland impacts and a 1:1 replacement to loss ratio for open water impacts.~~

~~B. Activities in both tidal and non-tidal waters may qualify for coverage under this general permit.~~

~~G. 7. _____ When functions and values of State waters, Surface waters are permanently adversely~~

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affected, such as for conversion of forested to emergent wetlands in permanently maintained utility right-of-ways, mitigation ~~may~~will be required to reduce and minimize the adverse effects of the project to ~~State waters~~Surface waters. ~~Permanently maintained access corridors no wider than twenty feet will be allowed without~~ compensatory mitigation.

~~BH. —~~ 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.

~~D.C. —~~ 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.

~~D.~~ Coverage under a Nationwide or Regional permit promulgated by the U.S. Army Corps of Engineers, and for which the board has issued or waived § 401 certification existing as of the effective date of this regulation, shall constitute coverage under this VWP general permit until such time as a state programmatic general permit is approved for the covered activity or impact.

9 VAC 25-670-40. Prohibitions

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A. This VWP general permit will not apply in the following areas:

1. Wetland areas 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 be based ~~upon stem~~ ~~upon counts~~, ~~basal area~~, or percent aerial cover.

~~2. Wetland areas underlain by histosols.~~

~~3.2. State waters~~ ~~Surface waters~~ with federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. This VWP general permit cannot be used in combination with other VWP general permits to impact greater than 1 acre. ~~The use of more than one VWP General Permit WP2 for a project is prohibited, except when the cumulative impact to state waters~~ ~~surface waters does not exceed the acreage limit of the VWP general permit with the highest specified acreage limit~~ ~~(i.e. stacking is not permitted to increase a project's impacts).~~

C. The activity ~~to impact surface waters~~ ~~to impact wetlands~~ shall not have been prohibited by state law,

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regulations or policies, nor shall it contravene the Water Quality Standards, as amended or adopted by the board.

D. The board shall deny coverage under this VWP general permit to any applicant conducting ~~wetland excavation or alteration or discharge-related~~ activities which the board determines 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. Receipt of this permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.~~

~~H.E.~~ This VWP general permit may not be used for any ~~activity that authorizes a~~ water withdrawal activities.

F. Pursuant to the Code of Virginia 29.1-564: "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

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~~published by the U.S. 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."~~

G. Pursuant to the Code of Virginia 29.1-566 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.

9 VAC 25-670-50. Notification.

A. Notification to the board is not required for utility line activities that have only temporary impacts and that do not involve mechanized land clearing of forested wetlands ~~unless those activities occur in the areas identified by 9 VAC 25-670-50-D.~~

B. Notification to the board is required for permanent impacts up to one-tenth of an acre and for mechanized land clearing in forested wetlands. In lieu of the complete registration statement, the applicant shall submit only the information required in subpart B, items 1 ~~through~~-10, 14, 16 and 17 ~~and items 1157, and 178 and 18,~~ of 9 VAC 25-670-60 prior to commencing the activity, ~~so that DEQ can ensure that no State waters with federal or state listed or proposed threatened or~~

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~~endangered species or proposed or designated critical habitat are being affected. Alternatively, the owner may opt to file a notification 30 days post construction, to include documentation from the Virginia Department of Game and Inland Fisheries, the Virginia Department of Conservation and Recreation Natural Heritage Program, and the Virginia Department of Agriculture and Consumer Services indicating that the project did not affect any federally or state proposed or listed threatened and endangered species or proposed or designated critical habitat and provide DEQ copies of any pre-construction notification, post-construction report and certificate of compliance required by the U.S. Army Corps of Engineers.~~

C. ~~Notification to the board~~ will be required ~~prior to construction~~ for permanent impacts greater than one-tenth of an acre of wetlands and shall be reported by the applicant to DEQ via the entire registration statement in 9 VAC 25-670-60:

~~D. All proposed impacts to State waters shall be reported by the owner to DEQ via the entire registration statement (9 VAC 25-670-60) loss of in the following areas:~~

~~a. 1. Stockable Trout Waters and Natural Trout Waters, as defined by the DEQ's Water Quality Standards (9VAC25-260-00 et seq.), dated December 10, 1997, or the most recent updated publication. Activities proposed in trout waters in the following river basins:~~

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~~a.60.~~

~~D. The DEQ will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation and the Virginia Department of Game and Inland Fisheries.~~

James	Rappahannock
New	Roanoke
Potomac-Shenandoah	Tennessee and Big Sandy

~~b. The counties in which this notification requirement applies include:~~

Albemarle	Craig	Lee	Russell
Alleghany	Dickenson	Loudoun	Scott
Amherst	Fauquier	Montgomery	Shenandoah
Augusta	Floyd	Nelson	Smyth
Bath	Franklin	Page	Tazewell

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Bedford	Frederick	Patrick	Warren
Bland	Giles	Pulaski	Washington
Botetourt	Grayson	Rappahannock	Wise
Buchanan	Greene	Roanoke	Wythe
Carroll	Henry	Rockbridge	
Clarke	Highland	Rockingham	

~~2. Certain Natural Heritage Resource Areas. The DEQ will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation and the Virginia Department of Game and Inland Fisheries concerning the following areas:~~

~~1. a. Naturally occurring basins or depressions that normally contain standing water seasonally or permanently, (e.g., Delmarva/Carolina bays, sinkhole ponds, vernal ponds, etc.);~~

~~2. b. Wetlands driven by groundwater discharges from the water table in the coastal plain (e.g., sphagnum dominated wetlands and seeps);~~

~~3. c. High alkaline marshes in calcareous substrate. There are a number of different wetland community types that fall into this category, and no single set of indicator species. For instance, the grass/sedge dominated~~

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~~wet prairies of the Shenandoah Valley have several characteristic sedges, including the state-rare *Carex lacustris* (lake-bank sedge), the more common *Carex lanuginosa* (woolly sedge) and *Carex trichocarpa* (hairy-fruit sedge). Another example is calcareous seeps, which are often “crunchy” under foot, due to the presence of travertine-marl (calcium carbonate precipitate) on the ground surface.~~

9 VAC 25-670-60. Registration statement.

A. Registration statements shall be filed [with the board](#), as follows:

1. The applicant shall file a complete registration statement ~~as described in 9 VAC 25-670-50~~ for a VWP General Permit ~~WP3WP2~~, which will serve as a notice of intent for coverage under the VWP general permit.
2. Any applicant proposing an activity under this VWP general permit shall 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.

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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 ~~or within 30 days upon being requested to by the Board, whichever comes first.~~

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

1. The applicant's name, mailing address, telephone number and fax number (if applicable).
2. The authorized agent's (if applicable) name, mailing address, telephone number and fax number (if applicable).
3. The existing VWP ~~PERMIT~~ 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), if applicable.
6. The hydrologic unit code (HUC) for the project area.
7. ~~The name of the~~ City or county where the project ~~occurs 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. Project plan view ~~and cross-sectional sketches.~~ All plan view sketches should include, at a minimum, north arrow, scale, existing structures, existing ~~contours~~ and proposed contours (~~if~~

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available), limit of jurisdictional areas, direction of flow, ordinary high water, impact limits,

location and dimension of all proposed structures in impact areas. ~~All cross-sectional sketches~~

~~should include, at a minimum, scale, existing and proposed contours or depths, limit of~~

~~jurisdictional areas, location and dimensions of all structures or materials in impact areas, ordinary~~

~~high water mark or mean low water mark.~~

11. Wetland Impact Information, including a description of the impact, the impact area (in square feet

or acres), and the wetland classification based on ~~the~~ Cowardin classification system ~~or similar~~

~~terminology.~~

12. A description of the measures taken during project design and development both to avoid and

minimize impacts to ~~wetlands~~ ~~State waters~~ ~~Surface waters~~ to the maximum extent practicable, as

~~required by 9 VAC 25-210-115A.~~

13. ~~A description of the intended compensation for unavoidable impacts.~~

~~a. A conceptual compensatory mitigation plan, at a minimum, must be submitted, and shall~~

~~include: the goals and objectives in terms of replacement of wetland or stream acreage and~~

~~function; a location map, including latitude and longitude (to the nearest second) at the center~~

~~of the site; a hydrologic analysis, including a draft water budget based on expected monthly~~

~~inputs and outputs which will project water level elevations for a typical, dry and wet year;~~

~~groundwater elevation data, if available, or the proposed location of groundwater monitoring~~

~~wells to collect this data; wetland delineation sheets, maps and a jurisdictional determination~~

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from the Corps of Engineers for existing wetland areas on the proposed site(s); a conceptual grading plan; a conceptual planting scheme, including suggested plant species, zonation and acreage of each vegetation type proposed; a proposed soil preparation and amendment plan addressing both topsoil and subsoil conditions; and a draft design of any water control structures.

- b. Applicants proposing to mitigate off-site, to purchase mitigation bank credits, or to contribute to an in-lieu fee program shall discuss the feasibility of on-site compensatory mitigation. If on-site compensatory mitigation is practicable, applicants must provide documentation as to why the proposed off-site compensatory mitigation, mitigation banking, or in-lieu fee fund contribution is ecologically preferable. The evaluation should include, but not be limited to, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, wetlands functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation vs. impacts, acquisition, constructability, and cost.
- c. Any wetland compensation plan proposing to include contributions to in-lieu fee programs shall include proof of the willingness of the entity to accept the donation and the assumptions or documentation of how the amount of the contribution was calculated.
- d. Any wetland compensation plan proposing the purchase of wetland banking credits shall include:
- i) The name of the proposed wetland mitigation bank within the same or adjacent

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hydrologic unit code within the same river watershed with available credits;

ii) The number of credits proposed to be purchased or used; and

iii) Certification from the bank owner of the availability of credits.

e. A final compensatory mitigation plan may be submitted, if available.

i) The final compensatory mitigation plan shall include: Narrative description of the plan

including goals and objectives, site location, existing and proposed grade, schedule for

compensatory mitigation site construction, source of hydrology and a water budget (non-

tidal sites only) for typical and driest years, mean tidal range (tidal sites only), proposed

mean low water and mean high water elevations (tidal sites only), plant species, planting

scheme indicating expected zonation, planting schedule, an abatement and control plan for

undesirable plant species, soil amendments, all structures and features considered

necessary for the success of the plan, and number and locations of panoramic

photographic stations and ground water monitoring wells (or tide gages, for tidal sites).

Rooted seedlings or cuttings should originate from a local nursery or be adapted to local

conditions. Vegetation should be native species common to the area, should be suitable

for growth in local wetland conditions, and should be from areas approximately 200 miles

from the project site.

ii) The final compensatory mitigation plan shall include protection of State waters (including

compensatory mitigation areas and non-impact State waters) within the project boundary

in perpetuity. These areas shall be surveyed or platted within 120 days of final plan

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approval, and the survey or plat shall be recorded in accordance with the requirements of this section. Any restrictions, protections, or preservations, or any similar instrument provided as part of the compensatory mitigation plan, shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or non-impact State water, with the exception of maintenance or corrective action measures authorized by DEQ. Unless specifically authorized by DEQ through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to State waters do not occur.

iii) If the final compensatory mitigation plan is submitted prior to authorization for coverage under this VWP general permit, however it is not deemed complete until after the authorization, the board shall review the plan and approve, approve with modifications or disapprove within 45 days of the completeness determination.

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- ~~a. Any wetland compensation plan proposing to include contributions to in-lieu fee programs shall include proof of the willingness of the entity to accept the donation and the assumptions or documentation of how the amount of the contribution was calculated.~~
- ~~b. Any wetland compensation plan proposing the purchase of wetland banking credits shall include:~~
- ~~i) The name of the closest proposed wetland mitigation bank within the same or adjacent hydrologic unit code within the same river watershed with available credits;~~
 - ~~ii) The number of credits proposed to be purchased; and~~
 - ~~iii) Certification from the bank owner of the availability of credits.~~
- ~~14. An aerial photo or scale map which clearly shows the property boundaries, location of surface waters including all wetland boundaries, wetland boundaries and all surface water wetland impacts at the site site, including the wetlands data sheets. 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. shall also be provided at the time of application, or if not available at that time, during the permit review.~~
14. Where the proposed work involves the discharge of fill material into surface water or wetlands resulting in permanent above grade fills within the 100 year flood plain, the notification must

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include documentation demonstrating that the proposed work complies with the appropriate FEMA or FEMA-approved floodplain construction requirements.

~~15. The appropriate application processing fee for a VWP general permit (9 VAC 25-20-10 et seq.).~~

~~16. 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 effect on any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat.~~

~~17.~~

16. 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 25-210-10080~~. ~~If an agent is~~

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~~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 the VWP general permit shall be approved, approved with conditions, or denied within forty-five (45) days. If the board fails to act within 45 days, coverage under the VWP general permit shall be deemed approved.

1. In evaluating the permit action registration statement, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts.

~~The Coverage under the VWP general~~ permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of ~~state waters~~ surface waters or fish and wildlife resources.

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

~~E. For impacts less than one-tenth of an acre and exempt from 9VAC 25-660-50 A.2, the owner~~
must

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1. Obtain a letter documentation from both the Virginia Department of Game and Inland Fisheries and the Virginia Department of Conservation and Recreation Agriculture and Consumer Services indicating that the project will not affect any federally or state proposed or listed threatened and endangered species or proposed or designated critical habitat and
2. Provide DEQ copies of any preconstruction notification, postconstruction report and certificate of compliance required by the U.S. Army Corps of Engineers, or file a registration statement prior to commencing activities.

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

VAC 25-670-70. Mitigation.

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A. For the purposes of this VWP general permit, the board shall accept wetland creation, wetland restoration, wetland preservation, upland buffer preservation, the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund or a combination of the above as compensation for unavoidable wetland impacts.

B. Compensatory mitigation for unavoidable ~~permanent~~ permanent wetland impacts shall be provided at the following compensatory mitigation to impact ratios:

1. Impacts to forested wetlands shall be mitigated at a 2:1 ~~replacement compensation~~ to impact ratio.
2. Impacts to scrub shrub wetlands shall be mitigated at a 1.5:1 ~~replacement compensation~~ to impact ratio.
3. Impacts to emergent wetlands shall be mitigated at a 1:1 ~~replacement compensation~~ to impact ratio.
4. Impacts to open water (ponds, lakes, etc.) shall be mitigated at a 1:1 ~~replacement to impact ratio~~.

C. Credits or units of wetland compensation shall be calculated according to the following ratios:

1. One acre of wetland creation equals one unit of wetland compensation
2. One acre of wetland restoration equals one unit wetland compensation

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3. Ten acres of wetland preservation equals one unit of wetland compensation
4. Twenty acres of upland buffer preservation equals one unit of wetland compensation
5. One mitigation bank credit equals one unit of wetland compensation
6. 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 compensation.

D. In order for contribution to an in-lieu fee fund to be an acceptable form of mitigation, the fund must be approved for use by the board according to the provisions of 9 VAC25-210-115 E.

E. The use of mitigation banks for mitigating project impacts shall be deemed appropriate ~~if the bank is operating in accordance with the provisions of § 62.1-44.15:5 E. and 9 VAC 25-210-115, and if the following criteria are met by the bank:~~

- ~~1. The bank must be approved and operating in accordance with all applicable federal and state laws, guidance and regulations related to the establishment, use and operation of mitigation banks; and~~
- ~~2. The bank must be in the same U.S.G.S. cataloging unit as the project impacts, or an adjacent cataloging unit within the same river basin; or~~
 - ~~a. The U.S.G.S. cataloging units are derived from the Hydrologic Unit Map of the United States (U.S.G.S. 1980);~~
 - ~~b. The river basins are defined in the Water Quality Standards (9VAC25-260-10 et seq.);~~
 - ~~c. This criteria does not apply if the following criteria are met:~~

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- ~~i) The impacts are a result of a Virginia Department of Transportation linear project or a locality project for a locality with a jurisdiction crossing multiple river basins;~~
- ~~ii) There is no practical mitigation alternative within the same river basin;~~
- ~~iii) There is no significant harm to water quality or fish and wildlife resources within the river basin of the impacts; and~~
- ~~iv) Impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed (within the Commonwealth) as close as possible to the impact, or impacts within U.S.G.S. cataloging units 02080108, 02080208, and 03010205 are mitigated in-kind within those same cataloging units as close as possible to the impacts;~~

~~NOTE: After July 1, 2002, the above provision for cataloging units 02080108, 02080208, and 03010205 shall only apply to areas within these three units where overlapping watersheds occur, as determined by DEQ;~~

~~3. The banking instrument, if approved after July 1, 1996, has been approved by a process that involved public review and comment, and~~

~~The~~ applicant provides verification to DEQ of purchase ~~or debiting~~ of the required _____ amount of credits.

9 VAC 25-670-80. Modification

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Authorization under this VWP general permit may be modified, when any of the following developments occur, provided the total impacts to ~~State waters~~Surface waters for a single and complete project do not exceed two acres:

1. When additions or alterations have been made to the ~~affected facility or activity~~project which require the application of VWP 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 issuance~~coverage and would have justified the application of different VWP permit conditions at ~~the that time of 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 Act;
- ~~5. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of §307(a) of the Act;~~

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~~6.5~~ When changes occur which are subject to "reopener clauses" in the VWP general permit;

~~7~~ When the level of discharge of a pollutant not limited in a permit exceeds the level which can be achieved by available methodology for controlling such discharges;

~~8~~ When the permittee begins or expects to begin to cause the discharge of any toxic pollutant not reported in the application; or

~~9~~ When other states were not notified of the change in the permit and their waters may be affected by the permitted activity;

9 VAC 25-670-90. Notice of Termination

When all permitted activities requiring notification have been completed, the applicant 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;
2. Name and location of the activity;
3. The VWP Permit Authorization Number;
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

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authorized to perform activities in wetlands in accordance with the VWP general permit, and that performing activities in wetlands 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 25-670-100. VWP General Permit.

Any applicant whose registration statement is 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.:

VWP General Permit No. ~~WP3~~WP2

Effective date:

Expiration date:

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REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE
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UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE
VIRGINIA STATE WATER CONTROL LAW**

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Based upon an examination of the information submitted by the applicant and in compliance with Section 401 of the Clean Water Act as amended (33 USC 1251 et seq.) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that 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 surface waters~~ or fish and wildlife resources.

_____ In compliance with 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 authorized to impact up to one acre of ~~wetland surface waters (including wetlands)~~ within the boundaries of the Commonwealth of Virginia, for the referenced activities, except in those areas specifically named or excluded in board regulations or policies which prohibit such impacts.

Permittee:

Address:

Activity Location:

Activity Description:

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The authorized ~~discharge 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 Permits, as set forth herein.

Director, Department of Environmental Quality

Date

Part I. SPECIAL CONDITIONS.

A. Authorized Activities:

1. Any additional impacts to ~~sState waters~~ ~~Surface waters~~ associated with this project may require modification of this VWP general permit and additional ~~compensatory~~ mitigation.
2. The activities authorized by this VWP general permit must commence and be completed within ~~three~~ ~~one year~~ ~~years~~ of the date of this authorization.

B. Reapplication

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1. ~~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 permit requirement (including compensatory mitigation) has not been completed within three years of the date of authorization.~~ one: the Application consists of an updated or new registration statement.

C. Overall Project Conditions:

1. ~~Wet or uncured concrete shall be prohibited from entry into flowing State surface waters.~~
2. ~~No fill in surface waters may consists 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.~~
3. ~~Erosion and sedimentation controls shall be designed in accordance with the current Virginia Department of Conservation and Recreation (DCR) Erosion and Sediment Control Handbook. These controls shall be placed prior to clearing and grading, and maintained in good working order to minimize impacts to State waters surface waters to the maximum extent practicable. These controls shall remain in place until the area stabilizes.~~

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4. Any exposed slopes and streambanks must be stabilized immediately upon completion of the utility line crossing of each water body. All denuded areas shall be properly stabilized in accordance with the current DCR Erosion and Sedimentation Control Handbook.
5. 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 ~~State waters~~[Surface waters to the maximum extent practicable](#), unless authorized by this VWP general permit.
6. Access roads must be constructed so that the length of the road minimizes the adverse effects on ~~surface waters~~[to the maximum extent practicable](#) and is as near as possible to preconstruction contours and elevations. Mechanized land clearing necessary for the construction, maintenance and expansion of utility line substations, foundations for overhead utility lines and access roads is authorized provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of surface waters or wetlands filled, excavated or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations and access roads.
7. No activity may substantially disrupt the movement of aquatic life indigenous to the water body.

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No activity may cause more than minimal adverse effect on navigation. Access roads constructed above preconstruction contours and elevations in surface waters must be properly bridged or culverted to maintain surface flows. Culverts placed in streams must be installed to maintain low flow conditions. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

9-8. All non-impacted wetlands within the project limits that are within 50 feet of any clearing, grading, and/or filling activities shall be clearly flagged or demarcated~~demarcated~~ for the life of the construction activity within that area. The permittee shall notify all contractors that these marked areas are wetlands where no excavation or filling is to occur.

10-9. Temporary disturbances to wetlands during construction shall be avoided and minimized to the ~~greatest maximum~~ extent ~~possible~~ practicable. All temporarily disturbed wetland areas shall be restored to pre-construction conditions and planted ~~or seeded~~ with appropriate wetland vegetation. The permittee shall ensure that all temporarily disturbed wetland areas revegetate with wetland vegetation by the second year post-disturbance. Any temporary fills must be removed in their entirety and the effected area returned to their preexisting elevation

11-10. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance ~~to the maximum extent practicable.~~

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11. Material resulting from trench excavation may be temporarily sidecast (up to three months) into wetlands, provided the material is not placed in a manner such that it is dispersed by currents or other forces. ~~The Department~~ [DEQ](#) may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate.

~~13.12.~~ All utility line work in ~~State waters~~ [Surface waters](#) shall be performed in such a manner as to minimize disturbance [to the maximum extent practicable](#), and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

~~19.13.~~ If stream channelization is required, all work in ~~State waters~~ [Surface waters](#) shall be done in the dry and all flows shall be diverted around the channelization 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 area. The center line 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 stream bed can begin.

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~~20-14.~~ Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

~~21-15.~~ Excess material must be removed to upland areas immediately upon completion of construction.

~~22-16.~~ 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 Control Handbook.

~~23-17.~~ 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 Control Handbook.

~~25-18.~~ The permittee shall contact the Department of Game and Inland Fisheries and the Virginia Marine Resources Commission to determine whether a time of year restriction is appropriate for any period of dredging or construction in waters containing endangered species or waters critical to the movement and reproduction of anadromous fish. The permittee shall maintain a copy of such time of year restriction as is issued, or notification that no restriction is necessary, for the duration of the construction phase of the project.

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~~26.19.~~ The permittee shall employ measures to prevent spills of fuels or lubricants into ~~State~~
~~waters~~ Surface waters.

~~27.20.~~ Immediately downstream of the construction area, the ~~instream pH shall be maintained between~~
~~6.0 and 9.0 standard units, the instantaneous instream dissolved oxygen shall not fall below 4.0~~
~~mg/l, and the instream water temperature shall not rise more than 3° C from the instream water~~
~~temperature at an appropriate upstream sampling point. If the permittee can establish that~~
~~baseline conditions are outside of these limits, DEQ shall determine site-specific limits violate~~
~~Water Quality Standards as a result of construction activities.~~

21. The trench for a utility line cannot be constructed in such a manner as to drain wetlands (e.g.
backfilling with extensive gravel layers creating a french drain effect.)

Part II. MITIGATION, MONITORING AND REPORTING.

A. Wetland Mitigation: In order to qualify for this VWP general permit, 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 wetland or stream creation or restoration, the purchase or

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use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters is acceptable when utilized in conjunction with creation, restoration or mitigation bank credits.

1. The site(s) depicted in the conceptual compensatory mitigation package submitted with the registration statement, shall constitute the compensatory mitigation package for the approved project, unless otherwise authorized by a VWP permit modification.

2. For compensation involving the purchase or use of mitigation bank credits, the permittee shall submit documentation within 60 days of VWP general permit authorization that the Corps of Engineers has debited the required mitigation credits from the Mitigation Bank ledger. For projects proposing a contribution to an in-lieu fee program, the permittee shall submit documentation within 60 days of VWP general permit authorization that the fund contribution has been received.

3. All aspects of the compensatory mitigation plan shall be finalized, submitted and approved by DEQ prior to any construction activity in permitted impact areas. DEQ shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensatory mitigation plan as approved by DEQ shall become an official component of this VWP general permit.

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- a. The final compensatory mitigation plan shall include: Narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget (non-tidal sites only) for typical and driest years, mean tidal range (tidal sites only), proposed mean low water and mean high water elevations (tidal sites only), plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of panoramic photographic stations and ground water monitoring wells (or tide gages, for tidal sites). Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas approximately 200 miles from the project site.
- b. The final compensatory mitigation plan shall include protection of State waters (including compensatory mitigation areas and non-impact State waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a

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compensatory mitigation area or non-impact State water, with the exception of maintenance or corrective action measures authorized by DEQ. Unless specifically authorized by DEQ through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to State waters do not occur.

4. Post-grading elevations for the compensatory mitigation site(s) shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensatory mitigation plan. As a general rule, elevations shall be within 0.2 feet of the elevations proposed in the final compensatory mitigation plan. The final as-built grading plan shall be approved by DEQ prior to any planting and placement of ground water monitoring wells.
5. All work in jurisdictional areas shall cease if compensatory mitigation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by DEQ.

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6. The wetland creation portions of the site(s) shall be excavated 6-12 inches below final grade. Topdressing soil shall then be spread to bring the compensatory mitigation site to final grade. A wetland vegetation seed mix shall be applied within 7 days of final grading for site stabilization.
7. For compensatory mitigation sites involving restoration, a wetland vegetation seed mix shall be applied for site stabilization within 7 days of final grading or soil disturbance.
8. Planting of woody plants shall occur outside the growing season, when the soil is not frozen, between November 1st and March 31st.
9. Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.
10. The success of the compensatory mitigation shall be based on establishing and maintaining a viable wetland with suitable wetland hydrology, hydric soils or soils under hydric conditions, and hydrophytic plant communities.

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11. Wetland hydrology shall be considered established if depths to the seasonal high water table, in a typical rainfall year, are equal to or less than one foot for at least 12.5% of the growing season for all monitoring years.

12. The wetland plant community shall be considered established if:
 - a. Greater than 50% of the woody plants, expressed either by plant stems or canopy coverage, shall be facultative (FAC) or wetter (FACW or OBL). A minimum plant stem count of 400/acre must be achieved in sample plots until canopy coverage is 30% or greater. Of these 400 stems, a minimum of 300 shall be from the targeted species of the compensatory mitigation plan. A minimum of 65% of the planted trees and shrubs must be viable and show signs of growth for the life of the VWP general permit.

 - b. Greater than 50% of all herbaceous plants shall be FAC or wetter. Aerial coverage shall be a minimum of 60% after one (1) full growing season and 80% after three (3) growing seasons and remaining at or above 80% for the life of the VWP general permit. Scrub/shrub or sapling/forest vegetation is not included in coverage or stem count for herbaceous vegetation.

 - c. Species composition reflects the desired plant community types stated in the wetland

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compensatory mitigation plan by the end of the first growing season and is maintained through the last year of the VWP general permit.

- d. Noxious weeds are identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the VWPP staff of any invasive species occurrences, methods of removal, and successful control.
 - e. Deviations from this plan must be approved in advance by DEQ.
13. If the compensatory mitigation area fails to be established as viable wetlands, the reasons for this failure shall be determined, and a corrective action plan, schedule, and monitoring plan shall be submitted to DEQ for approval prior to or with the next required monitoring report. Replacement of dead plant stock in the wetland compensatory mitigation site shall occur, as necessary, to achieve a minimum of 400 stems/acre for the tree species (until canopy coverage is 30% or greater) and 65% of the original stocking density for the planted herb, shrub and tree species. Of these 400 stems, a minimum of 300 shall be from the targeted species of the compensatory mitigation plan. All problems shall be corrected by the permittee. Should significant changes be necessary to establish wetlands, the monitoring plan shall begin again, with year one being the year changes are complete.

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14. The wetland boundary for the compensatory mitigation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary.

15. Herbicides or algicides shall not be used in or immediately adjacent to the compensatory mitigation site(s) without prior authorization by DEQ. All vegetation removal shall be done by mechanical means only, unless authorized by DEQ.

16. This VWP general permit authorization may need to be renewed (or extended) to assure that the compensatory mitigation work has been successful. The request for renewal/extension must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time DEQ will determine if renewal of the VWP general permit authorization is necessary.

B. Compensatory mitigation Site Monitoring

1. A post-grading survey, including spot elevations, of the site(s) for wetland compensatory mitigation shall be conducted by a licensed land surveyor or a professional engineer and submitted to DEQ for approval prior to placing the permanent groundwater monitoring wells

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- and planting of the vegetation. Grading elevation plans shall be on a scale of 1" equals 50' (or 1:500 metric) with contour intervals of one (or two) feet accompanied by cross section views. The final as-built grading plan shall be submitted to DEQ for approval prior to any planting and placement of ground water monitoring wells.
2. Panoramic photographs shall be taken at the compensatory mitigation site(s) from each of the monitoring well stations. These photographs shall be taken after the initial planting and in August or September every year for the life of the VWP general permit. Permanent markers shall be established to ensure that the same locations and view directions at the sites are monitored in each monitoring period.
 3. Compensatory mitigation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (year 1) following compensatory mitigation site construction. Monitoring shall be required for years 1, 2, 3, 5, 7 and 10, with years 7 and 10 only required if the site success criteria were not achieved during the previous monitoring event.
 4. The establishment of wetland hydrology shall be measured weekly during the growing season. The number of monitoring wells for each site will be determined by DEQ on a site-specific basis. The location of the wells must be approved by DEQ prior to placement. Adequate hydrology shall be within twelve inches of the surface for 12.5% of the growing season.

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Monitoring shall include approximate acreage and average depth of any ponded water on the wetland compensatory mitigation site(s). Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, weekly monitoring may be discontinued for the remainder of that monitoring year.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated by digging soil pits at each monitoring station and evaluating the soil profile for hydric soil indicators using a documented method acceptable to DEQ.

6. The establishment of wetland vegetation shall be indicated by percent cover, percent survival, stem counts and species composition monitored in August or September during each reportable growing season in the life of the VWP general permit. At each monitoring station, the following information shall be collected:
 - a. Percent cover for all herbaceous species shall be estimated using a documented method accepted by DEQ. The approximate species composition of the herbaceous vegetation shall be indicated, including non-dominants. The number of stems per acre for woody species shall be provided. A quantitative measure for noxious species present shall also be provided.

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- b. Percent survival of planted woody species, if applicable, shall be estimated using a documented method accepted by DEQ. The number of stems of all tree species within each sample plot and the density of all tree species (number of stems per acre) shall be provided.

- c. The presence of noxious species shall be documented.

C. Construction Monitoring

- 1. Photo stations shall be established to document the various construction aspects of the project within jurisdictional areas. These stations shall be established to document the existing and post-construction conditions of the project site. These stations shall be photographed prior to construction, during construction, and within one week after the completion of construction. Photos 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.

- 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.

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3. Stream bottom elevations at road crossings shall be measured 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;

 - 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 twenty-four hours of opening the new channel.

D. Reporting

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1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. Please include the VWP general permit authorization number on all correspondence.

2. DEQ shall be notified in writing by certified letter at least ten 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 DEQ within 30 days of each monitoring event as required in condition D.1 of Part II of this VWP general permit. 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, and VWP permit number) showing representative construction activities (including, but not limited to, flagging non-impact wetland areas, site grading and excavation, installation and maintenance of E&S controls, culvert installation, bridge and

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ramp construction, dredging, dredge disposal, etc.). Photographs are not necessary during periods of no activity within jurisdictional areas.

4. The permittee shall notify DEQ in writing when unusual or potentially complex conditions are encountered which require debris removal or involve 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 DEQ.
5. 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 AM to 5:00 PM Monday through Friday, DEQ shall be notified at *[Insert appropriate DEQ office phone number]*; otherwise, the Department of Emergency Services shall be notified at 1-800-468-8892.
6. Violations of State water quality standards shall be reported within 24 hours to the appropriate DEQ office.
7. The final plans of compensatory mitigation shall be submitted to and approved by DEQ prior to any construction in permitted impact areas.
8. An official copy of the instrument of restriction, protection, or preservation of wetlands and

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State waters provided as part of the compensatory mitigation plan shall be submitted to the DEQ within 60 days of recordation as outlined in the mitigation portion of this VWP general permit.

9. The mitigation bank account ledgers shall be submitted denoting the purchase of the required credits from the proposed bank(s).

10. All compensatory mitigation monitoring reports required by the special conditions in Section B above shall be submitted annually by November 30 with the exception of the final report in the life of the VWP general permit which shall be submitted by November 30 of that monitoring year or 180 days prior to VWP general permit expiration, whichever occurs sooner.
Alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to DEQ.

11. 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

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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 II. MITIGATION, MONITORING AND REPORTING

A. Mitigation

~~1. In order to qualify for this permit, appropriate and practicable compensatory mitigation will be required for all permanent wetland impacts greater than one-tenth of an acre that meet the conditions outlined in this permit. In general, mitigation for temporary impacts will not be required. However, some type of mitigation may be required when functions and values of State waters Surface waters are permanently adversely affected, such as for conversion of forested to emergent wetlands in permanently maintained utility right-of-ways.~~

~~2. The types of mitigation options that may be considered under this permit include:~~

- ~~a. Creation or restoration of wetlands at an on-site or off-site location.~~
- ~~b. Purchases of credits from approved wetland mitigation banks in accordance with 9 VAC 25-680-70.~~
- ~~c. Preservation of wetlands or preservation or restoration of upland buffers in combination with a or b above.~~

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~~d. Contributions to an in-lieu fee program approved by DEQ and dedicated to the achievement of no net loss of wetland acreage and function.~~

~~2.3 Mitigation for unavoidable wetland impacts shall be provided at the following mitigation to impact ratios:~~

~~a. Impacts to forested wetlands shall be mitigated at a 2:1 compensation to impact ratio.~~

~~b. Impacts to scrub shrub wetlands shall be mitigated at a 1.5:1 compensation to impact ratio.~~

~~c. Impacts to emergent wetlands shall be mitigated at a 1:1 compensation to impact ratio.~~

~~3. Credits or units of wetland compensation shall be calculated according to the following ratios:~~

~~a. One acre of wetland creation equals one unit of wetland compensation.~~

~~b. One acre of wetland restoration equals one unit wetland compensation.~~

~~c. Ten acres of wetland preservation equals one unit of wetland compensation.~~

~~d. Twenty acres of upland buffer preservation equals one unit of wetland compensation.~~

~~e. One mitigation bank credit equals one unit of wetland compensation.~~

~~f. 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 compensation.~~

~~4. The site(s) depicted in the conceptual mitigation package submitted with the registration statement~~

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~~shall constitute the mitigation package for the approved project, unless otherwise authorized by a permit modification.~~

~~5. For projects proposing wetland restoration or creation, all aspects of the mitigation plan must be finalized and submitted to DEQ for approval no later than 60 days from the date of general permit authorization. Activities in State waters Surface waters shall not commence until DEQ has granted approval of the final plan. The final mitigation plan must include complete information on all components of the conceptual mitigation plan approved by DEQ, as well as proposed deed restriction language for protecting the mitigation site(s) in perpetuity. The final mitigation plan must include protection of all surface waters and upland areas that are to be preserved in perpetuity within the mitigation site(s) boundary. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. Any restrictions, protections, or preservations, or any similar instrument provided as part of the mitigation plan, shall state that no activity will be performed on the property in any area designated as a mitigation area. Unless specifically authorized by DEQ through the issuance of an individual permit, modification of an existing permit, or waiver thereof, this restriction applies to ditching, excavating, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, excavating, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation~~

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~~shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of mitigation areas and to ensure that additional impacts to ~~State waters~~ Surface waters do not occur. The final mitigation plan as approved by the staff of the DEQ shall become an official component of this permit.~~

~~6. For projects proposing the purchase or use of mitigation bank credits or a contribution to an in-lieu fee program, the permittee shall submit documentation within 60 days of permit issuance that the Corps of Engineers or bank sponsor has debited the required mitigation credits from the mitigation bank ledger or that the fund contribution has been received.~~

~~7. Post-grading elevations for the creation or restoration mitigation site(s) shall be within 0.2 feet of the elevations proposed in the final mitigation plan or at elevations that ensure sufficient wetland hydrology to support the goals and objectives of the site.~~

~~8. All work in jurisdictional areas shall cease if mitigation site construction has not commenced within one year of commencement of project construction.~~

~~9. The wetland creation portions of the sites shall be excavated a minimum of 1 foot below final grade. Topdressing soil shall then be spread to bring the mitigation site to final grade. A wetland vegetation seed mix shall be applied within 7 days of final grading for site stabilization.~~

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- ~~10. For mitigation sites involving restoration, a wetland vegetation seed mix shall be applied for site stabilization within 7 days of final grading or soil disturbance.~~
- ~~11. Planting of woody plants shall occur outside the growing season between November 1st and March 31st when the soil is not frozen.~~
- ~~12. Point sources of stormwater runoff, unless authorized, shall be prohibited from entering any wetland mitigation site prior to treatment by appropriate best management practices.~~
- ~~13. The success of the mitigation shall be based on establishing and maintaining a viable wetland with suitable wetland hydrology and wetland plant communities.~~
- ~~14. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than one foot for at least 15% of the growing season during the first two years and equal to or less than one foot for at least 12.5% of the growing season in more than 50% of the remaining monitoring years.~~
- ~~15. The wetland plant community shall be considered established if:~~

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~~a. At least 50% of woody plants, expressed either by plant stems or canopy coverage, shall be facultative (FAC) or wetter (FACW or OBI). A minimum plant stem count of 400/acre must be achieved in sample plots until canopy coverage is 30% or greater. Of these 400 stems, a minimum of 300 shall be from planted stock, while the remainder may be from naturally recruited species. A minimum of 80% of the planted trees and shrubs must be viable and show signs of growth for the life of the permit.~~

~~b. At least 50% of all herbaceous plants shall be FAC or wetter. Aerial coverage shall be a minimum of 60% after one (1) full growing season and 80% after three (3) growing seasons and remaining at or above 80% for the life of the permit. Scrub/shrub or sapling/forest vegetation is not included in coverage or stem count for herbaceous vegetation. A minimum of 80% of the planted trees and shrubs must be viable and show signs of growth for the life of the permit.~~

~~c. Species composition reflects the desired plant community types stated in the wetland mitigation plan by the end of the first growing season and is maintained through the last year of the permit.~~

~~d. Noxious weeds are identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community.~~

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~~structure. The control plan shall include procedures to notify the VVPP staff of any
invasive species occurrences, methods of removal, and successful control.~~

~~e) Deviations from this plan must be approved in advance by DEQ.~~

~~16. If the mitigation area fails to be established as viable wetlands, the reasons for this failure shall be
determined, and a corrective action plan, schedule, and monitoring plan shall be submitted to
DEQ for approval prior to or with the next required monitoring report. Replacement of dead
plant stock in the wetland mitigation site shall occur, as necessary, to achieve a minimum of 400
stems/acre for the tree species (until canopy coverage is 30% or greater) and 80% of the original
stocking density for the planted herb, shrub and tree species. The problems shall be corrected by
the permittee. Should significant changes be necessary to establish wetlands, the monitoring plan
shall begin again, with year one being the year changes are complete.~~

~~17. The permittee shall submit a final grading plan for the mitigation site(s) to the DEQ for approval prior
to any planting or placement of ground water monitoring wells.~~

~~18. The wetland boundary for the mitigation site shall be based on the results of the hydrology and
vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland
acreage shall be based on that boundary.~~

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~~19. There shall be no use of herbicides or algacides in or immediately adjacent to the mitigation site, including the use of herbicides or algacides for the control of aquatic vegetation or algae, unless authorized by the staff of DEQ. All vegetation removal shall be done by mechanical means only, unless authorized by the staff of DEQ.~~

~~20. This permit authorization may need to be renewed (or extended) to assure that the mitigation work has been successful. The request for renewal/extension must be made no less than 60 days prior to the expiration date of this general permit, at which time DEQ will determine if renewal of the permit authorization is necessary.~~

~~B. Mitigation Site Monitoring~~

~~1. A post-grading survey of the site(s) for wetland mitigation shall be conducted by a licensed land surveyor or a professional engineer and submitted to DEQ for approval prior to placing the permanent groundwater monitoring wells and planting of the vegetation. Grading elevation plans shall be on a scale of 1" equals 50' (or 1:500 metric) with contour intervals of one (or two) feet accompanied by cross section views.~~

~~2. Panoramic photographs shall be taken at the mitigation site(s) from each of the monitoring well~~

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~~stations. These photographs shall be taken after the initial planting and in August every year for the life of the permit. Permanent markers shall be established to ensure that the same locations and view directions at the sites are monitored in each monitoring period.~~

~~3. After the grading of the mitigation site(s), establishment of wetland hydrology shall be measured at the monitoring wells weekly during the growing season every year for the life of the permit. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, weekly monitoring may be discontinued for the remainder of that monitoring year.~~

~~4. The number of wells for each mitigation site will be determined by DEQ on a site-specific basis. The location of the wells must be approved by DEQ prior to placement.~~

~~5. Adequate hydrology shall be within twelve inches of the surface for 15% of the growing season during the first two growing seasons and for 12.5% of the growing season during the remaining growing seasons. Monitoring shall include approximate acreage and average depth of any ponded water on the wetland mitigation site(s).~~

~~6. The establishment of wetland vegetation shall be indicated by percent cover monitored in August or September during each reportable growing season in the life of the permit. At each monitoring station, the following information shall be collected:~~

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- ~~a. Percent cover for all herbaceous species shall be estimated using three randomly placed one square meter quadrats within two ten meter sample stations. The approximate species composition of the herbaceous vegetation shall be indicated, including non-dominants. The number of stems per square meter for woody species shall be provided. A quantitative measure for noxious species present shall also be provided.~~
- ~~b. Percent survival of planted woody species, if applicable, shall be estimated within a ten meter radius. The number of stems of all tree species within the ten meter radius and the density of all tree species (number of stems per square meter or acre) shall be provided.~~
- ~~c. The presence of noxious species shall be documented.~~

~~C. Construction Monitoring~~

- ~~1. Photo stations shall be established to document the various construction aspects of the project within jurisdictional areas. These stations shall be established to document the existing and post-construction conditions of the project site. These stations shall be photographed prior to construction, during construction, and within one week after the completion of construction. Photos shall be taken during construction at the end of the first, second and twelfth months, and~~

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~~then annually for the remainder of the construction project.~~

- ~~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. 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 AM to 5:00 PM Monday through Friday, DEQ shall be notified at [Insert appropriate DEQ office phone number]; otherwise, the Department of Emergency Services shall be notified at 1-800-468-8892.~~

~~D. Reporting~~

- ~~1. Written communications required by this permit shall be submitted to the appropriate DEQ office. Please include the permit number on all correspondence.~~
- ~~2. DEQ shall be notified in writing by certified letter at least ten days prior to the start of any activities authorized by this 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 to document the progress of the construction activities authorized by this permit shall be submitted to DEQ within 30 days of each monitoring event as required in condition C.1 of Part II of this general permit. The reports shall include, at a minimum, the following:~~

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- ~~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, and permit number) showing representative construction activities (including, but not limited to, flagging non-impact wetland areas, site grading and excavation, installation and maintenance of E&S controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.). Photographs are not necessary during periods of no activity within jurisdictional areas.~~
- ~~4. The permittee shall notify DEQ in writing when unusual or potentially complex conditions are encountered which require debris removal or involve 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 DEQ.~~
- ~~5. 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 AM to 5:00 PM Monday through Friday, DEQ shall be notified at the appropriate regional office; otherwise, the Department of Emergency Services shall be notified at 1-800-468-8892.~~

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~~6. Violations of State water quality standards shall be reported within 24 hours to the appropriate DEQ office:~~

~~7. The final plans of mitigation shall be submitted to the DEQ within 60 days of authorization by this general permit.~~

~~8. An official copy of the instrument of restriction, protection, or preservation of wetlands and State waters. Surface waters provided as part of the mitigation plan shall be submitted to the DEQ within 60 days of recordation as outlined in the mitigation portion of this permit.~~

~~9. The mitigation bank account ledgers denoting the purchase of the required credits from the proposed bank(s) shall be submitted to DEQ within 60 days of authorization by this general permit.~~

~~10. All wetland monitoring reports required by the special conditions in Section B of Part II of this general permit shall be submitted annually by November 30 with the exception of the final report in the life of the permit which shall be submitted by November 30 or 180 days prior to permit expiration, whichever occurs sooner. Alterations and maintenance conducted on the mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to DEQ.~~

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~~H. All submittals required by this 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.~~

~~G. Violations of State water quality standards shall be reported within 24 hours to the DEQ.~~

Part III. CONDITIONS APPLICABLE TO ALL VWP PERMITS.

A. Duty to Comply

~~The permittee shall comply with all conditions of the VWP 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~~

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statutes, regulations and toxic standards and prohibitions. Any VWP permit non-compliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP permit 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 may be reopened to modify the conditions of the VWP general permit when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the Department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for VWP general permit modification or revocation and reissuance.

~~D. Change in Management of Pollutants~~

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~~All activities authorized by this permit shall be made in accordance with the terms and conditions of this permit. The permittee shall submit a new application 45 days prior to any proposed modification to the activity which will:~~

~~1. Result in a significantly new or substantially increased impact, or a significant change in the nature of the pollutants; or~~

~~2. Violate or lead to the violation of the terms and conditions of the permit or the Water Quality Standards of the Commonwealth.~~

~~E. Duty to Halt or to Reduce 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 permitted activity in order to maintain compliance with the conditions of this permit.~~

~~DE. 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~~

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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 Section 510 of the Clean Water Act.

EG. Property Rights

The issuance of 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.

EH. Severability

The provisions of this VWP general permit are severable.

GI. Right of Entry

The applicant and/or permittee shall allow authorized state and federal representatives, upon the presentation of credentials, at reasonable times and under reasonable circumstances:

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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.

HH. Transferability of VWP Permits

This VWP general permit may be transferred to another person by a permittee if:

1. The current permittee notifies the Department of Environmental Quality 30 days prior to the proposed transfer of the title to the facility or property;

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2. The notice of the proposed transfer includes a written agreement between the existing and proposed new permittee containing a specific date of transfer of VWP general permit responsibility, coverage and liability between them; and

3. The Department of Environmental Quality does not within the 30 day time period notify the existing permittee of the State Water Control Board's intent to modify or revoke and reissue the VWP general permit.

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

IK VWP Permit Modification

The permittee shall notify the 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

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application of VWP 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 do not exceed two acres 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 VWP general 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;

5. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of Section 307(a) of the CWA;

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~~6.5~~ When changes occur which are subject to "reopener clauses" in the VWP general permit;

~~7. When the level of discharge of a pollutant not limited in the permit exceeds the level which can be achieved by available methodology for controlling such discharges;~~

~~8. When the permittee begins or expects to begin to cause the discharge of any toxic pollutant not reported in the application; or~~

~~9. When other states were not notified of the change in the permit and their waters may be affected by the activity.~~

~~H. VWP Permit Termination~~

This VWP general permit, after ~~public~~ notice and opportunity for a hearing, 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 issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any

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time;

3. The permittee's violation of a special or judicial order;

~~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 modification or termination; or~~

4.

~~A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge of dredged and fill material controlled by the permit~~

~~5. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.~~

~~KM. Civil and Criminal Liability~~

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

~~LN. Oil and Hazardous Substance Liability~~

Nothing in this VWP general permit shall be construed to preclude the institution of legal action or

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relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or Sections 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

MO. Unauthorized Discharge of Pollutants

Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into ~~Statestate waters~~ **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 ~~Statestate waters~~ **waters** and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or 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 alters or degrades existing wetland acreage

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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.~~