

9 VAC 25-690-10 et seq. Virginia Water Protection General Permit for Impacts from Development Activities

CHAPTER 690.VIRGINIA WATER PROTECTION GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT ACTIVITIES.**9 VAC 25-690-10. Definitions.**

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

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

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

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

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

"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 is usually dominated by perennial plants.

["Farm tract" means, as identified by the Farm Service Agency, a unit of contiguous land under one ownership which is operated as a farm or part of a farm.]

"FEMA" means Federal Emergency Management Agency.

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"Forebay" means a deeper area at the upstream end of a stormwater management facility that would be maintained through excavation.

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

"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 United States Department of Agriculture] Natural Resources Conservation Service.

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

"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend 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.]

~~"NRCS" means Natural Resources Conservation Service.]~~

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

"Real estate subdivision" means a tract of land ~~divided~~ subdivided after October 5, 1984] into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. The tract of land includes the entire area of a residential, commercial, or other real estate subdivision, including all parcels and parts thereof.

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"Recreational facility" means ~~an activity~~ a facility] that is integrated into the natural landscape and does not substantially change preconstruction grades or deviate from natural landscape contours.

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

"Riprap" means a layer of material such as stone or chunks of concrete on an embankment slope for the purpose of preventing erosion.

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

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

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

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

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["Temporary impact" means an impact caused by activities in surface waters, including wetlands, in which the ground is restored to its preconstruction contours and elevations, without significantly affecting wetland functions and values.]

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

"Up to two acres" means 0.00 to 2.00 acres, 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 surface water] to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

9 VAC 25-690-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this [chapter regulation] is to establish VWP General Permit Number WP4 under the [VWPP VWP permit] regulation to govern impacts related to the construction and [operation maintenance] of development activities. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board.

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

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

D. C.] This VWP general permit regulation will become effective on [October 1, 2001] and will expire [three years after the effective date. For any covered activity, this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-690-30 and the receipt of this VWP general permit on October 1, 2006.

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

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D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-690-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for a maximum of five years.]

9 VAC 25-690-30. Authorization to impact surface waters.

A. Any person governed by this VWP general permit is authorized to impact up to two acres of [nontidal] surface waters, including [up to] 500 linear feet of perennial stream channel and [up to] 1,500 linear feet of nonperennial stream channel for general development activities, provided that the applicant submits notification as required in 9VAC 25-690-50 and 9VAC 25-690-60, remits the required application processing fee (9 VAC 25-20-10 et seq.), complies with the limitations and other requirements of 9VAC 25-690-100, receives approval from the board, and provided that:

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

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

~~[a. Activities authorized include residential, commercial, institutional, agricultural, recreational, and stormwater management facilities as described in 9 VAC 25-690-50.~~

~~b. a.] Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the board may, at its discretion, require [an individual VWPP a VWP individual permit].~~

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

~~[3. Impacts from a single and complete project do not exceed two acres of surface waters, 500 linear feet of perennial stream, or 1,500 linear feet of nonperennial stream.~~

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~~a. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations.~~

~~b. Stream channel manipulations (e.g., tie-ins or cleanout) may not exceed 100 linear feet on the upstream or downstream end of a stream crossing.~~

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

4. Dredging does not exceed 5,000 cubic yards. [Only mechanical dredging is authorized. Dredged areas shall not exceed the controlling depths for ingress or egress, whichever is less.]

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, or a contribution to an approved in-lieu-fee fund. [Compensation may incorporate Preservation 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)~~

~~7. Compensatory mitigation for unavoidable impacts to streams is provided at a 1:1 replacement to loss ratio via stream relocation, restoration, purchase of mitigation bank credits or contribution to an in lieu fee fund that includes stream restoration.~~

B. Activities that may be authorized under this VWP general permit include the following:

1. Residential, commercial, institutional. The construction or expansion of building foundations, building pads

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and attendant features for residential, commercial and institutional development activities.

a. Residential developments include both single and multiple units.

b. Commercial developments include, but are not limited to, retail stores, industrial facilities, restaurants, business parks, office buildings and shopping centers.

c. Institutional developments include, but are not limited to, schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.

d. Attendant features include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities (such as playgrounds, playing fields and golf courses). Attendant features must be necessary for the use and maintenance of the structures.

2. Recreational facilities. The construction or expansion of recreational facilities and small support facilities.

a. Recreational facilities include, but are not limited to, hiking trails, bike paths, horse paths, nature centers, and campgrounds (but not trailer parks). Boat ramps (concrete or open-pile timber), boathouses, covered boat lifts, mooring piles and dolphins, fender piles, camels (wooden floats serving as fenders alongside piers), and open-pile piers (including floating piers, travel-lift piers, etc.) associated with recreational facilities are also included.

b. Recreational facilities do not include as a primary function the use of motor vehicles, buildings or impervious surfaces.

c. Golf courses and ski area expansions may qualify as recreational facilities provided the construction of the proposed facility does not result in a substantial deviation from the natural contours and the facility is designed to minimize adverse effects on state waters and riparian areas. Measures that may be used to minimize adverse effects on waters and riparian areas include the implementation of integrated pest management plans, adequate stormwater management, vegetated buffers, and fertilizer management plans.

d. Small support facilities are authorized provided they are directly related to the recreational activity. Small support facilities include, but are not limited to, maintenance storage buildings and stables.

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e. The following do not qualify as recreational facilities: hotels, restaurants, playing fields (e.g., baseball, soccer or football fields), basketball and tennis courts, racetracks, stadiums, arenas or new ski areas.

f. The recreational facility must have an adequate water quality management plan, such as a stormwater management plan, to ensure that the recreational facility results in no substantial adverse effects to water quality.

3. Stormwater management facilities. The construction, maintenance, and excavation of stormwater management facilities; the installation and maintenance of water control structures, outfall structures, and emergency spillways; and the maintenance dredging of existing stormwater management facilities.

a. Stormwater management facilities include stormwater ponds and facilities, detention basins, retention basins, and other facilities designed to reduce pollutants in stormwater runoff.

b. The stormwater management facility must:

(1) To the maximum extent practicable, be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity and flow rates);

(2) Not permanently restrict or impede the passage of normal or expected high flows, unless the primary purpose of the facility is to impound waters;

(3) Withstand expected high flows;

(4) To the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and not increase water flows from the project site, relocate water, or redirect flow beyond preconstruction conditions;

(5) To the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the facility is part of a larger system designed to manage water flows; and

(6) Be designed using best management practices (BMPs) and watershed protection techniques. Examples include forebays, vegetated buffers, bioengineering methods, and siting considerations to

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minimize adverse effects to aquatic resources.

c. Maintenance excavation shall be in accordance with the facility maintenance plan and shall not exceed the original contours of the facility as approved and constructed.

~~B. C.] The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9 VAC 25-210-10. [Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.~~

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

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

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

9 VAC 25-690-40. [Prohibitions Exceptions to coverage].

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

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

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

3. Surface waters with federal or state listed or proposed threatened or endangered species or proposed or

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designated critical habitat.

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

C. This VWP general permit cannot be used for any activity in any real estate subdivision which would cause the aggregate total loss of ~~[nontidal]~~ surface waters in the subdivision to exceed two acres ~~[of nontidal state waters]~~, ~~[or more than]~~ 500 linear feet of perennial stream ~~[channel]~~, or ~~[more than]~~ 1,500 linear feet of nonperennial stream ~~[channel]~~.

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

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

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

G. This VWP general permit may not be used for:

1. Any stormwater management facility that is located in a perennial stream or in waters designated as oxygen- or temperature-impaired[- :]

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- ~~2.~~ The construction of an irrigation impoundment on a perennial stream[- :]
- ~~3.~~ Any water withdrawal activity[- :]
- ~~4.~~ The location of animal feeding operations or waste storage facilities in state waters[- :]
- ~~5.~~ Restoration, creation or any fill in wetlands or perennial streams in association with the establishment of a mitigation bank.
- ~~6.~~ 5.] The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the area is contained within a cofferdam or the work is performed in the dry [- :
- ~~7.~~ 6.] Return flow discharges from dredge disposal sites[- :
- ~~8.~~ 7.] Overboard disposal of dredge materials[- :
- ~~9.~~ Disposal of dredge materials in wetlands.]
- ~~10.~~ Dredging in marinas[- :
- ~~11.~~ Maintenance dredging of marine terminals.
- ~~12.~~ 11.] Dredging of shellfish areas, submerged aquatic vegetation beds or other highly productive areas[- :
- ~~13.~~ 12.] Federal navigation projects[- :
- ~~14.~~ 13.] The construction of new ski areas or oil and gas wells[- : and
- ~~15.~~ The construction of marine railways.
- ~~16.~~ 14.] The taking of threatened or endangered species [in accordance with the following:-]
 - a. Pursuant to §29.1-564 of the Code of Virginia: "Taking, transportation, sale, etc., of endangered species is prohibited. The taking, transportation, processing, sale or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the U.S. 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."

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~~b. Pursuant to § 29.1-566 of the Code [of Virginia] and 4 VAC 15-20-130 B and C, the taking, transportation, processing, sale or offer for sale within the Commonwealth of any state listed endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code[–of Virginia].~~

~~9 VAC 25-690-50. Activities covered.~~

~~A. Residential, commercial, institutional. This chapter authorizes the construction or expansion of building foundations, building pads and attendant features for residential, commercial and institutional development activities.~~

~~1. Residential developments include both single and multiple units.~~

~~2. Commercial developments include, but are not limited to, retail stores, industrial facilities, restaurants, business parks, office buildings and shopping centers.~~

~~3. Institutional developments include, but are not limited to, schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.~~

~~4. Attendant features include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities (such as playgrounds, playing fields and golf courses). Attendant features must be necessary for the use and maintenance of the structures.~~

~~B. Agricultural. This chapter authorizes activities related to the improvement of agricultural production and the construction of building pads for farm buildings.~~

~~1. The following activities are authorized:~~

~~a. The installation, placement, or construction of drainage tiles, ditches or levees;~~

~~b. Mechanized land clearing;~~

~~c. Land leveling; and~~

~~d. The relocation of existing serviceable ditches constructed in state waters.~~

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~~2. Activities that qualify for an exemption under §404(f) of the Clean Water Act are exempt, even though a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS pursuant to the Food Security Act of 1985 (16 USC § 3801 et seq.), as amended, may be required.~~

~~3. Activities authorized by this VWP general permit may not exceed a total of two acres for a farm tract.~~

~~4. For the improvement of agricultural production, USDA program participants must:~~

~~a. Obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS in accordance with the provisions of the Food Security Act of 1985, as amended;~~

~~b. Have an NRCS-certified wetland delineation;~~

~~c. If required, implement an NRCS-approved compensatory mitigation plan that fully offsets wetland losses; and~~

~~d. Not cause the loss of greater than two acres of state waters on a farm tract.~~

~~5. For the improvement of agricultural production, non-USDA program participants (or USDA program participants for which the proposed work does not qualify for authorization under subdivision 3 of this subsection) must:~~

~~a. Provide a delineation of the affected wetlands;~~

~~b. Provide a compensatory mitigation proposal to offset losses of state waters;~~

~~c. Not cause the loss of greater than two acres of state waters on a farm tract.~~

~~6. For the construction of building pads for farm buildings, the activity must not cause the loss of greater than two acres of wetlands that were in agricultural production prior to December 23, 1985 (i.e., farmed wetlands).~~

~~7. Activities in other state waters is limited to the relocation of existing serviceable drainage ditches constructed in nontidal streams.~~

~~C. Recreational facilities. This chapter authorizes activities related to the construction or expansion of recreational facilities and small support facilities.~~

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~~1. Recreational facilities include, but are not limited to, hiking trails, bike paths, horse paths, nature centers, and campgrounds (but not trailer parks). Boat ramps (concrete or open-pile timber), boathouses, covered boat lifts, mooring piles and dolphins, fender piles, camels (wooden floats serving as fenders alongside piers), and open-pile piers (including floating piers, travel-lift piers, etc.) associated with recreational facilities are also included.~~

~~2. Recreational facilities do not include as a primary function the use of motor vehicles, buildings or impervious surfaces.~~

~~3. Golf courses and ski area expansions may qualify as recreational facilities provided the construction of the proposed facility does not result in a substantial deviation from the natural contours and the facility is designed to minimize adverse effects on state waters and riparian areas. Measures that may be used to minimize adverse effects on waters and riparian areas include the implementation of integrated pest management plans, adequate stormwater management, vegetated buffers, and fertilizer management plans.~~

~~4. Small support facilities are authorized provided they are directly related to the recreational activity. Small support facilities include, but are not limited to, maintenance storage buildings and stables.~~

~~5. The following do not qualify as recreational facilities: hotels, restaurants, playing fields (e.g., baseball, soccer or football fields), basketball and tennis courts, racetracks, stadiums, arenas or new ski areas.~~

~~6. The recreational facility must have an adequate water quality management plan, such as a stormwater management facility, to ensure that the recreational facility results in no substantial adverse effects to water quality.~~

~~D. Stormwater management facilities. This chapter authorizes activities related to the construction, maintenance, and excavation of stormwater management facilities; the installation and maintenance of water control structures, outfall structures, and emergency spillways; and the maintenance dredging of existing stormwater management facilities.~~

~~1. Stormwater management facilities include stormwater ponds and facilities, detention basins, retention~~

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~~basins, and other facilities designed to reduce pollutants in stormwater runoff.~~

~~2. The stormwater management facility must:~~

~~a. To the maximum extent practicable, be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity and flow rates);~~

~~b. Not permanently restrict or impede the passage of normal or expected high flows, unless the primary purpose of the facility is to impound waters;~~

~~c. Withstand expected high flows;~~

~~d. To the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and not increase water flows from the project site, relocate water, or redirect flow beyond preconstruction conditions;~~

~~e. To the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the facility is part of a larger system designed to manage water flows; and~~

~~f. Be designed using best management practices (BMPs) and watershed protection techniques. Examples include forebays, vegetated buffers, bioengineering methods, and siting considerations to minimize adverse effects to aquatic resources.~~

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

9 VAC 25-690-60. 9 VAC 25-690-50.] Notification.

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

1. ~~[Impacts equal to or greater than one-tenth of an acre of surface waters shall be reported by the applicant to DEQ via the entire registration statement in 9VAC 25-690-70. For any real estate subdivision created or subdivided after October 5, 1984, a notification is required for any activity which would cause the aggregate total loss of state waters for the entire subdivision to exceed one-tenth of an acre. An application~~

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for proposed impacts greater than one-tenth of an acre of surface waters shall be submitted via a registration statement that includes all information pursuant to section 9 VAC 25-690-60].

2. ~~For Proposed~~ impacts up to one-tenth of an acre, [shall be reported via a registration statement that includes only the following information: ~~items~~ subdivisions 1 through 8, 13, 15 and 20 of the registration statement (9 VAC 25-690-70) shall be provided 9 VAC 25-690-60 B.

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

B. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) may serve as the registration statement provided that all information required pursuant to 9 VAC 25-690-60 is included and that the first page of the form is clearly marked indicating the intent to have the form serve as the registration statement for this VWP general permit.]

C. The ~~DEQ board~~ will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation[, the Virginia Department of Agriculture and Consumer Services] and the Virginia Department of Game and Inland Fisheries [regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this general permit.

9 VAC 25-690-70. 9 VAC 25-690-60.] 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 25-690-60~~ 9 VAC 25-690-50] for a VWP [General Permit Number] WP4 for [impacts to] surface ~~water~~ waters] from development activities, which will serve as a notice of intent for coverage under this VWP general permit.

2. Any applicant proposing an activity under this VWP general permit ~~shall~~ is advised to] file the required

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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. [The VDOT may use its monthly IACM process for submitting registration statements.]

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

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

1. The applicant's name, mailing address, telephone number and, if applicable, fax number[- :]
2. The authorized agent's (if applicable) name, mailing address, telephone number and, if applicable, fax number[- :]
3. The existing VWP permit number (if applicable)[- :]
4. The name of the project, purpose of project, and a description of the activity[- :]
5. The name of ~~water body~~(ies) the water body or water bodies] or receiving stream, as applicable[- :]
6. The hydrologic unit code (HUC) for the project area[- :]
7. The name of the city or county where the project is located[- :]
8. Latitude and longitude (to the nearest second) from a central location within the project limits[- :]
9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the ~~impact~~ project] area. The map should be of sufficient detail such that the site may be easily located for site inspection[- :]
10. The appropriate appendices from the ~~Joint Permit Application~~- JPA;]
11. Project plan view. All plan view sketches should include, at a minimum, north arrow, scale, existing structures, existing contours, proposed contours (if available), limit of ~~jurisdictional~~ surface water] areas, direction of flow, ordinary high water, impact limits, [and] location and dimension of all proposed structures in impact areas. Cross-sectional sketches, with the above information, may be required for certain projects to demonstrate minimization of impacts[- :]

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12. Dredge material management plan (for dredging projects only) including plan and cross-section view drawings of the disposal [and/or or] dewatering area, the dimensions and design of the proposed berm and spillway, and the capacity of the proposed disposal [and/or or] dewatering site[- ;

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

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

14. Functional values [assessments assessment] for impacts to wetlands greater than one acre. The functional assessment shall consist of a narrative description of the existing wetland functions and values and the impact that the project will have on these functions and values[- ;]

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

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

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~~ typical year, a dry year, and a wet year]; ground water elevation data, if available, or the proposed location of ground water monitoring wells to collect [this these] data; wetland delineation [confirmation and data sheets and maps and a jurisdictional determination from the [Corps of Engineers USACE] for existing wetland areas on the proposed [site(s) site or sites]; a conceptual grading plan; a conceptual planting scheme, including suggested plant species, zonation and acreage of each vegetation type proposed; a proposed soil

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preparation and amendment plan addressing both topsoil and subsoil conditions; and a draft design of any water control structures.

b. Applicants proposing to ~~mitigate~~ compensate] off-site, ~~to including~~ purchase [or use of] mitigation bank credits, or ~~to contribute~~ contribution] to an in-lieu-fee ~~program~~ fund] shall [first] 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~~ surface water] functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation ~~vs.~~ versus] impacts, acquisition, constructability, and cost.

c. Any [applicant proposing] compensation ~~plan~~ involving stream restoration shall submit a plan that includes: goals and objectives in terms of water quality benefits; location map, including the latitude and longitude at the center of the site; the proposed stream segment restoration locations, including plan view and cross-section sketches; the stream deficiencies that need to be addressed; the restoration measures to be employed, including proposed design flows and types of instream structures; and a proposed construction schedule.

d. Any ~~wetland~~ compensation plan proposing to include contributions to in-lieu-fee fund 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.

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

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

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

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

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

(1) The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensation site construction, source of hydrology and a water budget (nontidal 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.

(2) The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact 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. 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 nonimpact 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

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~~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.~~

~~(3) 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.]~~

~~[f. The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in subdivision 16 a above, as well as a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photostations, monitoring wells, vegetation sampling points, and reference wetlands (if available); an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and proposed deed restriction language for protecting the compensation site or sites in perpetuity. The final compensatory mitigation plan must include protection of all surface waters and upland areas that are to be preserved in perpetuity within the compensation site boundary.~~

~~17. An aerial photo or scale map which clearly shows the property boundaries, location of surface waters including all wetland boundaries, limits of Chesapeake Bay Resource Protection Area(s) (RPAs) if applicable, and all surface water impacts at the site. A copy of the Corps of Engineers' delineation confirmation, including wetland data sheets, shall also be provided at the time of application. If written confirmation is not available at the time of application, verbal confirmation must be provided and the written confirmation submitted during the VWP general permit review. Additional state or local requirements may apply if the project is located within an RPA.~~

~~17. A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9VAC 25-210-45, including the wetlands data sheets, and the latitude and longitude (to the nearest second) of the center of the wetland impact area. Wetland types should be noted according to their Cowardin classification or similar terminology. A copy of the [Corps of Engineers' USACE]~~

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delineation confirmation, or other correspondence from the [Corps USACE] indicating their approval of the wetland boundary, shall also be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review. The delineation map should also include the location of all impacted and non-impacted streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) should be shown on the map, as other state or local requirements may apply if the project is located within an RPA ;]

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

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

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

21. 20.] The following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

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

D. Upon receipt of a complete registration statement, coverage under this VWP general permit shall be

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approved, approved with conditions, or denied within 45 days. If the board fails to act within 45 days, coverage under this VWP general permit shall be deemed approved.

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

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

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

~~[9 VAC 25-690-80. 9 VAC 25-690-70.] Mitigation.~~

A. For the purposes of this VWP general permit, the board ~~[shall may]~~ accept any one or combination of the following as compensation for unavoidable impacts: wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu-fee fund. ~~[Compensation may incorporate Preservation preservation]~~ of wetlands or streams 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.

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

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1. Impacts to forested wetlands shall be mitigated at 2:1.
2. Impacts to scrub-shrub wetlands shall be mitigated at 1.5:1.
3. Impacts to emergent wetlands shall be mitigated at 1:1.

[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.
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.

C. Compensatory mitigation for unavoidable impacts to streams shall be provided at a 1:1 replacement to loss ratio via stream relocation, restoration, riparian buffer establishment, or purchase of mitigation bank credits or contribution to an in-lieu-fee fund that includes stream restoration, when feasible.

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

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

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

~~[F. Unavoidable impacts to streams shall be compensated on a one-to-one basis through the restoration or preservation of similar order streams, when practicable.~~

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~~9 VAC 25-690-90, 9 VAC 25-690-80. Modification Notice of planned changes.]~~

~~[A.] Authorization under this VWP general permit may be modified [provided the total impacts to surface waters for a single and complete project are less than two acres of nontidal state waters, 500 linear feet of perennial stream, or 1,500 linear feet of nonperennial stream when any of the following developments occur: subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated.~~

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

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

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

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

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

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

~~9 VAC 25-690-100, 9 VAC 25-690-90.] Notice of termination.~~

~~When all permitted activities requiring notification under ~~9 VAC 25-690-60 A 1~~ 9 VAC 25-690-50 A 1] have been completed, the permittee shall submit a notice of termination within 30 days of final completion. The notice shall contain the following information:~~

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

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~~[2. B.] Name and location of the activity:~~

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

~~[4. D.] The following certification:~~

~~"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in ~~wetlands surface waters~~ in accordance with the VWP general permit, and that performing activities in ~~wetlands surface waters~~ is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit."~~

~~[9 VAC 25-690-110. 9 VAC 25-690-100.] VWP general permit.~~

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

~~VWP General Permit Number WP4~~

~~[Authorization] Effective date:~~

~~[Authorization] Expiration date:~~

VWP GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT ACTIVITIES

UNDER THE VIRGINIA

WATER PROTECTION PERMIT AND THE

VIRGINIA STATE WATER CONTROL LAW

~~Based upon an examination of the information submitted by the applicant and in compliance with §401 of the Clean Water Act as amended (33 USC §1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses~~

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and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

[In compliance with Subject to] the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, [citizens of the Commonwealth of Virginia are the permittee is] authorized to impact up to ~~2.0~~ two acres of nontidal] surface waters [including wetlands], with a maximum including up to ~~of~~ 500 linear feet of perennial stream channel and [up to] 1,500 linear feet of nonperennial stream channel [~~within the boundaries of the Commonwealth of Virginia, except in those areas specifically named or excluded in board regulations or policies which prohibit such impacts].~~

Permittee:

Address:

Activity Location:

Activity Description:

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

Director, Department of Environmental Quality Date

Part I. Special Conditions.

A. Authorized activities.

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

~~2. The activities authorized by this VWP general permit must commence and be completed within five years of the date of this authorization.~~

1. This permit authorizes impacts of up to two acres of nontidal surface waters [including wetlands].

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including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel according to the information provided in the applicant's approved registration statement.

2. Any additional impacts to surface waters associated with this project shall require either a notice of planned change in accordance with section 9 VAC 25-690-80 or another VWP permit application.

3. The activities authorized for coverage under this VWP general permit must commence and be completed within five years of the date of this authorization.]

B. Reapplication. Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP general permit requirement (including compensatory mitigation) has not been completed within five years of the date of authorization. Application consists of an updated or new registration statement. Notwithstanding any other provision, a request for a reissuance of certification of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered an application for coverage and no application fee will be charged.

C. Overall project conditions.

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

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body[, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.] No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

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

4. [No fill in surface waters may consist of unsuitable materials (e.g., trash, debris, car bodies, asphalt).] All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with

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all ~~[Department of Environmental Quality (DEQ) applicable laws and]~~ regulations.

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

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

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

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

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

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

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

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fills must be removed in their entirety and the ~~affected~~ affected area returned to ~~their~~ pre-existing ~~elevation contours~~.

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

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

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

15. ~~The permittee shall conduct his activities in accordance with any Time time-of-year~~ restrictions ~~imposed recommended~~ by the Department of Game and Inland Fisheries ~~of or~~ the Virginia Marine Resources Commission ~~shall be strictly adhered to~~.

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

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

D. Road crossings.

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

2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to

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provide for the reestablishment of a natural stream bottom and a low flow channel. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

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

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

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

E. Utility lines.

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

2. Material resulting from trench excavation may be temporarily sidecast ~~[(up to three months)]~~ into wetlands [not to exceed a total of 90 days] , provided the material is not placed in a manner such that it is dispersed by currents or other forces. ~~[DEQ may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate.]~~

3. The trench for a utility line cannot be constructed in ~~[such]~~ a manner ~~[as to drain that drains]~~ wetlands

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(e.g., backfilling with extensive gravel layers creating a french drain effect).

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

F. [Shoreline Bank] stabilization.

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

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

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

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

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

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

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

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

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

G. Dredging.

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in [such] a manner [as to minimize that minimizes] disturbance of the bottom and minimize turbidity levels in the water column. [Recommendations outlined in the Corps 1984 research document, "Sediment Resuspension Characteristics of Selected Dredges," shall be followed when applicable.]

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease and the [Department of Environmental Quality (DEQ)] shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent any overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted. [Utilization of the Craney Island Rehandling Basin is not considered double handling.]

6. Overdredging to reduce the frequency of maintenance dredging should not exceed one foot deeper than adjacent natural water bodies and only as wide as necessary to avoid creating circulation and flushing problems.

7. A minimum of 15 feet shall be maintained between the top of the dredge cut and the toe of the bank. This landward limit of encroachment shall be flagged and inspected prior to construction.

8. A buffer of four times the depth of the dredge cut shall be maintained between the top of the dredge cut and the channelward limit of wetlands or mean low water.

9. Side slope cuts of the dredging area shall not exceed a two horizontal to one vertical slope to prevent slumping of material into the dredged area.

6. For navigation channels the following shall apply:

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a. A minimum of 15 feet shall be maintained between the top of the dredge cut and the toe of the bank.

This landward limit of encroachment shall be flagged and inspected prior to construction.

b. A buffer of four times the depth of the dredge cut shall be maintained between the top of the dredge cut and the channelward limit of wetlands or mean low water.

c. Side slope cuts of the dredging area shall not exceed a two horizontal to one vertical slope to prevent slumping of material into the dredged area.

~~10- 7.] A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.~~

~~[11- 8.] Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.~~

~~[12- 9.] The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.~~

~~[13- 10.] The dredge material dewatering area shall utilize an earthen berm ~~and/or~~ straw bales covered with filter fabric along the edge of the area to contain the dredged material, and shall be properly stabilized prior to placing the dredged material within the containment area.~~

~~[14- 11.] Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.~~

H. Stormwater management facilities.

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

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2. Compensatory mitigation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

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

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

Part II. Mitigation, Monitoring and Reporting.

A. ~~Wetland Compensatory]~~ mitigation. ~~In order to qualify for this VWP general permit,~~ The permittee shall provide] appropriate and practicable compensatory mitigation ~~will be required]~~ for all ~~wetland]~~ impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu-fee fund. ~~[Compensation may incorporate Preservation 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) site or sites]~~ depicted in the conceptual compensatory mitigation ~~package plan]~~ submitted with the registration statement, shall constitute the compensatory mitigation ~~package plan]~~ for the approved project, ~~unless otherwise authorized by a VWP general 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 USACE]~~ has debited the required mitigation credits from the Mitigation Bank ledger. For projects proposing a contribution to an in-lieu-fee ~~program fund]~~, 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 the board]~~ prior to any construction activity in permitted impact areas. ~~DEQ The board]~~ shall review and

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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~~ the board] shall ~~become an official component~~ be an enforceable requirement] of this VWP general permit. [Any deviations from the approved plan must be submitted and approved in advance by the board.]

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 ~~[(nontidal sites only) for typical and driest years a typical year, a wet year and a dry year 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 [within] approximately 200 miles from the project site.

b. The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact 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 compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by ~~DEQ~~ the board]. Unless specifically authorized by ~~DEQ~~ the board] 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

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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) site or sites] 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 foot 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 impact] areas shall cease if compensatory mitigation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by [DEQ the board.]

[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 seven days of final grading for site stabilization.

6. A site stabilization plan shall be provided for compensation sites involving land disturbance.

7. For compensatory mitigation sites involving restoration, a wetland vegetation seed mix shall be applied for site stabilization within seven days of final grading or soil disturbance.

8. 7.] Planting of woody plants shall occur [outside the growing season, when the soil is not frozen, between November 1 and March 31, when vegetation is normally dormant unless otherwise approved in the final mitigation plan.

9. 8.] 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.

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~~[10. 9.] 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.~~

~~[11. 10.] 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 12 inches below ground surface]~~ for at least 12.5% of the growing season ~~[, as defined in the United States Department of Agriculture soil survey for the locality of the compensation site for in]~~ all monitoring years ~~[under normal rainfall conditions, as defined in the water budget of the final mitigation plan.~~~~

~~12. 11.] The wetland plant community shall be considered established ~~if:~~ according to the performance criteria specified in the final mitigation plan and approved by the board. Species composition shall reflect the desired plant community types stated in the final mitigation plan by the end of the first growing season and shall be maintained through the last year of the VWP permit. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or ~~aerial~~ areal cover.~~

~~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 full growing season and 80% after three 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 compensatory mitigation plan by the end of the first growing season and is maintained through the last year of the VWP general permit.~~

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~~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.~~

12. Noxious weeds shall be 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 board of any invasive species occurrences, methods of removal, and successful control.]

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 the board] 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.

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 [at the end of the monitoring cycle].

15. Herbicides or ~~algicides~~ algicides] shall not be used in or immediately adjacent to the compensatory mitigation [site(s) site or sites] without prior authorization by DEQ the board. All vegetation removal shall be done by manual means, unless authorized by the board in advance.]

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 renewal or

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~~extension] must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time [DEQ the board] 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) site or sites] for wetland compensatory mitigation [may be required depending upon the type and size of the compensation site, and] 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 inch equals 50 feet (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 Photographs shall be taken at the compensatory mitigation [site(s) site or sites] from [each of the monitoring well stations the permanent markers identified in the final mitigation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period]. These photographs shall be taken after the initial planting and in August or September every [monitoring] 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, and 5[, 7 and 10, with years 7 and 10 only required if the site success criteria were not achieved during the previous monitoring event. If all success criteria have not been met in the fifth year, monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.~~

~~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 12 inches of~~

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~~the surface for 12.5% of the growing season. 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.~~

~~4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. All hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site, or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, 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 in accordance with the final mitigation plan].~~

~~6. The establishment of wetland vegetation shall be [indicated by percent cover, percent survival, stem counts and species composition monitored in accordance with the final mitigation plan. Monitoring shall take place] in August or September during [each reportable the] growing season [in the life of the VWP general permit of each monitoring year, unless otherwise authorized in the monitoring plan. 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 nondominants. The number of stems per acre 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 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.~~

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~~7. The presence of noxious species shall be documented.~~

~~8. All compensatory mitigation monitoring reports shall be submitted annually by November 30, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit. Any 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 the board.]~~

C. Stream [mitigation,] restoration [and] monitoring.

~~[1. Representative photographs shall be taken along the stream segment(s). These photographs shall be taken prior to restoration, after restoration work is complete, and in August or September for three years after completion. Permanent markers shall be established to ensure that the same locations and view directions at the sites are monitored in each monitoring period.~~

~~2. Monitoring for stream restoration success shall begin at the first complete growing season (year 1) following site restoration. Monitoring shall be required for years 1, 2, and 3. Monitoring shall consist of an evaluation of the stability and success of any instream structures, vegetative monitoring of any established riparian buffers, and a pre- and post-construction assessment of the benthic community of the stream.~~

~~1. Stream mitigation shall be performed in accordance with the final mitigation plan and subsequent submittals, as approved by the board.~~

~~2. Stream bank slopes shall be stabilized to reduce stream bank erosion, where practicable.~~

~~3. Stream mitigation monitoring shall be conducted in the manner proscribed in the final mitigation plan approved by the board. All monitoring reports shall be submitted by November 30th of the monitoring year. Monitoring reports [should follow the procedures described in Section D of these permit conditions, and should shall] include:~~

~~a. Photographs sufficient to document installation of specific structures and vegetative plantings or where the stream channel banks are reshaped. Permanent markers shall be established to ensure that the same locations and view directions at the site are photographed in each monitoring period.~~

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b. Discussion of the establishment of vegetation, if applicable.

c. Any alterations, maintenance, and corrective actions conducted at the stream mitigation site.]

D. Construction monitoring.

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

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

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

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

a. A sampling station shall be located upstream and immediately downstream of the relocated channel;

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels;

c. After opening the new channel, temperature, pH and D.O. readings shall be taken once every half

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hour for at least three readings at each station within 24 hours of opening the new channel.

E. Reporting.

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

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

3. After construction begins, construction monitoring reports shall be submitted to [DEQ the board] 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, [a brief description,] and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.). ~~Photographs are not necessary during periods of no activity within jurisdictional areas.~~

4. All compensatory mitigation monitoring reports shall be submitted annually by November 30, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit. Any 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 the board.

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~~4. 5.] The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-690-90.]~~

~~[4. 6.] The permittee shall notify [DEQ the board] 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 the board].~~

~~[5. 7.] The permittee shall report any fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, [DEQ the appropriate DEQ regional office] shall be notified [at (insert appropriate DEQ office phone number)]; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.~~

~~[6. 8.] 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 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 subsection 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.~~

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

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

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

A. Duty to comply. The permittee shall comply with all conditions of the VWP [general] permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP [general] permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP [general] permit [authorization] termination, revocation, [modification] or denial of a [VWP permit] renewal application.

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

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

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance

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

E. Property rights. 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.

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

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

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;
2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;
3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

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

1. The current permittee notifies the board within 30 days of the transfer of the title to the facility or property;
2. The notice to the board includes a written agreement between the existing and ~~proposed new~~ permittee containing a specific date of transfer of VWP general permit [authorization] responsibility, coverage and liability ~~[between them~~ to the new permittee], or that the ~~seller~~ existing permittee] will retain such

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responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and

3. The board does not notify the existing and [proposed new] permittee of [the board's its] intent to modify or revoke and reissue the VWP general permit [authorization] within the 30-day time period.

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

[1. VWP permit modification. The permittee shall notify 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 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 (of nontidal surface waters), including [up to] 500 linear feet of perennial stream or [up to] 1,500 linear feet of nonperennial stream 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 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 Clean Water Act; and

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

~~I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation.]~~

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

~~1. Noncompliance by the permittee with any condition of the VWP general permit;~~

~~2. The permittee's failure in the application or during the VWP general permit [authorization] issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;~~

~~3. The permittee's violation of a special or judicial order;[and]~~

~~4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit [authorization] modification or termination[; or .]~~

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

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

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

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

N. Duty to provide information.

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing and terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

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

O. Monitoring and records requirements.

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

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

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

4. Records of monitoring information shall include:

a. The date, exact place and time of sampling or measurements;

b. The name of the individuals who performed the sampling or measurements;

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c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

DOCUMENTS INCORPORATED BY REFERENCE

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

9 VAC 25-690-10 et seq. Virginia Water Protection General Permit for Impacts from Development Activities

VA.R. Doc. No. R00-196; Filed February 6, 2001, 9:06 a.m.

[FORMS

Department of Environmental Quality Water Division Permit Application Fee.

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia.

Virginia Water Protection General Permit Registration Statement.]

Certified true and accurate: _____ Date: _____

Dennis H. Treacy, Director, DEQ