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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Approving authority name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-690-10 et seq.
Regulation title	Virginia Water Protection General Permit for Impacts from Development Activities
Action title	Virginia Water Protection General Permit WP-4
Document preparation date	December 31, 2003

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

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this proposed regulatory action is to allow for revisions to the above referenced general permit regulation to correct several administrative procedures, clarify application and permitting requirements, and allow for a more efficient application review process. In addition, we propose to include coal, natural gas, and coalbed methane gas mining activities authorized by the Department of Mines, Minerals and Energy, and sand mining, as authorized activities under this general permit to satisfy the requirement to have a general permit for wetland impacts resulting from these activities (Section 62.1-44.15:5D of the Code of Virginia). Since implementation of this regulation in October 2001, it has become evident that these minor corrections are needed to improve applications for coverage, timeframes for issuance of authorizations, and coordination with the U.S. Army Corps of Engineers State Program General Permit (SPGP-01). No change to the upper thresholds of coverage under this regulation or to compensation ratios is being proposed.

Legal Basis

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

The basis for this regulation is provided for in Sections 62.1-44.15(10) and 62.1-44.15:5 of the Code of Virginia, as well as in 9VAC-24-210-10 et seq., Virginia Water Protection Permit Program Regulation.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The VWP general permits are intended to simplify and streamline the permitting process for activities in state waters that have a minor individual and cumulative impact to the environment. The proposed changes will allow for a more efficient and understandable application submittal and review and authorization issuance process. In turn, this will allow for greater consistency and predictability for the public.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Proposed changes to the regulation include, but may not be limited to, the following general areas:

1. modifications to language throughout the regulation to improve consistency and clarity;
2. clarification of what is needed to decide that an application is complete, including informational and time requirements;
3. allow for payments to mitigation bank or in-lieu fee funds to be linked to the start of work in jurisdictional areas rather than to the date of authorization issuance;
4. modify the procedure for pre-construction notification;
5. allow the permittee to decrease impacts and associated compensation without having to terminate and reissue their authorization;
6. clarify the section on protection of non-impacted wetlands on the project and mitigation sites;
7. allow for termination of authorizations without penalty when the project does not go forward;
8. clarify the general permit condition regarding the entry of untreated stormwater into surface waters;
9. clarify exceptions to coverage section for consistency;
10. specify timeframe for requests for extension or renewal of general permit authorizations;
11. clarify requirements for avoidance, minimization and compensation alternatives;
12. clarify limits to use of multiple general permit authorizations for the same project;
13. clarify requirements concerning threatened and endangered species;

14. clarify the distinctions between temporary and permanent impacts and conversion impacts;
15. clarify lower threshold for reporting only authorizations to include up to one-tenth acre of surface waters, but not more than 300 linear feet of stream channel, to maintain consistency with the U.S. Army Corps of Engineers SPGP-01 requirements;
16. modify certain requirements for mitigation plans, including source of plant materials, soils information, and impacts to surface waters as a result of compensation site construction;
17. clarify that no conceptual or final compensation plan is needed when compensation is via purchase of bank credits or contribution to an in-lieu fee fund;
18. modify certain construction monitoring requirements;
19. provide for coverage for impacts resulting from coal, natural gas, and coalbed methane gas mining activities authorized by the Department of Mines, Minerals and Energy(DMME), and sand mining, unless coverage is already provided under a DMME permit or Corps of Engineers general permit for which we have provided Section 401 Certification.

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

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

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

Public Participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a public meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate that the date, time and place of the meeting may be found in the calendar of events section of the Virginia Register of Regulations.

The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this notice or other alternatives, and 3) impacts of the regulation on farm and forest land preservation. Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by mail, email or fax to Ellen Gilinsky, Virginia Department of Environmental Quality, 629 E. Main Street, 9th Floor, Richmond, VA 23219, phone 804-698-4375, fax 804-698-4347, email: egilinsky@deq.state.va.us. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5:00 p.m. on the date established as the close of the comment period.

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

Participatory Approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is using the participatory approach to develop a proposal.

Impact on family

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

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