

9 VAC 25-690 Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities

9VAC25-690-10. Definitions.

The words and terms 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 (9VAC25-210-10 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, march 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.

"Conversion" means changing one type of surface water to another type of surface water, either permanently or temporarily. The permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this regulation.

"Cross-sectional drawing" means a graph or plot of ground elevation across a waterbody or a

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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.

"FEMA" means Federal Emergency Management Agency.

"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 United States Department of Agriculture Natural Resources Conservation Service.

"Impacts" means results caused by human-induced activities conducted in 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

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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 complete projects with independent utility.

["In-stream mining" means operations that remove accumulated sand, gravel, and mineral deposits directly from stream channels using equipment such as, but not limited to, hydraulic dredges, clamshell dredges, or draglines, for the sole purpose of processing and selling the material. In-stream mining does not include dredging activities, whose main purpose is to maintain channels and harbors for navigation, nor does it include the recovery of spilled material, such as sand, gravel, and aggregate, which was inadvertently spilled into a waterway during loading activities.]

"Less than one-half of an acre" means 0.00 to 0.49 acre (0 to 21,779 square feet).

"Perennial stream" means a ~~stream~~ well-defined channel that ~~has flowing~~ contains water year round ~~in~~ during a typical year of normal rainfall. 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. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

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"Permanent impacts" are those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.

"Person" means an individual, corporation, partnership, association, government body, municipal corporation, or any other legal entity.

~~"Real estate subdivision" means a tract of land 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.~~

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

"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.

"Single and complete project" means the total project proposed or accomplished by ~~one~~ a person and which has independent utility. For linear projects, the "single and complete project" (i.e., a single and complete crossing) ~~will~~ may but does not always apply to each crossing of a separate

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surface water (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.~~

Phases of a project that have independent public and economic utility may each be considered single and complete.

"State programmatic general permit" means a general permit issued by the Department of the Army 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.

"Temporary impacts" ~~means an~~ are those impacts to surface waters, including wetlands, that do not caused by activities in a permanent alteration of the physical, chemical, or biological properties of the surface waters, including wetlands, in which the ground is restored to its preconstruction contours and elevations, without significantly affecting wetland or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction contours and elevations, such that previous functions and values are restored.

"Up to 300 linear feet of stream channel" means 0.00 to 300.00 linear feet of any stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to 500 linear feet of stream perennial channel" means 0.00 to 500.00 linear feet of perennial stream, rounded to the second decimal place, as measured along the center of the main channel

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"Up to 1500 linear feet of nonperennial stream channel" means 0.00 to 1500.00 linear feet of nonperennial stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to one acre" means 0.00 to 1.00 acre (0 to 43, 560 square feet).

"Up to one-tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place. (0 to 4,356 square feet).

"Up to two acres" means 0.00 to 2.00 acres, rounded to the second decimal place. (0 to 87,120 square feet).

"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 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.

Statutory Authority

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

Historical Notes

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Derived from Virginia Register Volume 17, Issue 21, eff. October 1, 2001.

9VAC25-690-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this regulation is to establish VWP General Permit Number WP4 under the VWP permit program regulation to govern impacts related to the construction and maintenance of development activities, and activities directly associated with aggregate mining (i.e., sand, gravel, and crushed or broken stone), hard rock/mineral mining (i.e., metalliferous ores), and surface coal, natural gas, and coalbed methane gas mining, as authorized by the Virginia Department of Mines, Minerals and Energy. 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 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. This VWP general permit regulation will become effective on October 1, 2001, and will expire on October 1, 2006.

D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9VAC25-690-30. 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.

Statutory Authority

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

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Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. October 1, 2001.

9VAC25-690-30. 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 9VAC25-690-50 and 9VAC25-690-60, remits the required application processing fee (9VAC25-20-10 et seq.), complies with the limitations and other requirements of 9VAC25-690-100, 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 (9VAC25-210-10 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[, both temporary and permanent,] result from a single and complete project including all attendant features[~~-, both temporary and permanent~~].
 - a. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the board may, at its discretion, require a VWP individual permit.

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

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

4. Dredging does not exceed 5,000 cubic yards.

5. ~~Compensatory mitigation~~Compensation 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. For wetlands, C~~ompensation~~ may incorporate preservation of wetlands, or preservation or restoration of upland buffers adjacent to state waters, when utilized in conjunction with creation, restoration or mitigation bank credits. For other surface waters, compensation may incorporate preservation and enhancement of stream channels, or preservation, restoration, or enhancement of adjacent riparian buffers.

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

a. Residential developments include both single and multiple units.

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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

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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.

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,

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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 minimize adverse effects to aquatic resources.

c. Maintenance excavation shall be in accordance with the facility maintenance plan and shall

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not exceed the original contours of the facility as approved and constructed.

4. Mining Facilities. The construction or expansion of mining facilities and attendant features for a single and complete project. [This general permit may not be used to authorize impacts from in-stream mining activities as defined in Section 9 VAC 25-690-10.]

a. Mining facilities include activities directly associated with aggregate mining (i.e., sand, gravel, and crushed or broken stone), hard rock/mineral mining (i.e., metalliferous ores), surface coal, natural gas, and coalbed methane gas mining, as authorized by the Virginia Department of Mines, Minerals, and Energy.

b. Attendant features are authorized provided they are directly related to the mining facility, and include, but are not limited to, access road construction, parking lots, offices, maintenance shops, garages, and stormwater management facilities.

c. Both direct impacts (i.e., footprints of all fill areas, road crossings, sediment ponds, and stormwater management facilities; mining through State waters; stockpile of overburden, and excavation) and indirect impacts (i.e., diversion of [surface] water and reach of State waters affected by sediment pond pool and sediment transport) shall be considered when issuing an authorization under this general permit.

~~d. This general permit may not be used to authorize impacts from mining facilities, except for those impacts from attendant features to the mining facilities, that occur in the following areas:~~

~~(1) Where federal and state listed endangered and threatened species or their critical habitat are~~

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~~present within one mile of the project site, as determined by the Division of Natural Heritage or the Department of Game and Inland Fisheries;]~~

~~[(2) State waters within one mile of the project site that are designated by the Department of Game and Inland Fisheries as natural or stockable trout waters; and]~~

~~[(3) State waters within one mile of the project site that are designated by the Department of Game and Inland Fisheries or the National Marine Fisheries Service as having anadromous fish.]~~

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 9VAC25-210-10. Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.

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

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

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 §401 certification existing as of October 1, 2001, shall constitute coverage under this VWP general permit 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 9VAC25-210-130 do not need to obtain

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coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.

[G. Coverage under a permit issued by the Department of Mines, Minerals and Energy under the Virginia Coal Surface Mining Control and Reclamation Act, Chapter 19 of Title 45.1 of the Code of Virginia, where such permit authorizes activities that may be permitted by this regulation and contains a mitigation plan for the impacts from the mining activities, shall also constitute coverage under this VWP general permit.]

[H. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require individual applications and VWP individual permits rather than approving coverage under this VWP general permit.]

Statutory Authority

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

Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. October 1, 2001.

9VAC25-690-40. Exceptions to coverage.

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

1. Wetlands composed of 10% or more of the following species (singly or in combination) in any

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stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*). Percentages shall be based upon either basal area or percent areal cover in the area of impact.

2. Wetlands underlain by histosols.

3. Surface waters ~~with~~ where the proposed activity will impact federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. Authorization for coverage under this VWP general permit cannot be used in combination with authorization for coverage under other VWP general permits in order 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. More than one authorization for coverage under this VWP general permit for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the ~~above-mentioned~~ limits specified here.

C. This VWP general permit cannot be used for any activity in ~~any real-estate subdivision~~ a phased development which would cause the aggregate total loss of nontidal surface waters in the subdivision to exceed two acres, 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, nor shall it contravene applicable Water Quality Standards (9VAC25-260-5 et seq.).

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E. The board shall deny coverage under this VWP general permit to any applicant for activities 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 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, that significantly increase flooding, or that 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 perennial streams or in waters designated as oxygen- or temperature-impaired;
2. The construction of an irrigation impoundment on a perennial stream;
3. Any water withdrawal activities;
4. The location of animal feeding operations or waste storage facilities in state waters;
5. 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 and the work is performed in the dry;
6. Return flow discharges from dredge disposal sites;

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7. Overboard disposal of dredge materials;
8. Dredging in marinas;
9. Dredging of shellfish areas, submerged aquatic vegetation beds or other highly productive areas;
10. Federal navigation projects;
11. The construction of new ski areas [~~or oil and gas wells~~]; and
12. The taking of threatened or endangered species in accordance with the following:
 - a. Pursuant to §29.1-564 of the Code of Virginia 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 United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in §29.1-568 of the Code of Virginia.
 - b. Pursuant to §29.1-566 of the Code of Virginia and 4VAC15-20-130 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.

Statutory Authority

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

Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. October 1, 2001.

9VAC25-690-50. Notification.

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

1. An application for authorization for proposed permanent wetland impacts greater than one-tenth of an acre of surface waters or for proposed permanent stream channel impacts greater than 300 linear feet shall be submitted via an registration statement application that includes all information pursuant to 9VAC25-690-60.

2. Proposed, permanent surface water impacts up to one-tenth of an acre, which may include up to 300 linear feet of stream channel, shall be reported via an registration statement application that includes only the following information: subdivisions 1 through 8, 13, 15 and 20 of 9VAC25-690-60 B.

B. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) may shall serve as ~~the registration statement provided that all information required pursuant to 9VAC25-690-60 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.~~ an application under this regulation.

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C. The 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.

Statutory Authority

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

Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. October 1, 2001.

9VAC25-690-60. ~~Registration statement~~Application.

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

1. The applicant shall file a complete ~~registration statement~~application, as described in 9VAC25-690-50 for a VWP general permit number WP4 for impacts to surface waters from development [and certain mining] 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 is advised to file the required registration statement at least 45 days prior to the date planned for the commencement~~

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~~of the activity to be regulated by the VWP general permit.~~ The VDOT may use its monthly IACM process for submitting ~~registration statements~~applications.

B. The required ~~registration statement~~application shall contain the following information[, if applicable to the project]:

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 and electronic mail address;
3. The existing VWP permit number (if applicable);
4. The name of the project, narrative description of project purpose ~~of project~~, and a description of the proposed activity in surface waters;
5. The name of the water body or water bodies or receiving stream, as applicable;
6. The hydrologic unit code (HUC) for the project area;
7. The name of the city or county where the project is located;
8. Latitude and longitude (to the nearest second) from a central location within the project limits;
9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the project area, including the project boundary. The map ~~should~~shall be of sufficient detail such that the site may be easily located for site inspection;

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10. ~~The appropriate appendices from the JPA(Reserved);~~

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

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

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, ~~and~~ the areal extent [of the impact (area of wetland in square feet and acres; area of stream, length of stream, and average width)], [the] location ([by] latitude and longitude [at the center of the impact, or at the center of each impact for linear projects]) and [the] type of [the] impact [(area (of wetland in square feet, linear feet or ~~and acres; area of stream, length of stream, and average width).~~ Wetland impacts ~~should~~shall be quantified] [(according to [the] Cowardin classification or similar terminology)];

14. Functional values assessment for impacts to wetlands greater than one acre. ~~The functional assessment~~which shall consist of a ~~narrative description~~summary of field observations of the

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existing wetland functions and values and an assessment of the impact that the project will have on these functions and values. The following parameters/functions shall be directly addressed: surrounding land uses and cover types; nutrient, sediment, and pollutant trapping; flood control and flood storage capacity; erosion control and shoreline stabilization; groundwater recharge and discharge; aquatic and wildlife habitat; and unique or critical habitats;

15. A description of the specific, on-site measures considered or taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable, ~~as required by 9VAC25-210-115 A;~~

16. A ~~description of conceptual plan~~ for the intended compensation for unavoidable impacts, including:

a. ~~A~~ For wetlands, the conceptual compensatory mitigation compensation 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 detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including latitude and longitude (to the nearest second) at the center of the site; a description of the surrounding land use; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical year, a dry year, and a wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; ~~wetland delineation confirmation and data sheets, and~~ maps for existing ~~wetland~~ surface water areas on the proposed site or sites, including a wetland delineation confirmation for any existing wetlands;

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a conceptual grading plan; a conceptual planting scheme, including suggested plant species, and zonation and acreage of each vegetation type proposed; and a proposed description of existing soils preparation and amendment plan addressing both including general information on topsoil and subsoil conditions; and a draft design of any water control structures, permeability, and the need for soil amendments.

b. For streams, the conceptual compensation plan shall include: the goals and objectives in terms of water quality benefits and replacement of stream functions; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including the latitude and longitude and the hydrologic unit code (HUC) 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 proposed restoration measures to be employed, including channel measurements, proposed design flows and types of instream structures; and reference stream data, if available.

~~b.c.~~ Applicants proposing to compensate off-site, including purchase or use of mitigation bank credits, or contribution to an in-lieu fee fund shall ~~first discuss~~ submit an evaluation of the feasibility of on-site compensatory mitigation/compensation. If on-site ~~compensatory mitigation/compensation~~ mitigation/compensation is practicable, applicants ~~must~~ shall provide documentation as to why the proposed off-site ~~compensatory mitigation/compensation~~ mitigation/compensation is ecologically preferable. The evaluation ~~should~~ shall include, but not be limited to, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, surface water functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation

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versus impacts, acquisition, constructability, and cost.

~~e. Any applicant proposing compensation 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 applicant proposing compensation ~~plan proposing to include~~involving contributions to in-lieu fee programs shall ~~include proof~~state such as [the] conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior to issuance of this general permit authorization.

e. Any applicant proposing compensation ~~plan proposing~~involving the purchase or use of mitigation banking credits shall include as their conceptual compensation plan:

(1) The name of the proposed mitigation bank and the HUC in which it is located;

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

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

~~f. The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in subdivision 16 a of this subsection, as~~

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~~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. A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9VAC25-210-45, 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~~shall be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, shall also be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review. The delineation map ~~should~~shall also include the location of ~~all impacted and nonimpacted~~ streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) ~~should~~shall 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;

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19. The appropriate application processing fee for a VWP general permit (9VAC25-20-10 et seq.); and

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~~application shall be signed in accordance with 9VAC25-210-100. 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 an ~~complete registration statement~~application by the appropriate DEQ office, the board has 15 days to review the application and either determine the information requested in section 60B of this regulation is complete, or to inform the applicant that additional information is required to make the application complete. Coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days of receipt of a complete application. If the board fails to act within 45 days on a complete application, coverage under this VWP permit general permit shall be deemed approved.

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1. In evaluating the ~~registration statement~~application, 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 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~~application. Where an ~~registration statement~~application is incomplete, the board shall require the submission of additional information and ~~may~~shall suspend processing the application until such time as the applicant has supplied the missing or deficient information and the ~~registration statement~~application is complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from an ~~registration statement~~application, or submitted incorrect information in an ~~registration statement~~application or in any report to the board, ~~he~~the applicant shall immediately submit such facts or the correct information. Such application with new information shall be deemed a new application[, but shall not require an additional permit application fee].

Statutory Authority

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

9 VAC 25-690 Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities**Historical Notes**

Derived from Virginia Register Volume 17, Issue 21, eff. October 1, 2001.

9VAC25-690-70. ~~Mitigation~~Compensation.

A. For the purposes of this VWP general permit, the board may accept any one or combination of the following as compensation for unavoidable impacts: wetland [~~creation;~~ 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 p~~Preservation of wetlands, or streams or preservation or restoration of upland buffers adjacent to state waters, may only be applied toward wetland compensation when utilized in conjunction with creation, restoration or mitigation bank creditsone or more of the above-mentioned compensation options. Preservation or enhancement of stream channels, or preservation, restoration, or enhancement of adjacent riparian buffers, may be applied toward stream compensation as appropriate.

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

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. ~~Compensatory mitigation~~Compensation for unavoidable impacts to streams shall be provided

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~~at a 1:1 replacement to loss ratio via~~, and shall include as practicable and appropriate, stream ~~relocation~~, restoration, riparian buffer ~~establishment~~restoration or enhancement, or preservation or enhancement of stream corridors. The purchase [or use] of stream mitigation bank credits or contribution to an in-lieu fee fund that includes stream restoration, when feasible watershed enhancements is also acceptable. ~~[The amount of]~~One factor in determining the required compensation ~~[will]~~shall be ~~[determined based on]~~ an analysis of stream impacts utilizing a ~~[scientifically based]~~ stream impact assessment methodology approved by the board.

D. Compensation for open water impacts [other than to streams] may be required at a 1:1 replacement to impact ratio, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.

E. Compensation for conversion impacts [to wetlands] shall be required at a 1:1 replacement to impact ratio, when such conversion results in a permanent alteration of the functions and values of the [surface water wetland].

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

~~FG. The use of mitigation~~In order for purchase [or use] of banks for compensating project impacts shall be deemed appropriate if credits to be an acceptable form of compensation, the bank ~~is~~shall be operating in accordance with the provisions of §62.1- 44.15:5 E of the Code of Virginia and 9VAC25-210-115, ~~and~~ ~~tF.~~ The applicant shall provide ~~verification~~proof of

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purchase[, use,] or debit to the board of purchase or debiting of the required amount of creditsDEQ [prior to commencing activities in impact areas].

Statutory Authority

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

Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. October 1, 2001.

9VAC25-690-80. Notice of planned changes.

A. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional permanent wetland and/or 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. In no case can this authorization be modified to exceed the general permit threshold for use.

B. Authorization under this VWP general permit may be modified after issuance if the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals. [DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases, mitigation bank usage, or in-lieu fee fund contributions.]

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C. Authorization under this VWP general permit may be modified after issuance for a change in project plans that does not result in a change in project impacts.

D. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased [or used], provided that the same amount of credits are purchased [or used] and all criteria for use in 9 VAC 25-210-115 are met.

E. Authorization under the VWP general permit may be modified after issuance for typographical errors.

F. A Notice of Planned Change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and [they are the area is] restored to pre-existing conditions in accordance with Part I.C.11 of this general permit. In no case can the additional temporary impacts exceed the general permit threshold for use.

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

Statutory Authority

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

Historical Notes

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Derived from Virginia Register Volume 17, Issue 21, eff. October 1, 2001.

9VAC25-690-90. ~~Notice of~~ Termination of Authorization by Consent.

When all permitted activities requiring notification under 9VAC25-690-50 A 1 have been completed, or if the authorized impacts will not occur, the permittee shall submit a ~~notice~~ of request for termination within 30 days of ~~final project completion or project cancellation.~~ The director may accept this termination of authorization on behalf of the board. The ~~notice~~ permittee shall ~~contain~~ submit the following information:

1. Name, mailing address and telephone number ~~of the permittee;~~
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. One of ~~The~~ following certifications:
 - a. For project completion:

"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 surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization."

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b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

[c. For Events Beyond Permittee Control, the Permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that all activities authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."]

Statutory Authority

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

Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. October 1, 2001.

9VAC25-690-100. VWP general permit.

Any applicant whose ~~registration statement~~application has been accepted by the board shall be subject to the following requirements:

VWP General Permit No. WP4

Authorization effective date:

Authorization expiration date:

Authorization Note(s):

VWP GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT AND CERTAIN MINING 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 and will not violate

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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.

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, the permittee 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.

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I--Special Conditions, Part II--~~Mitigation~~Compensation, 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.

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1. This permit authorizes impacts of 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 according to the information provided in the ~~applicant's approved registration statement~~ application.

2. Any ~~additional~~ changes to the authorized permanent impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9VAC25-690-80, or another VWP permit application.

3. Any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to pre-existing conditions in accordance with the conditions of this permit authorization.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals.

35. 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~~ Continuation of Coverage. ~~A~~ Reapplication 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~~ compensation) has not been completed within five years of the date of authorization.

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~~Application consists of an updated or new registration statement.~~ Notwithstanding any other provision, a request for [~~a reissuance of certification~~continuation] of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered [~~ana new~~] application[~~for coverage,~~] and no application fee will be charged. The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if continuation of the VWP general permit authorization is necessary.

C. Overall project conditions.

1. The ~~construction or work~~activities 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. [The requirement to countersink does not apply to extensions or maintenance of existing culverts that are not countersunk, to floodplain culverts being placed above ordinary high water, to culverts being placed on bedrock, or to culverts required to be placed on slopes 5% or greater.] 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.

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3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters. Excess or waste concrete shall not be disposed of in [flowing] surface waters or washed [out] into [flowing] surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992[, or for mining activities covered by this general permit, the standards issued by the Virginia Department of Mines, Minerals and Energy that are as effective as those in the Virginia 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 is stabilized and shall then be removed.

6. Any exposed slopes and streambanks ~~must~~shall be stabilized immediately upon completion of ~~the project work at~~in each water body permitted impact area. All denuded areas shall be properly stabilized in accordance with the 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 a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

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

9. Heavy equipment in temporarily-impacted ~~wetland areas~~[surface waterswetland areas] shall be placed on mats, geotextile fabric, or other suitable ~~measures,~~material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

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

11. Temporary disturbances to ~~wetlands~~surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions within 30 days of completing work, which shall include re-establishing pre-construction contours, and planteding or seededing with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation bythrough the second year post-disturbance. All temporarily ~~fills~~impacted streams [and streambanks] shall be ~~removed in~~restored to their ~~entirety and the~~

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~~affected area returned to the preexisting contours~~original [elevation contours] within 30 days following the construction at that stream segment, and the banks seeded or planted with [native the same] vegetation [cover type originally present along the streambanks], [and supplemented by including supplemental] erosion control grasses [(crown vetch, orchard grass, or weeping lovegrass) when stabilizing steep slopes] if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list].

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~~restored within 30 days following removal of the stockpile, and restored ~~to the original~~with [native vegetated state] or a seed mix comprised of native~~the same] vegetation [and cover type originally present, including supplemental] erosion control grasses [(crown vetch, orchard grass, or weeping lovegrass) when stabilizing steep slopes] if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list].~~

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

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

15. The permittee shall conduct ~~his~~ activities in accordance with any time-of-year restrictions

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recommended by the Department of Game and Inland Fisheries or the Virginia Marine

Resources Commission, and shall ensure that all contractors are aware of any time-of-year restrictions imposed.

16. ~~Immediately downstream of the construction area, w~~Water quality standards shall not be violated as a result of the construction activities, unless allowed by this permit authorization.

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters, unless allowed by this permit authorization. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

18. 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 stream channel can begin.

D. Road crossings.

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1. Access roads and associated bridges or culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable ~~and to follow as near as possible preconstruction contours and elevations~~. Access roads constructed above preconstruction contours and elevations in surface waters must be ~~properly~~ bridged or culverted to maintain surface flows.

~~[2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the re-establishment of a natural stream bottom and to maintain a low flow channel. For multiple celled culverts, only those cells situated within the limits of ordinary high water shall be countersunk. Countersinking is shall not be required for existing pipes or culverts that are being maintained or extended.]~~

~~[32]. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.~~

4. All 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

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~~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 channel can begin.~~

E. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and ~~stabilized~~ restored within 30 days of completing work in the area, unless otherwise authorized by this VWP general permit. [Restoration shall be the seeding or planting of the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.]
2. Material resulting from trench excavation may be temporarily sidecast 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.
3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

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F. ~~Bank stabilization~~ Stream Modification and Stream Bank Protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
3. For stream bank protection activities, the structure and backfill shall be placed as close to the ~~shoreline~~ stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.
4. All stream bank ~~erosion~~ protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.
5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.
6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.
7. ~~All~~ No material removed from the stream ~~substrate~~ bottom shall be disposed of in ~~an approved upland area~~ surface waters [, unless authorized by this permit].

G. Dredging.

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

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2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease and the 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.

6. For navigation channels the following shall apply:

~~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.~~

~~ba. A buffer of four times the depth of the dredge cut shall be maintained between the ~~top~~bottom edge of the dredge cut design channel and the channelward limit of wetlands or mean low water, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands or mean low water, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.~~

~~eb. 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.~~

7. A dredged material management plan for the designated upland disposal site shall be

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submitted and approved 30 days prior to initial dredging activity.

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.

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.

10. The dredge material dewatering area shall utilize an earthen berm 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.

11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

H. Stormwater management facilities.

1. Stormwater management facilities shall be ~~designed~~installed 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~~Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance ~~excavation~~activities within stormwater management facilities shall not require additional permit authorization[;] or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan.

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~~Compensation, Monitoring, and Reporting.

A. ~~Compensatory mitigation~~Compensation.

1. The permittee shall provide appropriate and practicable ~~compensatory mitigation~~compensation for all impacts meeting the conditions outlined in this VWP general permit.

2. The types of ~~compensatory mitigation~~compensation 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.

3. For wetlands, ~~C~~ompensation may incorporate preservation of wetlands or ~~streams or~~ preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration, or mitigation bank credits. For other surface waters, compensation

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may incorporate preservation[, restoration,] or enhancement of stream channels, or preservation, restoration[,] or enhancement of adjacent riparian buffers.

14. The site or sites depicted in the conceptual ~~compensatory mitigation~~compensation plan submitted with the ~~registration statement~~application[;] shall constitute the ~~compensatory mitigation~~compensation [~~plansite~~] for the approved project. A site change will require a modification to the authorization.

25. For compensation involving the purchase or use of mitigation bank credits, the permittee shall ~~submit~~not initiate work in permitted impact areas until documentation ~~within 60 days of VWP general permit authorization that the USACE has debited the required mitigation credits from the Mitigation Bank ledger~~of the mitigation bank credit purchase [or usage] has been submitted to and received by DEQ.

6. For projects proposing a contribution to an in-lieu fee fund, the permittee shall ~~submit~~not initiate work in permitted impact areas until documentation ~~within 60 days of VWP general permit authorization that the fund contribution has been received~~of the in-lieu fee fund contribution has been submitted to and received by DEQ.

37. All aspects of the ~~compensatory mitigation~~compensation plan shall be finalized, submitted and approved by the board prior to any construction activity in permitted impact areas. The board shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final ~~compensatory mitigation~~compensation plan as approved by the board shall be an enforceable requirement of this VWP general permit authorization. Any

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deviations from the approved plan must be submitted and approved in advance by the board.

~~a8.~~ The final ~~compensatory mitigation~~wetlands compensation plan shall include: ~~narrative description of the plan including~~

~~a.~~ the goals and objectives, of the plan in terms of replacement of wetland acreage and functions, by wetland type;

~~b.~~ site location, map, including latitude and longitude (to the nearest second) at the center of the site;

~~c.~~ summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;

~~d.~~ grading plan with existing and proposed ~~grade,~~ elevations at one-foot or less contours;

~~e.~~ schedule for ~~compensatory mitigation~~ compensation site construction, including sequence of events with estimated dates;

~~f.~~ source of hydrologic analysis, including ~~and~~ a water budget based on expected monthly inputs and outputs which will project water level elevations for a typical year, a wet year, and a dry year;

~~g.~~ plant species, groundwater elevation data for the site, or the proposed location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;

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h. design of water control structures;

i. planting scheme and schedule, indicating expected plant species, zonation, planting schedule, and acreage of each vegetation type proposed;

j. an abatement and control plan [for covering all] undesirable plant species, [including, at a minimum, the species as] listed on DCR's Invasive Alien Plant Species of Virginia list, [and including that includes the proposed] procedures [to notify for notifying] DEQ of [any undesirable plant species occurrence their presence], methods of removal, and [successful the] control [of any such species];

k. erosion and sedimentation control plan;

l. a soil preparation and amendments, plan addressing both topsoil and subsoil conditions;

m. a discussion of all any structures and features considered necessary for the success of the plan, site;

n. and number and a monitoring plan, including [proposed] success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations [; and] and ground water monitoring wells. 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., any sampling points, and [if applicable,] reference wetlands;

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o. site access plan;

p. the location and composition of any buffers; and

q. the mechanism for protection of the compensation area(s).

9. The final stream compensation plan shall include:

a. the goals and objectives of the compensation plan in terms of replacement of stream functions and values~~[, and linear feet and acreage of surface waters]~~;

b. a location map, including latitude and longitude (to the nearest second) at the center of the site;

c. an evaluation~~[and,]~~ discussion[, and plan sketches] of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the [restorative] measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);

d. the identification of existing [geomorphological] stream type being impacted and proposed [geomorphological] stream type for compensation purposes;

e. detailed design information for the proposed restorative measures, including geomorphological measurements~~[,]~~ and reference reach information as appropriate;

f. riparian buffer plantings, including planting scheme, species, buffer width;

g. livestock access limiting measures[, to the greatest extent possible];

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h. a site access plan;

i. an erosion and sedimentation control plan, if appropriate;

j. ~~a monitoring and control plan for covering all~~ undesirable plant species, ~~if appropriate, including, at a minimum, the species as~~ listed on DCR's Invasive Alien Plant Species of Virginia list, ~~and including that includes the proposed~~ procedures ~~to notify for notifying~~ DEQ of ~~any undesirable plant species occurrences~~ their presence], methods for removal[,] and ~~successful~~ the control ~~and report the success of the removal efforts~~ of any such species];

k. a schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;

l. a monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; ~~proposed monitoring photo points; monitoring and reporting schedule;~~ location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams[:];

m. the mechanism for protection of the compensation area[:; and]

[n. plan view sketch depicting the pattern and all compensation measures being employed, a profile sketch, and cross-section sketches of the proposed compensation stream.]

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~~[10. For final wetland or stream compensation plans, rooted seedlings or cuttings shall be from areas within the same or adjacent, USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.]~~

~~[110]. For final wetland or stream compensation plans, any vegetation used shall be native species common to the area, shall be suitable for growth in local wetland conditions, and shall be from areas within the same or adjacent, USDA Plant Hardiness Zone/NRCS Land Resource Region as that of the project site.~~

~~b[1211]. The final ~~compensatory mitigation~~ wetland or stream compensation plan(s) shall include a mechanism for protection in perpetuity of the compensation site(s) to include all state waters (including ~~compensatory mitigation areas and nonimpact state waters~~) within the ~~project~~ compensation site boundary in perpetuity. These areas or boundaries. Such protections shall be surveyed or platted in place 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~~ compensation area or ~~nonimpact state water~~, with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general permit, ~~modification of this VWP general permit~~, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be~~

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recorded in the chain of title to the property, or an equivalent instrument for government-owned lands. Proof of recordation shall be submitted within ~~[60]~~[120] 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 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.~~

~~[13. An as-built survey of the site, including spot elevations, shall be submitted to DEQ within 60 days of completion of grading, and shall be certified by a licensed land surveyor or a professional engineer.]~~

~~5[14]~~[12]. All work in impact areas shall cease if ~~compensatory mitigation~~compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.

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

~~[15]~~[13]. DEQ shall be notified in writing at least ten days prior to the initiation of construction activities at the compensation site(s).

~~7[16]~~[14]. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final ~~mitigation~~wetlands or stream compensation plan(s).

~~8[17]~~[15]. Point sources of stormwater runoff shall be prohibited from entering any wetland

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~~compensatory mitigation~~compensation 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/or~~ forebays.

9[~~18~~16]. The success of the ~~compensatory mitigation~~compensation 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~~meeting the success criteria established in the approved final compensation plan.

10[~~19~~17]. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the region's killing frost free growing season, as defined in the United States Department of Agriculture soil survey for the locality of the compensation site in all monitoring years or the NRCS WETS table, measured in consecutive days under normal rainfall typical precipitation conditions, and as defined in the water budget of the final mitigation compensation plan. For the purpose of this regulation, the growing season is defined as the period in which temperatures are expected to be above 28 degrees Fahrenheit in five out of ten years, or the period during which the soil temperature in a wetland compensation site is greater than biological zero (five degrees Celsius) at a depth of 50 centimeters (19.6 inches), if such data is available.

11[~~20~~18]. The wetland plant community shall be considered established according to the performance criteria specified in the final ~~mitigation~~compensation plan and approved by the board. The proposed vegetation success criteria in the final compensation plan shall include the

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following:

a. Species composition shall reflect the desired plant community types stated in the final ~~mitigation~~ wetland[s] compensation plan by the end of the first growing season and shall be maintained through the last monitoring year ~~of the VWP permit~~.

b. Species composition shall consist of greater than 50% percent facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover, by the end of the first growing season and shall be maintained through the last monitoring year.

12[2119]. ~~Noxious weeds~~ Undesirable plant species shall be identified and controlled as described in the ~~noxious weed~~ undesirable plant species 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~~ DEQ when undesirable plant species comprise greater than 5 percent of the vegetation by [aerial/areal] coverage on wetland or stream compensation sites[, including. The notification shall include] the methods of removal, and [control, and] whether the methods are successful ~~control~~.

13[2220]. If the ~~compensatory mitigation~~ wetland or stream compensation area(s) fails or fail to be established as viable wetlands meet the specified success criteria in a monitoring year (with the exception of the final monitoring year), the reasons for this failure shall be determined and a corrective action plan; (including proposed actions, a schedule, and a monitoring plan) shall be submitted to ~~the board~~ DEQ for approval prior to or with the next required or before that year's monitoring report. ~~All problems shall be corrected by the permittee~~ The approved corrective

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action plan shall be implemented by the permittee in accordance with the approved schedule.

Should significant changes be necessary to ~~establish wetlands~~ensure success, the required monitoring ~~plan~~cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by DEQ.

[2321]. If all success criteria have not been met in the final monitoring year, or if the wetland or stream compensation site~~[(s) have has]~~ not met the stated restoration goals, monitoring shall be required for each consecutive year until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site~~[(s) have has]~~ met the overall restoration goals (i.e., that corrective actions were successful). The reasons for this failure shall be determined and a corrective action plan (including proposed actions, a schedule, and a monitoring plan) shall be submitted with the monitoring report to DEQ for approval and implemented by the permittee in accordance with the approved schedule.

14[2422]. The surveyed wetland boundary for the wetlands ~~compensatory mitigation~~compensation 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. Data shall be submitted by ~~[November 30th~~December 31st] of the final monitoring year.

15[2523]. Herbicides or algicides shall not be used in or immediately adjacent to the wetlands or stream ~~compensatory mitigation~~compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means, unless authorized by the

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~~board~~DEQ 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 or extension must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if renewal of the VWP general permit authorization is necessary.~~

B. ~~Compensatory mitigation~~ Wetland compensation site monitoring.

1. An ~~post grading as-built~~ ground survey, or an aerial survey provided by a firm specializing in aerial surveys, including spot elevations, of shall be conducted for the entire compensation site or sites for wetland compensatory mitigation ~~may~~ including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be required depending upon the type and size of the compensation site, and shall be ~~conducted~~ certified by a licensed ~~land~~ surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within ~~[9060]~~ days of completing compensation site construction. Any changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the ~~compensatory mitigation~~ compensation site or sites from the permanent markers identified in the final ~~mitigation~~ compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring

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period. These photographs shall be taken after the initial planting and ~~in August or September~~ at a time specified in the final compensation plan during every monitoring year.

3. ~~Compensatory mitigation~~ Compensation site monitoring ~~for hydrology, soils, and hydrophytic vegetation~~ shall begin ~~[at on day one of]~~ the first complete growing season (monitoring year 1) ~~following compensatory mitigation~~ after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by DEQ. ~~If~~ In all cases, if all success criteria have not been met in the ~~first~~ final monitoring year, then 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 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 following DEQ approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from DEQ.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance

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with the final ~~mitigation~~ compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final ~~mitigation~~ compensation plan. Monitoring shall take place in August-~~or~~, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan:

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

8. All wetland compensation monitoring reports shall be submitted by [November 30th December 31st] of the monitoring year. The reports shall include, as applicable, the following:

a. General description of the site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

b. Summary of activities completed during the monitoring year.

c. Description of monitoring methods.

d. Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

e. Evaluation of hydric soils or soils under hydric conditions, as appropriate.

f. Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

g. Photographs labeled with the permit number, the name of the compensation site, the photo

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station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary.

Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

h. Discussion of wildlife or signs of wildlife observed at the compensation site.

i. Comparison of site conditions from the previous monitoring year and reference site, if applicable.

j. Discussion of corrective measures or maintenance activities to control undesirable species, to repair any damaged water control device, or to replace any damaged planted vegetation.

k. Corrective action plan, which includes proposed actions, a schedule, and monitoring plan.

C. Stream ~~mitigation~~compensation, restoration, and monitoring.

1. ~~Stream mitigation~~Any riparian buffer restoration activities shall be performed~~performed~~detailed in accordance with the final ~~mitigation~~compensation plan and subsequent submittals, as approved by the boardshall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

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2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, slopes, and channel relocation, shall be stabilized to reduce stream bank erosion, where completed in the dry whenever practicable.
3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.
4. [Heavy equipment is authorized for use within the stream] channel [during] restoration activities [when shall be conducted in the dry or during low flow conditions. When] site conditions prohibit access from the streambank [These activities shall be conducted in the dry or during low flow conditions, when practicable, heavy equipment shall be authorized for use within the stream channel].
5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.
6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include

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the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans.

The survey shall be submitted within [9060] days of completing compensation site construction.

Any changes or deviations [from the final compensation plans] in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

[7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise determined by DEQ. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.]

3[78]. All ~~S~~stream mitigation/compensation monitoring reports shall be conducted in the manner proscribed in the final mitigation plan approved by the board. All monitoring reports shall be submitted by [November 30thDecember 31st] of the monitoring year. ~~Monitoring~~The reports shall include, as applicable, the following:

a. General description of the site including a site location map identifying photo stations and monitoring stations.

b. Summary of activities completed during the monitoring year.

c. Description of monitoring methods.

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d. An evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

~~ae. 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~~ labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

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

~~ef. Any discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream mitigation~~ compensation site.

g. Documentation of undesirable plant species and summary of abatement and control measures.

h. A summary of wildlife or signs of wildlife observed at the compensation site.

i. Comparison of site conditions from the previous monitoring year and reference site, [and as-built survey,] if applicable.

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j. A corrective action plan, which includes proposed actions, a schedule and monitoring plan.

[k. Any additional submittals that were approved by DEQ in the final compensation plan.]

D. [Impact Site] Construction monitoring.

1. ~~Photo stations shall be established to document the e~~Construction aspects of project activities within impact areas. as authorized by this permit that are within impact areas shall be monitored [through photographic documentation and documented]. Photographs shouldThe [photographic] monitoring shall document the pre-construction conditions, activities during construction, and post-construction conditions ~~within one week after completion of construction.~~ [Photographic monitoringMonitoring] shall consist of one of the following options:

a. Photographs shall be taken during construction at the end of the first, second, and ~~twelfth~~third months of construction, and then semi-annually for the remainder of the construction project. Photographs are not necessary, except during periods of no activity within impact areas; or

b. An ortho-rectified photograph shall be taken [by a firm specializing in ortho-rectified photography] prior to construction, and annually thereafter until all impacts are taken, and shall clearly show the delineated surface waters and authorized impact areas.

[c. In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months of construction in impact areas, and then semi-annually for the remainder of the construction activities in impact areas, except during

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periods of no activity within the 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.~~ As part of construction monitoring, photographs taken at the photo stations [or the narrative] shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; condition of adjacent non-impact surface waters; flagged non-impact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the pre-construction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.

~~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.~~ Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

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4. Monitoring of water quality parameters shall be conducted during ~~rerouting of the~~
~~live~~permanent relocation of perennial 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~~30 minutes for at least ~~three readings~~two hours at each station prior to opening the new channels; and immediately before opening new channels.

c. ~~After opening the new channel,~~ Temperature, pH and D.O. readings shall be taken ~~once~~after opening the channels and every ~~half hour~~30 minutes for at least ~~three readings~~hours at each station ~~within 24 hours of opening the new channel.~~

[5d]. The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II.E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

E. Reporting.

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

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

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of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include ~~identification of the impact area at which work will occur and a~~ projected schedule for ~~completing~~ initiation and completion of work at each permitted impact area.

3. ~~After construction begins, e~~ Construction monitoring reports shall be submitted to the board DEQ within 30 days of each not later than the 10th day of the month following the month in which the monitoring event specified in Part II.D takes place[, unless otherwise specified below].

The reports shall include, ~~at a minimum,~~ the following, as appropriate:

a. For each permitted impact area, A ~~a written statement regarding when~~ narrative stating whether work started in the identified impact area, where work was performed during the monitoring period[.], what [if and if] work was performed, a description of the work performed, when the work was initiated, and what work was completed expected date of completion.

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.). The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions. The first construction monitoring report shall include the photographs taken at each impact site prior

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to initiation of construction in any permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration.

c. Summary of activities conducted to comply with the permit conditions.

d. Summary of permit non-compliance events or problems encountered, subsequent notifications, and corrective actions.

e. Summary of anticipated work to be completed during the next monitoring period[] and an estimated date of construction completion at all impact areas.

f. Labeled site map depicting all impact areas and photo stations.

4. DEQ shall be notified in writing within 30 days following the completion of all activities in all permitted impact areas authorized under this permit.

5. DEQ shall be notified in writing at least ten days prior to the initiation of activities at the compensation site. The notification shall include a projected schedule of activities and construction completion.

46. All ~~compensatory mitigation~~ compensation monitoring reports shall be submitted annually by [~~November 30~~ December 31st], 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~~ compensation sites shall be reported. ~~Invasive~~ Undesirable plant species occurrences

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and control of these occurrences shall also be reported to ~~the board~~ DEQ.

~~5. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9VAC25-690-90.~~

~~6~~7. The permittee shall notify ~~the board~~ DEQ in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by ~~the board~~ DEQ.

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

~~8~~9. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

~~9~~10. 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

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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 for cause, VWP general permit authorization revocation,⁷ or denial of a ~~renewal application~~ continuation of coverage request.

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 its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the 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 authorization revocation and reissuance.

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

E. Property rights. 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 permittee shall allow 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.

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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 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 new permittee containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
3. The board does not notify the existing and new permittee of its intent to modify or revoke and reissue the VWP general permit authorization within ~~the 30-15 days 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.

I. Notice of planned change. Authorization under the VWP general permit may be modified subsequent to issuance if: (1) the permittee determines that additional permanent wetland ~~and/or~~

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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~~compensated; (2) the project results in less wetland or stream impacts, in which case, compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals; (3) there is a change in the project plans that does not result in a change in project impacts; (4) there is a change in the mitigation bank at which credits are purchased [or used], provided that the same amount of credits are purchased [or used] and all criteria for use are met, as detailed in 9 VAC 25-210-115; or (5) typographical errors need to be corrected. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to pre-existing conditions in accordance with Part I.C.11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and the ~~modification~~planned change request will be reviewed according to all provisions of this regulation.

J. VWP general permit authorization termination for cause. This VWP general permit authorization is subject to termination for cause by the board; after public notice and opportunity for a hearing, ~~is subject to termination. Causes~~Reasons for termination for cause are as follows:

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

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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 that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by a VWP general permit authorization modification, planned change or termination for cause.

K. VWP general permit authorization termination by consent. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9VAC25-690-50 A 1 have been completed, when the authorized impacts [~~do~~will] not occur, or when a planned change occurs that involves substituting a specified, approved mitigation bank(s) with another specified, approved mitigation bank. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. The director may accept this termination of authorization on behalf of the board. The request for termination by consent shall contain the following information:

1. Name, mailing address and telephone number of the permittee;

2. Name and location of the activity;

3. The VWP permit authorization number; and

4. One of the following certifications:

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a. For project completion:

"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 surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

[c. For Events Beyond Permittee Control, the Permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that all activities authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting

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this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."]

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

~~LM~~. 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.

~~MN~~. 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 ~~VSWP~~ permit has been granted in order to maintain compliance with the conditions of the VWP permit.

~~NO~~. 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

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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.

OP. 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, as appropriate:

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

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- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. the name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

PQ. 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

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or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

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

FORMS

Department of Environmental Quality Water Division Permit Application Fee (eff. 8/01July 1, 2004).

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (rev. 10/02[April 1, 2004October 2004]).

[Tidewater Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (October 2004)]

~~Virginia Water Protection General Permit Registration Statement (eff. 8/01).~~

Virginia Department of Transportation Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. January 1, 2004).

DOCUMENTS INCORPORATED BY REFERENCE

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

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Certain Mining Activities

Conservation and Recreation.

Certified True and Accurate: _____

Robert G. Burnley, Director, DEQ

Date: _____