

CHAPTER 680
VIRGINIA WATER PROTECTION GENERAL PERMIT FOR LINEAR
TRANSPORTATION PROJECTS

9VAC25-680-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9VAC25-210) unless a different meaning is required by the context ~~clearly indicates otherwise~~ or ~~unless otherwise is~~ indicated below.

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

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

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

"Coverage" means authorization to conduct a project in accordance with a VWP general permit.

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

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

~~"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 normally possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.~~

~~"Greater than one acre" means more than 1.00 acre (43,560 square feet).~~

~~"Impacts" means results caused by human-induced activities conducted in surface waters, as specified in § 62.1-44.15:20 A of the Code of Virginia.~~

"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent public and economic utility.

~~"Isolated Wetland of Minimal Ecological Value (IWOMEV)" means a wetland that (i) does not have a surface water connection to other state waters; (ii) is less than one-tenth of an acre in size; (iii) is not located in a Federal Emergency Management Agency designated 100-year floodplain; (iv) is not identified by the Virginia Natural Heritage~~

~~Program as a rare or state significant natural community; (v) is not forested; and (vi) does not contain listed federal or state threatened or endangered species.~~

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

"Linear transportation project" means a project for the construction, expansion, modification or improvement of features such as, but not limited to, roadways, railways, trails, bicycle and pedestrians paths, and airport runways and taxiways, including all attendant features both temporary and permanent. Nonlinear features commonly associated with transportation projects, such as, but not limited to, vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars are not included in this definition.

~~"Notice of project completion" means a statement signed by the permittee or authorized agent that the authorized activities and any required compensatory mitigation have been completed.~~

~~"Open water" means an area that, during a year with normal patterns of precipitation, has standing water for sufficient duration to establish an ordinary high water mark. The term "open water" includes lakes and ponds but does not include ephemeral waters, stream beds, or wetlands.~~

~~"Ordinary high water" or "ordinary high water mark" means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.~~

~~"Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall. 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.~~

~~"Permanent impacts" means 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, governmental body, municipal corporation, or any other legal entity.~~

~~"Riprap" means a layer of nonerodible material such as stone or chunks of concrete.~~

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

"Single and complete project" means the total project proposed or accomplished by a person, which also has independent utility, as defined in this section. For linear projects, the "single and complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single ~~waterbody~~water body) and to multiple crossings of the same ~~waterbody~~water body at separate and distinct locations. Phases of a project that have independent public and economic utility may each be considered single and complete.

"State program general permit (SPGP)" means a general permit issued by the Department of the Army in accordance with 33 USC 1344(e), ~~33 CFR 325.2(e)(2)~~, and 33 CFR ~~325.3(b)~~325.5(c)(3) and that is founded on a state program. The SPGP is designed to avoid duplication between the federal and state programs.

~~"Stream bed" means the substrate of a stream, as measured between the ordinary high water marks along a length of stream. The substrate may consist of organic matter, bedrock or inorganic particles that range in size from clay to boulders, or a combination~~

~~of both. Areas contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.~~

~~"Surface waters" means all state waters that are not ground water as defined in § 62.1-255 of the Code of Virginia.~~

~~"Temporary impacts" are those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface water, or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction conditions, contours, or elevations, such that previous functions and values are restored.~~

"Up to 300 linear feet" means ~~>0.00 to~~ 300.00 linear feet or less, as measured along the center of the main channel of the stream segment.

"Up to ~~1500~~1,500 linear feet" means ~~>0.00 to 1500.00~~1,500.00 linear feet or less, as measured along the center of the main channel of the stream segment.

"Up to one-tenth ~~of an~~ acre" means 0.10 acre (4,356 square feet) or less.

"Up to two acres" means 2.00 acres (87,120 square feet) or less.

"Utility line" means a pipe or pipeline for the transportation of any gaseous, liquid, liquefiable or slurry substance, for any purpose, and a 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

§§ 62.1-44.5 and 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. August 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006; Volume 24, Issue 9, eff. February 6, 2008.

9VAC25-680-15. Statewide information requirements.

The board may request, and any owner, permittee, or person applying for a VWP permit or general permit coverage shall provide if requested, such plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this chapter.

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Statutory Authority

§§ 62.1-44.15:21 and 62.1-44.21 of the Code of Virginia.

9VAC25-680-20. Purpose; delegation of authority; ~~effective date of VWP general permit.~~

A. The purpose of this regulation is to establish VWP General Permit Number WP3 under the VWP permit program regulation to govern permanent and temporary impacts related to the construction and maintenance of Virginia Department of Transportation (VDOT) or other linear transportation projects. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board. AuthorizationCoverage, authorizationcoverage with conditions, or application denial by the board shall constitute the VWP general permit action. ~~Each VWP general permit action and~~ shall follow all provisions in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each VWP general permit action is exempt.

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 August 1, 2006, and will expire on August 1, 2016.~~

~~D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9VAC25-680-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for seven years.~~

Statutory Authority

§ 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. August 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006.

9VAC25-680-25. Authorization for coverage under VWP general permit effective August 1, 2006.

A. All complete applications or notifications received by the board through 11:59 p.m. on August 1, 2016 shall be processed in accordance with the VWP general permit regulation in effect August 1, 2006 through August 1, 2016. If the application or notification is incomplete, or if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a completeness determination, the applicant shall re-apply for coverage under the VWP general permit effective August 2, 2016 or apply for a VWP individual permit, including any required permit application fee. No refund of permit application fees shall be made.

B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016 shall remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP authorization cover page, unless otherwise revoked or terminated, or unless a

notice of project completion is received by the board on or before that date. Any permittee that desires to continue an authorized activity beyond the stated expiration date must reapply for coverage under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and conditions, or apply for a VWP individual permit, including any required permit application fee. This section shall only apply to permittees holding valid authorizations for coverage granted under the VWP general permit effective August 1, 2006 through August 1, 2016.

Statutory Authority

§ 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

9VAC25-680-27. VWP general permit coverage; transition; continuation.

A. All applications or notifications received on or after August 2, 2016 will be processed in accordance with the VWP general permit regulation effective August 2, 2016.

B. The general permit in 9VAC25-680-100 is effective August 2, 2016 and expires August 1, 2031. Any coverage that is granted pursuant to 9VAC25-690-30 shall remain in full force and effect until 11:59 p.m. on August 1, 2031 unless the general permit coverage is terminated or revoked, or unless a notice of project completion is received by the board on or before this date. Where a permittee that has received general permit coverage and desires to continue or complete the authorized activities beyond August 1, 2031, the permittee shall reapply for new general permit coverage or for a VWP individual permit, including any required permit application fee. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the board.

C. Application may be made at any time for a VWP individual permit in accordance with 9CVAC25-210-10 et seq. Activities in surface waters requiring a permit shall not

commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the board.

Statutory Authority

§ 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

9VAC25-680-30. Authorization to impact surface waters.

A. Any person ~~governed by this~~granted coverage under the VWP general permit ~~is authorized to~~effective August 2, 2016 may permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed for linear transportation projects, provided that:

1. The applicant submits notification as required in 9VAC25-680-50 and 9VAC25-680-60.
2. The applicant remits ~~the~~any required permit application ~~processing fee in accordance with 9VAC25-20.~~
3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of ~~9VAC25-680-100~~the VWP general permit, the general permit coverage, the Clean Water Act as amended, and the State Water Control Law and attendant regulations.
4. ~~The applicant receives approval from the Virginia Department of Environmental Quality.~~
54. The applicant has not been required to obtain a VWP individual permit under the VWP permit 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.

~~65~~. Impacts, both temporary and permanent, result from a single and complete project, including all attendant features.

a. Where a road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of state waters (several single and complete projects), the board may at its discretion require a VWP individual permit.

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

~~76~~. The stream impact criterion applies to all components of the project, including structures and stream channel manipulations.

~~87~~. Dredging does not exceed 5,000 cubic yards.

~~98~~. Compensation for unavoidable impacts, when required, is provided in accordance with 9VAC25-680-70 and 9VAC25-210-116.

B. Activities that may be ~~authorized~~granted coverage under this VWP general permit include the construction, expansion, modification or improvement of linear transportation crossings (e.g., highways, railways, trails, bicycle and pedestrian paths, and airport runways and taxiways, including all attendant features both temporary and permanent).

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 ~~9VAC25-680-109~~9VAC25-210-10. Any~~Upon request by the board, any~~ person claiming this waiver ~~bears the burden to~~shall demonstrate to the satisfaction of the board that he qualifies for the waiver.

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

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

~~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 in accordance with 9VAC25-210-130 H~~ as ~~of the effective date of this regulation August 2, 2016,~~ shall constitute coverage under this VWP general permit, unless a state program general permit (SPGP) is ~~approved~~ required and granted 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 coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.~~

~~G.~~ 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~~ individual applications VWP individual ~~permits~~ permit in accordance with 9VAC-25-210-130 B rather than ~~approving~~ granting coverage under this VWP general permit.

Statutory Authority

§ 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. August 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006.

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9VAC25-680-35. Administrative continuance.

Beginning on August 2, 2016, in any case where an existing permittee has submitted a timely and complete notification or application for coverage under the next consecutive VWP general permit, in accordance with sections 50 and 60 of this chapter, and the board, through no fault of the permittee, does not issue the next consecutive VWP general permit with an effective date on or before the expiration date of the expiring VWP general permit, the conditions of that expiring VWP general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive VWP general permit.

Statutory Authority

§ 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

9VAC25-680-40. Exceptions to coverage.

A. ~~Authorization for coverage~~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 a vegetative 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. Surface waters where the proposed activity will impact federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat~~ is not required if the activity is excluded from permitting in accordance with 9VAC25-210-60.

B. ~~Authorization for coverage~~Coverage under this VWP general permit cannot be used in combination with ~~authorizations for~~ coverage under other VWP general permits

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in order to impact greater than two acres of nontidal wetlands or open water or greater than 1,500 linear feet of nontidal stream bed. ~~More than one authorization for~~ Granting coverage under this VWP general permit more than once for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the limits specified here.

C. This VWP general permit ~~may not~~ cannot be used ~~to authorize for~~ nonlinear features commonly associated with transportation projects, such as, but not limited to, vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

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).

E. The board shall deny application for coverage under this VWP general permit to any applicant conducting 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 significantly 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 a stream.

G. ~~This~~ Coverage under this VWP general permit ~~may~~ shall not be ~~used~~ granted for:

1. Construction of a stormwater management facility in perennial streams or in waters designated as oxygen- or temperature-impaired ~~waters~~ (does not include wetlands).
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 or uncured concrete ~~or the use of tremie concrete or grout bags~~ in state waters, unless the area is contained within a cofferdam or the work is performed in the dry, or unless approved by ~~DEQ~~ the Department of Environmental Quality (DEQ).

6. Return flow discharges from dredge disposal sites.

7. Overboard disposal of dredge materials.

8. Dredging in marinas.

9. Dredging of shellfish areas, submerged aquatic vegetation beds ~~and/or~~ other highly productive areas.

10. Federal navigation projects.

11. ~~The~~ Any activity in surface waters that will impact federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat, or the taking of threatened or endangered species in accordance with the following:

a. As 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. As 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.

12. Any activity in wetlands composed of 10 percent or more, singularly or in combination based upon either basal area or percent areal cover in the area of impact, in a vegetative stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*).

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13. Any activity in tidal waters.

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Statutory Authority

§ 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. August 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006.

9VAC25-680-50. Notification.

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

1. When the Virginia Department of Transportation is the applicant for coverage under this VWP general permit, the notification requirements shall be in accordance with this section and 9VAC25-680-60, unless otherwise authorized by the Department of Environmental Quality (DEQ).

2. An application for ~~authorization of coverage for~~ proposed, permanent nontidal wetland or open water impacts greater than one-tenth ~~of an~~ acre, or of proposed permanent nontidal stream bed impacts greater than 300 linear feet, shall include

all information pursuant to 9VAC25-680-60 B, ~~except for 9VAC25-680-60 B 20 when the application is for a Virginia Department of Transportation (VDOT) administered project. VDOT shall provide the information in 9VAC25-680-60 B 20 through the VDOT State Environmental Review Process, the National Environmental Policy Act (42 USC § 4321 et seq.) (for federal actions), or the VDOT Geographic Information System.~~ Compensatory mitigation may be required for all permanent impacts ~~in accordance with Parts I, II, and III of this VWP general permit regulation.~~ All temporary impacts ~~shall be restored to preexisting conditions, as per Parts I, II, and III of this VWP general permit regulation.~~

~~23.~~ An application for ~~the authorization of coverage for~~ proposed, permanent nontidal wetland or open water impacts up to one-tenth ~~of an~~ acre, or of proposed, permanent nontidal stream bed impacts up to 300 linear feet, shall be submitted ~~as follows~~ in accordance with either a or b:

- a. ~~For a proposed VDOT-administered project that is not subject to subdivision 2 c of this subsection, the application shall include the information required by subdivisions 1 through 8, 13, 15, and 21 of 9VAC25-680-60 B. The VDOT Quarterly Reporting of Impacts Less Than One-Tenth Acre application may be used, provided that it contains the required information. Compensatory mitigation may be required for all permanent impacts once the notification limits of one-tenth acre wetlands or open water, or 300 linear feet of stream bed, are exceeded. All temporary impacts, regardless of amount, shall be restored to preexisting conditions, as per Parts I and III of this VWP general permit regulation. For any proposed project in wetlands, open water, streams, or compensatory mitigation sites that are under a deed restriction, conservation easement, declaration of restrictive covenant, or other land use~~

protective instrument (hereafter protected areas), when such restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to activities in wetlands and compensatory mitigation sites, the application shall include all of the information required by 9VAC25-680-60 B. Compensatory mitigation may be required for all permanent impacts.

b. For all other projects ~~that are not subject to subdivision 2 c of this subsection~~, the application shall include the information required by subdivisions 1 through ~~9, 13, 15, 20, and 247~~, ~~11, 12, 15, and 16~~ of 9VAC25-680-60 B, and documentation that verifies the quantity and type of impacts. Compensatory mitigation may be required for all permanent impacts once the notification limits of one-tenth acre wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required, the application shall include the information in 9VAC25-680-60 B 13. ~~All temporary impacts, regardless of amount, shall be restored to preexisting conditions, as per Parts I and III of this VWP general permit regulation.~~

c. ~~For any proposed project in wetlands, open water, streams, or compensatory mitigation sites that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (hereafter protected areas), when such restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to activities in wetlands and compensatory mitigation sites, the application shall include all of the information required by 9VAC25-680-60 B, and documentation that verifies the quantity and type of impacts. Application for a VDOT-administered project shall provide the required information in 9VAC25-680-60 B 20 through the VDOT State Environmental Review Process, the~~

~~National Environmental Policy Act (for federal actions), or the VDOT Geographic Information System. Compensatory mitigation may be required for all permanent impacts, regardless of amount. All temporary impacts, regardless of amount, shall be restored to preexisting conditions, as per Parts I and III of this VWP general permit regulation.~~

B. ~~A Joint Permit Application (JPA), Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA), or a VDOT Quarterly Reporting of Impacts Less Than One-Tenth Acre~~The Department of Environmental Quality-approved application forms listed at the end of this regulation shall serve as an application under this regulation for a VWP permit or VWP general permit coverage.

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 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 application for coverage under this general permit. The applicant may also consult with these agencies prior to submitting an application. Species or habitat information that the applicant provides will assist ~~DEQ~~the Department of Environmental Quality (DEQ) in reviewing and processing the application.

Statutory Authority

§ 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. August 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006.

9VAC25-680-60. Application.

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

1. The applicant shall file a complete application in accordance with 9VAC25-680-50 and this section for coverage under this VWP ~~General Permit Number WP3 general permit~~ for impacts to surface waters from linear transportation ~~projects, which will serve as a notice of intent for coverage under this VWP general permit~~ activities.
2. The VDOT may use its monthly IACM process for submitting applications.

B. ~~The required~~ A complete application for VWP general permit coverage, at a minimum, shall contain consists of the following information; if applicable to the project:

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

2. If different from the applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number of property owner.

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

4. The existing VWP general permit tracking number (if applicable).

5. The name of the project, narrative description of project purpose, and a description of the proposed activity in surface waters Project name and proposed project schedule.

~~56.~~ ~~The name of the water body or water bodies or receiving stream, as applicable.~~ The following information for the project site location, and any related permittee-responsible compensatory mitigation site, if applicable:

a. The physical street address, nearest street, or nearest route number; city or county; zip code; and, if applicable, parcel number of the site(s).

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b. Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site(s).

c. The latitude and longitude (to the nearest second) at the center of the site(s).

d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site(s).

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e. A detailed map depicting the location of the site(s), including the project boundary. The map (for example, a United States Geologic Survey topographic quadrangle map) should be of sufficient detail to easily locate the site(s) for inspection.

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f. GIS-compatible shapefile(s) of the project boundary and all existing preservation areas on the site(s), unless otherwise approved by or coordinated with DEQ. The requirement for a GIS-compatible shapefile(s) may be waived by DEQ on a case-by-case basis.

~~67.~~ ~~The hydrologic unit code (HUC) for the project area.~~ A narrative description of the project, including project purpose and need.

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~~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 shall be of sufficient detail such that the site may be easily located for site inspection.~~

~~10. (Reserved.)~~

~~118. Project plan view. Plan view sketches shall include, at a minimum, north arrow, scale, existing structures, existing and proposed contours (if available), limit of surface water areas, direction of flow, ordinary high water mark, impact limits, location and dimension of all proposed structures in impact areas. In addition, cross-sectional or profile sketches with the above information may be required to detail impact areas.~~
Plan-view drawing(s) of the project site sufficient to assess the project, including at a minimum the following:

a. North arrow, graphic scale, existing and proposed ~~topographic or bathymetric~~ contours.

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b. Limits of proposed impacts to surface waters.

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c. Location of all existing and proposed structures.

d. All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification (~~emergent, scrub-shrub, forested~~) for those surface waters and waterway name (if designated); ebb and flood or direction of flow; and ordinary high water mark in nontidal areas.

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e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830-10 et seq.).

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f. The limits of any areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (protected areas).

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9. Cross-sectional and profile drawing(s). Cross-sectional drawing(s) of each proposed impact area include(s) at a minimum, a graphic scale, existing structures, existing and proposed elevations, limits of surface water areas, ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits, and location of all existing and proposed structures. Profile drawing(s) with this information may be required on a case-by-case basis to demonstrate minimization of impacts. Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond the limits of proposed impact.

1210. 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 siteMaterials assessment. Upon request by the board, the applicant shall provide evidence or certification that the material is free from toxic contaminants prior to disposal, or that the dredging activity will not cause or contribute to a violation of water quality standards during dredging. The applicant may be required to conduct grain size and composition analyses, tests for specific parameters or chemical constituents, or elutriate tests on the dredge material.

1311. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, 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 (latitude and longitude at the center of the impact, or at the center of each impact for linear projects)) and the type of surface water impact (open water; wetlands according to the Cowardin classification or similar terminology; or perennial and nonperennial for streams). The board encourages applicants to coordinate the determination of perennial or nonperennial streams with the appropriate local government agency in Tidewater Virginia. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters and any physical alteration to surface waters. Surface water impacts shall be identified as follows:

a. Wetland impacts identified according to their Cowardin classification (emergent, scrub-shrub, forested); and for each classification, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

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b. Individual stream impacts quantified in linear feet to the nearest whole number and then cumulatively summed, and when compensatory mitigation is required, the impacts identified according to the assessed type using the Unified Stream Methodology.

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c. Open water impacts identified according to their Cowardin classification; and for each type, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

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d. A copy of the approved jurisdictional determination, if available, or the preliminary jurisdictional determination from the United States Army Corps of Engineers (USACE), United States Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ, or other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable.

e. A delineation map, and GIS-compatible shapefile(s) of the delineation map, that: depicts the geographic area(s) of all surface water boundaries delineated in accordance with 9VAC25-210-45, and confirmed in accordance with the jurisdictional determination process; identifies such areas in accordance with subdivisions 11, a through 11 c, of this subsection; and quantifies and identifies any other surface waters according to their Cowardin classification (emergent, scrub-shrub, forested) or similar terminology, if applicable. The requirements for a delineation map or GIS-compatible shapefile(s) may be waived by DEQ on a case-by-case basis.

~~14. Functional values assessment for impacts to wetlands greater than one acre, which shall consist of a summary of field observations of the existing wetland functions and values and an assessment of the impact that the project will have on these functions and values. The following parameters and 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.~~

~~1512. A description of~~ An alternatives analysis for the proposed project detailing the specific on-site measures ~~considered and~~ taken during project design and

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development ~~both~~ to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230 (Federal Register, December 24, 1980). Avoidance and minimization includes, but is not limited to, the specific on-site measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. The analysis shall demonstrate to the satisfaction of the board that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.

~~4613. A conceptual plan for the intended compensation for unavoidable impacts, including:~~ A compensatory mitigation plan to achieve no net loss of wetland acreage or functions or stream functions and water quality benefits.

~~a. For wetlands, the conceptual compensation plan shall include: the goals and objectives in terms of replacement of wetland 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; a~~

map for existing surface water areas on the proposed site or sites, including a wetland delineation confirmation for any existing wetlands; a conceptual grading plan; a conceptual planting scheme, including suggested plant species and zonation of each vegetation type proposed; and a description of existing soils, including general information on topsoil and subsoil conditions, permeability, and the need for soil amendments If permittee-responsible compensation is proposed for wetland impacts, a conceptual wetland compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum: the goals and objectives in terms of replacement of wetland acreage or functions; a detailed location map including latitude and longitude (to the nearest second) and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; a description of the surrounding land use; a hydrologic analysis including a draft water budget for nontidal areas 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, data sheets, and maps for existing surface water areas on the proposed site(s); a conceptual grading plan; a conceptual planting scheme including suggested plant species and zonation of each vegetation type proposed; a description of existing soils including general information on both topsoil and subsoil conditions, permeability, and the need for soil amendments; a draft design of any water control structures; inclusion of buffer areas; a description of any structures and features necessary for the success of the site; the schedule for compensatory mitigation site construction; and measures for the control of undesirable species.

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 to the nearest second; 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.~~ If permittee-responsible compensation is proposed for stream impacts, a conceptual stream compensatory mitigation plan must be submitted in order for an application to be deemed complete, and shall include at a minimum: the goals and objectives in terms of water quality benefits and replacement of stream functions; a detailed location map including the latitude and longitude (to the nearest second) and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; a description of the surrounding land use; the proposed stream segment restoration locations including plan view and cross-sectional drawings; the stream deficiencies that need to be addressed; data obtained from a DEQ-approved, stream impact assessment methodology such as the Unified Stream Methodology; the proposed restoration measures to be employed including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; reference stream data, if available; inclusion of buffer areas; schedule for restoration activities; and measures for the control of undesirable species.

~~c. Applicants proposing to compensate off-site, including purchase or use of mitigation bank credits, or contribution to an in-lieu fee fund, shall submit an evaluation of the feasibility of on-site compensation. If on-site compensation is practicable, applicants shall provide documentation as to why the proposed off-site compensation is ecologically preferable. The evaluation 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 versus impacts, acquisition, constructability, and cost~~For any permittee-responsible compensatory mitigation, the conceptual compensatory mitigation plan shall also include a draft of the intended protective mechanism(s), in accordance with 9VAC25-210-116 B 2, such as but not limited to, a conservation easement held by a third party in accordance with the Virginia Conservation Easement Act or Virginia Open-Space Land Act, a duly recorded declaration of restrictive covenants, or other protective instrument. The draft intended protective mechanism shall contain the information below, or in lieu, shall describe the intended protective mechanism(s) that contains the information required below:

(1) a provision for access to the site;

(2) the following minimum restrictions: no ditching, land clearing, or discharge of dredge or fill material, and no activity in the area designated as compensatory mitigation area with the exception of maintenance; corrective action measures; or DEQ-approved activities described in the approved final compensatory mitigation plan or long-term management plan; and

(3) a long-term management plan that identifies a long-term steward and adequate financial assurances for long-term management in accordance with the current standard for mitigation banks and in-lieu fee program sites, except that financial assurances will not be necessary for permittee-responsible compensation provided by government agencies on government property. If approved by DEQ, permittee-responsible compensation on government property and long-term protection may be provided through federal facility management plans, integrated natural resources management plans, or other alternate management plans submitted by a government agency or public authority.

~~d. Applicants proposing compensation involving contributions to an in-lieu fee fund shall 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. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-lieu fee program credits shall include the number and type of credits proposed to be purchased and documentation from the approved bank or in-lieu fee program sponsor of the availability of credits at the time of application.~~

~~e. Applicants proposing compensation 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.~~

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~~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. The delineation map shall also include the location of streams, open water, and the approximate limits of Chesapeake Bay Resource Protection Areas (RPAs), as other state or local requirements may apply if the project is located within an RPA. Wetland types 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 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.~~

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

~~19~~14. The appropriate Permit application processing fee for a VWP permit in accordance with 9VAC25-20-10 et seq. The permit application fee for VWP permit authorizations is based on acres only. Therefore, impacts that include linear feet of stream bed must be converted to an acreage in order to calculate the permit application applicant will be notified by the board as to the appropriate fee for the project.

~~20~~15. A written disclosure identifying all wetlands, open water, streams, and associated upland buffers within the proposed project or compensation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (protected areas). Such disclosure shall include the nature of the prohibited activities within the protected areas description and a graphical depiction identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensatory

mitigation areas, located within the proposed project boundary or permittee-responsible compensatory mitigation areas, that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (protected areas). Such description and a graphical depiction shall include the nature of the prohibited activities within the protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830-10 et seq.), as additional state or local requirements may apply if the project is located within an RPA.

2416. 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."Signature page that has been signed, dated, and certified by the applicant in accordance with 9VAC25-210-100. If the applicant is a business or other organization, the signature must be made by an individual with the authority to bind the business or organization, and the title of the signatory must be provided. The application signature page, either on the copy submitted to VMRC or to DEQ, must have an original signature. Electronic submittals

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containing the original signature page, such as that contained in a scanned document file, are acceptable.

C. ~~The 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.~~An analysis of the functions of wetlands proposed to be impacted may be required by DEQ. When required, the method selected for the analysis shall assess water quality or habitat metrics and shall be coordinated with DEQ in advance of conducting the analysis.

1. No analysis shall be required when:

a. Wetland impacts per each single and complete project total 1.00 acre or less; or

b. The proposed compensatory mitigation consists of purchasing or using mitigation bank or in-lieu fee program credits at standard mitigation ratios of 2:1 forest, 1.5:1 scrub-shrub, and 1:1 emergent, or higher.

2. Analysis shall be required when wetland impacts per each single and complete project total 1.01 acres or more, and when any of the following applies:

a. The proposed compensatory mitigation consists of permittee-responsible compensation, including water quality enhancements as replacement for wetlands; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at less than the standard mitigation ratios of 2:1 forest, 1.5:1 scrub-shrub, and 1:1 emergent.

D. Upon receipt of an application from the Department of Transportation for a road or highway construction project by the appropriate DEQ office, the board has 10 business days, pursuant to § 33.2-258 of the Code of Virginia, to review the application and either determine the information requested in subsection B of this section is

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complete or inform the Department of Transportation that additional information is required to make the application complete ~~(pursuant to § 33.1-19.1 of the Code of Virginia)~~. Upon receipt of an application from other applicants for any type of project, the board has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. ~~For Department of Transportation road or highway construction projects,~~ Pursuant to § 33.2-258 of the Code of Virginia, application for coverage under this VWP general permit for Department of Transportation road or highway construction projects shall be approved, or approved with conditions, or the application shall be denied within 30 business days of receipt of a complete application ~~(pursuant to § 33.1-19.1 of the Code of Virginia)~~. For all other projects, application for coverage under this VWP general permit shall be approved, or approved with conditions, or the application shall be denied within 45 days of receipt of a complete application. If the board fails to act within the applicable 30 or 45 days on a complete application, coverage under this VWP general permit shall be deemed ~~approved~~ granted.

1. In evaluating the application, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. ~~Coverage~~ Application for 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~~ requirements on a project in order to ~~approve authorization~~ grant coverage under this VWP general permit. However, ~~these conditions~~ the requirements must be consistent with the VWP general permit regulation.

E. Incomplete application. Where an application is ~~incomplete~~not accepted as complete by the board within the applicable 10 or 15 days of receipt, the board shall require the submission of additional information from the applicant and may suspend processing ~~the of any~~ application until such time as the applicant has supplied the requested information and the application is complete. Where the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or in ~~reports~~any report to the board, ~~he~~the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application for the purposes of reviews but shall not require an additional permit application fee. An incomplete permit application may be administratively withdrawn from processing by the board for failure to provide the required information after ~~480~~60 days from the date ~~that of the original permit application was received~~latest written information request made by the board. An applicant may request a suspension of application review by the board, but requesting a suspension shall not preclude the board from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

Statutory Authority

§ 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. August 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006; Volume 24, Issue 9, eff. February 6, 2008.

9VAC25-680-70. Compensation.

A. ~~In accordance with 9VAC25-680-50 A, compensatory~~Compensatory mitigation may be required for ~~all~~ permanent, nontidal surface water impacts, as specified in 9VAC25-680-50 A. All temporary, nontidal surface water impacts shall be restored to preexisting conditions in accordance with the VWP general permit in section 100 of this regulation.

B. ~~Generally, the sequence of preferred compensation options shall be restoration, then creation, then mitigation banking, and then in-lieu fee fund. Also, on-site, in-kind compensatory mitigation, when available, shall be deemed the most ecologically preferable form of compensation for project impacts, in most cases. However, off-site or out-of-kind compensation opportunities that prove to be more ecologically preferable to practicable on-site or in-kind compensation may be considered. When the applicant can demonstrate satisfactorily that an off-site or out-of-kind compensatory mitigation proposal is ecologically preferable, then such proposal may be deemed appropriate for compensation of project impacts~~Compensatory mitigation and any compensatory mitigation proposals shall be in accordance with this section and 9VAC25-210-116.

C. ~~For the purposes of this VWP general permit, compensatory mitigation for unavoidable wetland impacts may be met through the following:~~

- ~~1. Wetland creation.~~
- ~~2. Wetland restoration.~~
- ~~3. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:23 of the Code of Virginia.~~
- ~~4. A contribution to an approved in-lieu fee fund.~~
- ~~5. Preservation of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection and when consistent with 9VAC25-210-116 A.~~

~~6. Restoration of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection and when consistent with 9VAC25-210-116 A.~~

~~7. Preservation of wetlands, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection.~~

~~D. For the purposes of this VWP general permit, compensatory mitigation for unavoidable stream impacts may be met through the following:~~

~~1. Stream channel restoration or enhancement.~~

~~2. Riparian buffer restoration or enhancement.~~

~~3. Riparian buffer preservation, when consistent with 9VAC25-210-116 A.~~

~~4. A contribution to an approved in-lieu fee fund.~~

~~5. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:23 of the Code of Virginia.~~

~~E. In order for contribution to an in-lieu fee fund to be an acceptable form of compensation, the fund must be approved for use by the board according to the provisions of 9VAC25-210-116 D. The applicant shall provide proof of contribution to DEQ prior to commencing activities in impact areas.~~

~~F. In order for purchase or use of bank credits to be an acceptable form of compensation, the bank shall be operating in accordance with the provisions of § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 E. The applicant shall provide proof of purchase, use, or debit to DEQ prior to commencing activities in impact areas.~~

GC. CompensationWhen required, compensatory mitigation for unavoidable, permanent wetland impacts shall be provided at the following minimum ~~compensation to impact~~mitigation ratios:

1. Impacts to forested wetlands shall be mitigated at 2:1, as calculated on an area basis.
2. Impacts to scrub shrub wetlands shall be mitigated at 1.5:1, as calculated on an area basis.
3. Impacts to emergent wetlands shall be mitigated at 1:1, as calculated on an area basis.

~~H~~D. CompensationWhen required, compensatory mitigation for stream bed impacts shall be appropriate to replace lost functions and water quality benefits. One factor in determining the required stream compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology acceptable to ~~DEQ~~the Department of Environmental Quality (DEQ).

~~I~~E. Compensation for permanent open water impacts, other than to streams, may be required at an in-kind or out-of-kind mitigation ratio of 1:1 ~~replacement to impact ratio or less~~, as calculated on an area basis, to offset impacts to state waters and fish and wildlife resources ~~from significant impairment~~. Compensation shall not be required for permanent or temporary impacts to open waters identified as palustrine by the Cowardin classification method, except when such open waters are located in areas of karst topography in Virginia and are formed by the natural solution of limestone.

~~J~~F. CompensationWhen conversion results in a permanent alteration of the functions of a wetland, compensatory mitigation for conversion impacts to wetlands shall be required at a 1:1 ~~replacement to impact~~mitigation ratio, as calculated on an area basis, ~~when such conversion results in a permanent alteration of the functions and values of the wetlands~~. For example, the permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this regulation. Compensation for conversion of other types of surface waters may be

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required, as appropriate, to offset impacts to state waters and fish and wildlife resources ~~from significant impairment.~~

Statutory Authority

§ 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. August 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006; Errata, 22:23 VA.R. 3424 July 24, 2006; amended, Virginia Register Volume 24, Issue 9, eff. February 6, 2008.

9VAC25-680-80. Notice of planned changes; modifications to coverage.

A. The permittee shall notify the board in advance of ~~the~~ planned change, and ~~the planned change~~ an application or request will for modification to coverage shall be reviewed according to all provisions of this regulation. Coverage shall not be modified if the cumulative total of permanent and temporary impacts exceeds two acres of nontidal wetlands or open water, or exceeds 1,500 linear feet of nontidal stream bed, or if the criteria in subsection B of this section are not met. The applicant may submit a new permit application for consideration under a VWP individual permit.

B. ~~Authorization under this~~ VWP general permit coverage may be modified ~~subsequent to issuance if the permittee determines that additional permanent wetland, open water, or stream~~ under the following circumstances:

1. Additional impacts to surface waters are necessary, provided that ~~the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development or within logical termini, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not~~

~~greater than 100 linear feet, and the additional impacts are fully mitigated. Prior to a planned change approval, DEQ may require submission of a compensatory mitigation plan for the additional impacts. In cases where the:~~

a. The additional impacts are proposed prior to impacting the additional areas.

b. The proposed additional impacts are located within the project boundary as depicted in the application for coverage, or are located in areas of directly-related offsite work, unless otherwise prohibited in this VWP general permit regulation.

c. The permittee has provided sufficient documentation that the board may reasonably determine that the additional impacts will not impact federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat, or to be a the taking of threatened or endangered species.

d. The cumulative, additional permanent wetland or open water impacts for one or more notices of planned change do not exceed 0.25 acre.

e. The cumulative, additional permanent stream impacts for one or more notices of planned change do not exceed 100 linear feet.

f. Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-680-60 B 12.

g. Compensatory mitigation for the proposed impacts, if required, meets the requirements of 9VAC25-680-70 and 9VAC25-210-116. Prior to a planned change approval, the Department of Environmental Quality (DEQ) may require submission of a compensatory mitigation plan for the additional impacts.

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h. Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the board that the area to be temporarily impacted will be restored to its preconstruction elevations and contours, with topsoil from the impact area where practicable, such that the previous acreage and functions are restored, in accordance with section 100, Parts I A 3 and B 11 of this general permit regulation. The additional temporary impacts shall not cause the cumulative total impacts to exceed the general permit threshold for use. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

i. ~~original impacts totaled less than 1/10 acre of wetlands or open water, or less than 300 linear feet of stream bed, and the additional impacts result in these limits being exceeded, the notice of planned change will not be approved~~the additional proposed impacts do not change the category of the project, based on the original impact amounts as specified in 9VAC25-680-50 A 2. However, the applicant may submit a new permit application ~~and permit application fee~~ for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

~~C2. Authorization under this VWP general permit may be modified after issuance if the project results in less~~A reduction in wetland or stream impacts. ~~Compensation~~Compensatory mitigation requirements may be modified in relation to the adjusted impacts ~~at the request of the permittee~~, provided that the adjusted ~~compensation~~compensatory mitigation meets the initial ~~authorization~~ ~~compensation~~compensatory mitigation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases, ~~mitigation bank usage~~, or in-lieu fee ~~fund contributions~~program credit purchases.

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~~D3. Authorization under this VWP general permit may be modified after issuance for a~~ change in project plans or use that does not result in a change ~~into~~ authorized project impacts other than those allowed in subdivisions 1 and 2 of this subsection.

~~E4. 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 9VAC25-210-116 E are met~~Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program, or substitute all or a portion of the prior authorized permittee-responsible compensation with a purchase of mitigation credits, in accordance with 9VAC25-210-116 C from a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory mitigation requirement for which the compensatory mitigation is proposed to replace.

~~F5. Authorization under the VWP general permit may be modified after issuance for~~Correct typographical errors.

~~G. 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 the area is restored to preexisting 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.~~

~~H. In no case can this authorization be modified to exceed the general permit threshold for use.~~

~~I. A notice of planned change shall be denied if fish and wildlife resources are significantly impacted or if the criteria in subsection B of this section are not met.~~

~~However, the original VWP general permit authorization shall remain in effect. The applicant may submit a new permit application and permit application fee for consideration under a VWP individual permit.~~

Statutory Authority

§ 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. August 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006; Volume 24, Issue 9, eff. February 6, 2008.

9VAC25-680-90. Termination of ~~authorization by consent~~coverage.

~~When all permitted activities requiring notification under 9VAC25-680-50 A and all compensatory mitigation requirements have been completed, or if the authorized impacts will not occur, the~~

A. The permittee shall submit a request for termination by consent within 30 days of ~~project completion~~completing or ~~project cancellation~~cancelling all ~~authorized activities requiring notification under 9VAC25-680-50 A and all compensatory mitigation requirements~~. When submitted for project completion, the ~~request for~~ termination by consent shall constitute a notice of ~~project~~ completion in accordance with 9VAC25-210-130 F. The director may accept this termination of ~~authorization~~coverage on behalf of the board. The permittee shall submit the following information:

1. Name, mailing address and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP ~~general~~ permit ~~authorization~~tracking 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 and any required compensatory mitigation authorized by ~~the~~ VWP general permit and general permit coverage have been completed. 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 general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by ~~the~~ VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this~~the VWP general permit authorization or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by ~~this~~the VWP general permit and general permit coverage will not occur. 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 general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by ~~the~~ VWP permit or for coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this~~the VWP general permit authorization or coverage, nor does it allow me to resume the ~~permitted~~authorized activities without reapplication and reauthorization coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by ~~DEQ~~the Department of Environmental Quality (DEQ), and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by ~~the~~ VWP general permit ~~and general permit coverage~~ 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 general permit coverage~~, and that performing activities in surface waters is unlawful where the activity is not authorized by ~~the~~ VWP permit ~~or coverage, unless otherwise excluded from obtaining coverage~~. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this~~the VWP general permit ~~authorization~~or coverage, nor does it allow me to resume the ~~permitted~~authorized activities without reapplication and ~~reauthorization~~coverage."

B. VWP general permit coverage may be terminated for cause in accordance with 9VAC25-210-180 G and 9VAC25-230-10 et seq., or without cause in accordance with 9VAC25-210-180 H and 9VAC25-230-10 et seq.

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Statutory Authority

§ 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. August 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006; Errata, 22:23 VA.R. 3424 July 24, 2006.

9VAC25-680-95. ~~Transition(Repealed).~~

~~A. All applications received on or after August 1, 2006, will be processed in accordance with these new procedures.~~

~~B. VWP general permit authorizations issued prior to August 1, 2006, will remain in full force and effect until such authorizations expire, are revoked, or are terminated.~~

~~C. Notices of planned change and all other types of notification that are received by the board prior to August 1, 2006, will be processed in accordance with the VWP general permit regulation in effect at that time. Notices of planned change and all other types of notification to the board that are received on or after August 1, 2006, will be processed in accordance with these new procedures.~~

~~Statutory Authority~~

~~§ 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.)~~

~~Historical Notes~~

~~Derived from Virginia Register Volume 22, Issue 21, eff. August 1, 2006.~~

9VAC25-680-100. VWP general permit.

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

~~**WVP GENERAL PERMIT NO. WP3 FOR LINEAR TRANSPORTATION PROJECTS
UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE
WATER CONTROL LAW**~~

~~**WVP General Permit No. WP3**~~

~~Authorization ~~Expiration~~Effective date: August 2, 2016~~

~~Authorization Notes(s):Expiration date: August 1, 2031~~

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~~VWP GENERAL PERMIT FOR LINEAR TRANSPORTATION PROJECTS 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 compiled with~~, will protect instream beneficial uses ~~and~~, will not violate applicable
water quality standards. ~~The board finds that the effect of the impact, together with other~~
~~existing or proposed impacts to wetlands, and~~ will not cause or contribute to a
significant impairment of state waters or fish and wildlife resources. ~~In issuing this VWP~~
~~general permit, the board has not taken into consideration the structural stability of any~~
~~proposed activities.~~

~~Subject~~~~The permanent or temporary impact of up to two acres of nontidal wetlands~~
~~or open water and up to 1,500 linear feet of nontidal stream bed and is subject to the~~
provisions of ~~the VWP general permit set forth herein; any requirements in coverage~~
~~granted under this VWP general permit;~~ 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 permanently or temporarily impact up to two acres of nontidal~~
~~wetlands or open water and up to 1,500 linear feet of nontidal stream bed.~~

~~Permittee:~~

~~Address:~~

~~Activity Location:~~

~~Activity Description:~~

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

Director, _____ Department _____ of _____ Environmental _____ Quality _____
Date

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Part I. Special Conditions.

A. Authorized activities.

- ~~This permit authorizes~~The activities authorized by 9VAC25-680-10 et seq. shall not cause more than the permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed ~~according to the information provided in the approved and complete application.~~
- Any changes to the authorized permanent impacts to surface waters ~~associated with this project~~ shall require ~~either~~ a notice of planned change in accordance with 9VAC25-680-80. An application or request for modification to coverage, or another VWP permit application, may be required.
- Any changes to the authorized temporary impacts to surface waters ~~associated with this project~~ shall require written notification to ~~DEQ~~and approval from the Department of Environmental Quality in accordance with 9VAC25-680-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit ~~authorization.~~
- 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.

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~~5. The activities authorized for coverage under this VWP general permit must commence and be completed within seven years of the date of this authorization.~~

~~B. Continuation of Coverage. 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 permit requirement (including compensation) has not been completed within seven years of the date of authorization. Notwithstanding any other provision, a request for continuation of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered a new application 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.B.~~ Overall project conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts 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~~Pipes and culverts placed in streams must be installed to maintain low flow conditions; ~~and shall be countersunk at both inlet and outlet ends of the pipe or culvert unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows:~~ The requirement to countersink does not apply to extensions or maintenance of existing culverts that are not countersunk, ~~floodplain~~floodplain pipe and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on

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slopes 5.0% percent 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~~Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry, or unless otherwise approved by ~~DEQ~~the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed 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. 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. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each 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~~the 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.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable 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 and compensatory mitigation areas within 50 feet of ~~permitted~~authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable, and planting or seeding 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 through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their original preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment, ~~and the banks. Streambanks shall be~~ seeded or planted with the same vegetation cover type originally present ~~along the streambanks~~, including supplemental erosion control grasses if necessary, ~~except for invasive. Invasive~~ species identified on ~~DCR's~~ the Department of Conservation and Recreation's Virginia Invasive Alien Plant Species of Virginia list shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. 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 preconstruction elevations and contours, with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile, and restored with the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, ~~except for invasive. Invasive~~ species identified on ~~DCR's~~ the Department of Conservation and Recreation's Virginia Invasive Alien Plant Species of Virginia list shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

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 the time-of-year restrictions recommended by the Virginia Department of Game and Inland Fisheries, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in Department of Environmental Quality VWP general permit coverage, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

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

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by this VWP general permit the Department of Environmental Quality, 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 rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

DC. Road crossings.

1. Access roads and associated bridges or, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours and elevations in surface waters must be bridged, piped, or culverted to maintain surface flows.

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

ED. 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-preconstruction elevations and contours, with topsoil from the impact area where practicable, and restored within 30 days of completing work in the area, unless otherwise authorized by this VWP general permit the Department of Environmental Quality. 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,~~ Invasive species identified on DCR's the Department of Conservation and Recreation's Virginia Invasive Alien Plant Species of Virginia list List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

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.

FE. 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 aprons for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

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

4. All stream bank 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. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this [VWP general](#) permit.

GF. Dredging.

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

2. Dredging shall be accomplished in 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 Department of Environmental Quality (~~DEQ~~) shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent the 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 buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or

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a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.

b. 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 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 filter bags, or other similar filtering practices, any of which~~ 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.

HG. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality

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and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

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

3. Maintenance activities within stormwater management facilities shall not require additional permit ~~authorization~~coverage 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 or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II. Construction and Compensation Requirements, Monitoring and Reporting.

A. Minimum compensation requirements:

1. The permittee shall provide ~~appropriate and practicable~~any required compensation for ~~all impacts~~ meeting in accordance with the conditions ~~outlined~~ in this VWP general permit and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in 9VAC25-680-70 and 9VAC25-210-116.

3. The permittee-responsible compensation site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation

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site ~~for the approved project~~. A site change ~~will~~may require a modification to ~~the authorization coverage~~.

4. For compensation involving the purchase ~~or use~~ of mitigation bank credits or ~~a contribution to~~the purchase of in-lieu fee ~~fund~~program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase ~~or usage~~ or of the ~~fund contribution~~in-lieu fee program credit purchase has been submitted to and received by ~~DEQ~~the Department of Environmental Quality.

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

~~6a.~~ The final ~~permittee-responsible~~ wetlands compensation plan shall include:

~~a.(1) The goals and objectives of the plan in terms of replacement of wetland acreage and functions, by wetland type;~~The complete information on all components of the conceptual compensation plan.

~~b.(2) Location map, including latitude and longitude (to the nearest second) at the center of the site;~~A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo stations, monitoring wells, vegetation sampling points, and reference wetlands or streams (if available); an abatement and control plan for

undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

~~e.(3) Summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;~~The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

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

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

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

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

~~h. Design of water control structures;~~

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

~~j. An abatement and control plan covering all undesirable plant species, as listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the~~

~~proposed procedures for notifying DEQ of their presence, methods of removal, and the control of such species;~~

~~k. Erosion and sedimentation control plan;~~

~~l. A soil preparation and amendment plan addressing both topsoil and subsoil conditions;~~

~~m. A discussion of structures and features considered necessary for the success of the plan;~~

~~n. A monitoring plan, including success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations and monitoring wells, sampling points and, if applicable, reference wetlands;~~

~~o. Site access plan;~~

~~p. The location and composition of any buffers; and~~

~~q. The mechanism for protection of the compensation areas.~~

~~7b.~~ The final permittee-responsible stream compensation plan shall include:

~~a.(1) The goals and objectives of the compensation plan in terms of replacement of stream functions and water quality benefits;~~The complete information on all components of the conceptual compensation plan.

~~b.(2) A location map, including latitude and longitude (to the nearest second) at the center of the site;~~An evaluation, discussion, and plan drawing(s) of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting

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schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing(s) of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

~~e.(3) An evaluation, discussion, and plan sketches of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);~~ The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

~~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. Abatement and control plan covering all undesirable plant species, as listed on DCR's Invasive Alien Plant Species of Virginia list that includes the proposed procedures for notifying DEQ of their presence, methods for removal, and the control of 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; 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.~~

8. ~~For final~~The following criteria shall apply to permittee-responsible wetland or stream compensation plans:

a. the vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent USDAUnited States Department of Agriculture Plant Hardiness Zone or NRCSNatural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur

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when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan(s).

~~9. The final wetland or stream compensation plan or plans shall include a mechanism for protection in perpetuity of the compensation sites to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place within 120 days of final compensation plan approval. 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 compensation area 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, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands. Proof of recordation shall be submitted within 120 days of final compensation plan approval.~~

~~10b.~~ All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.

~~11c.~~ DEQThe Department of Environmental Quality shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation sitesite.

~~12. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final wetlands or stream compensation plan(s).~~

~~13d.~~ Point sources of stormwater runoff shall be prohibited from entering a wetland 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, or forebays.

~~14e.~~ The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

~~15. 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 soil survey for the locality of the compensation site or the NRCS WETS table, measured in consecutive days under typical precipitation conditions, and as defined in the water budget of the final 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 10 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.~~

~~16. The wetland plant community shall be considered established according to the performance criteria specified in the final compensation plan and approved by the board. The proposed vegetation success criteria in the final compensation plan shall include the following:~~

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

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~~b. Species composition shall consist of greater than 50% 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.~~

~~17. Undesirable plant species shall be identified and controlled as described in the 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 DEQ when undesirable plant species comprise greater than 5.0% of the vegetation by areal coverage on wetland or stream compensation sites. The notification shall include the methods of removal and control, and whether the methods are successful.~~

18f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan shall be submitted to ~~DEQ~~the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete as confirmed by ~~DEQ~~the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year, or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be

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submitted with the final year monitoring report for ~~DEQ~~Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

~~19g.~~ The surveyed wetland boundary for the 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 December 31 of the final monitoring year.

~~20h.~~ Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means only, unless authorized by ~~DEQ~~the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall ~~document the preexisting conditions, activities during construction, and post-construction conditions.~~ Monitoring shall consist of ~~one of the following options:~~

a. ~~Photographs shall be~~Preconstruction photographs taken ~~during construction at the end of the first, second and third months of commencing construction, and then every six months thereafter for the remainder of the construction project. Photos are not required during periods of no activity within impact areas at each impact area prior to initiation of activities within impact areas.~~ Photographs shall remain on the project site and depict the impact area and the nonimpacted

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surface waters immediately adjacent to and down-gradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date, and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

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. Photos shall clearly show the delineated surface waters and authorized impact areas~~Site inspections conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on-site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within 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 after commencing construction, and then every six months thereafter, for~~

~~the remainder of the construction activities. Narratives are not required during periods of no activity with the impact areas.~~

~~2. 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; surface water discharges from the site; condition of adjacent nonimpact surface waters; flagged nonimpact 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 preconstruction 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. 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.~~

42. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to ~~DEQ~~the Department of Environmental Quality in accordance with the procedures in 9VAC25-680-100 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.

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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 every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. ~~Wetland~~ Permittee-responsible wetland compensation site monitoring.

1. 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, 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 certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. 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 compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on the first day of the first complete growing season (monitoring year 1) 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~~ the Department

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of Environmental Quality. 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.

4. The establishment of wetland hydrology shall be measured weekly 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. 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~~Department of Environmental Quality 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~~the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

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

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

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-680-100 Part II E 6.

D. ~~Stream~~Permittee-responsible stream compensation, ~~restoration,~~ and monitoring.

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1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall 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.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks and channel relocation shall be 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. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank, - or upon prior authorization from the Department of Environmental Quality, heavy equipment ~~shall~~may 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 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 60 days of completing compensation site construction. 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 constructions activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise ~~determined~~approved by ~~DEQ~~the Department of Environmental Quality. 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.

8. All stream compensation site monitoring reports shall be submitted in accordance with 9VAC25-680-100 Part II E 6.

E. Reporting.

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

2. ~~DEQ~~The Department of Environmental Quality shall be notified in writing ~~at least 10 days~~ prior to the start 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

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~~a projected schedule for initiation and completion of work at each permitted impact area.~~

~~3. Construction monitoring reports shall be submitted to DEQ no later than the 10th day of the month following the month in which the monitoring event specified in Part II-B takes place, unless otherwise specified below. The reports shall include the following, as appropriate: A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:~~

~~a. For each permitted impact area, a written narrative stating whether work was performed during the monitoring period, and if work was performed, a description of the work performed, when the work was initiated, and the expected date of completion. Construction activities have not yet started;~~

~~b. Photographs labeled with the permit number, the photo station number, the photo orientation, the date and time of the photo, the name of the person taking the photograph, and a brief description of the construction activities. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in a 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. The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions. Construction activities have started;~~

~~c. Summary of activities conducted to comply with the permit conditions.~~
Construction activities have started but are currently inactive; or

~~d. Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions~~
Construction activities are complete.

~~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~~The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all ~~permitted~~authorized impact areas ~~authorized under this permit.~~

5. ~~DEQ~~The Department of Environmental Quality shall be notified in writing ~~at least 10 days~~ prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year ~~of authorization~~, in which case the report shall be submitted at least 60 days prior to the expiration of ~~authorization under the general permit,~~ unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

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

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(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) 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.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

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

(7) Photographs 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. 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.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan, which includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

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

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

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

(5) Photographs shall be 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.

(6) A 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 compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) A summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) A corrective action plan, which includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by ~~DEQ~~the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify ~~DEQ~~the Department of Environmental Quality 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 a structure are prohibited until approved by ~~DEQ~~the Department of Environmental Quality.

8. The permittee shall report 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~~Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported within 24 hours to the appropriate ~~DEQ~~Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of impacts to surface waters, including wetlands, stream channels, and open water, or to preservation areas, that are not authorized by the general permit coverage. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

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4011. Submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit coverage termination for cause, VWP general permit coverage revocation, denial of application for coverage, or denial of an application for a modification to VWP general permit coverage. 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. ~~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, or denial of a continuation of coverage request.~~

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B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit that 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 revoking and reissuing the VWP general permit ~~authorization revocation and reissuance~~.

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

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal property rights, ~~nor or~~ 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 Inspection and~~ entry. ~~The~~ Upon presentation of credentials, the permittee shall allow the board or ~~its agents, upon the presentation of credentials~~ any duly authorize agent of the board, at reasonable times and under reasonable circumstances, to enter upon 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;

to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit ~~authorization coverage~~. ~~This~~ VWP general permit ~~authorization coverage~~ may be transferred to another ~~person by a~~ permittee when all of the criteria listed below are met. On the date of the VWP general permit ~~authorization coverage~~ transfer, the transferred VWP general permit ~~authorization coverage~~ shall be as fully effective as if it had been ~~issued~~ granted directly to the new permittee.

1. The current permittee notifies the board of the proposed transfer of the ~~title to the facility or property~~.

~~2. The notice to the board includes general permit coverage and provides~~ a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit ~~authorization~~ responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the ~~permitted~~ authorized activity.

~~3. The board does not~~ within 15 days notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit ~~authorization within 15 days~~.

I. Notice of planned change. ~~Authorization under this~~ VWP general permit coverage may be modified subsequent to issuance in ~~one or more of the cases listed~~

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~~below accordance with 9VAC25-680-80. 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 preexisting 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 planned change request will be reviewed according to all provisions of this regulation.~~

~~1. The permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully 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 9VAC25-210-116 E.~~

~~5. Typographical errors need to be corrected.~~

J. VWP general permit ~~authorization coverage~~ termination for cause. ~~This~~ VWP general permit ~~authorization coverage~~ is subject to termination for cause by the board after

public notice and opportunity for a hearing pursuant to 9VAC25-230-10 et seq. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of the VWP general permit regulation, any condition of the VWP general permit ~~authorization, or any requirement in general permit coverage~~;
2. The permittee's failure in the application or during the ~~VWP general permit authorization issuance~~ process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order; ~~and~~
4. A determination by the board that the ~~permitted~~authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to WP general permit ~~authorization planned change~~coverage or a termination ~~for cause~~;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or
6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The board may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death, dissolution, or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the board shall follow the applicable procedures for termination under § 62.1-44.15:25 of the Code of Virginia and 9VAC25-230-10 et seq.

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~~KL~~. VWP general permit ~~authorization~~coverage termination by consent. ~~This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9VAC25-680-50 A and all compensatory mitigation have been completed or when the authorized impacts will not occur.~~ The permittee shall submit a request for termination by consent within 30 days of ~~project completion~~completing or ~~project cancellation~~cancelling all authorized activities requiring notification under 9VAC25-680-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of ~~authorization~~coverage on behalf of the board. The ~~request for termination by consent~~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 general permit ~~authorization~~tracking number; and
4. One of the following certifications:
 - a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by ~~at~~the VWP general permit ~~and general permit coverage~~ have been completed. 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 general permit coverage~~, and that performing activities in surface waters is unlawful where the activity is not authorized by ~~at~~the VWP permit ~~or coverage, unless otherwise excluded from obtaining coverage~~. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this~~the VWP general permit ~~authorization~~or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by ~~this~~the VWP general permit and general permit coverage will not occur. 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 general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by ~~a~~the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this~~the VWP general permit authorization or coverage, nor does it allow me to resume the ~~permitted~~authorized activities without reapplication and ~~reauthorization~~coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by ~~DEQ~~the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by ~~a~~the VWP general permit and general permit coverage have been completed (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 general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by ~~a~~the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this~~the VWP general permit authorization or coverage, nor does it allow me to resume the ~~permitted~~authorized activities without reapplication and ~~reauthorization~~coverage."

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

MN. 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.

NO. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which ~~a~~ VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

OP. 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 ~~and~~, reissuing ~~and, or~~ terminating ~~the~~ VWP permit ~~authorization~~ coverage, or to determine compliance with the VWP general permit ~~authorization~~ or general permit coverage. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

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

PQ. Monitoring and records requirements.

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

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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 [general](#) permit, and records of all data used to complete the application for [coverage under](#) the VWP [general](#) permit, for a period of at least three years from the date of ~~the general permit~~ [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;
- 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.

[QR](#). 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, [or](#) to the uses of

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such waters for domestic or industrial consumption, for recreation, or for other uses;
or

4. On and after August 1, 2001, for linear transportation projects of the Virginia Department of Transportation, or on and after October 1, 2001 for all other projects, conduct the following activities in a wetland:

- a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
- b. Filling or dumping;
- c. Permanent flooding or impounding; or
- d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously-authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-690-27.

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Statutory Authority

§ 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. August 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006; Volume 24, Issue 9, eff. February 6, 2008.

FORMS (9VAC25-680)

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Department of Environmental Quality Water Division Permit Application Fee (eff. 7/0403/14).

~~Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 10/04).~~

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Joint Permit Application for Projects in Tidewater, Virginia (eff. ~~10/04~~03/14).

Monthly Reporting of Impacts Less than or Equal to One-Tenth Acre Statewide (eff. 08/07).

Standard Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 03/14).

Virginia Department of Transportation Inter-Agency Coordination Meeting Joint Permit Application (eff. ~~10/02~~06/08).

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-680)

Classification of Wetlands and Deepwater Habitats of the United States, Cowardin, Lewis M. II, et al., United States Fish and Wildlife Service, December 1979, Reprinted 1992.

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Guidelines for Specification of Disposal Sites for Dredged of Fill Material, 40 CFR Part 230 (Federal Register December 24, 1980).

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

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Virginia Invasive Plant Species List, Natural Heritage Technical Document 14-11, Department of Conservation and Recreation, Division of Natural Heritage (2014).