



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Director

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VWP Individual Permit Number 07-0436

Effective Date: November 15, 2007

Expiration Date: November 15, 2022

VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

Based upon an examination of the information submitted by the owner, 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 State Water Control Board (board) has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to surface waters, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

Permittee: Dominion Virginia Power

Address: 5000 Dominion Blvd., 1NE
Glen Allen, VA 23060

Activity Location: Cushaw Dam on the James River between Bedford and Amherst Counties just west of Route 501.

Activity Description: The operation of a hydroelectric generating station.

The permitted activity shall be in accordance with this Permit Cover Page, Part I - Special Conditions, and Part II - General Conditions.

Director, Division of Water Quality

Date

A. Authorized Activities

This permit authorizes the following impacts as indicated in the application dated February 21, received by DEQ on February 23, 2007, and deemed complete by DEQ on May 16, 2007. The permit authorization and conditions are also based on additional submittals approved by DEQ.

1. The discharge of water from the hydropower pool of the Cushaw Dam through the turbines and into the James River.
2. The temporary use of mechanical equipment in surface waters when conducted according to the permit conditions.

B. Permit Term

This permit is valid for 15 years from the date of issuance. A new permit may be necessary for the continuance of the authorized activities, or if any permit requirement has not been completed.

C. Standard Project Conditions

1. The activities authorized by this permit shall be executed in such a manner that any impacts to stream beneficial uses are minimized. As defined in § 62.1-10(b) of the Code, "beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.
2. Flows downstream of the project area shall be maintained to protect all uses.
3. The activity shall not impede the passage of normal or expected high flows, and any associated structure shall withstand expected high flows.
4. All excavation, dredging, or filling in surface waters shall be accomplished in a manner that minimizes bottom disturbance and turbidity. Turbidity levels downstream of the construction site shall not exceed turbidity levels upstream of the construction site at any time.

5. All in-stream activities shall be conducted during low-flow conditions whenever practicable.
6. All construction, construction access, and demolition activities associated with this project shall be accomplished in a manner that minimizes construction materials or waste materials from entering surface waters, unless authorized by this permit. Wet, excess, or waste concrete shall be prohibited from entering surface waters.
7. All fill material placed in surface waters shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
8. Measures shall be employed at all times to prevent and contain spills of fuels, lubricants, or other pollutants into surface waters.
9. Temporary in-stream construction features such as cofferdams shall be made of non-erodible materials.
10. Virginia Water Quality Standards shall not be violated in any surface waters as a result of the project activities.
11. All required notifications and submittals shall be submitted to the DEQ office stated below, to the attention of the VWP permit manager, unless directed in writing by DEQ subsequent to the issuance of this permit:

Office of Wetlands and Water Protection
P.O. Box 1105,
Richmond, Virginia 23218

12. All submittals 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 violations."
13. Any fish kills or spills of fuels or oils shall be reported to DEQ immediately upon discovery at (434) 582-6220. If DEQ cannot be reached, the spill shall be reported to

the Virginia Department of Emergency Management (DEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802.

14. DEQ shall be notified in writing within 24 hours or as soon as possible on the next business day when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.
15. The permittee shall notify the DEQ of any additional impacts to surface waters, including wetlands; of any modifications of the intake structure; and of any change to the type of surface water impacts associated with this project. Any additional impacts, modifications, or changes shall be subject to individual permit review and/or modification of this permit. Compensation may be required.

D. Reapplication

The permit shall reapply for reissuance of the Virginia Water Protection Permit at least 180 days prior to the expiration of the current permit. Information included in the reapplication shall include information on whether alosines (shad and herring) and eels have been restored to the stretch of the river immediately below Cushaw dam and any coordination efforts that have been made with the Department of Game and Inland fisheries regarding restoration.

E. Maintenance of Instream Flows

The permittee shall operate the project in a run of the river fashion by matching river flows with turbine operations. The permittee shall activate and deactivate turbines in a fashion such that an overflow over the primary spillway (the main dam) is maintained at all times. The permittee shall maintain written records detailing the time(s) that turbines are dispatched and taken off line and numbers of turbines in operations. Records retention shall be governed by General Condition G located in Part II of this permit. The permittee shall maintain remote video capability and a river elevation alarm system to alert the operators of the need to take turbines off line in order to maintain run of the river operations. The development of any FERC required Operation Compliance Monitoring Plan for maintenance of instream flow shall be coordinated with DEQ.

Part II – General Conditions

A. Duty to Comply

The permittee shall comply with all conditions of the VWP permit. Nothing in the VWP permit regulations shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and prohibitions. Any VWP permit violation is a violation of the law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or reissuance.

B. Duty to Cease or Confine Activity

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

C. Duty to Mitigate

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

D. VWP Permit Action

1. A VWP permit may be modified, revoked and reissued, or terminated as set forth in 9 VAC 25-210 et seq.
2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9 VAC 25-210-185 (VWP Permit Extension).
3. VWP permits may be modified, revoked and reissued or terminated upon the request of the permittee or other person at the board's discretion, or upon board initiative to reflect the requirements of any changes in the statutes or regulations, or as a result of VWP permit noncompliance as indicated in the Duty to Comply subsection above, or for other reasons listed in 9 VAC 25-210-180 (Rules for Modification, Revocation and Reissuance, and Termination of VWP permits).

E. Inspection and Entry

Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

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

F. Duty to Provide Information

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing or terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

G. Monitoring and Records Requirements

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.
4. Records of monitoring information shall include:
 - a. The date, exact place and time of sampling or measurements;

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

H. Transferability

This VWP permit may be transferred to a new permittee only by modification to reflect the transfer, by revoking and reissuing the permit, or by automatic transfer. Automatic transfer to a new permittee shall occur if:

1. The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;
2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
3. The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit.

I. Property rights

The issuance of this permit does not convey any 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 rights or any infringement of federal, state or local law or regulation.

J. Reopener

Each VWP permit shall have a condition allowing the reopening of the VWP permit for the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits includes, but is not limited to when the circumstances on which the previous VWP permit 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 permit was issued and thereby constitute cause for VWP permit modification or revocation and reissuance.

K. Compliance with State and Federal Law

Compliance with this VWP permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP 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.

L. Severability

The provisions of this VWP permit are severable.

M. Permit Modification

A VWP permit may be modified, but not revoked and reissued except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP permit or are absent from it;
2. When new information becomes available about the operation or activity covered by the VWP permit which was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VWP permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;
5. When changes occur which are subject to "reopener clauses" in the VWP permit; or
6. When the board determines that minimum instream flow levels resulting from the permittee's withdrawal of water are detrimental to the instream beneficial use and the withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.

N. Permit Termination

After notice and opportunity for a formal hearing pursuant to Procedural Rule No. 1 (9 VAC 25-230-100) a VWP permit can be terminated for cause. Causes for termination are as follows:

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

O. Civil and Criminal Liability

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

P. Oil and Hazardous Substance Liability

Nothing in this VWP 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.

Q. Unauthorized Discharge of Pollutants

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses;
4. On or after October 1, 2001 conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding;
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.