



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 10009, Richmond, Virginia 23240

Fax (804) 698-4500 TDD (804) 698-4021

[www.deq.state.va.us](http://www.deq.state.va.us)

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

Robert G. Burnley  
Director

(804) 698-4000  
1-800-592-5482

April 24, 2003

Town of Front Royal  
c/o George Shadman, Director  
Department of Public Works and Utilities  
P. O. Box 1560  
Front Royal, Virginia 22630-1560

RE: Virginia Water Protection Permit Number 91-0714  
Final VWP Individual Permit

Dear Mr. Shadman:

Pursuant to the Virginia Water Protection (VWP) Permit Program Regulation 9 VAC 25-210-10 and § 401 of the Clean Water Act Amendments of 1977, Public Law 95-217, the Department of Environmental Quality (DEQ) has enclosed the original VWP individual permit for the Front Royal water supply intake. The proposed project may withdraw a maximum of 4.0 million gallons of water per day from the South Fork Shenandoah River.

The provisions and conditions contained therein according to § 401(a)(1) of the Clean Water Act requires that:

“Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge in the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act.”

This permit is valid for 15 years from the date of issuance. Re-issuance of the permit may be necessary if any portion of the authorized activities continue.

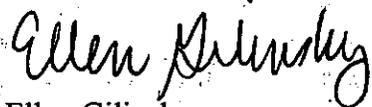
Mr. George Shadman  
Virginia Water Protection Permit Number 91-0714  
Page 2 of 2

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have 30 calendar days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court of Virginia with the Director, Department of Environmental Quality. In the event that this decision is served on you by mail, three days are added to that period. Refer to Part 2A of the Rules of the Supreme Court of Virginia for additional requirements governing appeals from administrative agencies.

Alternatively, any owner under §§62.1-44.16, 62.1-44.17 and 62.1-44.19 of the State Water Control Law aggrieved by any action of the board taken without a formal hearing, or by inaction of the board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the board. Said petition must meet the requirements set forth in §1.23(b) of the board's Procedural Rule Number 1 (9 VAC 25-230-10 et seq. of the Virginia Administrative Code). In cases involving actions of the board, such petition must be filed within 30 calendar days after notice of such action is mailed to such owner by certified mail.

If you have any questions, please contact Joseph P. Hassell at (804) 698-4072.

Sincerely,



Ellen Gilinsky  
Environmental Program Manager  
Virginia Water Protection Permit Program

Enclosures: Permit Cover Page, Part I – Special Conditions, Part II – General Conditions

cc: VWP permit file.



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VWP Individual Permit Number: 91-0714

Effective Date: April 24, 2003

Expiration Date: April 24, 2018

### 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 1251 et seq.) 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 wetlands, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

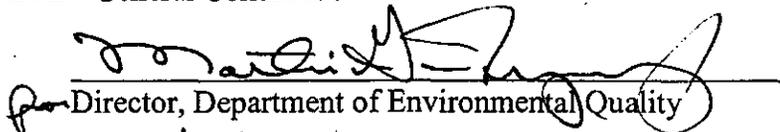
**Permittee:** Town of Front Royal

**Address:** P. O. Box 1560, Front Royal, Virginia 22630

**Activity Location:** Intake on the S. F. Shenandoah River in Front Royal

**Activity Description:** Operation of a municipal water supply intake.

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

  
\_\_\_\_\_  
for Director, Department of Environmental Quality

April 24, 2003  
\_\_\_\_\_  
Date

**A. Authorized Activities**

1. This permit authorizes the withdrawal of a maximum of 4.0 million gallons per day from the South Fork Shenandoah River as indicated in the request for reissuance dated May 8, 2002, received on May 13, 2002, and deemed complete on May 29, 2002.
2. The project activities, including any conditions and limitations, shall be adhered to as described in the Joint Permit Application and any supplemental materials approved by DEQ.
3. The permittee shall notify the DEQ, Office of Water Permits, P. O. Box 10009, Richmond, Virginia 23240 of any additional impacts to surface waters, including modifications of the intake structure. Any additional impacts to surface waters, including wetlands, or any change to the type of wetland impacts, shall be subject to individual permit review or modification of this permit, and compensation may be required.
4. This permit is valid for 15 from the date of issuance. Reissuance of the permit may be necessary if any portion of the authorized activities have not been completed.

**B. Standard Project Conditions**

1. The activities authorized by this permit shall be executed in a manner to minimize any adverse impact on stream beneficial uses, as defined in § 62.1-10(b) of the Code.
2. No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. No activity may cause more than minimal adverse effect on navigation. The activity shall not impede the passage of normal or expected high flows and the structure or discharge shall withstand expected high flows. Flows downstream of the project area shall be maintained to protect all uses.
3. Virginia Water Quality Standards shall not be violated in any surface water as a result of the project activities.
4. The permittee shall employ measures to prevent spills of fuels, lubricants, or other pollutants into surface waters.
5. In issuing this permit, DEQ has not taken into consideration the structural stability of any proposed structure.

**C. Required Notifications and Submittals**

1. The permittee shall monitor on a daily basis, the provisional streamflow of the USGS South Fork Shenandoah River at Front Royal gage and the volume of water withdrawn from the South Fork Shenandoah River.
2. The permittee shall report on an annual basis daily water withdrawal, daily streamflow conditions and water conservation programs. The report shall document for each day: the amount of water withdrawn from the South Fork Shenandoah River, that day's streamflow, the 14 days rolling average streamflow calculated by including the previous 13 days of readings with the present days streamflow. The annual report shall include those dates in which the Town has enacted voluntary and mandatory conservation measures. The annual report is due by January 31<sup>st</sup> for activities in the previous calendar year.
3. All written communications required by this permit shall be submitted to the DEQ Office of Water Permits, P. O. Box 10009, Richmond, Virginia 23240. The permit number shall be included on all correspondence.
4. All reports required by this permit and other information requested by DEQ shall be signed by the applicant or a person acting in the applicant's behalf, with the authority to bind the applicant. A person is a duly authorized representative only if:
  - a. The authorization is made in writing by a person described above; and
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
  - c. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization shall be submitted to DEQ prior to or together with any separate information, or applications to be signed by an authorized representative.
5. All submittals required by this 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.

**D. Water Withdrawal Conditions**

1. The maximum daily withdrawal shall not exceed 4.0 million gallons.

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  2. The maximum annual withdrawal shall not exceed 1.46 billion gallons.
  3. The maximum instantaneous withdrawal shall not exceed 2778 gallons per minute.
  4. If the 14-day rolling average streamflow of the South Fork Shenandoah River at Front Royal gage is less than 400 cubic feet per second, then the Town shall be practicing voluntary water conservation measures.
  5. If the 14 day rolling average streamflow of the South Fork Shenandoah River at Front Royal gage is less than 340 cubic feet per second, then the Town shall enact mandatory water conservation measures designed to eliminate or reduce unessential uses of water.
-

## **Part II – General Conditions**

### **A. Duty to Comply**

The permittee shall comply with all conditions of the VWP permit. Nothing in this permit 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.
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 subsection A above, or for other reasons listed in 9 VAC 25-210-180.

### **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. Reopener**

This permit may be reopened to modify conditions to meet new regulatory standards duly adopted by the board. Cause for reopening a permit includes, but is not limited to when the circumstances on which the 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 permit was issued and thereby constitute cause for permit modification or revocation and re-issuance.

**I. Compliance with State and Federal Law**

Compliance with this 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.

**J. 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.

**K. Transferability**

Except as provided for under automatic transfer, a permit shall be transferred only if the permit has been modified to reflect the transfer or has been revoked and reissued to the new permittee. A permit shall be automatically transferred to a new permittee 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 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.

**L. Civil and criminal liability**

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

**M. Unauthorized discharge of pollutants**

Except in compliance with this permit, it shall be unlawful for the permittee to dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical or biological properties of surface waters, excavate in wetlands, or on or after October 1, 2001, conduct the following activities in a wetland:

1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
2. Filling or dumping;
3. Permanent flooding or impounding; or
4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

**N. Severability**

The provisions of this permit authorization are severable.

**O. VWP Permit Extension**

Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit, shall submit written notification requesting an extension. The permittee must file the request prior to the expiration date of the VWP permit. Under no circumstances will the extension be granted for more than 15 years beyond the original effective date of the VWP permit. If the request for extension is denied, the VWP permit will still expire on its original date and, therefore, care shall be taken to allow for sufficient time for the board to evaluate the extension request and to process a full VWP permit modification, if required.

VIRGINIA WATER PROTECTION INDIVIDUAL PERMIT ISSUANCE FACT SHEET

Department of Environmental Quality  
Office of Water Permits

SUBJECT: Reissuance of Virginia Water Protection Permit Number 91-0714

TO: Martin G. Ferguson, Jr.  
Environmental Quality Assistant Division Director

FROM: Joseph P. Hassell *Joseph P. Hassell*  
Environmental Program Manager

DATE: April 24, 2002 *typo*

COPY: VWP permit file

DEQ has reviewed the application for the Virginia Water Protection (VWP) Individual Permit Number 91-0714 and has determined that the project qualifies as a VWP Category I project. Based on the information provided in the application and in compliance with § 401 of the Clean Water Act, as amended (33 USC 1251 et seq.), and the State Water Control Law and regulations, DEQ has determined that there is a reasonable assurance that the activity authorized by this permit will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to significant impairment of state waters or fish and wildlife resources, provided the permittee complies with all permit conditions.

Surface water impacts have been avoided and minimized to the maximum extent practicable.

The following details the application review process and summarizes relevant information for developing the Part I - Special Conditions for permit issuance.

1. Contact Information:

Permittee Legal Name and Address: Town of Front Royal  
P.O. Box 1560  
Front Royal, Virginia 22630-1560

2. Processing Dates:

addressed in the VWP individual permit Part I - Special Conditions. Therefore, the staff anticipates no adverse effect on water quality and fish and wildlife resources provided the applicant adheres to the permit conditions.

#### Summary of State Agency Comments and Actions

VDH had "no objections"; DCR had "no specific comments"; DGIF, VDACS and VMRC did not reply.

#### Summary of Federal Agency Actions

Corps issued an ASP-18 ten years ago.

#### 11. Changes in Permit Part I - Special Conditions Due to Public Comments:

The public notice was published in the Northern Virginia Daily on March 18, 2003.

No public comments were received during the public comment period. Therefore, no changes have been made to the permit conditions.

#### 12. Permit Conditions Developed to Protect Water Quality:

The following conditions were developed to protect instream beneficial uses, to ensure compliance with applicable water quality standards, to prevent significant impairment of state waters or fish and wildlife resources, and to provide for no net loss of wetland acreage and function through compensatory mitigation and success monitoring and reporting.

#### Part I - Special Conditions:

##### *Part A Authorized Activities:*

No. 1 addresses the activities authorized by this permit.

No. 2 ensures that all conditions and limitations in the application and associated submittals will be adhered to for the entire permit term.

No. 3 directs the permittee to notify DEQ of additional impacts to state waters. The condition further states that intake modification will require permit modification. Prior to permit application the applicant and the DGIF were in negotiations and in disagreement regarding intake modification. When the applicant decided not to modify the intake, DGIF decided not to comment. Should the applicant decide to modify the intake in the future, major modification is intended to allow the DGIF recommendations on intake design to be considered. This type of activity is in fact anticipated sometime during the permit term which is why this standard condition is slightly modified.

No. 4 addresses the permit term and re-issuance process to ensure that all permit conditions are completed.

##### *Part B Standard Project Conditions:*

- No. 1 addresses the requirement for the minimization of adverse impacts to instream beneficial uses.
- No. 2 ensures that the project will be executed in a manner so as to minimize impacts to instream beneficial uses by imposing limitations on the disruption of the movement of aquatic life, and setting requirements for the maintenance of low flow conditions, provision for high flows, and minimization of adverse effects on navigation.
- No. 3 requires that Water Quality Standards downstream of the construction area must not be violated as a result of the site activities.
- No. 4 provides requirements and limitations on the entry of various materials (including fuels, lubricants, and other pollutants) into state waters.
- No. 5 determines that the permit does not take into consideration the structural stability of any proposed structure.

*Part C Required Notifications and Submittals*

Nos. 1 through 13 list the notification, submittal, and reporting requirements to ensure compliance with all permit conditions.

*Part D Water Withdrawal and Conservation Conditions*

- No. 1 through 3 set the water withdrawal limits for maximum day, annual and instantaneous rates and are the same limits as in the original permit.
- No. 4 requires voluntary water conservation measures to be implemented when the 14 day rolling average streamflow drops below 400 cfs. This will occur about 8% of the time.
- No. 5 requires mandatory water conservation measures to be implemented when the 14 day rolling average streamflow drops below 340 cfs. This will occur about 4% of the time.

Part II - General Conditions:

General Conditions are applied to all VWP individual permits, as stated in the VWP Permit Program regulation.

13. General Standard:

This project may result in negligible, temporary impacts to beneficial uses related to the propagation and growth of aquatic life as defined in the General Standard. Provided the permittee abides by the conditions of the permit, no substances shall enter state waters in concentrations, amounts or combinations that would contravene established standards or interfere with beneficial uses or are inimical or harmful to human, animal, plant, or aquatic life.

14. Staff Recommendations:

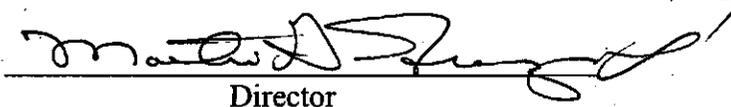
Based on the review of the permit application, the staff provides the following recommendations.

- The proposed activity is consistent with the provisions of the Clean Water Act and State Water Control Law and will protect instream beneficial uses.
- The effect of the impact, together with other existing or proposed impacts, will not cause or contribute to significant impairment of state waters or fish and wildlife resources.
- This permit is proposed to prevent unpermitted impacts.

The staff recommends that the Director:

- (1) Find the above determinations to be appropriate.
- (2) Approve the attached VWP individual permit and conditions.
- (3) Direct the staff to issue VWP Individual Permit Number 91-0714.

Approved:

  
\_\_\_\_\_  
Director

Date:

April 24, 2003