

## CHAPTER 660

# VIRGINIA WATER PROTECTION GENERAL PERMIT FOR IMPACTS LESS THAN ONE-HALF ACRE

### **9VAC25-660-10. 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 Permit Program Regulation (9VAC25-210) unless a different meaning is required by the context or 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.

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

"DEQ" means the Department of Environmental Quality.

"Histosols" means organic soils that are often called mucks, peats, or mucky peats. The list of histosols in the Commonwealth includes, but is not limited to, the following soil series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and Rappahannock. Histosols are identified in the Hydric Soils of the United States lists generated by the U.S. Department of Agriculture's Natural Resources Conservation Service.

"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 phased project that depend upon other phases of the project do not have independent utility. Portions of a phased 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.

"Less than one-half acre" means less than 0.50 acre (21,780 square feet).

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

"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 water body) and to multiple crossings of the same 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 that is issued by the Department of the Army in accordance with 33 USC § 1344 and 33 CFR 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.

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

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

"Utility line" means a pipe or pipeline for the transportation of a 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 that drain a surface water to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

#### Statutory Authority

§ 62.1-44.15 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 22, eff. October 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; Volume 32, Issue 21, August 2, 2016.

### **9VAC25-660-15. Statewide information requirements.**

The board may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's discharge on the quality of state waters or

(ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a VWP permit or general permit coverage shall provide the information requested 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.).

Historical Notes

Derived from Virginia Register Volume 32, Issue 21, eff. August 2, 2016.

**9VAC25-660-20. Purpose; delegation of authority.**

A. The purpose of this chapter is to establish VWP General Permit Number WP1 under 9VAC25-210 to govern permanent and temporary impacts to less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed. Applications for coverage by this VWP general permit shall be processed for approval, approval with conditions, or denial by the board. Coverage, coverage with conditions, or application denial by the board shall constitute the 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.

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 22, eff. October 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006; Volume 32, Issue 21, August 2, 2016.

**9VAC25-660-25. 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 reapply for coverage under the VWP general permit effective August 2, 2016, or apply for a VWP individual permit, including payment of 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 payment of 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.).

#### Historical Notes

Derived from Virginia Register Volume 32, Issue 21, eff. August 2, 2016.

### **9VAC25-660-27. 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 9VAC25-660-100 is effective August 2, 2016, and expires August 1, 2026. Any coverage that is granted pursuant to 9VAC25-660-30 shall remain in full force and effect until 11:59 p.m. on August 1, 2026, unless the general permit coverage is terminated or revoked on or before this date. Where a permittee that has received general permit coverage desires to continue or complete the authorized activities beyond August 1, 2026, the permittee shall reapply for new general permit coverage or for a VWP individual permit, including payment of 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 9VAC25-210. 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.).

Historical Notes

Derived from Virginia Register Volume 32, Issue 21, eff. August 2, 2016.

**9VAC25-660-30. Authorization to impact surface waters.**

A. Any person granted coverage under the VWP general permit effective August 2, 2016, may permanently or temporarily impact less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed, provided that:

1. The applicant submits notification as required in 9VAC25-660-50 and 9VAC25-660-60.
2. The applicant remits any required permit application fee.
3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of the VWP general permit; the general permit coverage letter; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.
4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-210 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.
5. 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 surface 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 surface waters, the entire interchange shall be considered the single and complete project.

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

7. When required, compensation for unavoidable impacts is provided in accordance with 9VAC25-660-70 and the associated provisions of 9VAC25-210-116.

B. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon request by the board, any person claiming this waiver shall demonstrate to the satisfaction of the board that he qualifies for the waiver.

C. 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.

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

E. 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 a VWP individual permit in accordance with 9VAC25-210-130 B rather than 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 22, eff. October 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006; Volume 32, Issue 21, eff. August 2, 2016.

#### **9VAC25-660-35. 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 9VAC25-660-50 and 9VAC25-660-60 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.).

Historical Notes

Derived from Virginia Register Volume 32, Issue 21, eff. August 2, 2016.

**9VAC25-660-40. Exceptions to coverage.**

A. Coverage under this VWP general permit is not required if the activity is excluded from permitting in accordance with 9VAC25-210-60.

B. Coverage under this VWP general permit cannot be used in combination with coverage under other VWP general permits in order to impact greater than one-half acre of nontidal wetlands or open water or greater than 300 linear feet of nontidal stream bed. 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. 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).

D. 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.

E. 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.

F. Coverage under this VWP general permit shall not be granted for:

1. Construction of a stormwater management facility in perennial streams or in waters designated as oxygen-impaired or temperature-impaired (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 in state waters, unless the area is contained within a cofferdam or the work is performed in the dry or unless approved by the Department of Environmental Quality.
6. Dredging or maintenance dredging.
7. Return flow discharges from dredge disposal sites.
8. The construction of new ski areas or oil and gas wells.
9. Any activity in surface waters that will impact federal or state listed threatened or endangered species or designated critical habitat, or result in a 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.
10. Any activity in 100-year floodplains, as identified by the Federal Emergency Management Agency's (FEMA) flood insurance rate maps or FEMA-approved local floodplain maps.
11. Any activity in wetlands composed of 10% 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*).
12. Any activity in wetlands underlain by histosols.
13. Any activity in tidal waters or in nontidal wetlands adjacent to tidal waters.

#### 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 22, eff. October 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006; Volume 32, Issue 21, eff. August 2, 2016.

### **9VAC25-660-50. Notification.**

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

1. An application for coverage for proposed, permanent nontidal wetland or open water impacts greater than one-tenth acre or for proposed, permanent nontidal stream bed impacts greater than 300 linear feet shall include all information pursuant to 9VAC25-660-60 B. Compensatory mitigation may be required for all permanent impacts.

2. An application for coverage for proposed, permanent nontidal wetland or open water impacts up to one-tenth acre or for proposed, permanent nontidal stream bed impacts up to 300 linear feet shall be submitted in accordance with either subdivision 2 a or 2 b of this subsection:

a. 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 9VAC25-660-60 B. Compensatory mitigation may be required for all permanent impacts.

b. For all other projects, the application shall include the information required by subdivisions 1 through 7, 10, 11, 15, and 16 of 9VAC25-660-60 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 9VAC25-660-60 B 12.

B. The Department of Environmental Quality-approved application forms shall serve as an application for a VWP permit or VWP general permit coverage.

C. The board will determine whether the proposed activity requires coordination with the U.S. 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 listed threatened and endangered species 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 the Department of Environmental Quality 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 22, eff. October 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006; Volume 32, Issue 21, eff. August 2, 2016.

### **9VAC25-660-60. Application.**

A. The applicant shall file a complete application in accordance with 9VAC25-660-50 and this section for coverage under this VWP general permit for impacts to nontidal wetlands or open water of less than one-half acre and up to 300 linear feet of nontidal stream bed.

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

1. The applicant's legal name, mailing address, 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. If applicable, the authorized agent's 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. Project name and proposed project schedule.
6. The following information for the project site location :

- a. The physical street address, nearest street, or nearest route number; city or county; zip code; and if applicable, parcel number of the site or sites.
  - b. Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.
  - c. The latitude and longitude to the nearest second at the center of the site or sites.
  - d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site or sites.
  - e. A detailed map depicting the location of the site or sites, including the project boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S. Geologic Survey topographic quadrangle map) should be of sufficient detail to easily locate the site or sites for inspection.
7. A narrative description of the project, including project purpose and need.
8. Plan-view drawing or drawings of the project site sufficient to assess the project, including at a minimum the following:
- a. North arrow, graphic scale, and existing and proposed topographic or bathymetric contours.
  - b. Limits of proposed impacts to surface waters.
  - c. Location of all existing and proposed structures.
  - d. All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification (i.e., emergent, scrub-shrub, or 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.
  - 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).
  - f. The limits of areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas).
9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings of each proposed impact area shall include 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 or drawings 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.

10. 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 (i.e., emergent, scrub-shrub, or 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.

b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole number and by average width in feet to the nearest whole number; (ii) quantified in square feet to the nearest whole number; and (iii) when compensatory mitigation is required, the impacts identified according to the assessed type using the Unified Stream Methodology.

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.

d. A copy of the approved jurisdictional determination when available, or when unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps of Engineers (USACE), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ or (ii) 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 that (i) depicts the geographic area or areas of all surface water boundaries delineated in accordance with 9VAC25-210-45 and confirmed in accordance with the jurisdictional determination process; (ii) identifies such areas in

accordance with subdivisions 10 a, 10 b, and 10 c of this subsection; and (iii) quantifies and identifies any other surface waters according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) or similar terminology.

11. An alternatives analysis for the proposed project detailing the specific on-site measures taken during project design and development 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. 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.

12. A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits. 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.

13. A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map depicting any 100-year floodplains.

14. Permit application fee. The applicant will be notified by the board as to the appropriate fee for the project in accordance with 9VAC25-20.

15. A written 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 that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., 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), as additional state or local requirements may apply if the project is located within an RPA.

16. 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 the Virginia Marine Resources Commission or to DEQ, must have an original signature. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

C. 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 complete or inform the Department of Transportation that additional information is required to make the application complete. 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 that 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. Pursuant to § 33.2-258 of the Code of Virginia, 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. For all other projects, 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 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. 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 requirements on a project in order to grant coverage under this VWP general permit. However, the requirements must be consistent with this chapter.

D. Incomplete application. Where an application is 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 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 any report to the board, 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 review 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 60 days from the date of the 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 22, eff. October 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; Volume 32, Issue 21, eff. August 2, 2016.

### **9VAC25-660-70. Compensation.**

A. Compensatory mitigation may be required for permanent, nontidal surface water impacts as specified in 9VAC25-660-50 A. All temporary, nontidal surface water impacts shall be restored to preexisting conditions in accordance with the VWP general permit in 9VAC25-660-100.

B. For the purposes of this VWP general permit chapter, the board shall assume that the purchase of mitigation bank credits or the purchase of in-lieu fee program credits is ecologically

preferable to practicable on-site or other off-site surface water compensation options. Compensatory mitigation and any compensatory mitigation proposals shall be in accordance with this section and the associated provisions of 9VAC25-210-116.

C. When required, compensatory mitigation for unavoidable, permanent wetland impacts shall be provided at a 2:1 mitigation ratio, as calculated on an area basis.

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

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 or less, as calculated on an area basis, to offset impacts to state waters and fish and wildlife resources. Compensation shall not be required for permanent or temporary impacts to open waters identified as palustrine by the Cowardin classification method, but compensation may be required when such open waters are located in areas of karst topography in Virginia and are formed by the natural solution of limestone.

F. When 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 mitigation ratio, as calculated on an area basis. 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 chapter. Compensation for conversion of other types of surface waters may be required, as appropriate, to offset impacts to state waters and fish and wildlife resources.

#### 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 22, eff. October 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; Volume 32, Issue 21, eff. August 2, 2016.

#### **9VAC25-660-80. Notice of planned changes; modifications to coverage.**

A. The permittee shall notify the board in advance of a planned change, and an application or request for modification to coverage shall be reviewed according to all provisions of this

chapter. Coverage shall not be modified if (i) the cumulative total of permanent and temporary impacts for a single and complete project equals or exceeds one-half acre of nontidal wetlands or open water or exceeds 300 linear feet of nontidal stream bed or (ii) 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. VWP general permit coverage may be modified subsequent to issuance under the following circumstances:

1. Additional impacts to surface waters are necessary, provided that:

- a. The additional impacts are proposed prior to impacting those 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 off-site work, unless otherwise prohibited by this chapter.
- c. The permittee has provided sufficient documentation that the board may reasonably determine that the additional impacts will not impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species. The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.
- 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 9VAC25-660-60 B 11.
- g. Compensatory mitigation for the proposed impacts, if required, meets the requirements of 9VAC25-660-70 and the associated provisions of 9VAC25-210-116. Prior to a planned change approval, the Department of Environmental Quality may require submission of a compensatory mitigation plan for the additional impacts.
- 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 Part I A 3 and B 11 of 9VAC25-660-100. 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. The additional proposed impacts do not change the category of the project, based on the original impact amounts as specified in 9VAC25-660-50 A 2. However, the applicant may submit a new permit application for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

2. A reduction in wetland or stream impacts. Compensatory mitigation requirements may be modified in relation to the adjusted impacts, provided that the adjusted compensatory mitigation meets the initial compensatory mitigation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases or in-lieu fee program credit purchases.

3. A change in project plans or use that does not result in a change to authorized project impacts other than those allowed by subdivisions 1 and 2 of this subsection.

4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program in accordance with 9VAC25-210-116 C. 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.

5. Correct typographical errors.

#### 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 22, eff. October 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; Volume 32, Issue 21, eff. August 2, 2016.

**9VAC25-660-90. Termination of coverage.**

A. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-660-50 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 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 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 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 the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by 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 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 the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by 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 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 the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

B. VWP general permit coverage may be terminated for cause in accordance with 9VAC25-210-180 F and § 62.1-44.15:02 of the Code of Virginia or without cause in accordance with 9VAC25-210-180 G and § 62.1-44.15:02.

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 22, eff. October 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006; Volume 32, Issue 21, eff. August 2, 2016.

**9VAC25-660-95. (Repealed.)**

Historical Notes

Derived from Virginia Register Volume 22, Issue 21, eff. August 1, 2006; repealed, Virginia Register Volume 32, Issue 21, eff. August 2, 2016.

**9VAC25-660-100. VWP general permit.**

VWP GENERAL PERMIT NO. WP1 FOR IMPACTS LESS THAN ONE-HALF ACRE UNDER  
THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER  
CONTROL LAW

Effective date: August 2, 2016

Expiration date: August 1, 2026

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 this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, 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.

The permanent or temporary impact of less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed shall be 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 the State Water Control Law and regulations adopted pursuant to it.

Part I. Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts to less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the board in the coverage letter, if any, shall be enforceable conditions of this permit.
2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-660-80. An application or request for modification to coverage or another VWP permit application may be required.
3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in

accordance with 9VAC25-660-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

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

B. Overall 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 that normally migrate through the area, unless the primary purpose of the activity is to impound water. 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 pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. 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 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 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 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 (i.e., 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 preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species 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 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 any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species 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 a Department of Environmental Quality VWP general permit coverage letter, 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.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by 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.

C. Road crossings.

1. Access roads and associated bridges, 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 in surface waters must be bridged, piped, or culverted to maintain surface flows.

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

D. 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 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 the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species 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.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.
4. All stream bank protection control 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.

F. 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 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 coverage or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and are 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 any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit.
2. The types of compensation options that may be considered for activities covered under this VWP general permit include the purchase of mitigation bank credits or the purchase of in-lieu fee program credits in accordance with 9VAC25-660-70 and the associated provisions of 9VAC25-210-116.
3. The final compensation plan shall be submitted to and approved by the board prior to a construction activity in permitted impacts 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 plan as approved by the board shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the board.

### 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 consist of:
  - a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs remain on the project site and shall depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient 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. Site inspections shall be 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.

2. 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 the Department of Environmental Quality in accordance with the procedures in 9VAC25-660-100 Part II C. 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.

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. Reporting.

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

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first authorized impact area.

3. 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. Construction activities have not yet started;

- b. Construction activities have started;
  - c. Construction activities have started but are currently inactive; or
  - d. Construction activities are complete.
4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.
  5. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered that require debris removal or involve a 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 the Department of Environmental Quality.
  6. 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 Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.
  7. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.
  8. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.
  9. 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 (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) 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.

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

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general 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 general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

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. Coverage under 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, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the board or any duly authorized 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 coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the board of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit 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 authorized activity.

2. 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.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-660-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the board after public notice and opportunity for a hearing pursuant to § 62.1-44.15:02 of the Code of Virginia. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;
2. The permittee's failure in the application or during the 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;
4. A determination by the board that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to the VWP general permit coverage or a termination;
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 or 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 §§ 62.1-44.15:02 and 62.1-44.15:25 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-660-50 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 coverage on behalf of the board. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;
2. Name and location of the activity;
3. The VWP general permit 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 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 the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by 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 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 the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by 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 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 the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

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

N. 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.

O. 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 VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the board information that the board may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit 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.

Q. 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.

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 general permit expiration. 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.

R. 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 such waters for domestic or industrial consumption, for recreation, or for other uses; or
- 4. On and after October 1, 2001, conduct the following activities in a wetland:
  - a. New activities to cause draining that significantly alter or degrade 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 9VAC25-660-27.

#### 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 22, eff. October 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; Volume 32, Issue 21, eff. August 2, 2016.

## FORMS (9VAC25-660)

Department of Environmental Quality Water Division Permit Application Fee Form (rev. 10/2014)

Standard Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (rev. 3/2014)

Virginia Department of Transportation, Inter-Agency Coordination Meeting Joint Permit Application (eff. 6/2008)

Monthly Reporting of Impacts Less than or Equal to One-Tenth Acre Statewide (eff. 8/2007)

## DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-660)

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

Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230

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

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