COMMONWEALTH OF VIRGINIA
Department of Environmental Quality
Division of Water Programs Coordination
Larry G. Lawson, P.E., Director

Subject: Guidance Memorandum 02-2005
Virginia Water Protection Permit Manual

To: Regional Directors

From: Larry G. Lawson, P.E., Director

Date: May 1, 2002

Copies: Regional Permit Managers, Regional Compliance and Enforcement Managers, VWPP Supervisors and Staff, Martin Ferguson, Mary Jo Leugers, Karen Sismour, Richard Weeks

Summary:

The Virginia Water Protection Permit Program Manual has been revised and reissued effective May 1, 2002. This manual supercedes the VWP Permit Manual that was issued on October 1, 2001 as Guidance Memorandum 01-2023. The VWP Permit Manual reflects the program changes made as a result of statutory changes to the VWPP Program enabling legislation (Sections 62.1-44.15.15 and 62.1-44.15:5 of the Code of Virginia), and to the VWPP Regulation (9 VAC 25-210-10 et seq.). In addition, the VWP Permit Manual includes procedures for review and issuance of VWPP General Permits for: Impacts Less than One-Half Acre (9 VAC 25-660-10 et seq.); Facilities and Activities of Utilities and Public Service Companies Regulated by FERC or SCC, or Other Utility Line Activities (9 VAC 25-670-10 et seq.); Linear Transportation Projects (9 VAC 25-680-10 et seq.); and Impacts from Development Activities (9 VAC 25-690-10 et seq.). The VWP Permit Manual is comprehensive and includes an overview of the program, procedures for reviewing permit applications and issuing permits, samples of letters and fact sheets, and lists of frequently asked questions. The VWP Permit Manual also includes a complete listing of special conditions and general conditions to be used in the issuance of VWP individual permits. This version of the VWP Permit Manual has undergone extensive review by both Central Office and Regional VWP staff, other DEQ program staff, and legal counsel, and reflects the most up to date procedures for issuance of VWP permits in compliance with State Water Control Law and the VWP regulations.

Each Regional Office will receive a bound copy of the VWP Permit Manual. Any program updates will be included in the Manual, and will be distributed in hard copy as well as electronically.

Contact information:

Please contact Ellen Gilinsky, Virginia Water Protection Permit Program Manager, at 804-698-4375 or egilinsky@deq.state.va.us if you have any questions about the VWP Permit Manual.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, It does not mandate any particular method nor does it prohibit any particular method for the analysis of data, establishment of a wasteload allocation, or establishment of a permit limit. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Virginia Water Protection Permit Manual

May 2002

DEQ
VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

VIRGINIA WATER PROTECTION PERMIT MANUAL

TABLE OF CONTENTS

TITLE		PAGE
Chapter I – Introduction		
A.	History of the Virginia Water Protection Permit Program	I-1
B.	Central Office and Regional Office Program Responsibilities	I-2
C.	Purpose, Organization, and Use of the VWP Permit Manual	I-3
1.	Purpose	I-3
2.	Organization	I-3
3.	Use	I-4
D.	Comprehensive Environmental Data System (CEDS)	I-4
Chapter II – Initial Review Procedures		
A.	Receipt of Application	II-1
B.	Regulatory Authority	II-2
C.	Permit Processing Pathways	II-2
1.	No Permit Required (NPR)	II-3
2.	VWP General Permits	II-3
3.	VWP Individual Permits	II-4
4.	VWP Permit Changes	II-5
5.	VWP Permit Enforcement	II-6
Chapter III – No Permit Required		
A.	Background	III-1
B.	No Authority	III-1
C.	The NPR and § 401 Certification of USACE General Permits	III-1
D.	Exclusions	III-2
E.	VMRC Jurisdiction	III-3
F.	Isolated Wetlands of Minimal Ecological Value (IWOMEV)	III-3
G.	Processing an NPR	III-4

Created 9/28/2001
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TABLE OF CONTENTS (CONTINUED)

TITLE		PAGE
H.	Frequently Asked Questions	III-5
Chapter IV – VWP General Permits		
A.	The Four VWP General Permits	IV-1
	1. VWP General Permit Number WP1	IV-1
	2. VWP General Permit Number WP2	IV-2
	3. VWP General Permit Number WP3	IV-4
	4. VWP General Permit Number WP4	IV-5
B.	Timeframes	IV-7
C.	Registration Statement and Joint Permit Application Review	IV-7
	1. Initial Review	IV-7
	2. VWP Permit Application Review Checklist	IV-8
	3. Impacts Less Than One-Tenth Acre	IV-9
	4. Incomplete Applications	IV-10
	5. Suspension of Review Process	IV-10
	6. Site Visits	IV-11
D.	Permit Application Fees and Refunds	IV-11
E.	Notifications	IV-13
	1. Notice of Complete Application	IV-13
	2. Coordination with Other Agencies	IV-13
F.	VWP General Permit Authorization Issuance	IV-16
G.	Automatic Authorizations	IV-18
H.	Denial of Coverage	IV-18
I.	Changes to VWP General Permit Authorizations	IV-18
	1. Authorization Notice of Planned Change	IV-19
	2. Authorization Continuation of Coverage	IV-20
	3. Termination of Authorization	IV-21

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

TABLE OF CONTENTS (CONTINUED)

TITLE		PAGE
J.	Frequently Asked Questions	IV-22
Chapter V – VWP Individual Permits		
A.	Timeframes for the VWP Individual Permit Process	V-1
B.	Tracking and Format	V-2
C.	Application Review	V-2
1.	Application Review Process	V-2
2.	VWP Application Review Checklist for Individual Permits	V-3
3.	Additional Information and Permit Application Fee Request Letter	V-4
4.	Application Suspension	V-5
5.	Permit Application Fees and Refunds	V-5
6.	Site Visit	V-7
D.	Review Notifications and Requests	V-8
1.	Notice of Complete Application	V-8
2.	Riparian Owner Notification	V-8
3.	Local Government Notification	V-9
4.	Coordination with Regulatory Agencies	V-9
5.	Draft Permit Package	V-13
1.	Routing and Concurrence Form	V-13
2.	Issuance Fact Sheet	V-13
3.	Permit Cover Page	V-15
4.	Part I – Special Conditions	V-15
5.	Part II – General Conditions	V-16
6.	Public Notice and Public Notice Verification Form	V-16
7.	Draft Permit and Public Notice Transmittal Letter	V-16
8.	DEQ Review of Draft Permit Package	V-16
9.	Applicant Review of Draft Permit Package	V-16

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

TABLE OF CONTENTS (CONTINUED)

TITLE		PAGE
	10. Regulatory Agency Review of Draft Permit Package	V-17
	11. Locality Notification of Public Notice	V-17
F.	Public Notice and 30-Day Comment Period	V-18
G.	VWP Individual Permit Public Hearing Process	V-19
	1. Hearing Need Determination	V-19
	2. Hearing Coordination and Public Notice	V-20
	3. Preparation for the Hearing	V-21
	4. Conducting the Hearing	V-22
	5. Post Hearing Actions	V-22
H.	Final VWP Individual Permit Preparation	V-23
I.	VWP Individual Permit Denial Process	V-24
	1. Reasons for Denial	V-24
	2. Denial Notification to Applicant	V-25
	3. Public Notice of Denial	V-26
J.	Frequently Asked Questions	V-26

Chapter VI – Permit Changes for VWP Individual Permits

A.	General Information for All Permit Changes	VI-1
	1. Timeframes	VI-1
	2. Tracking and Format	VI-1
	3. Fee Refunds	VI-2
B.	Permit Modification	VI-2
	1. Activities Qualifying for a Modification	VI-2
	2. Minor Modification	VI-3
	3. Major Modification	VI-6
	4. Denial of a Modification Request	VI-9

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

TABLE OF CONTENTS (CONTINUED)

TITLE		PAGE
C.	Permit Extension	VI-10
D.	Permit Re-Issuance	VI-11
E.	Permit Revocation and Re-Issuance	VI-11
F.	Permit Termination	VI-12
1.	Causes for Permit Termination	VI-12
2.	Termination Process and Permittee Notification of Pending Action	VI-13
3.	Termination Notification	VI-13
4.	CEDS Data	VI-14

Chapter VII – Inspection and Compliance

A.	Site Inspections	VII-1
1.	Construction (Impact) Site	VII-1
2.	Compensation Site	VII-2
B.	Required Notifications and Submittals for Permit Compliance	VII-3
1.	Typical Required Submittals	VII-3
2.	Tracking Required Submittals	VII-4
3.	Review of Required Submittals	VII-4
C.	Compliance and Enforcement Issues	VII-9

APPENDICES

A – State Water Control Law

B – Technical Guidance

C – CEDS

D – Virginia Water Protection and General Permit Regulations

E – General Permit Authorizations

F – VDGIF Username and Password Information

G – Individual Permit Special Conditions

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

TABLE OF CONTENTS (CONTINUED)

APPENDICES

H – Individual Permit General Conditions

I – Compensation Mitigation [to be added at future date]

FIGURES

Figure II-1:	Summary of Permit Processing Pathways	II-7

TABLES

Table III-1:	Summary of USACE Permits and VWP Requirements	III-8
Table IV-1:	Summary of VWP General Permits	IV-27
Table VII-1:	Typical Notifications and Submittals Required For VWP General Permit No. WP1 Authorizations	VII-13
Table VII-2:	Typical Notifications and Submittals Required For VWP General Permit Nos. WP2, 3, 4 Authorizations	VII-14
Table VII-3:	Typical Notifications and Submittals Required For VWP Individual Permits	VII-16

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

CHAPTER I - INTRODUCTION

This chapter provides a brief history of the Virginia Water Protection (VWP) Permit Program. An overview of central office and regional office program responsibilities is presented. This chapter also introduces the purpose, organization and use of the Permit Manual, and the use of the Comprehensive Environmental Data Systems (CEDS).

A. History of the Virginia Water Protection Permit Program

The enactment of the Tidal Wetlands Act of 1972 gave the Virginia Marine Resources Commission (VMRC) the responsibility for issuing **tidal** wetlands permits under Chapters 12 and 13 of Title 28.2 of the Code of Virginia. The Virginia Department of Environmental Quality (DEQ) provides § 401 Certification for these impacts either through certification of U.S. Army Corps of Engineers (USACE) nationwide permits (NWP) or regional permits (RP), or the issuance of a VWP permit.

Since non-tidal impacts were not considered in the above legislation, permit regulations were enacted in May 1992 to create a wetlands program that provided § 401 Certification for **non-tidal** wetland impacts. Hence, the VWP Permit Program derives its regulatory authority from both the Clean Water Act (§ 401) and State Water Control Law (§§ 62.1-44.15 and 62.1-44.15:5, Code of Virginia). **Note that references to the terms '§ 401' and '§ 404' of the Clean Water Act of 1977 are the current convention within the environmental community. The permit writer should be aware that the correct citation for these sections of the law are Title 33, Chapter 26, Subchapter IV, Section 1341 and 1344, respectively. However, the current convention will be used throughout this manual.**

Prior to July 1, 2000, applicants seeking a § 404 permit from the USACE for water withdrawals or discharge of fill in wetlands or waters of the United States were required to submit an application to the DEQ under § 401 Certification procedures for a permit or waiver for the same activity. The 2000 General Assembly amended § 62.1-44.15 et seq. of the Code of Virginia (relating to wetlands) to establish and implement policies and programs to further protect and enhance Virginia's wetland resources. Thus, the General Assembly removed the dependence of the VWP Permit Program on the issuance of a USACE permit. DEQ is now able to regulate activities, such as excavation in wetlands and fill in isolated wetlands, that are not currently under federal jurisdiction due to various court decisions.

Key aspects of the new legislation that have been incorporated into the VWP permit regulation include:

- Regulation of new excavation in wetlands (Tulloch ditching) as of July 1, 2000
- Regulation of other activities in a wetland that cause drainage of wetlands as of October 1, 2001
- Regulation of activities (other than excavation) in isolated wetlands as of October 1, 2001
- Increase of individual permit term from five years to the length of the project, not to exceed 15 years

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Revised 11/30/2001; 5/1/2002

- New individual permit review times with a 15-calendar day window for DEQ application review to determine completeness and a 120-calendar day period to issue or deny a permit, or decide to conduct a public hearing
- Cumulative impacts to state waters and fish and wildlife resources must be considered when issuing wetland permits
- Acceptable forms of mitigation are specified and include creation, restoration, mitigation banks, preservation of wetland or upland buffers in combination with the above, and approved compensatory funds
- DEQ can be a signatory to mitigation banking agreements

DEQ is also directed to seek a State Programmatic General Permit by July 2002, establishing a tiered system for the review and issuance of permits for wetland impacts in the Commonwealth to allow the best use of resources between USACE and DEQ.

The new regulation also brought wetland issues related to landfills back into DEQ's authority that were previously excluded in 1992. Because separate, complex legislation regarding wetlands and landfills was passed in 1999 (Code of Virginia sections 10.1 - 1408.4 and 1408.5), locating new or expanding existing municipal solid waste landfills in wetlands is very difficult. However, the prohibitions only apply to Municipal Solid Waste Landfills. Other landfills, such as demolition debris landfills, can be sited in wetlands but require a VWP permit. The VWP permit writer should coordinate with the DEQ solid waste permit writer in their region before issuing a permit in these situations.

Finally, the General Assembly directed DEQ to develop general permits for activities with minimal impacts to expedite the permitting process in Virginia while maintaining the same high environmental standards as the individual permitting process. According to VWP general permit regulations, each general permit must have specific thresholds for use, specific mitigation requirements, and a 45-calendar day review period.

B. Central Office and Regional Office Program Responsibilities

VWP Permit Program staff are located in the DEQ Central Office and in seven regional offices. The regional offices generally issue and inspect VWP permits, while the central office maintains the VWP permit regulations and provides program guidance. However, all water withdrawal projects (including permanent impoundments for such) and Virginia Department of Transportation (VDOT) projects are currently managed and processed out of the central office. A map of regional office locations and jurisdictions is available on DEQNet\VWP Library.

Due to the statewide applicability of changes in federal regulations, the central office staff directly coordinates with the USACE-Norfolk District and the U.S. Environmental Protection Agency (EPA) over regulatory, procedural, technical, and administrative aspects of the wetlands program. Project specific issues should be coordinated with the applicable federal agency by the regional office. Where policy implications are involved, the central office should be consulted. Additionally, any issues involving wetland policy or regulatory interpretations should come through the VWP Permit Program Manager to

upper DEQ management or to the Office of the Attorney General, so that all regions can have the benefit of the advice given.

C. Purpose, Organization, and Use of the VWP Permit Manual

1. Purpose

This manual is intended to orient users to the VWP Permit Program and to establish procedures which ensure that VWP permit actions are executed in a consistent and legally enforceable manner. Modification of the procedures established in this manual may be necessary in the future. Significant changes to the internal DEQ procedures contained within this manual should only be undertaken after a consensus on the modification is reached between the applicable regional and central office staff within the VWP Permit Program. DEQ staff should use the established chain of command to pursue any such modifications. Changes made due to new legislation or procedures of outside agencies may be made without consulting regional office staff.

All official changes to the manual will be made by central office VWP permit staff after approval from the central office VWP Permit Program Manager.

2. Organization

Chapters II through VI of the manual describe the various possible paths of the permitting process. These sections are organized around the major components of the permitting process depicted in Figure II-1 (Chapter II). While Figure II-1 is intended to be a summary of the permit process, the VWP permit writer will need to consult the manual's individual sections to understand and execute the actions required by each component of the permitting process.

Chapter VII provides guidance on project inspection and permit compliance. As these aspects will differ from project to project, the guidance in this chapter outlines the broad issues associated with these post permitting activities. Coordination of specific inspection and compliance issues with other DEQ division staff is recommended and may be required.

The manual also contains tables and VWP permit specific forms and letters as guides to the permit writer. Some forms are standard, such as the VWP Permit Fee Form, and should not be changed by the permit writer. Other forms and letters contain information that is project specific and must be edited by the permit writer. In these instances, the text will be in **bold font** and **[bracketed]**. The permit writer is responsible for editing these forms and letters, or creating appropriate ones, to match each specific permit. The permit writer may also edit the sample letters as needed for special or unusual permit situations that may arise.

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Revised 11/30/2001; 5/1/2002

3. Use

The manual's text, figures and examples present the information needed to process VWP permit applications, while the Universal Resource Locator (URL) references in Appendix B provide regulatory, policy, and technical resources for the aspects of the VWP Permit Program, project review, and project assessment. Unless otherwise indicated, terminology used in this manual is based on the definitions given in the VWP permit regulation.

Manual sections concerned with specific permitting actions contain checklists to help users track the completeness of section specific tasks. Some tasks will require referring to other sections, URL resources, other DEQ offices, or other agencies. The example documents supplied in the manual contain the basic information required in the respective documents.

The VWP Permit Manual, including all appendices and references, will be located on DEQNet (http://deqnet) and will be updated by central office on a regular basis after October 1, 2001. Revision dates will be located in the document footers. Central office staff will attempt to notify each regional office when changes are made. Once a hard copy of the manual is printed and distributed to each permit writer, he/she will be responsible for keeping the document up to date. Each hard copy of the permit manual should remain in the respective regional office for future permitting staff.

D. Comprehensive Environmental Data System (CEDS)

CEDS is an integrated database that was developed to provide DEQ managers and staff with:

- Automated tools to perform basic environmental management functions, such as developing and issuing permits and scheduling inspections
- Information to understand and manage workload
- A comprehensive picture of a facility's compliance history and status in the air, water, and waste areas
- Information about environmental conditions and progress to share with the public, state legislature, and the governor

The Director of DEQ has made the use of CEDS mandatory by both managers and staff. This multimedia approach to tracking permits, inspections, and enforcement requires up-to-date and accurate data entry and quality control.

The VWP Permit Program uses CEDS to track the progress of permit application review, permit issuance, modification, etc., as well as to track the surface water impacts and associated compensation on a state-wide basis. The timely and accurate entry of permit data into CEDS is essential to tracking the success of the program in meeting the goal of no net loss of wetland acreage and function through the regulatory program. The DEQ

will be using the CEDS VWP permit database to interact with another DEQ watershed-based tracking system involving permitted surface water impacts and compensatory mitigation.

A discussion of CEDS is provided in Appendix C. This manual does not provide a user's guide to CEDS. The acquisition of CEDS passwords and training on the use of CEDS is coordinated with DEQ's Office of Information Services. This training must be completed before CEDS can be accessed for data entry or review.

CHAPTER II - INITIAL REVIEW PROCEDURES

This chapter details the procedures for the initial review of an application for a Virginia Water Protection (VWP) permit. This chapter addresses the accepted forms of applications for a VWP permit, the protocol for assuring that applications are received by the correct Department of Environmental Quality (DEQ) office, and an overview of DEQ authority. This chapter also introduces and directs the permit writer to the five major permit processing pathways, including: No Permit Required (NPR), VWP general permit, VWP individual permit, VWP permit change, and VWP permit enforcement.

A. Receipt of Application

The applicant must submit the application information to DEQ in one of the following ways:

- Submit a Joint Permit Application (JPA) with all appropriate addenda including the DEQ Addendum (appropriate for VWP individual permit or VWP general permit)
- Submit a Registration Statement (appropriate for VWP general permit only)
- Submit a Virginia Department of Transportation (VDOT) Joint Permit Application (JPA) for VDOT projects (appropriate for VWP individual permit or VWP general permit)

If the proposed activity requires a VWP individual permit, the applicant must submit a completed JPA with appropriate addenda. An applicant may submit either a Registration Statement or a JPA and appropriate addenda to apply for a VWP general permit, provided all information required by the specific VWP general permit is included. Typically, the Virginia Marine Resources Commission (VMRC) serves as the clearinghouse for these applications and assigns a permit number. However, **the DEQ Central Office will issue permit numbers to Registration Statements for proposed activities having less than one-tenth of an acre of surface water impacts.** Contact Priscilla Royal via e-mail in these instances and provide her with the project name/location, the VWP general permit type (WP1, 2, 3, or 4), the DEQ regional office, and staff contact name.

A copy of the JPA and all addenda may be downloaded from the World Wide Web at http://www.deq.state.va.us/wetlands. The JPA and Registration Statement are also located on DEQNet at http://deqnet. For the purpose of this manual, the term "application" shall be used to indicate any of the accepted forms of information submitted for a VWP permit.

The permit writer should adhere to the following protocol for the initial application review:

- Review the application within the regulatory time frames to determine if DEQ has authority over the proposed activity (see Section B).
- Determine if the application has been received by the appropriate DEQ office. All VDOT projects and water withdrawal projects are processed in central office. Occasionally, a project with minor water withdrawal impacts and major stream and wetland impacts, such as a golf course, will be process by the regional office. In these cases, the regional office may elect to handle the permit, particularly if the irrigation ponds are being built on intermittent or small streams. Construction of

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ponds in surface waters using Best Management Practices (BMPs) and similar impoundment projects that do not involve water withdrawals should be permitted by the regional office. All other projects are assigned to a regional office according to geographic location. A map of the counties located in each regional office is located on DEQNet.

- If the application is received by the incorrect DEQ office, notify the correct regional office VWP Permit Program supervisor by phone or e-mail, and forward the application to the correct DEQ office via interoffice mail.
- Date-stamp all applications when received, even if an application will be passed on to another DEQ office.
- If a DEQ office receives an application for which no permit number has been assigned, contact VMRC at (757) 247-2200 and request that a number be assigned. **Note the exception in paragraph two of Section A.**
- Check to ensure that a signed Certification Statement accompanies the Registration Statement or JPA, as per VWP permit regulations.
- Determine which processing pathway best corresponds to the proposed activity (see Section C and Figure II-1 at the end of this chapter).
- Request that the core Comprehensive Environmental Data System (CEDS) personnel enter the appropriate facility information, as defined by regional office protocols.

B. Regulatory Authority

The VWP Permit Program is designed to protect surface waters, which include waterbodies and wetlands. In accordance with this definition, DEQ has authority for activities impacting tidal and non-tidal open water and shoreline, marshes, mudflats, springs, creeks, streams, rivers, swamps, bogs, ponds, lakes, reservoirs, and the various types of associated wetlands (including marine, riverine, palustrine, estuarine, lacustrine, and isolated wetlands).

As described in Chapter I of this manual, the VWP Permit Program derives regulatory authority from both the Clean Water Act (§ 401) and State Water Control Law (SWCL). VWP permit authority was expanded in 2000 to include activities such as excavation in wetlands and impacts to isolated wetlands.

Although it is uncommon for an applicant to apply for a permit for an activity for which the VWP Permit Program has no authority, this situation may occur and is addressed in Chapter III. Although DEQ may have authority over a waterbody or wetland, the proposed activity may not require a VWP permit. Chapter III discusses specific cases in which a VWP permit is not required.

C. Permit Processing Pathways

While Figure II-1 summarizes the five major processing pathways, the following detailed sections are intended to direct the permit writer to the correct chapter of this manual.

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1. No Permit Required (NPR)

The most common reason that a proposed activity does not require a separate VWP individual or general permit is that the activity qualifies for a U.S. Army Corps of Engineers (USACE) general permit for which DEQ has granted § 401 Certification. The USACE has issued over forty nationwide permits (NWP) and several regional permits (RP) that are listed in Table III-1 *Summary of USACE Permits and VWP Requirements* at the end of Chapter III. Permit writers should refer to Chapter III of this manual for more details regarding the NPR pathway, including several conditions specific to USACE NWPs that may disqualify coverage under a VWP permit.

The VWP general permits were adopted with a clause that guarantees no duplication of coverage between DEQ and the USACE over projects with minor impacts. If the proposed activity is covered under a USACE NWP or RP that has received § 401 Certification, then the proposed activity is automatically covered under the applicable VWP general permit. No VWP general permit authorization needs to be issued (an NPR scenario as discussed in Chapter III). **In the future, a VWP general permit authorization may be required instead of a USACE NWP or RP, once the State Programmatic General Permit (SPGP) is approved.** Note that detailed information concerning the SPGP will be added to this manual after it is adopted.

2. VWP General Permits

If a proposed activity does not qualify for NPR status, and the proposed cumulative wetland and stream impacts are less than two acres for a single and complete project, the activity may qualify for one of the four VWP general permits. The VWP general permits are used only for impacts to **non-tidal** surface waters. General information for each VWP general permit is provided in Chapter IV. **Permit writers should always refer to the specific VWP general permit regulation, and the applicable sections of the main VWP permit regulation, for detailed information (see DEQNet and/or Appendix D).**

The VWP General Permit Number WP1 for 'Impacts Less than One-Half Acre' is not activity specific. This VWP general permit can be used for various projects with impacts less than one-half acre (0.00 to 0.49 acre) of non-tidal surface waters, including up to 125 linear feet (0.00 to 125.00 linear feet) of perennial stream channel and up to 1,500 linear feet (0.00 to 1,500.00 linear feet) of non-perennial stream channel, provided that compensatory mitigation is in the form of either a contribution to an approved in-lieu fee fund or the purchase of board-approved mitigation bank credits. This VWP general permit will likely be of limited use until DEQ obtains SPGP Authority due to existing § 401 Certification for impacts less than one-half acre.

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The VWP General Permit Number WP2 for 'Facilities and Activities of Utilities' authorizes utility projects that impact up to one acre (0.00 to 1.00 acre) of non-tidal surface waters, including up to 500 linear feet (0.00 to 500.00 linear feet) of perennial stream channel and up to 1,500 linear feet (0.00 to 1,500.00 linear feet) of non-perennial stream channel. This VWP general permit covers the same types of activities that are covered by USACE NWP 12. Because DEQ has certified NWP 12 with certain exceptions, utility projects with impacts totaling less than one-half acre will generally receive a NPR Letter until DEQ receives SPGP Authority. For the present time, those utility projects with impacts between one-half and one acre will receive a WP2.

The VWP General Permit Number WP3 for 'Linear Transportation Projects' authorizes linear transportation projects that result in up to two acres (0.00 to 2.00 acres) of non-tidal surface water impacts, including up to 500 linear feet (0.00 to 500.00 linear feet) of perennial stream channel and up to 1,500 linear feet (0.00 to 1,500.00 linear feet) of non-perennial stream channel. This VWP general permit authorizes activities similar to those authorized by USACE NWP 14, except that the WP3 has a higher acreage threshold. The USACE has added a regional condition for Virginia that limits the maximum impacts authorized by NWP 14 to one-third acre (0.00 to 0.33 acre). Because DEQ has certified NWP 14 with certain exceptions, linear transportation projects with impacts less than one-third acre will generally receive an NPR Letter until DEQ receives SPGP Authority for these activities. This VWP general permit will be very useful in permitting transportation projects with impacts in the one-third acre to two-acre range until that time.

The VWP General Permit Number WP4 for impacts from 'Development Activities' authorizes development projects that result in up to two acres (0.00 to 2.00 acres) of non-tidal surface water impacts, including up to 500 linear feet (0.00 to 500.00 linear feet) of perennial stream channel and up to 1,500 linear feet (0.00 to 1,500.00 linear feet) of non-perennial stream channel. This VWP general permit was modeled after many of the activities authorized by NWP 39 (Residential, Commercial and Institutional Development), NWP 42 (Recreational Facilities), and NWP 43 (Stormwater Management Facilities). The maximum impact acreage for these NWPs is one-half acre. As DEQ has certified these NWPs with certain exceptions, projects that qualify for these NWPs will generally receive a NPR Letter until DEQ receives SPGP Authority for these activities. Because the maximum threshold for WP4 is two acres, DEQ will generally use this VWP general permit to authorize qualifying projects in the one-half acre to two-acre range until that time.

3. VWP Individual Permits

A VWP individual permit is generally required when a proposed permitted activity does not qualify for either an NPR or a VWP general permit. Projects requiring a VWP individual permit may include:

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

- Proposed impacts that are greater than VWP general permit thresholds
- Threatened or endangered species issues that require outside-agency coordination
- Water withdrawal projects, or projects having water withdrawal components (for example, dams)
- Projects for which there are significant water quality or aquatic environment concerns
- Projects falling into categories that are excluded from one or more of the VWP general permits

A permit writer should refer to the VWP Permit Program Regulation 9 VAC 25-210-10 et seq. (Appendix D) and Chapter V of this manual for detailed information concerning VWP individual permits.

4. VWP Permit Changes

Of the major processing pathways, a VWP permit change is one of the most simple to determine due to the reliance upon an existing VWP permit. The existing permit number should have been entered in the CEDS database. Detailed information regarding the specific permit change processes for VWP general permits and VWP individual permits is given in Chapter IV and Chapter VI, respectively.

VWP General Permits

There are three permit changes that may be warranted after a VWP general permit authorization has been issued including:

- VWP general permit authorization Notice of Planned Change (similar to a VWP individual permit Modification)
- VWP general permit authorization Continuation of Coverage (similar to a VWP individual permit Extension)
- VWP general permit authorization Termination

The permittee may request a Notice of Planned Change to the authorization to cover additional wetland and stream impacts (with defined restrictions). The VWP general permit authorization cannot be modified for any other reason.

A Continuation of Coverage may be required if any portion of the authorized impact activities or any permit requirement (for example, compensatory mitigation) has not been completed before the authorization expiration.

As with all VWP permits, a VWP general permit authorization can be terminated in accordance with the VWP general permit regulations.

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VWP Individual Permits

There are five permit changes that may be warranted after a VWP individual permit has been issued including:

- VWP Individual Permit Modification (Major or Minor)
- VWP Individual Permit Extension
- VWP Individual Permit Re-Issuance
- VWP Individual Permit Revocation and Re-Issuance
- VWP Individual Permit Termination

Modifications can be considered Major or Minor. Minor Modifications, which are not public noticed, are reserved for specific changes as explained in Chapter VI, Section B.2. All other modifications are considered to be Major Modifications and require a public notice.

An Extension is used to extend the term of the coverage, when no other permit condition is altered, for a maximum of 15 years.

A Re-Issuance is processed when a permit expires for an on-going authorized activity (for example, a water withdrawal). Revocation and Re-Issuance is used when DEQ both modifies a permit and extends the term.

Termination can be used to take away the authorization to continue an activity, either because of noncompliance or because the activity has been completed prior to the expiration date.

5. VWP Permit Enforcement

The permit writer should refer to the Enforcement Manual at http://www.deq.state.va.us/enforcement/overview.html for information on this pathway.

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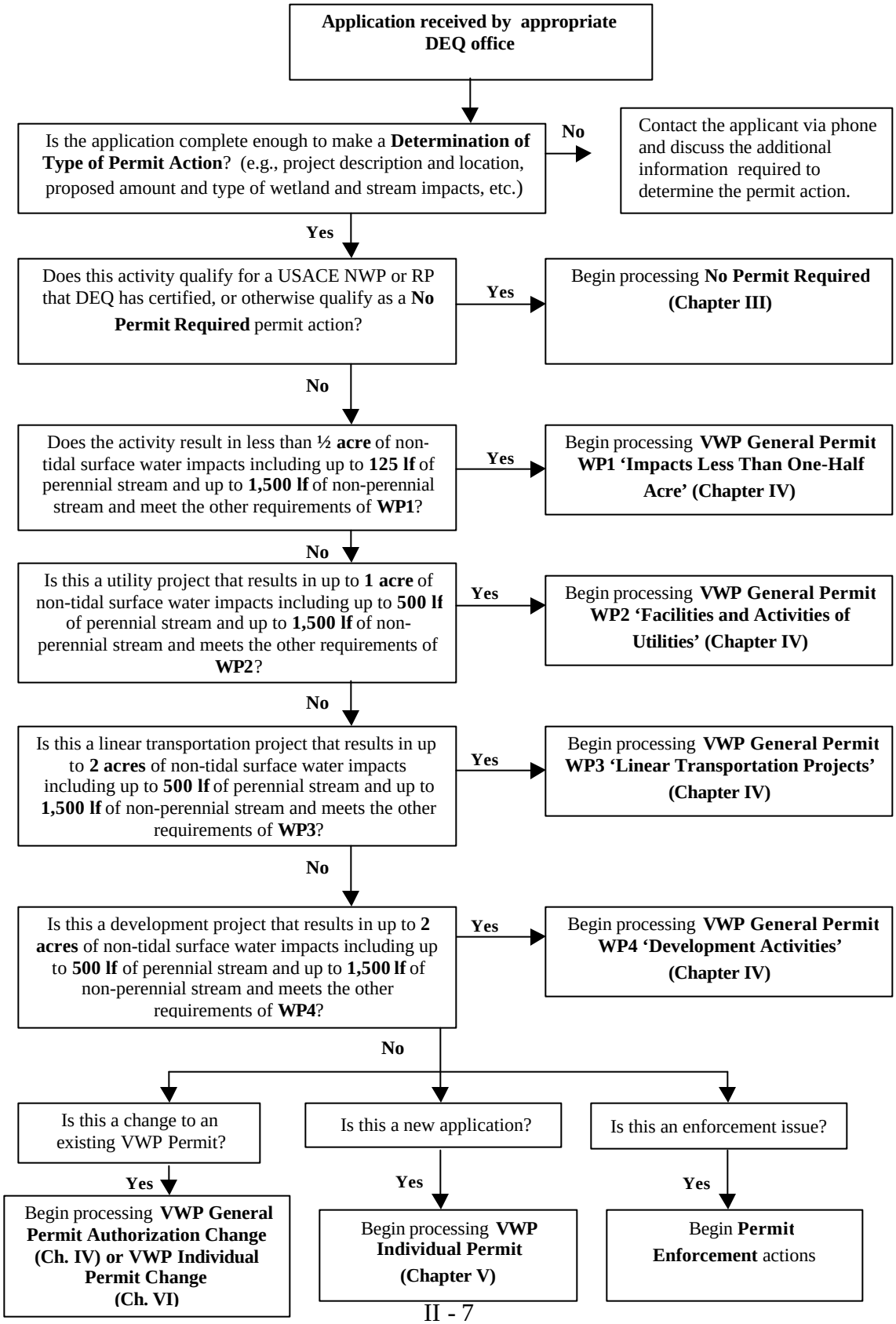
Figure II-1 – Summary of Permit Processing Pathways



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CHAPTER III- NO PERMIT REQUIRED

Multiple agencies can have authority over any particular project. To fulfill our mission of environmental protection in the most efficient manner, the Department of Environmental Quality (DEQ) uses tools such as Memoranda of Understanding, general permits, and 'No Permit Required' (NPR) determinations to avoid duplicative efforts. Note that a waiver is no longer a permit action, but rather is a type of NPR for very specific activities (see Regulation 9 VAC 25-210-220 in Appendix D).

The purpose of this chapter is to inform the permit writer of when and how to use the NPR Letter. A sample NPR Letter is provided at the end of this chapter.

A. Background

DEQ has an existing agreement with the Virginia Marine Resources Commission (VMRC) which provides for the distribution and review of Joint Permit Applications (JPAs). VMRC may forward applications that do not need to be reviewed by DEQ, and therefore, an NPR Letter is issued by DEQ.

One agency, usually the U.S. Army Corps of Engineers (USACE) will take the lead role on small projects and issue a type of general permit, either a nationwide permit (NWP) or a regional permit (RP). Another agency, usually DEQ, will take the smaller role and issue a NPR Letter. When DEQ obtains State Programmatic General Permit (SPGP) Authority, these roles will be reversed for certain activities.

B. No Authority

An NPR Letter is issued when DEQ has no statutory authority or when a proposed activity does not require a VWP permit due to the nature of the activity. Some examples of activities that usually do not involve impacts to surface waters, including wetlands, are private piers, boat houses, bridge/walkway supports on uplands, water withdrawals using standard irrigation equipment when no discharge of fill is involved, removal of stream channel debris, and maintenance/replacement of previously authorized water withdrawal structures, such as pumps.

C. The NPR and § 401 Certification of USACE General Permits

DEQ may grant § 401 Certification to a class of activities, over which DEQ has authority, but which also qualify for USACE general permits. A USACE general permit expires after five years and is usually re-issued or replaced by a similar general permit with a five-year term. Each time this occurs, the USACE asks DEQ what our action will be in terms of § 401 Certification. If DEQ **unconditionally** grants § 401 Certification for a class of activities allowed by a USACE general permit, then these applications receive an NPR Letter from DEQ. Table III-1, located at the end of this chapter, presents the current list of NWPs and RPs that receive an NPR Letter.

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DEQ may also **conditionally** grant § 401 Certification for a class of activities, in which case, the permit writer needs to carefully review the application prior to determining if an NPR Letter should be issued. If an NPR Letter is warranted, the permit writer should include the specific conditions that must be met in order for the proposed project to be considered § 401-Certified. Table III-1 provides a current list of activities which are conditionally § 401-Certified, based on the USACE NWPs and RPs, along with the conditions that apply to each.

D. Exclusions

As explained in Section C, projects falling under certain USACE permits may trigger an NPR Letter from DEQ. Additionally, Regulation 9 VAC 25-210-60 lists activities that are excluded from requiring a VWP permit at all, and thus, no NPR Letter is normally required. These exclusions are summarized below.

VPDES Permit Activities

Discharges that qualify for a Virginia Pollutant Discharge Elimination System (VPDES) permit do not typically require a VWP permit. For example, when an outfall structure is covered by a USACE NWP 7 and a VPDES permit for the effluent discharge, no VWP permit is required.

There are two areas of potential overlap that require careful attention and are not automatically excluded from a VWP permit. These are activities that require a stormwater general permit and activities involving hydraulic dredging.

Stormwater general permits are usually issued for construction activities with the intent to control the discharge of stormwater and sediment. This is not the same discharge as a discharge of fill material to a wetland or excavation in a wetland, which also may occur on a construction project. In such cases, both a stormwater general permit and a VWP permit are needed.

In the case of hydraulic dredging, the discharge that is of concern to water quality is the discharge that comes from the return flow. Even though this is a point source discharge of effluent, the agency has used the VWP Permit/§ 401 Certification Program to regulate this discharge. In fact, the DEQ cannot regulate this discharge other than with a VWP permit, as it is excluded by regulation from National Pollutant Discharge Elimination System (NPDES) permitting (see 33 CFR 122.3(b)). **The exception to this practice is the issuance of a VPDES general permit for non-metallic mineral or sand mining activities.** A VWP permit is not issued for this type of mining, as it would be duplicative. Instead, an NPR Letter should be issued.

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VPA Permit Activities

Activities covered by Virginia Pollution Abatement (VPA) permits are excluded in order to avoid duplicative DEQ permits.

Other Agency-Regulated Activities

Septic tanks permitted by the Virginia Department of Health do not require a VWP permit.

Normal agricultural and forestry activities (by law in both the Federal Clean Water Act and in our State Water Control Law) do not require a VWP permit.

Other Activities

- Normal residential gardening, lawn and landscape maintenance
- Maintenance of serviceable structures such as roads and utilities, dikes and dams, and drainage ditches
- Farm ponds
- Temporary sediment basins
- Farm and forest roads

E. VMRC Jurisdiction

Activities permitted by VMRC under Chapter 13 of Title 28.2 of the Code of Virginia, which is VMRC's statutory authority over tidal wetlands, do not require a VWP permit unless § 401 Certification is required. DEQ will only issue a VWP permit for tidal wetlands if the USACE issues a §404 permit for that activity. Note that in Regulation 9 VAC 25-210-220.B., DEQ has essentially retained the ability to waive the requirement for a VWP individual permit for tidal impacts covered under Chapters 12 and 13 of Title 28.2, provided that the USACE and VMRC issue permits. **Since DEQ no longer formally processes a waiver, the NPR Letter serves as the § 401 Certification in this situation.**

F. Isolated Wetlands of Minimal Ecological Value (IWOMEV)

The State Water Control Law provides that DEQ may "waive" permitting requirements on isolated wetlands of minimal ecological value (IWOMEV). When an application involves an IWOMEV, the permit applicant must first request that the USACE verify whether or not the wetland is isolated. Secondly, the applicant must prove that the wetland meets the definition of minimal ecological value as given in Regulation 9 VAC 25-210-10:

- Wetland does not have a surface water connection to other state waters
- Wetland is less than one-tenth acre in size (0.00 to 0.09 acre)

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

- Wetland is not located in a FEMA designated, 100-year floodplain
- Wetland is not identified by the Virginia Natural Heritage Program as a rare or state-significant natural community
- Wetland is not forested
- Wetland does not contain listed federal or state, threatened or endangered species

If the wetland meets this definition, then the permit writer should process the application as a NPR. **In these permitting situations, the permit writer should contact Priscilla Royal in DEQ Central Office to obtain an IWOMEV NPR permit number for CEDS data entry. This special set of permit numbers will start with the year and then a four-digit sequential number, beginning with 7000 (for example, 02-7000).**

For a single and complete project where more than one IWOMEV is impacted, an NPR Letter is issued even if the cumulative impacts exceed 0.09 of an acre, the definition threshold. For example, if a single and complete project impacts eight IWOMEVs, and each one is 0.05 of an acre, the permit writer should prepare an NPR Letter, regardless of the total impacts (0.40 of an acre) exceeding the definition threshold.

Should a single and complete project impact both IWOMEVs and any other type of permitted surface waters that require a VWP general or individual permit, compensatory mitigation is not required for the IWOMEV portion of the impacts.

G. Processing an NPR

The permit writer should make every attempt to review an application within **15 calendar days** of receipt by the appropriate DEQ office. Should the project end up qualifying for a VWP **individual** permit, this time frame is required to meet regulatory deadlines.

If additional information is required to make the permit determination, the permit writer should prepare a request letter summarizing the required additional information (use sample letter at the end of Chapter V as a template for editing) and should attempt to mail the letter within the 15 calendar-day review period. Although this is a regulatory deadline applicable to VWP individual permits, the permit writer should attempt to meet this goal with all permit application reviews for program consistency. A fee is not required for projects qualifying as an NPR, and therefore, the permit writer should modify the request letter by stating that the project may qualify as a NPR and by removing references to the permit application fee. The submission of an additional information letter within 15 calendar days of application receipt is a regulatory deadline.

If the project qualifies for a § 401-Certified USACE nationwide or regional permit, the NPR Letter should be prepared and issued. This may require coordination with USACE personnel (see DEQNet\VWP Library for listing of USACE contacts). Although there is no regulatory deadline for issuing an NPR letter, the permit writer should attempt to mail

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Revised 11/30/2001; 5/1/2002

the NPR Letter within **seven calendar days** of determining that the project qualifies as a NPR.

The most recent DEQ delegation memo dated October 2, 2001 does not address who should sign NPR Letters in the regional offices. DEQ Central Office suggests that the Regional Permit Manager or his/her designee sign the NPR Letter.

If the permit writer feels that the NPR Letter does not adequately document his/her reasoning for issuing an NPR Letter, then he/she should draft a memorandum to the file for further clarification. The permit writer should also enter the project and NPR information into CEDS (see Appendix C).

H. Frequently Asked Questions

Q: Is a threatened and endangered species search required in NPR situations?
A: DEQ personnel do not have to conduct these searches in NPR situations.

Q: Where can I find a summary of the USACE NWPs, so I can determine if an activity qualifies as an NPR?
A: Refer to Table III-1 or to the USACE website at **http://www.usace.army.mil/inet/functions/cw/cecwo/reg/nwpcond.htm**

Q: Must the permit writer have confirmation from the USACE that the activity will qualify for a particular § 401-Certified USACE NWP or RP prior to sending the NPR Letter?
A: No. Confirmation is recommended but not required (see next Question below). The USACE may not have assigned the project to one of their managers, or he/she has not had enough time to review the application and make a decision.

Q: What happens if DEQ issues an NPR Letter for an activity, and then the USACE issues an individual permit?
A: Treat these instances on a case-by-case basis. The DEQ will not usually retract the NPR. However, if the NPR was processed based upon false or deficient information, the application may be retracted and processed as a VWP individual or general permit. The permit writer should consult his/her supervisor on the retraction process.

Q: What happens if DEQ learns of a project but did not get an application for the project from VMRC?
A: Treat these projects on a case-by-case basis. If DEQ receives an application from the applicant but not from VMRC, contact VMRC for a permit number and process it as if it had come from VMRC. If you learn of a project by viewing the USACE Public

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Revised 11/30/2001; 5/1/2002

Notice page but did not get the application from VMRC, use discretion. At times our screening process, meant to give us only the applications DEQ needs to see, is not rigorous enough to catch all the possible applications over which DEQ has authority. If you have environmental concerns that could be handled by either the USACE or VMRC, then a comment to those agencies is appropriate. If you have water quality or other concerns that can only be handled by DEQ, seek out a copy of the application from VMRC.

Q: In the cases where DEQ receives applications for projects that will be permitted by VMRC under Chapters 12 and 13 of Title 28.2, such as the waterfront property improvement projects with little water quality impacts, does DEQ have to collect a $300 waiver fee prior to telling the applicant that DEQ is not going to require a permit?

A: The $300 fee is no longer applicable, since a "waiver" is not technically a permit action. The permit writer should process these cases using the NPR Letter.

Q: If the USACE permit number and the VMRC permit number are different, which should the permit writer use?

A: The VMRC permit number.

Q: Does maintenance of an existing drainage ditch require a VWP permit?

A: Not if the cross-sectional area of the ditch does not change.

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Sample NPR Letter

[Date]

[Applicant Name]
[c/o Agent, if applicable]
[Applicant or Agent Address]

RE: Joint Permit Application Number **[##-####]**
Notification of No Permit Required

Dear **[Applicant/Agent]**:

The Department of Environmental Quality has received your application to **[describe activity]** on the **[name waterbody]** at **[location]** in **[city/town/county]**, Virginia.

Because the water quality impacts should be minimal and temporary in nature, and **[give reason(s)-see possible phrases at bottom of letter]**, a Virginia Water Protection (VWP) general or individual permit will not be required for this project. **[If using the first phrase below, remove this sentence: This letter constitutes the § 401 Certification of your § 404 permit for this project.]** You are advised that this does not give you the authority to violate Virginia's State Water Quality Standards.

Please note that should the size and scope of the project change, a VWP general or individual permit may be required. If you have any questions, please do not hesitate to contact **[permit writer]** at **[phone number]** or **[e-mail address].**

Sincerely,

[Regional Permit Manager or his/her designee]
[Working Title]

cc: **[Contact Name],** U.S. Army Corps of Engineers
[Contact Name], Virginia Marine Resources Commission **(if they have jurisdiction)**
VWP Permit File

Possible phrases for "give reason(s)":

- the project as presented will not involve any discharges to surface waters or impacts to wetlands
- the project as presented qualifies for a general permit from the USACE on which DEQ has provided unconditional § 401 Certification
- the project qualifies for an exclusion from VWP permitting under 9 VAC 25-210-60 as [name exclusion]
- the impacted wetland(s) is (are) an isolated wetland(s) of minimal ecological value as defined by 9 VAC 25-210-10
- provided that the Virginia Marine Resources Commission issues a permit pursuant to Chapter 12 and Chapter 13 of Title 28.2 of the Code of Virginia, and the U.S. Army Corps of Engineers issues a § 404 permit for this activity

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Table III - 1
Summary of USACE Permits and VWP Requirements

Nationwide or Regional Permit	Last Date of Issuance, Re-issuance or Modification	VWP Permit Processing Pathway	Date of 401 Certification	401 Certification Conditions
1. Aids to Navigation	Mar-02	NPR	Mar-02	
2. Structures in Artificial Canals	Mar-02	NPR	Mar-02	
3. Maintenance	Mar-02	NPR	Mar-02	
4. Fish and Wildlife Activities	Mar-02	NPR	Mar-02	
5. Scientific Measurement Devices	Mar-02	NPR	Mar-02	
6. Survey Activities	Mar-02	NPR	Mar-02	
7. Outfall Structures and Maintenance	Mar-02	Conditional*	Mar-02	1,2,4,8,9
8. Oil and Gas Structures	Mar-02	NPR	Mar-02	
9. Structures in Fleet and Anchor Areas	Mar-02	NPR	Mar-02	
10. Mooring Buoys	Mar-02	NPR	Mar-02	
11. Temporary Recreation Structures	Mar-02	NPR	Mar-02	
12. Utility Line Activities	Mar-02	Conditional*	Mar-02	1,2,4,8,9
13. Bank Stabilization	Mar-02	Conditional*	Mar-02	1,2,4,8,9
14. Linear Transport Crossings	Mar-02	Conditional*	Mar-02	1,2,4,8,9
15. U.S. Coast Guard Approved Bridges	Mar-02	NPR	Mar-02	
16. Return Water - Upland Contained Disposal Areas	Mar-02	Permit Req'd	Mar-02	
17. Hydropower Projects	Mar-02	Permit Req'd	Mar-02	
18. Minor Discharges	Mar-02	Conditional*	Mar-02	1,2,4,8,9
19. Minor Dredging <25 Cubic Yards	Mar-02	Conditional*	Mar-02	1,2,4,5,8,9
20. Oil Spill Cleanup	Mar-02	NPR	Mar-02	
21. Surface Coal Mining Activities	Mar-02	Conditional*	Mar-02	1,2,4,8,9
22. Removal of Vessels	Mar-02	NPR	Mar-02	
23. Approved Categorical Exclusions	Mar-02	NPR	Mar-02	
24. State Administered Section 404 Programs	Mar-02	N/A in VA	Mar-02	
25. Structural Discharges	Mar-02	Conditional*	Mar-02	1,2,4,8,9
26. EXPIRED Jun-2000 and not re-issued	--	--	Expired Jun-00	--
27. Stream and Wetland Restoration Activities	Mar-02	Conditional*	Mar-02	1,2,4,7,8,9
28. Existing Marina Modifications	Mar-02	NPR	Mar-02	
29. Single-Family Housing	Mar-02	NPR	Mar-02	
30. Moist Soil Management for Wildlife	Mar-02	NPR	Mar-02	
31. Maintenance of Existing Flood Control Projects	Mar-02	NPR	Mar-02	
32. Completed Enforcement Actions	Mar-02	NPR	Mar-02	
33. Temporary Construction, Access and Dewatering	Mar-02	NPR	Mar-02	
34. Cranberry Production Activities	Mar-02	NPR	Mar-02	
35. Maintenance Dredging of Existing Basins	Mar-02	NPR	Mar-02	
36. Boat Ramps	Mar-02	NPR	Mar-02	
37. Emergency Watershed Protection and Rehabilitation	Mar-02	NPR	Mar-02	
38. Hazardous and Toxic Waste Cleanup	Mar-02	NPR	Mar-02	
39. Residential, Commercial and Institutional Development	Mar-02	Conditional*	Mar-02	1,2,3,4,8,9
40. Agricultural Activities	Mar-02	Conditional*	Mar-02	6
41. Reshaping Existing Drainage Ditch	Mar-02	NPR	Mar-02	
42. Recreational Facilities	Mar-02	Conditional*	Mar-02	1,2,3,4,8,9
43. Stormwater Management Facilities	Mar-02	Conditional*	Mar-02	1,2,4,8,9

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Table III - 1
Summary of USACE Permits and VWP Requirements

Nationwide or Regional Permit	Last Date of Issuance, Re-issuance or Modification	VWP Permit Processing Pathway	Date of 401 Certification	401 Certification Conditions
44. Mining Activities	Mar-02	Conditional*	Mar-02	1,2,4,5,8,9
ASP-18. Abbreviated Standard Permit	Discontinued. Feb-02	N/A	N/A	
LOP-1. Letter of Permission for VDOT Projects	Aug-98	Permit Req'd	Cert. Denied	
LOP-2. Letter of Permission for Certain Navigational Projects	Jan-02	Conditional*	Mar-02	10
RP-15. Maintenance of Certain Ditches	Aug-98	NPR	Aug-98	
RP-17. Private Piers and Mooring Piles	Aug-98	NPR	Aug-98	
RP-19. State Program Regional Permit	Jan-02	Conditional*	Mar-02	10
RP-22. For Certain Activities in Lake Gaston	Aug-98	NPR	Aug-98	
RP-24. For Certain Activities in Claytor & Smith Mtn. Lake	Aug-98	NPR	Aug-98	
RP-40. Minor Maintenance Dredging in Non-tidal Waters	Aug-98	NPR	Aug-98	

Abbreviations/Definitions

VWPP = Virginia Water Protection Permit
NPR = No (VWP) Permit Required
N/A = Not Applicable
Permit Req'd = Some VWPP action is required
Conditional* = If a proposed activity falls under any of the conditions listed below, the activity does not have Section 401 certification until a VWP individual or general permit is issued.

Conditions

1. When compensatory mitigation is in the form of the purchase of mitigation bank credits and the bank is not located within the same hydrologic unit or an adjacent unit within the same river watershed as the impacted site, as defined by the Hydrologic Unit Map of the U.S. (USGS, 1980), unless it meets the conditions listed in Section 62.1-44.15:5e of the Code of Virginia for transportation or locality projects.
2. When compensatory mitigation involves only the preservation of wetlands and/or wetland or upland vegetation buffers without accompanying creation or restoration of wetlands or the purchase of mitigation bank credits, or does not meet the goal of no net loss of wetland acreage and function.
3. When proposed construction of irrigation impoundments is located on perennial streams. May include impoundments for golf course irrigation, snowmaking operations.
4. When there is/are any proposed water withdrawal activity(ies). May include construction and/or protection of intake structures, transporting non-potable water, construction of weir or water diversion structure, installation of pilings for any type platform/holding structure mounted with water withdrawal pumps.
5. Proposed hydraulic dredging, or dredging a deep space/hole for water withdrawal.
6. When any concentrated animal feeding operation or waste storage facility is proposed in surface waters.
7. When used to permit a wetland mitigation bank, compensation for surface water impacts is debited from the mitigation bank credits.
8. When stormwater management facilities are located in perennial streams or oxygen- or temperature-impaired waters.
9. When impacts to perennial streams are in excess of 500 linear feet, and for impacts to intermittent streams in excess of 1,500 linear feet.
10. When used in tidal waters, no individual 401 Certification required; when used with non-tidal waters, individual 401 Certification required.

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CHAPTER IV – VWP GENERAL PERMITS

This chapter describes the permitting process for Virginia Water Protection (VWP) general permits. The Department of Environmental Quality (DEQ) encourages the use of VWP general permits as appropriate to expedite permitting while providing the necessary environmental protection. The VWP Permit Program currently has four VWP general permits. The right to use a particular VWP general permit and proceed with the proposed, regulated activity is conveyed to the applicant through a VWP General Permit Authorization. The VWP general permit regulations and the authorizations for the four VWP general permits are located in Appendix D and Appendix E, respectively, and on DEQNet. An authorization is valid for three or five years, depending on the particular VWP general permit. The authorization criteria and exemptions for each general permit are included in Subsections 30 and 40 of each general permit regulation.

A. The Four VWP General Permits

Each VWP general permit is summarized in Table IV-1 *Summary of VWP General Permits* located at the end of this chapter, and is further explained below. Permit writers should also refer to each VWP general permit regulation in Appendix D for information.

1. VWP General Permit Number WP1

The VWP General Permit Number WP1 (9 VAC 25-660-10 et seq.) may be used for a proposed project that qualifies as a "single and complete project" and that incurs **permanent and/or temporary**, **non-tidal** surface water impacts totaling less than one-half acre (0.00 to 0.49). The one-half acre threshold includes the acreage of stream impacts up to 125 linear feet (0.00 to 125.00) on perennial streams and up to 1,500 linear feet (0.00 to 1,500.00) on non-perennial streams. **The permit writer must determine the stream width, and thus the square footage of stream impacts, to ensure the acreage threshold is not exceeded.**

The WP1 may **not** be used for:

- Tidal wetland impacts
- Impacts in wetland areas composed of 10% or more of Atlantic white cedar, bald cypress, water tupelo, or overcup oak in any stratum
- Impacts in wetland areas underlain by histosols
- Impacts in non-tidal wetlands adjacent to tidal waters
- Impacts in wetlands within the Federal Emergency Management Administration (FEMA) designated or approved 100-year floodplain
- Any stormwater management facility located in perennial streams or in waters designated as oxygen- or temperature-impaired
- The construction of an irrigation impoundment on a perennial stream
- Any water withdrawal activities, including dams
- The location of animal feeding operations or waste storage facilities in state waters

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- The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the area is contained within a cofferdam or the work is performed in the dry
- Return flow discharges from dredge disposal sites
- Dredging or maintenance dredging
- The construction of new ski areas or oil and gas wells
- The taking of threatened or endangered species

Additionally, WP1 cannot be used in combination with other VWP general permits to exceed the less-than-one-half acre threshold.

Compensatory mitigation is not required for **temporary or permanent** wetland or stream impacts up to 0.10 of an acre. Compensatory mitigation is required for unavoidable, **temporary or permanent** impacts that total greater than 0.10 of an acre. Compensatory mitigation for **temporary** wetland and stream impacts is accomplished by restoring the impact site to pre-construction conditions (Part I.C.11), unless the permit writer determines that this form of compensation is inadequate. In this case, the permit writer may require compensatory mitigation for temporary impacts as listed below. The compensatory mitigation ratios for **permanent** impacts are 2:1 for wetlands and 1:1 for streams through:

- The purchase or use of board-approved mitigation bank credits within the same hydrologic unit code (HUC), or adjacent unit code within the same rivershed, as the project impacts; or
- Contribution to a board-approved, in-lieu fee fund dedicated to the achievement of no net loss of wetland acreage and function

Lists of available banks and funds are provided on DEQNet\VWP Library.

2. VWP General Permit Number WP2

The VWP General Permit Number WP2 (9 VAC 25-670-10 et seq.) is for utility lines and attendant features that qualify as a "single and complete project" and that **permanently** impact up to one acre (0.00 to 1.00) of **non-tidal** surface waters. **Temporary** impacts are only considered in this threshold if they involve mechanized land clearing of forested wetlands. The one-acre threshold includes the acreage of stream impacts up to 500 linear feet (0.00 to 500.00) on perennial streams and up to 1,500 linear feet (0.00 to 1,500.00) on non-perennial streams. **The permit writer must determine the stream width, and thus the square footage of stream impacts, to ensure the acreage threshold is not exceeded.**

The WP2 generally follows the U.S. Army Corps of Engineers (USACE) Nationwide Permit (NWP) 12. Because DEQ has certified NWP 12 with certain exceptions, utility projects with impacts totaling less than one-half acre will generally receive an NPR Letter (Chapter III). Those utility projects with impacts between one-half and one acre will receive a WP2.

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The WP2 **may** be used for the following proposed activities:

- The construction, maintenance, or repair of utility lines, including outfall structures and the excavation, backfill, or bedding for utility lines
- The construction, maintenance, or expansion of a substation facility or pumping station associated with a power line or utility line
- The construction or maintenance of foundations for overhead utility line towers, poles, or anchors
- The construction of access roads for the construction or maintenance of utility lines including overhead power lines and utility line substations

The WP2 shall **not** be used for the following:

- Impacts in tidal wetlands
- Impacts in wetland areas composed of 10% or more of Atlantic white cedar, bald cypress, water tupelo, or overcup oak in any stratum
- Impacts to surface waters with federal or state, listed or proposed threatened and endangered species, or proposed or designated critical habitat
- Any stormwater management facility
- Any water withdrawal activities, including dams
- The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the area is contained within a cofferdam or the work is performed in the dry
- Dredging or maintenance dredging
- The taking of threatened or endangered species

Additionally, WP2 cannot be used in combination with other VWP general permits to exceed the up-to-one-acre threshold.

Compensatory mitigation is not required for **permanent** wetland or stream impacts up to 0.10 of an acre. Compensatory mitigation is required for unavoidable, **permanent** impacts that total greater than 0.10 of an acre with the exception of permanently maintained access corridors of 20 feet or less through surface waters. Compensatory mitigation for **temporary** wetland and stream impacts is accomplished by restoring the impact site to pre-construction conditions (Part I.C.11). The permit writer cannot require additional compensatory mitigation for temporary impacts when issuing the WP2 authorization. **In the case of the WP2, compensatory mitigation for conversion impacts from mechanized land clearing that change forested wetlands to emergent wetlands is required in an amount sufficient to ensure no net loss of wetland function (see 9 VAC 25-670-30.A.5. and 25-670-70). However, the ratios of compensation below do not apply for conversion mitigation.** The compensatory mitigation ratios for **permanent impacts >0.10 of an acre outside of the 20-foot corridor** are 2:1 for forested wetlands, 1.5:1 for scrub/shrub wetlands, 1:1 for emergent wetlands, and 1:1 for streams through:

- Creation, restoration, the purchase or use of board-approved mitigation bank credits, or a contribution to a board-approved, in-lieu fee fund

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

- Preservation of wetlands, or preservation or restoration of upland buffers adjacent to state waters, when utilized in conjunction with creation, restoration, or the purchase of board-approved mitigation bank credits

3. VWP General Permit Number WP3

VWP General Permit Number WP3 (9 VAC 25-680-10 et seq.) may be used for proposed linear transportation projects, plus all attendant features both temporary and permanent, that qualify as a "single and complete project" and that incur **permanent and/or temporary** impacts up to two acres (0.00 to 2.00) of **non-tidal** surface waters. The "single and complete project" stipulation will apply to each crossing of a separate state water. The two-acre threshold includes the acreage of stream impacts up to 500 linear feet (0.00 to 500.00) on perennial streams and up to 1,500 linear feet (0.00 to 1,500.00) on non-perennial streams. **The permit writer must determine the stream width, and thus the square footage of stream impacts, to ensure the acreage threshold is not exceeded.**

This VWP general permit authorizes activities similar to those authorized by USACE NWP 14, except that the WP3 has a higher acreage threshold. The USACE has added a regional condition for Virginia that limits the maximum impacts authorized by NWP 14 to one-third acre (0.00 to 0.33 acre). Because DEQ has certified NWP 14 with certain exceptions, linear transportation projects with impacts less than one-third acre will generally receive an NPR Letter until DEQ receives SPGP Authority for these activities. This VWP general permit will be very useful in permitting transportation projects with impacts in the one-third acre to two-acre range until that time.

The WP3 shall **not** be used for:

- Impacts in tidal wetlands
- Impacts in wetland areas composed of 10% or more of Atlantic white cedar, bald cypress, water tupelo, or overcup oak in any stratum
- Impacts to surface waters with federal or state, listed or proposed threatened and endangered species, or proposed or designated critical habitat
- Authorization of non-linear features commonly associated with transportation projects, such as, but not limited to, vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars
- Any stormwater management facility located in perennial streams or in waters designated as oxygen- or temperature-impaired
- The construction of an irrigation impoundment on a perennial stream
- Any water withdrawal activities, including dams
- The location of animal feeding operations or waste storage facilities in state waters
- The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the concrete or grout bags are contained within a cofferdam(s) or the work is performed in the dry
- Return flow discharges from dredge disposal sites

- Overboard disposal of dredge materials
- Dredging in marinas
- Dredging of shellfish areas, submerged aquatic vegetation beds, and other highly productive areas
- Federal navigation projects
- The taking of threatened or endangered species

Additionally, WP3 cannot be used in combination with other VWP general permits to exceed the up-to-two-acres threshold.

Compensatory mitigation is not required for **temporary or permanent** wetland or stream impacts up to 0.10 of an acre. Compensatory mitigation is required for unavoidable, **temporary or permanent** impacts that total greater than 0.10 of an acre. Compensatory mitigation for **temporary** wetland and stream impacts is accomplished by restoring the impact site to pre-construction conditions (Part I.C.11), unless the permit writer determines that this form of compensation is inadequate. In this case, the permit writer may require compensatory mitigation for temporary impacts as listed below. The compensatory mitigation ratios for **permanent** impacts are 2:1 for forested wetlands, 1.5:1 for scrub/shrub wetlands, 1:1 for emergent wetlands, and 1:1 for streams through:

- Creation, restoration, the purchase or use of board-approved mitigation bank credits, or a contribution to a board-approved, in-lieu fee fund
- Preservation of wetlands, or preservation or restoration of upland buffers adjacent to state waters, when utilized in conjunction with creation, restoration, or the purchase of board-approved mitigation bank credits

4. VWP General Permit Number WP4

VWP General Permit Number WP4 (9 VAC 25-690-10 et seq.) may be used for recreational facilities, stormwater management facilities, and the developments themselves that qualify as a "single and complete project" and that incur **permanent and/or temporary** impacts up to two acres (0.00 to 2.00) of **non-tidal** surface waters. The two-acre threshold includes the acreage of stream impacts up to 500 linear feet (0.00 to 500.00) on perennial streams and up to 1,500 linear feet (0.00 to 1,500.00) on non-perennial streams. **The permit writer must determine the stream width, and thus the square footage of stream impacts, to ensure the acreage threshold is not exceeded.**

This VWP general permit was modeled after many of the activities authorized by NWP 39 (Residential, Commercial and Institutional Development), NWP 42 (Recreational Facilities), and NWP 43 (Stormwater Management Facilities). The maximum impact acreage for these NWPs is one-half acre. As DEQ has certified these NWPs with certain exceptions, projects that qualify for these NWPs will generally receive a NPR Letter until DEQ receives SPGP Authority for these activities. Because the maximum threshold for WP4 is two acres, DEQ will

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generally use this VWP general permit to authorize qualifying projects in the one-half acre to two-acre range until that time.

Compensatory mitigation is not required for **temporary or permanent** wetland or stream impacts up to 0.10 of an acre. Compensatory mitigation is required for unavoidable, **temporary or permanent** impacts that total greater than 0.10 of an acre. Compensatory mitigation for **temporary** wetland and stream impacts is accomplished by restoring the impact site to pre-construction conditions (Part I.C.11), unless the permit writer determines that this form of compensation is inadequate. In this case, the permit writer may require compensatory mitigation for temporary impacts as listed below. The compensatory mitigation ratios for **permanent** impacts are 2:1 for forested wetlands, 1.5:1 for scrub/shrub wetlands, 1:1 for emergent wetlands, and 1:1 for streams through:

- Creation, restoration, the purchase or use of board-approved mitigation bank credits, or a contribution to a board-approved, in-lieu fee fund
- Preservation of wetlands, or preservation or restoration of upland buffers adjacent to state waters, when utilized in conjunction with creation, restoration, or the purchase of board-approved mitigation bank credits

The WP4 shall **not** be used for:

- Impacts in tidal wetlands
- Impacts in wetland areas composed of 10% or more of the following species in any stratum: Atlantic white cedar, bald cypress, water tupelo or overcup oak
- Impacts in wetland areas underlain by histosols
- Impacts to surface waters with federal or state, listed or proposed threatened and endangered species, or proposed or designated critical habitat
- Any stormwater management facility located in perennial streams or in waters designated as oxygen- or temperature-impaired
- The construction of an irrigation impoundment on a perennial stream
- Any water withdrawal activities, including dams
- The location of animal feeding operations or waste storage facilities in state waters
- The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the area is contained within a cofferdam or the work is performed in the dry
- Return flow discharges from dredge disposal sites
- The overboard disposal of dredge materials
- Dredging in marinas
- Dredging of shellfish areas, submerged aquatic vegetation beds, and other highly productive areas
- Federal navigation projects
- The construction of new ski areas or oil and gas wells
- The taking of threatened or endangered species

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Additionally, WP4 cannot be used in combination with other VWP general permits to exceed the up-to-two-acres threshold.

B. Timeframes

The permit writer must adhere to the following review and process timeframes for applications qualifying for a VWP general permit, as per either the VWP statute, the VWP Permit Program regulation, and/or program guidance. Each timeframe is discussed in detail throughout this chapter.

The permit writer should review the application for completeness and request additional information, if necessary, within **15 calendar days** of receiving the application at the appropriate DEQ office. Although this 15-day period is not a regulatory timeframe, it is a program goal and will aid the permit writer in achieving the **45-calendar day regulatory deadline** that he/she has to either approve, approve with conditions, or deny coverage of a VWP general permit authorization, as per the VWP permit regulations. If one of these respective actions is not initiated or completed by the 45th day, the authorization is automatically issued.

Remember that a Conceptual Compensation Plan is required in order for an application to be considered complete (9 VAC 25-210-80.B.1.k(4)(c)). Therefore, the review of the conceptual plan occurs during the review of the application. Review of the Final Compensation Plan must occur within **30 calendar days** of receipt. The permit writer should make the appropriate comments in writing to the permittee within this time frame or the Final Compensation Plan is automatically approved as written.

C. Registration Statement and Joint Permit Application Review

The permit writer is responsible for reviewing the application to determine that it is administratively and legally complete. The applicant may file either the Registration Statement or a JPA with the required information when applying for a VWP general permit. The Registration Statement and JPA can be found on DEQNet\VWP Library or on http://www.deq.state.va.us. The exact requirements for notification are found in Subsection 60 of each VWP general permit regulation (Appendix D). They differ slightly depending on the applicable VWP general permit.

1. Initial Review

The 45-calendar day processing clock is initiated on the date that the appropriate DEQ office receives a **complete** application. The requirements of a complete application are further defined in each general permit regulation and include the deposit of the permit application fee by DEQ Accounting. The processing clock is stopped and reset to zero until the applicant submits all of the requested additional information and the permit application fee is deposited by Accounting.

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Revised 11/30/2001; 5/1/2002

During the initial application review, the permit writer should also conduct a technical review of the information to determine that the proposed activities comply with the VWP Permit Program regulation and general program guidance memorandums, many of which can be found on DEQNet. Technical review of the application should address the project impacts as they relate to the potential impairment of state water quality or cumulative impacts to water quality and fish and wildlife resources. Although each project will likely be different, the following major points should be carefully reviewed and considered:

- Have the impacts to wetlands and/or waterbodies been completely identified and properly classified (emergent, scrub/shrub, forested, open water; perennial versus intermittent)? Is the stream width given? Is the application being submitted for a VWP general permit when there are tidal wetland impacts?
- Have the impacts been avoided and minimized to the greatest extent practicable? Are there less environmentally damaging alternatives that are also practicable?
- Are the impacts to water quality and instream beneficial uses permanent or temporary?
- Are the impacts severe enough to violate any numeric water quality standard or the general standard?
- Will the impacts cause or contribute to a significant impairment of state waters or fish and wildlife resources?

The technical review should also focus on whether the proposed compensation for unavoidable impacts provides a no net loss of wetland acreage and function. The permit writer should refer to Appendix B for detailed guidance concerning compensatory mitigation. A source of information concerning wetland functions and values is a self-guided training module from the EPA at http://www.epa.gov/watertrain/wetlands/text.html. During the technical review, the permit writer should answer the following:

- Are compensatory mitigation ratios appropriate?
- Was the option of on-site, in-kind compensation addressed? If not, was an adequate alternatives analysis prepared?
- Is the proposed compensation site within the appropriate Hydrologic Unit Code (HUC) and watershed?
- If preservation is proposed, is it coupled with restoration or creation?
- Has stream compensation been addressed, when appropriate?

2. VWP Permit Application Review Checklist

The VWP Permit Program has developed the VWP Permit Application Review Checklist (hereafter, "checklist") for determining if a VWP general permit application is complete. A copy of the checklist is included at the end of this chapter. The checklist is divided into the following seven sections: General Information; Project Impacts-General; Project Impacts-Detailed; Delineation; Compensation; JPA Appendices; and Fee Payment.

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The checklist is designed to assist the permit writer in determining the minimum requirements of an application. During application review, a proposed scope of work may warrant additional information that is not included on the checklist. Conversely, not all information listed on the checklist is required for every permit. The permit writer should have a clear understanding of the scope of work of the project and ensure that the required information for the specific scope of work is included in the application.

3. Impacts Less Than One-Tenth Acre

If the project impacts are less than one-tenth of an acre (0.00 to 0.104 of an acre), the permit writer should ensure that Sections I, II, and V of the Registration Statement are completed. Sections III and IV are not required, and thus, the Registration Statement is known as an Abbreviated Registration Statement. A project that impacts less than one-tenth of an acre and is not already covered by one of the § 401-Certified, USACE nationwide permits will be considered to be a Reporting-Only VWP general permit. The permit writer should contact Priscilla Royal via e-mail at the DEQ Central Office to obtain a DEQ-specific permit number for use in updating CEDS with Reporting-Only project information (see Appendix C).

Applicants for Reporting-Only projects will receive a letter stating that the project is covered under the appropriate VWP general permit. The Notice of Complete Application Letter at the end of this chapter can be revised for this purpose. These projects do not require a fee or compensatory mitigation.

The permit writer should conduct a threatened and endangered (T&E) database search when issuing the above letter to determine if a threatened or endangered species is likely to be present at the project site. If a species is likely to be present at the site (versus just within the vicinity of the project site), further verification should be obtained by contacting the Virginia Department of Game & Inland Fisheries (DGIF) and Department of Conservation & Recreation (DCR) in accordance with Section E.2. below. Should there be a T&E issue on the proposed project, a T&E Species Review Results Letter must be sent to the applicant instead (see sample letter at end of this chapter). This letter should explain the reason that the project does not qualify for a VWP general permit. The applicant will be working at his/her own risk of violating state law should construction in jurisdictional areas begin prior to receiving one of the letters above.

If the project impacts are greater than one-tenth of an acre, continue with the review process as outlined in the following paragraphs.

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4. Incomplete Applications

Using the checklist at the end of this chapter will aid the permit writer in determining if an application is **complete**, as per the VWP permit regulations. When an application is determined to be incomplete, the permit writer should send a letter to the applicant requesting the additional information. An example Additional Information and Permit Application Fee Request Letter, including an Additional Information Request Summary, is provided at the end of this chapter. The request letter should be mailed to the applicant within **15 calendar days** of application receipt. If the appropriate permit application fee did not accompany the application, and deposit of the fee has not been confirmed by Accounting, this should also be addressed in the letter by including the Permit Application Fee Request Form. This form can be obtained from the DEQ web site http://www.deq.state.va.us/wetlands or DEQNet. *Note: This form incorrectly instructs payments to be made out to 'Commonwealth of Virginia'. Payments should be made out to 'Treasurer of Virginia'.* The permit writer may contact the applicant by telephone to discuss the requested information but should also mail a letter to document the request.

The permit processing clock is reset to zero as long as the permit writer mails the Additional Information and Permit Application Fee Request Letter within the **15-calendar day** timeframe. Once the requested information is received, the permit writer should review it within 15 calendar days and determine if the application is now complete. If all of the required information has been received and the permit application fee has been deposited by DEQ's accounting office, then the application is considered to be complete and the processing clock begins again. If the application is still not technically complete, the processing clock remains at zero, and the permit writer should call the applicant to discuss the status of the additional information and/or the permit application fee.

Several Additional Information and Permit Application Fee Request Letters may be needed (each within the 15-calendar day review period). If two or more letters are prepared, the permit writer should distinguish each request by using a consecutive numbering system.

5. Suspension of Review Process

The VWP permit staff should avoid having to suspend the review of a permit application if at all possible. In the event the applicant fails to respond to the permit writer's requests for additional information, within 30 days of the latest request, or the applicant fails to express that they are working on the request and expect to submit the information within a reasonable time period, the permit writer should contact the applicant via telephone to discuss the requested information and notify his or her supervisor of the situation. If no resolution results, the permit writer should send a Notice of Application Suspension Letter via certified mail, as per DEQ policy (see Chapter V for example of review

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suspension letter). Whereas the Additional Information and Permit Application Fee Request Letter temporarily suspends the permit processing clock, the Suspension Letter notifies the applicant that DEQ is stopping work permanently until such time that all the requested information is received. The applicant is not required to agree to the action or submit a letter saying that he or she is withdrawing the application. The review suspension letter should be copied to the appropriate USACE and Virginia Marine Resources Commission (VMRC) personnel and the VWP permit file (see DEQNet\VWP Library for USACE contact information).

6. Site Visits

The permit writer should attempt to conduct a site visit for any project qualifying for a VWP general permit that impacts more than one-half acre, or as deemed necessary by the permit writer. Both the impact site(s) and compensation or restoration site(s) may warrant a site visit to fully understand the proposed scope of work.

The permit writer should document existing site conditions with notes and photographs pertinent to proposed the impact areas and adjacent waterbodies or potential areas of concern, following the guidelines outlined below. Following these guidelines will assist DEQ in maintaining legally-defensible permit files:

- The photographs should be clearly labeled with the permit number, impact site name or number, date and time, name of the person taking the photograph, directional view, and a brief description of the subject.
- Site observation notes should be made in a bound field book that has consecutively numbered pages. The site name, permit number (when applicable), and the date should be listed on all pages used during each site visit. Each individual observation should list the time that the observation was made and a description of the observation. The name, title, address and telephone number of anyone interviewed during the site visit should be listed in the field book. Approximate locations of any photographs, their directional views, and their descriptions should also be listed in the field book. Upon returning to the office, the permit writer should copy the appropriate field book pages for that site visit, and place the copies into the permit file.

D. Permit Application Fees and Refunds

The fee for projects qualifying for a VWP general permit is set by regulation and cannot be prorated due to the time period that these permits are valid. **Since permit application fees are subject to change, the permit writer should consult Regulation 9 VAC 25-20 et seq. for current fee amounts and/or check the DEQ web site at http://www.deq.state.va.us for updates to these fees.** DEQ officially requests the appropriate fee using the Permit Application Fee Form (hereafter "fee form"), which is included as an original attachment to the Additional Information and Permit Application Fee Request Letter and can be obtained from the DEQ web site

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Revised 11/30/2001; 5/1/2002

ftp://ftp.deq.state.va.us/pub/forms/water/feeform.doc or DEQNet. Alternatively, the applicant may submit the fee directly to Accounting at the time of application. When the fee form is used, the permit writer should include his or her name and phone number at the bottom of the form and should complete the following sections: Type of Permit Applied For, Type of Action, Amount of Fee Submitted, Existing Permit Number (if applicable), and the DEQ Office to Which Application Submitted. The applicant is responsible for completing the remaining information and submitting the fee form and payment to Accounting in central office.

Should an applicant return the fee form and/or payment to the permit writer rather than to Accounting, the permit writer should attempt to complete the fee form and send it along with the check to Accounting to ensure that the record of payment is properly logged. Once the fee has been deposited, Accounting will complete the "For DEQ Use Only" section of the fee form and may notify the permit writer by forwarding a copy of the fee form to his or her attention. In lieu of this notification, the permit writer should contact Accounting to verify the official date of deposit.

The Virginia Department of Transportation (VDOT) processes an interagency transfer (IAT) of funds to DEQ from a VDOT-established escrow account. VDOT prepares and submits a completed fee form and an Inter-Agency Transfer (IAT) form that includes their expenditures coding information. If the permit writer receives these documents directly, he/she should make copies for the permit file and forward the originals to the DEQ Accounts Receivable Manager at central office. The Accounts Receivable Manager handles debiting the permit application fee from the VDOT escrow account. Accounting then will send a copy of the fee form with the recorded payment information back to the permit writer. This copy will serve as confirmation that the permit application fee has been deposited.

Other state agencies **may** process an interagency transfer (IAT) by submitting a completed fee form and an IAT form to DEQ's Accounting office. Once again, if the permit writer receives these forms, he/she should make copies for the permit file before forwarding them to Accounting. The responsibility to initiate the funds transfer lies with the outside agency rather than DEQ. DEQ's Accounting office will verify that the funds have been transferred using the CARS database. Accounting will then send a copy of the fee form with the recorded payment information back to the permit writer. This copy will serve as confirmation that the permit application fee has been deposited.

An application is considered incomplete until all required information has been received and the permit application fee has been deposited. **Unlike the process for a VWP individual permit, the 45-calendar day processing clock does not start until the date that the permit application fee is been deposited.**

The permit writer may initiate a refund of the permit application fee in certain cases, such as when the general permit changes to an NPR situation. The refund is initiated by completing a Permit Fee Refund Request Form and submitting the form to the DEQ Accounting Manager at central office. This form can be obtained from DEQNet at:

http://deqnet/docs/main/admin/admin_policy/fee_policy_revised_final_6_6_01.doc. The form is included as Attachment C to Agency Policy Statement No. 4-99. In most cases, check the 'an incorrect fee amount was determined during the permit application review' option when completing the form. If questions arise concerning the refund process, the permit writer should contact Accounting to coordinate the refund.

E. Notifications

1. Notice of Complete Application

Once the permit application is deemed complete, including the deposit of the fee by Accounting, the permit writer should send the applicant a Notice of Complete Application Letter (see example at the end of this chapter). This letter should clearly reference the date that the application was considered complete, which is the date that the **45-calendar day** processing clock was initiated.

2. Coordination with Other Agencies

Under the VWP general permits, the Registration Statement is not circulated to other state agencies involved in the JPA process unless the check for T&E species detects a federal or state, listed or proposed species at the project site (versus just within the vicinity of the project site).

T&E Species Review for VWP General Permit Authorizations

To ensure compliance with the regulatory timeframes, the permit writer should perform the initial screening reviews for the presence of T&E species, native trout areas, and anadromous fish areas during the initial **15 calendar-day** review process. The review for T&E species and the resolution of any related issues are not required in order for the application to be **complete**. However, these screenings will allow the permit writer to determine if further coordination is needed and to keep on track with the 45-calendar day deadline. The permit writer should note that coordination with the agencies is required for federal and state, listed and proposed T&E species prior to the issuance of the VWP general permit authorization.

The T&E species review is performed using the DGIF's web-based data and the DCR-Division of Natural Heritage (DNH) maps. *Note: Once DCR-DNH has its searchable web-based data on-line, DCR-DNH data searches can be performed in a similar way as the DGIF data searches.* Distances for these data searches will be a two-mile radius (based upon the project's latitude/longitude) for DGIF and a one-minute block (approximately one square mile) on a United States Geological Survey (USGS) 7.5-Minute Series topographic map for DCR-DNH. The data review should be conducted as follows:

To perform the data search for DGIF:

- Using a web browser, go to the DGIF web page http://vafwis.org/perl/vafwis.pl/vafwis. Click the "Login" button, and enter the appropriate Login Name and Login Password under "Registered Users" (see Appendix F). Once logged into the database, a User Manual for the Virginia Fish & Wildlife Information Service (VaFWIS) can be accessed to assist in conducting data searches.
- Click "Geographic Search". Enter the latitude/longitude for the project site or the "Geographic Names" button to search by nearby place names. If the permit writer chooses the search by name option, clicking on the project site on the resulting map will provide the center of the radius to be searched. After the project site has been pin-pointed by either method, click the "Report" button.
- Choose the "Initial Project Assessment Report" option and ensure that the search distance is two miles. Click "Submit".
- Print a hard copy of the Initial Project Assessment report for the VWP general permit file.
- Following the DGIF "Agency Coordination Guidelines" and "Agency Coordination Requirements (on DEQNet), review the data for a *hit*, or species having a "Yes" under the "Confirmed" column.
- If there are no *hits* for the study site reported in the DGIF database, the permit writer should document the search results on the VWP General Permit Issuance Fact Sheet (as described below).
- If a *hit* is present on the COLLECTIONS or CWB databases, or if a wild trout, mussel, or anadromous fish *hit* occurs, then complete the Threatened & Endangered Species Consultation Form, attach the Initial Project Assessment Report and a location map for the site, and fax the package to Brian Moyer (804-367-2427). Also notify him by e-mail that the package has been faxed (bmoyer@dgif.state.va.us). A blank T&E Species Consultation Form can be obtained from DEQNet\VWP Library, and an example of a completed form is provided at the end of this chapter.

To perform the data search for DCR-DNH:

- Compare the project location map from the permit application with the appropriate county map from DCR-DNH. Each DEQ regional office has a set of these maps.
- If it appears that the project is located within any shaded area on the DCR-DNH map, then complete the Threatened & Endangered Species Consultation Form and fax or e-mail the form to Rene Hypes (srhypes@dcr.state.va.us), along with a location map for the site.
- If the project is located outside of any shaded area on the DCR-DNH map, document this in the file, including the reason(s) why further consultation is not necessary.

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Complete the T&E Species Consultation Form as thoroughly as possible to expedite reviews by DGIF and DCR-DNH. The agencies have **15 calendar days** to respond from the date they receive a T&E Species Consultation Form, based on a Memorandum of Agreement signed by DEQ and these agencies. If the agency does not respond within 15 days, the permit writer should call the agency contact to discuss the search results. The potential agency responses and subsequent DEQ actions are outlined below:

- If an agency issues a statement that T&E issues are resolved to that agency's satisfaction, then the permit writer continues the VWP general permit application review process.
- If a recommendation is received, such as a time-of-year (TOY) restriction, then the permit writer should insert the recommendation as a new section called *Authorization Note(s)* and insert this section after the *Activity Description* section on the VWP General Permit Authorization Cover Page. The permit writer should use the Transmittal Letter to alert the permittee to any added recommendations. If comments are received from agencies that express concern but offer no recommendations, the permit writer should not include them in the Cover Page or Transmittal Letter and should continue the application review process.
- If an agency determines that a federal or state, listed or proposed T&E species may be adversely affected by the project, or if the agency makes a request for a species/habitat survey, the permit writer has two options: 1) The permit writer may request that the applicant withdraw the permit application and then resubmit the application once the T&E issues are resolved, thus resetting the review process clock to day zero; or 2) The permit writer may elevate the project to the VWP individual permit level, thus resetting the review process clock to day zero. With the latter option, a new application is only required if the project has changed or there is not enough information to satisfy the requirements for a complete VWP individual permit application. The general permit application fee will not be reimbursed for either option, and the permit application fee for an individual permit will need to be submitted if the project is elevated to that level.

  When the above situation occurs, the permit writer should first discuss the project with his/her supervisor. The permit writer should then prepare a Threatened and Endangered Species Review Results Letter (example at the end of the chapter) for the applicant that details the two options. The permit writer is also encouraged to call the applicant to discuss the situation. The letter above should include a note to the applicant that authorization under the general permit will be denied if the applicant requests the existing permit application processing to continue. If the project is withdrawn or elevated to a VWP individual

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permit, CEDS should be updated in accordance with the guidelines in Appendix C.

Coordination for Compensatory Mitigation

Under the VWP general permit regulation, an applicant must provide a conceptual compensatory mitigation plan as part of the application, with the development of a final compensatory mitigation and monitoring plan occurring after the authorization is issued. Due to regulatory timeframes, DEQ permit staff will have to decide very early whether a conceptual compensatory mitigation plan is acceptable. DEQ wants to avoid situations where the agency requires the applicant to adopt one compensatory mitigation package, and the USACE requires the applicant to adopt something different.

In some cases, the permit writer may have to decide on a conceptual plan before the USACE has given a proposal close scrutiny. Be aware that the VWP general permit regulations have minimum standards for compensatory mitigation that are at least as stringent as traditional USACE requirements. Regional offices are encouraged to contact the USACE if problems are anticipated with the conceptual plan in order to avoid conflicting approvals (see DEQNet\VWP Library for USACE staff contacts).

DEQ recognizes that the expedited time frames may result in non-identical state and federal compensatory mitigation requirements. If this happens, DEQ cannot modify the VWP general permit authorization pertaining to the conceptual mitigation plan. However, the permittee may submit changes to the Final Compensation Plan based on USACE requirements for DEQ approval (Part II.A.3. of the VWP general permit authorization).

F. VWP General Permit Authorization Issuance

Once the permit writer determines that all of the required information has been received, such as the USACE wetland delineation confirmation and permit application fee, he/she should prepare a VWP General Permit Authorization Package for the VWP Permit Manager or his/her designee to review and sign. The VWP General Permit Authorization Package consists of:

- a Routing and Concurrence Form
- the VWP General Permit Authorization Fact Sheet
- VWP General Permit Authorization Transmittal Letter, including appropriate Compliance Summary Sheet
- the VWP general permit authorization, including the Permit Authorization Cover Page and the permit conditions

The Routing and Concurrence Form, found on DEQNet\VWP Permit Program and at the end of this chapter, should be signed by the package reviewers before the Regional Director (or person with delegated signature authority) signs the permit authorization.

The permit writer should modify the Fact Sheet as appropriate and obtain the signature of the VWP Permit Manager or his/her designee. An example Fact Sheet is located at the end of this chapter.

The Transmittal Letter is drafted by the permit writer and is signed by the VWP Permit Manager or his/her designee. A sample Transmittal Letter is provided at the end of this chapter. One of the sample Compliance Summary Sheets should be modified and attached to this letter, depending on which VWP general permit authorization is being issued. Sample summary sheets are also provided at the end of this chapter.

VWP general permit authorization includes the Permit Authorization Cover Page and permit conditions.

- The Permit Authorization Cover Page is printed on letterhead and is ultimately signed and dated by the DEQ Director or designee. The Permit Authorization Cover Page includes the authorization effective and expiration dates, permittee name and address, activity location, and a brief description of the site activities, including a summary of the type and acreage and/or linear feet of impacts. As the VWP general permits are defined by the VWP general permit regulation, the permit writer cannot change the conditions of the VWP general permits. Rather, the permit writer may add specific conditions or recommendations, made by DEQ or other federal and state agencies, within an *Authorization Note(s)* section on the VWP general permit authorization cover page. These conditions or recommendations cannot contradict the special or general conditions given in Parts I through III of the applicable VWP general permit authorization. The permit writer should summarize the added condition(s) in the *Authorization Note(s)* section on the Permit Authorization Cover Page and also in the Transmittal Letter. A sample Permit Authorization Cover Page is included with the authorizations in Appendix E. The permit authorization must be issued (signed by the appropriate designee) within **45 calendar days** of the application being deemed complete.
- **Each VWP general permit has distinct, standard conditions (identified as Parts I, II, and III), which cannot be altered or contradicted by the permit writer**.

Once the Permit Authorization Cover Page has been signed, the permit writer should ensure that the correct effective and expiration dates are completed. Note that **the effective date is the date that the Permit Authorization Cover Page is signed**.

The permit writer then sends the Transmittal Letter, the original Permit Authorization Cover Page, and Parts I, II, and III to the permittee via Certified Mail. Copies are sent to the appropriate USACE and VMRC personnel via regular mail. The Routing and Concurrence Form and the Fact Sheet are internal documents and should not be included.

Finally, the permit writer must:

- Complete all CEDS information (see Appendix C) and ensure that the file is transferred from "application" to "active" status in CEDS
- Ensure that all pertinent information is included and organized in the permit file
- Begin compliance monitoring as detailed in Chapter VII

G. Automatic Authorizations

As per the VWP permit regulations, the VWP general permit authorization is automatically issued if the permit writer misses the 45-calendar day processing deadline. If this happens, the permit writer should discuss the situation with his or her supervisor. In addition, the permit writer must still prepare the authorization for the applicant. Note that the effective date is the date corresponding to the 45th day from when the application was considered complete. The permit package should only include the Transmittal Letter and the VWP general permit authorization (Cover Page and conditions). The permit writer cannot add any recommendations or special conditions as *Authorization Note(s)* on the Cover Page in these instances.

H. Denial of Coverage

Technically, DEQ may deny coverage under the VWP general permits for activities that cause, may reasonably be expected to cause, or may contribute to a violation of water quality standards. Permit writers should refrain from denying a permit application in the technical sense. Instead, the permit writer should communicate to the applicant that the proposed activity does not **qualify** for the particular VWP general permit for which the application was submitted. The Notice of Tentative Decision to Deny Application Letter at the end of Chapter V may be modified to outline the possible options an applicant has, such as resubmitting the application for another type of VWP general permit or for a VWP individual permit.

The permit writer may initiate a refund of the original permit application fee in these cases by completing a Permit Fee Refund Request Form as described in Section D of this chapter.

I. Changes to VWP General Permit Authorizations

This section describes the changes that may be warranted to an issued VWP general permit authorization. An authorization can qualify for a Notice of Planned Change (similar to a Modification), a Continuation of Coverage (referred to as a Re-Application in the regulations and similar to an Extension), or Termination.

There are no regulatory timeframes for the review of a VWP general permit authorization change request. However, the permit writer should strive to review each request, determine if additional information is required to process the change, and prepare and submit a request letter summarizing the requested additional information within **15 calendar days** of receipt of the request. Once all information has been received, the

permit writer should attempt to prepare the required documentation within **45 calendar days**. **The permit writer should note that database searches for T&E species are not required for any change to the VWP general permit authorization.**

If the requested authorization change is not in accordance with the regulations, the permit writer should prepare a letter stating the reason for denial. The letter is reviewed by the permit writer's supervisor and is signed by the Regional Permit Manager or designee.

1. Authorization Notice of Planned Change

In accordance with the various VWP general permit regulations, the permittee may request a Notice of Planned Change to cover additional surface water impacts meeting the criteria given below. **The VWP general permit authorization cannot be modified for any other reason, and a Notice of Planned Change is not required for a decrease in wetland or stream impacts.** The following criteria must be met to modify an authorization:

- The cumulative increase in acreage of wetland impacts is not greater than one-quarter acre (same permanent/temporary impact conditions as for the notification requirements)
- The cumulative increase in stream impacts is not greater than 50 linear feet
- All additional impacts are fully compensated
- The final impact total cannot exceed the maximum impact limit authorized under the VWP general permit (both total acreage and linear foot thresholds)

For example, the permit authorization of a project qualifying under a VWP General Permit Number WP4, with an authorized wetland impact of 0.75 of an acre and 100 linear feet of stream channel impacts, can be modified so that up to one acre of wetland impacts and up to 150 linear feet of stream impacts are authorized. **The permit writer should note that the impact increase limits are cumulative.** Therefore, the permittee could request the increase in the wetland impacts of 0.05 of an acre over five different times. Under this example, the permittee cannot request changes that exceed the two-acre maximum threshold for a VWP General Permit Number WP4. If the additional impact total exceeds the threshold limits, a VWP individual permit would be required for the additional acreage **above** that of the threshold limits.

A request for a Notice of Planned Change must be in writing and signed by the permittee or agent. Each Notice of Planned Change request should include, at a minimum:

- A detailed description of the proposed change(s) including (as appropriate) the exact site location of the required change(s) (for example, Station Number, Impact Area, etc.)
- Justification for the proposed change(s)
- Detailed sketches of the proposed activities and/or photographs documenting existing conditions that warrant the change(s), if applicable
- Brief description of the proposed compensation for additional impacts

If additional information is required to complete the Notice of Planned Change, the permit writer should prepare an Additional Information Request Letter as described earlier in this chapter. A Notice of Planned Change does not require submittal of a fee. Although there are no regulatory deadlines concerning this type of permit action, the permit writer should follow up with the applicant if no response is received within 30 calendar days.

Once all of the requested information has been received, the permit writer should prepare the Notice of Planned Change Approval Letter within **45 calendar days**. This letter should document the new impacts, the authorization totals, and compensation requirements. An example Notice of Planned Change Approval Letter is included at the end of this chapter. The letter should be reviewed by the permit writer's supervisor but signed by the Regional Permit Manager or designee. The permit writer should attach the letter to the original authorization in the permit file. No other documents or changes to the permit authorization are required.

DEQ prefers that the proposed compensation for additional impacts be the same as for the permitted impacts. If the compensation approved for the original impacts is not feasible for the impacts authorized under a Notice of Planned Change, the applicant can propose other options including the use of an approved in-lieu fee fund or compensation bank.

Due to the change in impacts, the Notice of Planned Change should be tracked in CEDS by initiating the "Modification" function and updating the information (see Appendix C).

2. Authorization Continuation of Coverage

In accordance with Part I, Section B of each VWP general permit regulation, the permittee may request a Continuation of Coverage under the existing VWP general permit authorization.

A Continuation of Coverage may be required if a portion of the authorized impacts has not yet occurred, or any permit requirement (for example, compensatory mitigation) has not been completed before the authorization expires.

In the former case, the permittee must submit a new general permit application fee. The new authorization will be for those impacts only and any applicable mitigation that was formerly authorized.

In the latter case, the permittee must submit a new or updated Registration Statement and documentation as to why the Continuation of Coverage is required (for example, compensatory mitigation requirements have not been completed).

A permit application fee is not required in this situation.

In either case, the applicant is responsible for submitting the request at least 60 calendar days prior to the authorization expiration date in accordance with VWP general permit authorization condition Part II, Section A.16 (for WP2, 3, and 4 only). The permit writer should attempt to contact the permittee prior to the authorization expiring, either by telephone, electronic mail, or written letter, as a courtesy reminder. The Continuation of Coverage will only extend the expiration date of the authorization by three years for VWP General Permit Numbers WP1 and WP2, and by five years for VWP General Permit Numbers WP3 and WP4.

If the Registration Statement is incomplete or lacking information, the permit writer should prepare an Additional Information Request Letter as described earlier in this chapter. Although there is no regulatory processing time period for the letter or response, the permit writer should attempt to review each request, determine if additional information is required, and if necessary, prepare and submit a letter summarizing the additional information required within **15 calendar days** of receiving the Registration Statement. The permit writer should also follow up with the applicant if no response is received within 30 calendar days.

Once all requested information has been received, the permit writer should attempt to prepare a Continuation of Coverage Approval Letter, noting the change in the authorization expiration date, within **45 calendar days**. An example of this letter is provided at the end of this chapter. The letter should be reviewed by the permit writer's supervisor but signed by the Regional Permit Manager or designee. The permit writer should attach the letter to the original authorization in the permit file. No other documents or changes to the Permit Authorization Cover Page are required.

The Continuation of Coverage should be documented in CEDS as described in Appendix C.

3. Termination of Authorization

In accordance with the VWP general permit regulations, the permittee shall submit a notice of termination to DEQ within 30 days of completing permitted activities. The following information must be provided in the notice:

- Name, mailing address, and telephone number of the permittee
- Name and location of the activity
- The VWP permit authorization number
- The following certification: "I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the

activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit."

The permit writer should also note that the DEQ board can terminate an authorization under specific conditions, including, but not limited to:

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

If such a case arises, the permit writer should immediately discuss the situation with his or her supervisor. If an authorization merits Termination, the permit writer should follow the procedures outlined in Chapter VI for Termination and complete the CEDS information as discussed in Appendix C.

J. Frequently Asked Questions

Q: What should I do if I need to issue a permit prior to the USACE making it's final permit determination?

A: Process the application under the VWP permit type that best covers the proposed activity. Collect the permit application fee. If the USACE later makes a final determination that would have negated the need for a VWP permit, then nothing needs to be done by the permit writer. Do not refund the fee, and continue with the permitting process. The VWP permit can be issued independently of the USACE permit, however, DEQ should strive to avoid permit duplication whenever possible.

Q: How should I process a Registration Statement for an activity that qualifies for a USACE nationwide or regional permit for which DEQ has issued or waived § 401 Certification?

A: Process the Registration Statement as an NPR, until such time that DEQ receives SPGP Authority.

Q: Should permit writers afford the same level of review to applications that will receive an NPR status (for example, impacts up to one-tenth acre) as applications that will

receive a VWP general permit, in terms of site visits or determining the application's completeness?

A: No. Some discretion is required. For example, if the applicant has a confirmed delineation and the amount of the impacts are less than 0.1 of an acre, then a site visit will not be required. Nor would a compensatory mitigation plan be required. However, DEQ does need to know the amount of the impacts and the location in order to know if the project qualifies for a USACE general permit. DEQ also needs the location in order to conduct the threatened and endangered species check. DEQ is responsible for tracking the amount and location of impacts in order to assess how it is meeting the goal of no net loss.

Q: What should I do if the applicant has submitted a check and the project results in an NPR?

A: If the check is received by the permit writer, return the check to the applicant. If the check is received by DEQ Accounting, the permit writer may initiate a refund of the permit application fee by completing a Permit Fee Refund Request Form and submitting the form to the DEQ Accounting Manager at central office. This form can be obtained from DEQNet at http://deqnet/docs/main/admin/admin_policy/fee_policy_revised_final_6_6_01.doc. The form is included as Attachment C to Agency Policy Statement No. 4-99. If questions arise concerning the refund process, the permit writer should contact Accounting to coordinate the refund.

Q: What if a reporting-only applicant insists on getting the VWP general permit authorization despite the fact that he/she is not required to get it?

A: Direct the applicant to print out the VWP general permit regulations from http://www.deq.state.va.us/wetlands as documentation. No permit authorization cover page should be issued.

Q: What happens when, after the VWP general permit authorization is issued, the USACE confirms a different amount of impacts than what the applicant indicated in the Registration Statement?

A: DEQ will consider this a "planned change", which is subject to the rules under Subsection 80 of each VWP general permit regulation. If the delineated impacts exceed the threshold limits of that particular VWP general permit, then a VWP individual permit must be issued. Remember, VWP general permits for single and complete projects may not be stacked to surpass the impact limits of a single VWP general permit.

Q: What happens if I miss the 15-day review deadline to request additional information?

A: Although the 15-day review period is DEQ's goal, it is not a statutory requirement for **general** permits. Therefore, the permit writer may still request additional

information. The permit writer should strive to review all applications within 15 days for program consistency.

Q: What happens if I haven't asked for any additional information and I miss the 45-day mark?

A: If the application is complete, the VWP general permit authorization is automatically issued. DEQ's practice will be to give the applicant a paper copy of the VWP general permit authorization, despite the fact that DEQ is late with its request for additional information. The permit package need only include the Transmittal Letter and the VWP general permit authorization. The permit writer cannot add any special recommendations or conditions as *Authorization Note(s)* on the General Permit Authorization Cover Page. Note that the permit writer will still be able to comment on the Final Compensation Plan.

Q: Can an applicant determine which VWP general permit to use in order to get lower compensatory mitigation (for example, apply for VWP General Permit Number WP4 instead of Number WP1)?

A: Yes. However, the applicant that uses VWP General Permit Number WP1 does not have to demonstrate that on-site compensatory mitigation is not practicable. That applicant may just purchase the credits for the required compensatory mitigation. The applicant who chooses VWP General Permit Number WP4 must prove that on-site compensatory mitigation is impracticable before using an approved bank or an approved in-lieu fee fund. That applicant may do the compensatory mitigation at an approved bank or in the form of a contribution and thus receive the lower compensation ratios, but they must perform the practicability study first.

Q: Can the VWP general permits be stacked in order to authorize greater impacts than a single VWP general permit would allow?

A: No. An authorization cannot be issued in combination with other VWP general permit authorizations (existing or applications) in order to exceed the maximum acreage or linear foot thresholds of the VWP general permit authorization with the lowest thresholds.

Q: Are applicants required to demonstrate ownership of the project site?

A: No. An applicant does not need to be the owner of the project site. And, neither the VWP individual or general permit conveys any property rights to the applicant (see Part III.E. of the VWP general permit General Conditions).

Q: What are the timeframe restrictions if the applicant submits only partial information that was requested in the Additional Information and Permit Application Fee Request Letter (for example, applicant provides only two of four requested items)?

A: The 45-calendar day processing clock will start only after all information detailed in the Additional Information and Permit Application Fee Request Letter has been received, thus completing the application. If all requested information was not received, the permit writer should call the applicant to discuss the missing information.

Q: If there is a reporting-only Registration Statement, can the applicant start work before receiving the authorization letter?
A: Technically no, but DEQ will not issue a Notice of Violation for starting since the applicant is following proper reporting procedures.

Q: What should the permit writer do if an activity permitted under a VWP general permit results in a decrease of impacts, and the permittee wants to decrease the required mitigation?
A: This situation cannot be handled as a Planned Change. The permittee will still need to provide the compensation required in the issued permit authorization, since the conditions of the VWP general permit authorization cannot be changed once issued. Under the VWP individual permit, a decrease could occur because there is not such restriction on changing the special conditions of the permit.

Q: Does the permit writer submit a draft Authorization Package to the applicant for review prior to issuance?
A: No. Unlike the procedures for a VWP individual permit, the applicant does not review the draft authorization for a VWP general permit.

Q: Does an applicant need to provide a USACE delineation confirmation for an application to be complete?
A: Yes. In accordance with 9 VAC 25-210-80.B., a USACE delineation confirmation, or **evidence** that a confirmation is in progress, is required for a **complete** application. The delineation confirmation must be submitted prior to issuing the VWP general permit authorization to the applicant. This confirmation is also required for the Conceptual Compensation Plan if existing wetlands are present at the compensation site.

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Table IV-1 Summary of VWP General Permits

Permit Number	Authorized Impacts	Notification Requirements	Required Compensation (>1/10 acre Sum of Perm & Temp Impacts)	Required Compensation (>1/10 acre Sum of Permanent & Temp* Impacts)	Compensation Options	Compensation Ratios	Authorization Term
WP 1 (<1/2 Acre)	< 1/2 acre (0.00 - 0.49) non-tidal surface waters including up to 125 LF perennial stream channel and 1,500 LF non-perennial stream channel	Perm & Temp Impacts >1/10 acre (0.105+) - Full RS Perm & Temp Impacts up to 1/10 acre (0.00-0.104) - Abbreviated RS	1		B, F	EM, SS, FO = 2:1; SC = 1:1	3 yrs
WP 2 (Utilities)	up to one (0.00 - 1.00) acre non-tidal surface waters including up to 500 LF perennial stream channel and 1,500 LF non-perennial stream channel	Perm & Temp* Impacts >1/10 acre (0.105+) - Full RS Perm & Temp* Impacts up to 1/10 acre (0.00-0.104) - Abbreviated RS		2	B, F, C, R, P	EM = 1:1; SS = 1.5:1; FO = 2:1; SC = 1:1	3 yrs
WP 3 (Transportation)	up to two (0.00 - 2.00) acres non-tidal surface waters including up to 500 LF perennial stream channel and 1,500 LF non-perennial stream channel	Perm & Temp Impacts >1/10 acre (0.105+) - Full RS Perm & Temp Impacts up to 1/10 acre (0.00-0.104) - Abbreviated RS	1		B, F, C, R, P	EM = 1:1; SS = 1.5:1; FO = 2:1; SC = 1:1	5 yrs
WP 4 (Development)	up to two (0.00 - 2.00) acres non-tidal surface waters including up to 500 LF perennial stream channel and 1,500 LF non-perennial stream channel	Perm & Temp Impacts >1/10 acre (0.105+) - Full RS Perm & Temp Impacts up to 1/10 acre (0.00-0.104) - Abbreviated RS	1		B, F, C, R, P	EM = 1:1; SS = 1.5:1; FO = 2:1; SC = 1:1	5 yrs

LF = Linear Feet
RS = Registration Statement (or JPA with required information)
* Only temporary impacts from mechanized land clearing of forested wetlands
1 = All permanent impacts; temporary impacts restored to pre-construction conditions (Part I.C.11); additional compensation (B,F,C,R,P) for temporary impacts at permit writer's discretion
2 = All permanent impacts; temporary FO impacts from mechanized clearing (other temporary impacts restored to pre-construction conditions [Part I.C.11.], no B,F,C,R,P); conversion impacts outside of 20 foot wide corridor (temporary from mechanized clearing excluded within corridor)
B = Approved Compensation Bank, F = Approved In-Lieu Fee Fund, C= Creation, R = Restoration, P = Preservation (wetland, stream, or upland buffers in combination with B, C, or R)
EM = Emergent, SS = Scrub/Shrub, FO = Forested, SC = Stream Channel

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Department of Environmental Quality
VWP General Permit Application Review Checklist

This checklist is to be used as a **guide** to review a VWP general permit application for "completeness" and to develop the Additional Information and Permit Application Fee Request Letter. Please note that several items are only required for certain types of VWP general permits (identified as WP1, WP2, WP3, and WP4). Projects impacting less than one-tenth of an acre of surface waters qualify for an Abbreviated Registration Statement, and therefore, only the items listed under Sections 1 and 3 are required to be submitted. Refer to each VWP general permit regulation for details of required information for complete applications.

Permit Authorization Number: **WP_-_ _-_ _ _ _**

- ❑ Impacts Less Than One-Half Acre (WP1)
- ❑ Utility Line Project (WP2)
- ❑ Linear Transportation Project (WP3)
- ❑ Development Project (WP4)

General Notes:

- **A signed Agent Authorization Form (included in the Joint Permit Application and Registration Statement) is required for a consultant to represent the applicant on permit issues.**
- **A signed Applicant and Contractor Authorization Form (included in the Joint Permit Application only) is required for a contractor to represent the applicant on permit issues.**

1) General Information

- ❑ Provide permittee contact information including name of owner, mailing address, and telephone and fax numbers.
- ❑ Provide property owner contact (if different from applicant) information including name of owner, mailing address, and telephone and fax numbers.
- ❑ Provide authorized agent information (if applicable) including name, company/firm, mailing address, and telephone and fax numbers.
- ❑ Provide project name and a complete narrative description of the project, project purpose and need, and the scope of work in state waters (both temporary and permanent).
- ❑ Provide project location information including the city/county, name of waterbody(ies), hydrologic unit code, and project latitude and longitude (to the nearest second).
- ❑ Provide the Certification Statement with original signature.

2) Project Impacts - General

- ❑ Submit a detailed site location map (for example, USGS 7.5-Minute Series

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Revised 11/30/2001; 5/1/2002

VWP General Permit Application Review Checklist
Page 2

- ❑ Topographic Map). The location map should be of sufficient detail that the site could be easily located for inspection.
- ❑ **WP2, WP3,WP4 only:** Include a brief assessment of the functions and values of the wetlands to be impacted (applicable for impacts greater than one acre). Include water quality, erosion control, water storage, existing beneficial use of surface water, and fish and wildlife resources and habitat.
- ❑ **WP 3, WP 4 only:** Provide a dredge material management plan (for dredging projects only), including plan and cross-section view drawings of the disposal or dewatering area, the dimensions and design of the proposed berm and spillway, and the capacity of the proposed disposal or dewatering site.
- ❑ Provide full-size or half-size plan sheets for the project. The limits of all surface waters should be included in the plans.
  - ❑ All permit sketches should include, at minimum: north arrow, scale, existing structures, existing contours, proposed contours (if available), limit of jurisdictional areas, direction of flow, impact limits, location and dimension of all proposed structures in impact areas (fill/riprap/outlet protection/channel tie-ins, dredging, excavation).
  - ❑ All cross-sections should include structural dimensions and low-flow provisions.

3) Project Impacts - Detailed

- ❑ Provide a complete narrative description of Avoidance and Minimization Efforts (for example, conduct activities in the dry, spanning bridges, bottomless culverts, coffer dams, alignment of crossings).
- ❑ Surface Water Impact Assessment (wetlands, streams, open water) – Enumerate individual impact areas (temporary and permanent) and include exact location (for example, Impact Site No. 1, Station No. 185+20 to 188+10), the acreage or linear feet/dimensions, and the type (for example, PFO, PEM) of wetlands impacted; include the impact description and dimensions (for example, 8’ by 10’ box culvert; 30” diameter by 200’ long concrete pipe; fill placement 200’ by 225’), the DEQ Classification (Water Quality Standards), the stream width/depth, the pool/riffle/flat ratio, and the substrate type.

4) Delineation

- ❑ Provide an aerial photo, scaled map, or delineation report that clearly shows the property boundaries, wetland and waterway boundaries, limits of RPAs (if applicable), and surface water and wetland impacts at the site. Include latitude and longitude (to the nearest second) of the center of the impact area.
- ❑ Provide a copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map for the project site (as applicable).
- ❑ Provide a copy of the wetland delineation data sheets.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

VWP General Permit Application Review Checklist
Page 3

- ❑ Provide a copy of the USACE delineation confirmation or evidence of confirmation in progress (also required for Conceptual Compensation Plan, if existing wetlands are present at compensation site). Note: The delineation confirmation must be received prior to issuing the VWP general permit authorization.

5) Compensation

- ❑ Attach a description of the intended compensation for unavoidable impacts (A, B, or C below, or a combination).
  - ❑ **WP2, WP3, WP4 only:** Discuss the feasibility of in-kind, on-site and off-site compensatory mitigation.
    - ❑ **WP2, WP3, WP4 only:** If off-site compensation is required (including approved bank or in-lieu fee fund), complete an alternative site analysis to include, at a minimum, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, wetlands functions and values, vegetation type, soil, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructibility, and cost.

A) Creation / Restoration

- ❑ **WP2, WP3, WP4 only:** Submit a Wetland/Stream Creation or Restoration Compensation Plan.

Wetland Creation/Restoration

- ❑ Submit a conceptual wetlands compensatory mitigation plan that includes, at a minimum, the following:
  - ❑ Goals and objectives in terms of replacement wetland acreage and function
  - ❑ Location map (topo map) including latitude and longitude (to the nearest second) of center of compensation site
  - ❑ A copy of the wetland delineation data sheets (if existing wetlands are present at compensation site)
  - ❑ A copy of the USACE delineation confirmation or evidence of confirmation in progress (if existing wetlands are present at compensation site)
  - ❑ Source of hydrology and additional ground water data (including elevation, if available) for the proposed compensation site and at reference wetland sites
  - ❑ Hydrologic budgets to include projected monthly inputs and outputs, a hydrograph showing monthly changes in water level, and projected water level elevations for a "typical", "wet"', and "dry" year
  - ❑ Proposed location of groundwater monitoring stations and photo stations.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

- ❑ Conceptual grading plans with existing and proposed elevations
- ❑ Planting schemes, species list, zonation, and acreage of each vegetation type proposed
- ❑ Soil preparation and amendment plans addressing both topsoil and subsoil conditions
- ❑ Draft design of any water control structures
- ❑ Location of buffers
- ❑ Additional structures and features necessary for the success of the site
- ❑ Proposed construction schedule

Stream Restoration

- ❑ Submit a detailed stream restoration plan that includes, at a minimum, the following:
  - ❑ Goals and objectives in terms of water quality benefits
  - ❑ Stream deficiencies to be addressed
  - ❑ Proposed restoration measures
  - ❑ Location map (topo map) including latitude and longitude (to the nearest second) of center of site
  - ❑ Plan view and cross-section drawings of the stream segments to be restored
  - ❑ Proposed location of vegetative/bank monitoring stations and photo stations
  - ❑ Plant species list and planting scheme
  - ❑ Proposed benthic monitoring plan including proposed baseline study
  - ❑ Type, location, and function of in-stream structures (for example, vanes)
  - ❑ Plan view and cross-section drawings of in stream structures
  - ❑ Design flows
  - ❑ Proposed construction schedule

B) In-Lieu Fee Fund (see list on DEQNet\VWP Library)

- ❑ Board must have approved the proposed fund for use
- ❑ Provide proof that the entity is willing to accept the donation.
- ❑ Provide the donation and the assumptions or documentation of how the contribution amount was calculated.

C) Wetland Mitigation Bank (see list on DEQNet\VWP Library)

- ❑ Provide the name of the proposed bank within the same or adjacent hydrologic unit code and the same river watershed.
- ❑ Provide the number of credits proposed to be purchased or used.
- ❑ Provide certification from the bank owner of the availability of credits.

VWP General Permit Application Review Checklist
Page 5

6) Joint Permit Application Appendices

- ❑ Submit Appendix A (Private Piers & Marginal Wharves).
- ❑ Submit Appendix B (Boathouses).
- ❑ Submit Appendix C (Marinas & Community Piers).
- ❑ Submit Appendix D (Dolphins-Mooring Piles-Buoys not associated with Piers).
- ❑ Submit Appendix E (Boat Ramps).
- ❑ Submit Appendix F (Bulkheads & Associated Backfill).
- ❑ Submit Appendix G (Fill).
  - ❑ Include source and amount, type and composition percentage, purpose of the filling activity and the type of structure to be built, distance from nearest waterbody, acreage and type of wetlands impacted, methods used for sedimentation and erosion control, drainage area and average stream flow, and evidence or certification that the material is free from toxic contaminants.
- ❑ Submit Appendix H (Riprap & Associated Backfill).
- ❑ Submit Appendix I (Marsh Toe Stabilization).
- ❑ Submit Appendix J (Dredging/Mining/Excavating).
  - ❑ Include disposal location and transport method, type and composition percentage, evidence or certification that the material is free from toxic contaminants (as applicable), detailed dewatering design plans and calculations to include erosion and sediment control measures, appropriate drainage area and average stream flow, previous date of dredging (for maintenance dredging only).
  - ❑ Include a scaled plan view and cross-section depicting the dredge area to include existing water depths; MLW, MHW (or OHW), and datum used to determine these lines; dredge dimensions; adjacent shoreline structures; and the location of all vegetated wetlands. Please note that a buffer of four times the depth of the dredge cut should be provided between the toe of the dredge cut and any adjacent wetlands.
  - ❑ ____ Sample(s) of the sediment from the area to be dredged should be collected and analyzed for the following parameters:
    [List]_____
    Samples should be collected at locations representative of the proposed dredge area and where the highest probability of contamination exists. All sampling and analysis should be performed using EPA approved methods.
  - ❑ A standard elutriate test should be performed prior to analysis of dredged sediment, in accordance with the EPA "Inland Testing Manual".
- ❑ Submit Appendix K (Groins & Jetties).
- ❑ Submit Appendix L (Breakwaters).
- ❑ Submit Appendix M (Beach Nourishment).
- ❑ Submit Appendix N (Intake-Outfall Structures).
- ❑ Submit Appendix O (Stream Channel Modifications).
- ❑ Submit Appendix P (Impoundments/Dams).

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

VWP General Permit Application Review Checklist
Page 6

- ❑ Submit Appendix Q (Utility Crossings).
- ❑ Submit Appendix R (Road Crossings).
  - ❑ Include narrative description of the materials to be used, method of construction, and the order in which construction will be conducted (including cofferdams); approximate drainage area and average stream flow rate; location and area of fill; hydrologic/hydraulic studies results; vertical distance above MHW, MLW or OHW for bridge crossings.

7) Fee Payment

- ❑ Joint Permit Application or Registration Statement - Provide fee payment of **[enter current fee]** and hardcopy of fee form
- ❑ Abbreviated Registration Statement – No fee required.

Clarifications and Additional Information

- ❑ _____
  _____
  _____
  _____

DISCLAIMER

This document provides procedural guidance to DEQ VWP permit staff for the review of VWP general permit applications. It does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying the State Water Control Law and the implementation regulations on the basis of the site specific facts when permits are issued.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Threatened and Endangered Species Review Results Letter

[Date]

[Applicant Name]
[c/o Agent, if applicable]
[Applicant or Agent Address]

RE: VWP General Permit Authorization No. **[WP#-##-####]**
[Route 250 Widening, Goochland County], Virginia
Threatened and Endangered Species Review Results

Dear **[Applicant/Agent]**:

The Department of Environmental Quality (DEQ) has conducted the required threatened and endangered species database review for the above-referenced application. Based on the results, the **[Department of Game and Inland Fisheries or Department of Conservation and Recreation]** has determined that the proposed project **[State agency results. For example: "may have the potential to adversely affect the state listed Roanoke Logperch in the vicinity of the proposed site. DGIF has directed that a survey be performed prior to issuance of the authorization."]**

DEQ cannot issue the Virginia Water Protection (VWP) general permit authorization you requested until these concerns are addressed, as per the VWP general permit regulation. This regulation states that authorization for coverage under a VWP general permit will not apply in surface waters with federal or state, listed or proposed threatened or endangered species, or proposed or designated critical habitat.

The applicant may elect to submit a written request for DEQ to temporarily withdraw the application until the threatened or endangered species issue(s) is/are resolved. The application can be resubmitted once the threatened or endangered species issue(s) is/are resolved without an additional permit application fee. In lieu of this action by the applicant, DEQ will elevate the application to a VWP individual permit, so that the T&E issues can be resolved during the individual application review process. The applicant will incur the cost of a VWP individual permit application fee in this instance, and no refund of the VWP general permit fee will be granted.

DEQ is available to meet with you to discuss the permitting options and requirements outlined in this letter. Please contact me at **[phone number]** or **[e-mail address]** with questions or concerns.

Sincerely,

[Permit Writer]
[Title]

cc: **[Contact Name]**, U.S. Army Corps of Engineers
[Contact Name], Virginia Marine Resources Commission **(if applicable)**
[Agent] (if applicable)
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Additional Information [and Permit Application Fee] Request Letter

[Date]

[Applicant Name]
[c/o Agent, if applicable]
[Applicant or Agent Address]

RE: VWP General Permit Authorization Application Number **[WP#-##-####]**
[Route 250 Widening, Goochland County], Virginia
Additional Information **[and Permit Application Fee]** Request Letter

Dear **[Applicant/Agent]**:

The Virginia Department of Environmental Quality (DEQ) has received your application for the above-referenced project on **[December 20, 2000]**. DEQ has determined that this project qualifies for authorization under the Virginia Water Protection (VWP) General Permit **[type it qualifies for]** in accordance with **[9 VAC – complete the state regulation reference for the specific VWP general permit]**.

The above regulation defines the information required for a complete application. Upon review, DEQ has determined that the application is incomplete and additional information is required in order for DEQ to continue the permitting process. I have enclosed a summary of the information required to complete the application package. Please submit the additional information to my attention at the letterhead address.

[[In addition to the requested information, a permit application fee is required for the proposed activity. The permit application fee for a VWP General Permit Number WP[#] is [$200.00]. Please complete the enclosed Permit Application Fee Form and mail with the designated fee to the following address:

DEQ
Receipts Control
Water Division
P.O. Box 10150
Richmond, Virginia 23240

Checks or money orders should be made payable to the Treasurer of Virginia. Please do not send cash.]]

Because your application has been determined to be incomplete, the **45-calendar day** processing period for authorization of a VWP general permit will not commence until you provide the additional information and the required permit application fee is deposited by the DEQ accounting department. Please submit the information **[and permit application fee]** within **30 calendar days** of the date of this letter so that DEQ

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Additional Information [and Permit Application Fee] Request Letter
Page 2

can continue a timely review of the application.

Do not hesitate to contact me at **[phone number]** or **[e-mail address]** if you have any questions regarding this request, or if you are having difficulty obtaining the requested information. Thank you for your cooperation in this matter.

Sincerely,

[Permit Writer]
[Title]

Attachments: Additional Information Request Summary **[, Permit Application Fee Form]**

cc: **[Contact Name, U. S. Army Corps of Engineers]**
[Contact Name, Virginia Marine Resources Commission]
[Agent]
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Additional Information [and Permit Application Fee] Request Letter
Page 3

Additional Information Request Summary

VWP General Permit Authorization Number **[WP#-##-####]**
[Route 250 Widening, Goochland County], Virginia

Please provide the following information to complete the application package:

1. **[Provide an original signature.**
2. **Provide a conceptual compensation plan.**
3. **Provide the wetland delineation map and data sheets.]**

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Notice of Complete Application Letter

[Date]

[Applicant Name]
[c/o Agent, if applicable]
[Applicant or Agent Address]

RE: VWP General Permit Authorization No. **[WP#-##-####]**
[Route 250 Widening, Goochland County], Virginia
Notice of Complete Application

Dear **[Applicant/Agent]**:

The Department of Environmental Quality (DEQ) has received the additional information requested for the above-referenced project on **[February 2, 2001]**, and DEQ Accounting has deposited the required permit application fee on **[February 7, 2001]**. Our technical review of the application and additional information indicates that the application is complete as of **[February 7, 2001]**. Coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 calendar days. If the board fails to act within 45 calendar days, coverage under this VWP general permit shall be deemed approved.

Please contact me at **[phone number]** or **[e-mail address]** with questions concerning the above information.

Sincerely,

[Permit Writer]
[Title]

cc: **[Agent] (if applicable)**
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Example

DEQ VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

VDEQ-WPP General Permits

Threatened & Endangered Species Consultation

To:

☒ DCR-Natural Heritage, Environmental Review Coordinator
☐ DGIF, Environmental Review Coordinator
☐ U.S. Fish & Wildlife Service, T/E Review Coordinator

From: [Name]
[Phone, Fax, Email]

Date Sent: [6/20/2001]

Date Needed: [7/5/2001] 15 days from "Date Sent"

DEQ Project Number: [01-3256]

Site Name/Address:
[Proposed:
The Royal Hare at Rabbit Hill Golf Course
7575 Jack Rabbitt Road
Anywhere, VA 23556]

Locality: [New Kent County]

ATTACHED USGS Quadrangle: [Roxbury]

Latitude/Longitude: [N 37° 44' 27" W 77° 56' 41"]

Waterway: [Rabbit Run Creek and Chickahominy River]

Site Owner's Name/Address/Phone Number:
[Mr. Stephen G. O'Hare
Sylvestris Development Company, LLP
3265 Flushing Bush Court
Anywhere Else, VA 23555
804-555-2121 804-555-2100 (FAX)]

Authorized Agent's Name/Address/Phone Number:
[John J. Smythe
Smythe Environmental Associates
8954 Rolling Rock Blvd.
Anywhere Else, VA 23555
804-555-2323 804-555-2300 (FAX)]

General Project Location and Description:
[347 acre site; located southwest of the intersection of U.S. Route 43 and State Route 658. Southern boundary bordered by Good Fishing Creek; western boundary bordered by Rabbit Hill subdivision and wooded land. Purpose of the project is to develop an 18-hole golf course with adjacent 400 home residential community surrounding golf course. Attendant infrastructure will include a master stormwater management plan, interior road network, interior utilities, irrigation pond for golf course, and club house.]

General Habitat Types Present On-Site:
[Majority of site is second growth mixed deciduous hardwoods with scattered pines. A 50-acre portion of the NE property corner is a fallow agricultural field. Several small, intermittent drainageways, separating broad, flat ridgetops, merge to form a large perennial stream that bisects the site. Intermittent drainageways contain side slope discharge wetlands and a beaver pond complex occurs on the perennial stream.]

Project/Permit Manager's Comments:
[Small whorled pogonia and swamp pink surveys were conducted four years ago as part of a comprehensive master plan study. Surveyed species were not observed at that time.]

Proposed Compensation:
[1.0 acres of wetland creation/preservation is proposed on-site along an intermittent drainageway. Mitigation will include 0.60 acre of emergent wetland (1:1) and 0.30 acre of forested wetland (2:1). Additionally, 0.10 acre of upland buffer will be preserved around the mitigation area.]

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Habitat Types Being Impacted:

Fill this section out as completely as possible to expedite DNH review.

[Several beaver pond complexes exist in wetlands proposed for impacts. One road crossing, with 0.15 acre of forested impacts and 0.60 acres of emergent impacts is proposed. Vegetation in the area of impact is typically green ash, ironwood, eastern sycamore, high-bush blueberry, netted chain fern, poison ivy and Japanese honeysuckle; dense emergent wetlands are located in the center of the beaver pond. Adjacent upland vegetation includes tulip poplar, white oak, persimmon, mountain laurel, partridge berry and ebony spleenwort.]

Species Search Results (or attach radius map):

[Info from DGIF database and DNH maps identified no T&E animals, but 2 endangered plants (small whorled pogonia and swamp pink.]

OR

[See attached radius map]

Sample

ROUTING AND CONCURRENCE FORM

Date Submitted: 09-20-2001

To: Ellen Gilinsky

From: **[Permit Writer]**

Action:
- ☐ Review
- ☒ Review and Sign
- ☐ File
- ☐ See Me

Document Title/Subject: Final VWP General Permit Application Package
No Wetlands Here Subdivision, Richmond, Virginia
Permit No. WP#-##-####

Comments: No comments were received on this project.

Concurrence

_____ _____
Signature Date

_____ _____
Signature Date

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

General Permit Authorization Issuance Fact Sheet

Department of Environmental Quality
[Regional Office Name and Address]

SUBJECT: Issuance of Virginia Water Protection General Permit Authorization No. **[WP#-##-####]**
[Applicant Name]

TO: **[Regional Permit Manager or Designee Name]**
[Title]

FROM: **[Permit Writer Name]**
[Title]

DATE: **[Date]**

COPY: VWP Permit File

DEQ has reviewed the application for authorization under VWP General Permit Number WP**[#]** and has determined that the project qualifies for this VWP general permit. 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 proposed activity subject to this permit authorization 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. **[This sentence, if applicable: The proposed permit also addresses no net loss of wetland acreage and function through compensatory mitigation and adequately assesses compensation implementation via success monitoring and reporting.]** Permitted wetland and stream impacts have been inventoried in evaluating this proposed permit.

The following details the application review process and summarizes relevant information for developing the special conditions for permit authorization issuance.

1. Contact Information:

Permittee Legal Name and Address:
[Name and Address]

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

General Permit Authorization Issuance Fact Sheet
Page 2

Owner Legal Name and Address (if different from Permittee):
[Name and Address]

Agent Legal Name and Address (if applicable):
[Name and Address]

2. Processing Dates:

Received Application: **[Date]**
Permit Fee Received by Accounting: **[Date]**
Application Complete: **[Date]**
Processing Deadline (From Complete Application): **[Date]**
Conducted DGIF Database Search: **[Date]**
Conducted DCR Database Search: **[Date]**
Letters sent to DGIF/DCR (as applicable): **[Date]**
Received response from agencies (as applicable): **[Date(s)]**

3. Project Location:

City/County:	**[Goochland County]**
Waterbody:	**[Tuckahoe Creek and an unnamed tributary]**
Basin:	**[James River]**
Subbasin:	**[Middle James River]**
Section:	**[9a]**
Class:	**[III]**
Special Standards:	**[PWS, o]**
HUC:	**[02080205]**

Compensation Site Name:	**[Mountain Site]**
Compensation Site City/ County:	**[Goochland County]**
Compensation Site Basin:	**[James River]**
Compensation Site Subbasin:	**[Middle James River]**
Compensation Site HUC:	**[02080205]**

[OR]

[On-Site Compensation]

4. Project Description:

The permittee proposes **[Summarize general project scope of work. Example: widening Route 250 (Broad Street) from two lanes to six lanes from approximately 0.4 miles west of the Goochland/Henrico County Line to Route 623 in Goochland**

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

County. The project includes the replacement of the existing 40' span bridge with a 70' span bridge over Tuckahoe Creek.]

5. Project Impacts:

The proposed activity results in the **[permanent or temporary]** impact of approximately **[Summarize all impacts to surface water. Example: 0.219 acres of palustrine, emergent wetlands, 1.0 acres of palustrine, scrub/shrub wetlands, and 0.527 acres of palustrine, forested wetlands associated with Tuckahoe Creek and an unnamed tributary, and approximately 250 linear feet of the perennial stream channel of Tuckahoe Creek.]** Water quality impacts are expected to be temporary and minimal provided the permittee abides by the conditions of the permit. Although a loss of state waters will occur, the impacts have been avoided and minimized to the greatest extent practicable.

6. Avoidance and Minimization Efforts:

[Summarize all avoidance and minimization efforts. Example: The alignment was shifted approximately 2,000 feet north to avoid an additional 0.85 acres of emergent and 1.2 acres of forested wetlands. The original design included a quadruple barrel box culvert. Wetland impacts have been minimized with the proposed design of a 70-foot span bridge and by reducing the lateral extent of the fill by approximately 200 feet along each side of the bridge approach.]

7. Compensation for Unavoidable Impacts:

[Summarize all compensation activities. Example: Permanent scrub/shrub wetland impacts will be compensated onsite through the creation of wetlands at the southern limit of Tuckahoe Creek. Impacts will be compensated at a replacement to loss ratio of 1.5:1 for permanent scrub/shrub wetland impacts (1.5 acres created). Permanent emergent and forested wetland impacts will be compensated through the purchase of available credits at the James River Mitigation Landbank in Goochland County, Virginia. Impacts will be compensated at ratios of 1.5:1 for permanent emergent wetland impacts (0.329 acres debited) and 2:1 for permanent forested wetland impacts (1.054 acres debited). The loss of stream channel will be compensated for by restoration of 250 linear feet of Tuckahoe Creek immediately upstream of the project site.]

8. Site Inspection:

A site visit was conducted on **[November 3, 2000].**

[Summarize observations]

General Permit Authorization Issuance Fact Sheet
Page 4

9. Results of Threatened and Endangered Species Searches:

A review of the DGIF and DCR databases was conducted on **[November 4, 2000].**

[The search did not identify any state or federal listed or proposed listed threatened or endangered species, state native trout, or state anadromous fish.]

[OR]

[Summary of coordination with agencies. Include dates that the forms were submitted to the agency and dates the responses were received. Summarize results of search with hits and agency comments. Example: The DGIF database search identified an anadromous fish species [insert name] in the vicinity of the project site. DGIF provided the time-of-year restriction of February 1 to June 30. The time-of-year restriction was included in the authorization.
-OR- for DCR: DCR stated that several rare species were listed in the vicinity of the project. However, no state- or federally proposed, or listed threatened or endangered species were identified. Therefore, no additional conditions were added to the authorization.
-OR- for the DCR typical E&S conditions, etc.: These concerns were addressed in Part I conditions of the authorization.]

10. New Conditions Added to Established Conditions:

[Summarize any new conditions included in the authorization. Example: As recommended by DGIF, the authorization includes the time-of-year restriction of February 1 to June 30.]

[OR]

[No additional conditions were included in the authorization.]

11. Staff Recommendations:

Based on the review of the permit application, the staff makes the following determinations:

- 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 proposed permit addresses avoidance and minimization of wetland impacts to the maximum extent practicable.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

General Permit Authorization Issuance Fact Sheet
Page 5

- The effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to significant impairment of state waters or fish and wildlife resources.
- The proposed permit conditions address no net loss of wetland acreage and function through compensatory mitigation and adequately assess compensation implementation via success monitoring and reporting.
- Permitted wetland impacts have been inventoried in evaluating this proposed permit.
- This permit is proposed to prevent unpermitted impacts.
- The proposed activity qualifies for VWP General Permit Number WP**[#].**

The staff recommends that the Director:
(1) Find the above determinations to be appropriate.
(2) Approve the attached Virginia Water Protection general permit authorization.
(3) Direct the staff to authorize coverage under VWP General Permit Number WP**[#]**.

Approved: _____
VWP Permit Manager or Designee

_____
Date

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample VWP General Permit Authorization Transmittal Letter

[Date]

[Permittee Name]
[c/o Agent, if applicable] **CERTIFIED MAIL**
[Address] **RETURN RECEIPT REQUESTED**

RE: VWP General Permit Authorization Number **[WP#-##-####]**
[Route 250 Widening, Goochland County], Virginia

Dear **[Permittee/Agent]**:

The Virginia Department of Environmental Quality (DEQ) has reviewed your application received on **[March 15, 2000]** and determined that the proposed **[Route 250 widening]** project is covered under the VWP General Permit Number WP**[#]**. The application was deemed complete on **[May 13, 2000].** The enclosed copy of the VWP general permit authorization contains the applicable limits, reporting requirements, and other conditions of coverage. **[Include any conditions added to authorization Cover Page. Example: Please note that a recommended time-of-year restriction (TOY) has been included as an *Authorization Note* on the VWP Permit Authorization Cover Page.]**

I have also attached a Compliance Summary Sheet for your convenience. Please note that you are responsible for compliance with all of the conditions of the authorization, not just the items on the summary sheet.

Your coverage under the authorization expires **[three or five]** years from the Authorization Effective Date. Please note that coverage under this authorization may be extended at the State Water Control Board's discretion and as per the VWP permit regulations. If the authorized activity has not been completed and you wish to obtain an extension, sufficient time should be allowed for the board's decision, otherwise coverage will expire on the original date.

If you have any questions, please contact **[permit writer]** at **[phone number]**.

Sincerely,

[Regional Permit Manager or Designee Name]
[Title]

Enclosures: VWP General Permit Authorization, Compliance Summary Sheet

cc: **[Contact Name]**, U.S. Army Corps of Engineers
[Contact Name], Virginia Marine Resources Commission **(if applicable)**
[Agent] (if applicable)
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Compliance Summary Sheet for WP1

[Note: Permit writer should modify as applicable based on scope of activities.]

VWP General Permit Authorization No. WP1-[##-####]
Compliance Summary Sheet

The following summarizes typical notification, monitoring, and reporting requirements outlined in the authorization. The permittee should review each condition for specific details. Please note that you are responsible for compliance with all conditions of the authorization, not just the items listed below.

Construction Requirements

Notification of Construction. Submit a notification letter at least 10 calendar days prior to the start of construction activities in permitted areas. (Part II.D.2)

Construction Monitoring Photographs. Photographs of all permitted areas are required to document 1) preconstruction conditions; 2) conditions at the end of the first, second, and twelfth months of construction, and then annually for the remainder of the construction activities; and 3) within one week following construction completion. (Part II.C.1)

Construction Monitoring Reports. Submit within 30 days of each monitoring event. (Part II.D.3)

[*Stream Bottom Elevations at Road Crossings.* Stream bottom elevations at inlet and outlet of proposed structures must be recorded prior to construction and within one week of construction completion. (Part II.C.3)]

[*Rerouting of Flowing Streams.* Water quality parameters must be monitored during rerouting of flowing streams through new channels. (Part II.C.4)]

Compensation Requirements

Purchase of Mitigation Bank Credits or Contribution to In-Lieu Fee Fund. Submit documentation that the USACE has debited the required mitigation credits from the mitigation bank ledger or documentation that the fund contribution has been received within 60 days of authorization issuance. (Part II.B.)

General Notification Requirements

Notice of Project Termination. Submit within 30 days of final completion of all permitted activities. (Part II.D.4)

Notice of Unusual or Potentially Complex Conditions. Notification is required for unusual or potentially complex conditions that require debris removal or involve potentially toxic substances. (Part II.D.5)

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Compliance Summary Sheet for WP1
Page 2

Notice of Fish Kills, or Oil or Fuel Spills. Immediate notification is required. (Part II.D.6)

Notice of Violation of State Water Quality Standards. Notification is required within 24 hours. (Part II.D.7)

Requests for Authorization Changes

Notice of Planned Change. Submit request for additional surface water impacts prior to taking impacts. (Part I.A.2)

Continuation of Coverage. Submit request if all permit conditions cannot be completed by expiration date. The permittee should request the Continuation of Coverage within a reasonable time frame of the authorization expiration to allow for processing. (Part I.B.)

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Compliance Summary Sheet for WPs 2, 3, and 4

[Note: Permit writer should modify as applicable based on compensation requirements and scope of activities.]

VWP General Permit Authorization No. WP[2,3, or 4-##-####]
Compliance Summary Sheet

The following summarizes typical notification, monitoring, and reporting requirements outlined in the authorization. The permittee should review each condition for specific details. Please note that you are responsible for compliance with all conditions of the authorization, not just the items listed below.

Construction Requirements

Notification of Construction. Submit a notification letter at least 10 calendar days prior to the start of construction activities in permitted areas. (Part II.E.2)

Construction Monitoring Photographs. Photographs of all permitted areas are required to document 1) preconstruction conditions; 2) conditions at the end of the first, second, and twelfth months of construction, and then annually for the remainder of the construction activities; and 3) within one week following construction completion. (Part II.D.1)

Construction Monitoring Reports. Submit within 30 days of each monitoring event. (Part II.E.3.)

[*Stream Bottom Elevations at Road Crossings.* Stream bottom elevations at inlet and outlet of proposed structures must be recorded prior to construction and within one week of construction completion. (Part II.D.3)]

[*Rerouting of Flowing Streams.* Water quality parameters must be monitored during rerouting of flowing streams through new channels. (Part II.D.4)]

Compensation Requirements

[*Purchase of Mitigation Bank Credits or Contribution to In-Lieu Fee Fund.* Submit documentation that the USACE has debited the required mitigation credits from the mitigation bank ledger or documentation that the fund contribution has been received within 60 days of authorization issuance. (Part II.A.2)]

[*Final Compensatory Mitigation Plan.* Submit plan prior to construction activities in permitted impact areas. DEQ has 30-calendar days to review and provide written comments or the plan is automatically approved. Deviations to the approved plan must be submitted and approved by DEQ prior to initiation. (Part II.A.3)]

[*Compensatory Mitigation Construction*. Compensatory mitigation must be initiated within 180 days of work in permitted impact areas or construction activities in permitted areas must cease. (Part II.A.5)]

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Compliance Summary Sheet for WPs 2, 3, and 4
Page 2

[*Site Stabilization Plan.* As part of the final compensatory mitigation plan, submit plan for a compensation site involving land disturbance. (Part II.A.6)]

[*Post-Grading Survey.* Prior to seeding and/or planting, and within 7 days of grading, a post-grading survey of the compensation site, performed by a licensed land surveyor or a professional engineer, must be submitted to DEQ. (Part II.B.1)]

[*Compensation Site Photographs.* Photographs must be taken after the initial planting and in August or September of every monitoring year. (Part II.B.2)]

[*Compensation Mitigation Site Monitoring*. Monitoring is initiated at the first complete growing season (identified as year 1) following site construction. Monitoring is required for years [for WP 2: 1, 2, and 3; for WP3/4: 1, 2, 3, and 5], assuming all success criteria are met in the last year. (Part II.B.3)]

[*Compensatory Mitigation Monitoring Reports.* Submit by November 30th of each monitoring year, except for the last year, when submittal should be at least 60 days prior to authorization expiration date. (Part II.E.4)]

[*Stream Mitigation Monitoring Reports*. Submit monitoring reports by November 30th of each monitoring year. (Part II.C.3)]

[*Compensation Site Correction Action Plan.* Submit plan for DEQ approval prior to or with the next required monitoring report. (Part II.A.13]

[*Compensation Site Wetland Boundary.* Submit final boundary(ies), broken out by wetland type, by the end of the monitoring cycle. (Part II.A.14)]

Dredging Requirements (WP3 and WP4 only)

[*Dredge Material Management Plan.* Submit plan for the designated upland disposal site prior to initial dredging activity. The plan must be approved by DEQ at least 30 calendar days prior to initiation of dredging. (Part I.G.7)]

General Notifications and Requirements

Protection of State Waters. Compensatory mitigation areas and non-impacted State waters within the project boundary must be surveyed or platted within 120 days of Final Compensation Plan approval and submitted to DEQ for approval. Proof of recordation must be submitted to DEQ with 60 days of survey or plat approval. (Part II.A.3.b)

Notice of Project Termination. Submit within 30 days of final completion of all permitted activities. (Part II.E.5)

Notice of Unusual or Potentially Complex Conditions. Notification is required for unusual or potentially complex conditions that require debris removal or involve potentially toxic substances. (Part II.E.6)

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Compliance Summary Sheet for WPs 2, 3, and 4
Page 3

Notice of Fish Kills, or Oil or Fuel Spills. Immediate notification is required. (Part II.E.7)

Notice of Violation of State Water Quality Standards. Notification is required within 24 hours. (Part II.E.8)

Requests for Authorization Changes

Notice of Planned Change. Submit request for additional surface water impacts prior to taking impacts. (Part I.A.2)

Continuation of Coverage. Submit request if all permit conditions cannot be completed by expiration date. In accordance with Condition Part II.A.16., the permittee must request the Continuation of Coverage no less than 60 calendar days prior to the authorization expiration date. (Part I.B and Part II.A.16)

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Notice of Planned Change Approval Letter

[Date]

[Permittee Name]
[c/o Agent, if applicable] **CERTIFIED MAIL**
[Address] **RETURN RECEIPT REQUESTED**

RE: VWP General Permit Authorization Number **[WP#-##-####]**
[Route 250 Widening, Goochland County], Virginia
Notice of Planned Change Approval

Dear **[Permittee/Agent]**:

The Virginia Department of Environmental Quality (DEQ) has received your Planned Change request for the Virginia Water Protection (VWP) General Permit Authorization No. **[WP#-##-####].** The authorization was issued on **[July 19, 2000]** for the impact of **[0.45 acres of emergent wetlands and 0.40 acres of scrub/shrub wetlands, including 50 linear feet of Maidens Creek].** The required compensatory mitigation consists of **[the creation of 0.45 acres of emergent wetlands and 0.60 acres of scrub/shrub wetlands and 50 linear feet of stream restoration at the impact site]** in accordance with the authorization conditions.

In the request letter dated **[March 16, 2001]**, you indicated **[the need to lengthen a pipe culvert from 148 feet to 296 feet to prevent stream flow of an unnamed tributary of the North Fork of the Mayo River from entering a stormwater basin. This design will impact an additional 0.05 acres of emergent wetlands and 20 linear feet of Maidens Creek at Station 130+10.]**

In accordance with your request and pursuant to the VWP General Permit Regulation 9 VAC 25-**[type in correct reference]**-80, DEQ approves the additional impacts for coverage under this authorization. As noted in your request letter, **[the creation of an additional 0.05 acres of emergent wetlands and the restoration of an additional 20 linear feet of Maidens Creek at the onsite compensation area]** is required to compensate for the additional impacts**.**

Please note that this letter is an official component of the authorization and should be attached to the authorization in your files. If you have any questions, please to contact **[permit writer]** at **[phone number]** or **[e-mail address].**

Sincerely,

[Delegated Signature Authority per Region]
[Title]

cc: **[Contact Name]**, U. S. Army Corps of Engineers
[Contact Name], Virginia Marine Resources Commission **(if applicable)**
[Agent] (if applicable)
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Notice of Continuation of Coverage Approval Letter

[Date]

[Permittee Name]
[c/o Agent, if applicable] **CERTIFIED MAIL**
[Address] **RETURN RECEIPT REQUESTED**

RE: VWP General Permit Authorization Number **[WP#-##-####]**
[Route 250 Widening, Goochland County], Virginia
Notice of Continuation of Coverage Approval

Dear **[Permittee/Agent]**:

The Virginia Department of Environmental Quality (DEQ) has received your Continuation of Coverage request for the Virginia Water Protection (VWP) General Permit Authorization No. **[WP#-##-####].** The authorization was issued on **[July 19, 2000]** for the impact of **[0.45 acres of emergent wetlands and 0.40 acres of scrub/shrub wetlands, including 50 linear feet of Maidens Creek]**. The required compensatory mitigation consists of the **[creation of 0.45 acres of emergent wetlands and 0.60 acres of scrub/shrub wetlands and 50 linear feet of stream restoration at the impact site]** in accordance with the authorization conditions. The authorization expires on **[July 19, 2005].**

In the letter dated **[January 16, 2005]**, you indicated that all impact activities **[have not been completed for the project. Therefore, you requested that the authorization be extended to complete the impact activities.] -OR- [have been completed for the project. However, you requested that the authorization be extended to ensure compliance with the compensation and monitoring conditions.]**

In accordance with your request and pursuant to Condition Part I. B. and Part II.A.16 of the authorization, DEQ approves the Continuation of Coverage request. The new authorization expiration date is **[July 19, 2010]**.

Please note that this letter is an official component of the authorization and should be attached to the authorization in your files. If you have any questions, please contact **[permit writer]** at **[phone number]** or **[e-mail address].**

Sincerely,

[Delegated Signature Authority per Region]
[Title]

cc: **[Contact Name]**, U. S. Army Corps of Engineers
[Contact Name], Virginia Marine Resources Commission **(if applicable)**
[Agent] (if applicable)
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

CHAPTER V - VWP INDIVIDUAL PERMITS

This section describes the permitting process for Virginia Water Protection (VWP) individual permits. If a new proposed activity does not qualify for a VWP general permit, a VWP individual permit may be required. While Chapter II provides guidance on determining if an activity qualifies for a VWP individual permit, this chapter will provide guidance on how to process a VWP individual permit.

A. Timeframes for the VWP Individual Permit Process

The permit writer must adhere to the following review and process timeframes for applications qualifying for a VWP individual permit, as presented in the State Water Control Law and the VWP Permit Program regulation (DEQNet and Appendix D). This section provides an overview of the timeframes associated with the VWP individual permit process. Each timeframe is discussed in detail throughout the chapter.

The permit writer must review the application for completeness within **15 calendar days** of receipt by the appropriate Department of Environmental Quality (DEQ) office. The permit writer must either accept the application as complete or request additional information prior to or on the 15th day. If the application is determined to be incomplete, the permit writer must prepare and submit an Additional Information and Permit Application Fee Request Letter summarizing the required additional information. If the request letter is dated and mailed prior to or on the 15th day, then the processing clock is stopped and reset to day zero. The 15-calendar day review cycle begins again upon the receipt of all the requested additional information. If the request letter is not submitted within the 15-calendar day period, then the application is considered to be legally complete, and the 120-calendar day processing clock continues. The permit writer may still request additional information after the 15th day, but the clock is not affected. **The 15-calendar day completeness review timeframe applies to all applications with the exception of minimum instream flow and water withdrawal projects.**

The permit writer has **120 calendar days** from the date of receipt of a **complete** application to review the application and decide to either issue the permit, issue the permit with conditions, deny the permit, or decide to conduct a public hearing. As noted in the paragraph above, this timeframe may or may not include the 15-calendar day review period. The public hearing must be scheduled within **60 calendar days** of the decision to conduct the proceeding, and a final decision (for example, to issue or deny) must be made within **90 calendar days** after the public hearing date.

If the respective permit action is not initiated or completed by the 120th day, the applicant does not automatically receive authority to conduct the proposed activity. The permit writer should discuss the timeframe issues and the appropriate course of action with his or her supervisor.

Although the deposit of the permit application fee is officially required to consider an application complete, the permit writer should start the 120-calendar day processing clock once all other information required for a complete application has been received.

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Note that the Draft Permit Package cannot be submitted for applicant review until the fee has been deposited by the DEQ Accounts Receivable Department (Accounting).

The permit writer should make every effort to review and process each application in a timely fashion. The permit writer should note that the actual permitting process timeframes are primarily determined by the completeness of the application, the timeliness of the applicant response to any requests for additional information, and the potential for a public hearing.

B. Tracking and Format

The VWP Permit Program regulation requires various submittal packages, notifications, and forms for the issuance of a VWP individual permit. Examples of the required submittals and forms are included at the end of this chapter. As described in the previous section, strict statutory timeframes are associated with each step of the process. The permit writer should update the Comprehensive Environmental Data System (CEDS) as each task is completed and use the CEDS Event Table to track deadlines.

The permit writer is also encouraged to actively communicate with the applicant during all phases of the issuance process. All documents and correspondence received by the permit writer should be date stamped and placed in the permit file. E-mails should be printed, if applicable, and placed in the permit file. Additionally, all telephone conversations, site visits, and meetings should be documented in the file.

The permit writer should streamline the permitting process and reduce the number of photocopies or non-essential copies as much as possible. The permit writer is encouraged to prepare double-sided copies of the permit documents, as practical. For example, the Part I - Special Conditions and Part II - General Conditions should be double-sided for each permit. However, the signed VWP Individual Permit Cover Page should be single-sided on letterhead. The permit writer should clarify any questions concerning document format with his or her supervisor.

C. Application Review

1. Application Review Process

As noted in Section A, the 15-calendar day completeness review timeframe is initiated upon receipt of an application by the appropriate DEQ office (for example, the DEQ regional office in which the project is located or the central office for Virginia Department of Transportation and water withdrawal projects). The permit writer is responsible for reviewing the application to determine that it is administratively and legally complete. A complete application includes a completed Joint Permit Application (JPA) with all appropriate attachments, including maps, appendices, and the DEQ Addendum. Refer to Regulation 9 VAC 25-210-80.B for the full requirements of a complete application.

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2. VWP Permit Application Review Checklist for Individual Permits

The VWP Permit Application Review Checklist for Individual Permits (checklist) can be used to determine if an application is complete (provided at the end of this chapter). The checklist is divided into five major sections detailing the informational requirements: General Information; Project Impacts; JPA Appendices; DEQ Addendum; and Fee Payment.

The checklist is designed to assist the permit writer in determining the minimum requirements of an application. During application review, a proposed scope of work may warrant additional information that is not included on the checklist. Conversely, not all information listed on the checklist is required for every permit. The permit writer should have a clear understanding of the scope of work of the project and ensure that the required information for the specific scope of work is included in the application.

During the initial application review, the permit writer should also conduct a technical review of the information to determine that the proposed activities comply with the VWP Permit Program regulation and general program guidance memorandums, many of which can be found on DEQNet. Technical review of the application should address the project impacts as they relate to the potential impairment of state water quality or cumulative impacts to water quality and fish and wildlife resources. Although each project will likely be different, the following major points should be carefully reviewed and considered:

- Identify the total impacts to surface waters. Have the impacts been properly classified (non-tidal versus tidal, emergent, scrub/shrub, forested, open water)?
- Have the impacts been avoided and minimized to the maximum extent practicable? Are there less environmentally damaging alternatives?
- Are the impacts to water quality and instream beneficial uses permanent or temporary?
- Are the impacts severe enough to violate any numeric water quality standard, the antidegradation standard, or the general standard?
- Are the impacts severe enough to violate any numeric water quality standard or the general standard?
- Will the impacts cause or contribute to a significant impairment of state waters or fish and wildlife resources?

The technical review should also focus on whether the proposed compensation for unavoidable impacts provides a no net loss of wetland acreage and function. The permit writer should refer to Appendix B for detailed guidance concerning compensatory mitigation. A source of information concerning wetland functions and values is a self-guided training module from the EPA (http://www.epa.gov/watertrain/wetlands/text.html). During the technical review, the permit writer should answer the following:

- Are compensatory mitigation ratios appropriate?

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- Was the option of on-site, in-kind compensation addressed? If not, was an adequate alternatives analysis prepared?
- Is the proposed compensation site within the appropriate Hydrologic Unit Code (HUC) and watershed?
- Has stream compensation been addressed, when appropriate?

3. Additional Information and Permit Application Fee Request Letter

Using the checklist at the end of this chapter will aid the permit writer in determining if an application is **complete**, as per the VWP permit regulations. When an application is determined to be incomplete, the permit writer should send a letter to the applicant requesting the additional information. An example Additional Information and Permit Application Fee Request Letter, including an Additional Information Request Summary, is provided at the end of this chapter. The request letter should be mailed to the applicant within **15 calendar days** of application receipt. The application is considered legally complete if the letter is not dated and mailed prior to or on the 15th day.

If the permit writer determines that an application is complete with the exception of the permit application fee being deposited, he/she should modify the Additional Information and Permit Application Fee Request Letter to notify the applicant of such and to request the appropriate permit application fee. A Permit Application Fee Form should be attached to the letter (see Section 5 below). A separate Notice of Complete Application Letter, which confirms that the application is complete and that the fee has been deposited, is not required (see Section D.1. below).

The letter and attachments should be copied to the appropriate U.S. Army Corps of Engineers (USACE) and Virginia Marine Resources Commission (VMRC) personnel and to the VWP permit file (see DEQNet\VWP Library for USACE contacts and the VMRC website for that agency's contacts). The permit writer is encouraged to contact the applicant to discuss the requested information.

The permit processing clock is reset to zero as long as the permit writer mails the Additional Information and Permit Application Fee Request Letter within the **15-calendar day** timeframe. Once the requested information is received, the permit writer should review it within 15 calendar days and determine if the application is now complete. If all of the required information has been received, then the processing clock begins again. If the application is still not technically complete, except for the permit application fee, the processing clock remains at zero, and the permit writer should call the applicant to discuss the status of the additional information and/or the permit application fee.

Several Additional Information and Permit Application Fee Request Letters may be needed (each within the 15-calendar day review period). If two or more letters

are prepared, the permit writer should distinguish each request by using a consecutive numbering system.

4. Application Suspension

The VWP permit staff should avoid having to suspend the review of a permit application if at all possible. In the event the applicant fails to respond to the permit writer's requests for additional information, within 30 days of the latest request, or the applicant fails to express that they are working on the request and expect to submit the information within a reasonable time period, the permit writer should contact the applicant via telephone to discuss the requested information and notify his or her supervisor of the situation. If no resolution results, the permit writer should send a Notice of Application Suspension Letter via certified mail, as per DEQ policy (see sample at end of chapter). Whereas the Additional Information and Permit Application Fee Request Letter temporarily suspends the permit processing clock, the Suspension Letter notifies the applicant that DEQ is stopping work permanently until such time that all the requested information is received. The applicant is not required to agree to the action or submit a letter saying that he or she is withdrawing the application. The review suspension letter should be copied to the appropriate USACE and Virginia Marine Resources Commission (VMRC) personnel and the VWP permit file (see DEQNet\VWP Library for USACE contact information).

5. Permit Application Fees and Refunds

Projects qualifying for VWP individual permits are classified into three categories based on the degree, permanence, and severity of impacts to surface waters. The three categories (Category I, II, or III) of VWP individual permit projects are addressed in the Permit Fee Regulation 9 VAC 25-20-110 found at http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-20-110. This regulation includes a description of the general activities associated with each category. **Since permit application fees are subject to change, the permit writer should check this regulation and the DEQ web site at http://www.deq.state.va.us for updates to these fees.**

The category fees are as follows:

VWP Permit **Category I** Project
(water withdrawal projects, wetland impacts >10 acres, perennial stream impacts >60 linear feet)

VWP Permit **Category II** Project
(wetland impacts one to 10 acres, perennial stream impacts >60 linear feet)

VWP Permit **Category III** Project
(wetland impacts < one acre)

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The permit writer should determine the project category during the initial review process. If the project falls between two categories, the lower of the two fees is considered appropriate. If insufficient information exists to determine the probable fee category, the permit writer should request the additional information through the Additional Information and Permit Application Fee Request Letter. In this case, the letter should clearly state that an application fee will be requested in a future Additional Information and Permit Application Fee Request Letter once the category has been determined. **A permit application fee is not required from any agricultural operations, including aquaculture, or from the USACE when navigational dredging projects are involved.**

DEQ officially requests the appropriate fee using the Permit Application Fee Form (hereafter "fee form"), an attachment to the Additional Information and Permit Application Fee Request Letter. The permit writer should include his or her name and phone number at the bottom of the form and complete the following sections: Type of Permit Applied For, Type of Action, Amount of Fee Submitted, Existing Permit Number (if applicable), and the DEQ Office to Which Application Submitted. The applicant is responsible for completing the remaining information and submitting the fee form and payment to Accounting in the central office. A Permit Application Fee Form can be obtained from the DEQ web site at ftp://ftp.deq.state.va.us/pub/forms/water/feeform.doc. *Note: This form incorrectly instructs payments to be made out to 'Commonwealth of Virginia'. Payments should be made out to 'Treasurer of Virginia'.*

Should an applicant return the fee form and/or payment to the permit writer rather than to Accounting, the permit writer should attempt to complete the fee form and send it along with the check to Accounting to ensure that the record of payment is properly logged. Once the fee has been deposited, Accounting will complete the "For DEQ Use Only" section of the fee form and may notify the permit writer by forwarding a copy of the fee form to his or her attention. In lieu of this notification, the permit writer should contact Accounting to verify the official date of deposit.

The Virginia Department of Transportation (VDOT) processes an interagency transfer (IAT) of funds to DEQ from a VDOT-established escrow account. VDOT prepares and submits a completed fee form and an Inter-Agency Transfer (IAT) form that includes their expenditures coding information. If the permit writer receives these documents directly, he/she should make copies for the permit file and forward the originals to the DEQ Accounts Receivable Manager at central office. The Accounts Receivable Manager handles debiting the permit application fee from the VDOT escrow account. Accounting then will send a copy of the fee form with the recorded payment information back to the permit writer. This copy will serve as confirmation that the permit application fee has been deposited.

Other state agencies **may** process an interagency transfer (IAT) by submitting a completed fee form and an IAT form to DEQ's Accounting office. Once again, if the permit writer receives these forms, he/she should make copies for the permit file before forwarding them to Accounting. The responsibility to initiate the funds transfer lies with the outside agency rather than DEQ. DEQ's Accounting office will verify that the funds have been transferred using the CARS database. Accounting will then send a copy of the fee form with the recorded payment information back to the permit writer. This copy will serve as confirmation that the permit application fee has been deposited.

Although the permit application fee is officially required to consider an application complete, the 120-calendar day processing clock is initiated once all other information for a complete application has been received. The permit writer should not stop processing the application to wait for the fee. **However, the Draft Permit Package cannot be issued until the fee has been deposited by Accounting.**

The permit writer may initiate a refund of the permit application fee in certain cases, such as when the individual permit category changes and thus changes the required fee, or when an individual permit changes to a general permit. The refund is initiated by completing a Permit Fee Refund Request Form and submitting the form to the DEQ Accounting Manager at central office. This form can be obtained from DEQNet at: http://deqnet/docs/main/admin/admin_policy/fee_policy_revised_final_6_6_01.doc. The form is included as Attachment C to Agency Policy Statement No. 4-99. In most cases, check the 'an incorrect fee amount was determined during the permit application review' option when completing the form. If questions arise concerning the refund process, the permit writer should contact Accounting to coordinate the refund.

6. Site Visit

The permit writer should coordinate with the applicant to conduct a site visit for all projects qualifying for a VWP individual permit. Both the impact and compensation/restoration sites may warrant visits to fully understand the proposed scope of work. Possible exceptions include navigational dredging projects and fills for artificial reefs.

The permit writer should document existing site conditions with notes and photographs pertinent to proposed the impact areas and adjacent waterbodies or potential areas of concern, following the guidelines outlined below. Following these guidelines will assist DEQ in maintaining legally-defensible permit files:

- The photographs should be clearly labeled with the permit number, impact site name or number, date and time, name of the person taking the photograph, directional view, and a brief description of the subject.

- Site observation notes should be made in a bound field book that has consecutively numbered pages. The site name, permit number (when applicable), and the date should be listed on all pages used during each site visit. Each individual observation should list the time that the observation was made and a description of the observation. The name, title, address and telephone number of anyone interviewed during the site visit should be listed in the field book. Approximate locations of any photographs, their directional views, and their descriptions should also be listed in the field book. Upon returning to the office, the permit writer should copy the appropriate field book pages for that site visit, and place the copies into the permit file.

Although not required, the permit writer may suggest that the applicant invite other federal and state agencies to review site conditions and discuss pertinent issues in the field.

D. Review Notifications and Requests

1. Notice of Complete Application

The application is considered complete on the date that all required information has been received by the appropriate DEQ office, including the permit application fee. At this point, the permit writer should prepare a Notice of Complete Application Letter. This letter should clearly reference the date the application was considered complete and the initiation of the **120-calendar day** processing clock. The permit writer should continue to contact the applicant when necessary to clarify project details throughout the preparation of the permit. An example Notice of Complete Application Letter is included at the end of this chapter. The letter should be copied to the permit file only.

2. Riparian Owner Notification

As part of the VWP individual permit process, the permit writer is responsible for notifying riparian landowners located adjacent to the wetland or stream impact areas, and within one-half mile **downstream** of each distinct impact site in non-tidal areas. The distance becomes 0.25 mile **upstream** and 0.25 mile **downstream** of each impact site in tidal areas. If the impact is associated with an isolated wetland, riparian owner notification is not required, because by definition there is nothing downstream. If impacts are associated with wetlands adjacent to a waterbody, the permit writer should notify all property owners adjacent to the impact area and one-half mile **downstream** (along the waterbody) of the impact. For the purposes of this manual a water body is indicated by solid or broken blue line on a 7.5-Minute USGS topographic map. Examples include open water, a river, a perennial stream, or an intermittent stream. The permit writer should prepare the notifications concurrent with the onset of the application review process.

The names and addresses of the landowners are identified on local tax rolls by the county or city Commissioner of Revenue or tax assessor. The permit writer must send a letter to the appropriate entity requesting the names and addresses of all landowners or holders of deeded easements, as described above, along the waterbodies. A sample Request for Landowner Information Letter is provided at the end of this chapter. The permit writer should attach a topographic map, highlighting the areas where landowner information is required. The name and address of the appropriate entity contact can be identified on the county or city web sites or on DEQNet\VWP Library. This letter should be copied to the permit file only. **The submission of Adjacent Property Owner's Acknowledgement Forms (part of the JPA), or an applicant supplied property owner list, is not sufficient to fulfill DEQ's responsibilities to notify riparian landowners.**

Following receipt of the landowner name and address list, the permit writer must send a notification letter to each landowner. The letter should identify the name of the applicant, project site location, a description of the proposed activities and impacts, and information concerning the Public Notice of the permit. A sample Riparian Landowner Notification Letter is provided at the end of the chapter. This letter is copied to the permit file only.

Upon receipt of notification, a landowner may contact the permit writer concerning the proposed project. The permit writer should answer all questions and provide the requested information. The permit writer should also explain the Public Notice and the 30-calendar day, public comment process. The permit writer may offer to send a copy of the Public Notice to the landowner via regular mail, once the draft is approved by the applicant.

3. Local Government Notification

Upon receipt of an application, DEQ is required to notify the locality in which the proposed activity is to occur (Code of Virginia, Chapter 3.1, §62.1-44.15:4 D). In the past, DEQ accomplished this notification by directing the applicant to inform the local governing body. However, DEQ now notifies the County Administrator in the county where the proposed project is located. The notification should include the applicant's and/or agent's name, the project location, and a brief description of the project. A sample Local Government Notification Letter is provided at the end of this chapter. The contact name and address for the Administrator can be identified on the appropriate county or city web site.

4. Coordination with Regulatory Agencies

DEQ requests that various regulatory agencies provide comments on the potential impacts of the proposed activity on their respective program areas. Comments from state reviewing agencies must receive full consideration prior to any proposed VWP individual permit action. Applicable agency comments are

addressed in the Part I - Special Conditions section of the VWP individual permit (as discussed in Section E of this chapter).

State and Local Agencies

The permit writer is required to consult with the following agencies prior to the issuance of a VWP individual permit in accordance with the VWP Permit Program regulation. These agencies are given **45 calendar days** from the date of the notification letter to provide comments. If comments are not received within 45 calendar days, the permit writer infers that the agency has no comments on the project activities. Sample Agency Comment Request Letters are provided at the end of this chapter. The main sections of the application should be included as an attachment to the Agency Comment Request Letter, and the letters should be copied to the permit file only. These letters should be prepared concurrent with the application review process. Comments received during the review process may result in the inclusion of Part I - Special Conditions in the permit. Therefore, the permit writer must contact the state agencies as soon as possible prior to the preparation of the Draft Permit Package (see Section E).

Virginia Department of Health (VDH)

The permit writer must contact the appropriate VDH regional or field office for each VWP individual permit. A listing of the VDH regional and field offices, addresses, and contact names is on DEQNet\VWP Library.

The VDH review may address potential impacts such as site activities on a public water supply in the vicinity of the project; erosion and sedimentation controls; and the need to prohibit equipment refueling, fuel storage, or potential leaks in the vicinity of state waters.

If VDH determines that the project will condemn shellfish water in accordance with the Virginia Water Quality Standards Regulation 9 VAC 25-260-5 et seq., the VWP individual permit application must be denied. If it is determined by the VDH that the condemnation of shellfish beds is necessary, the DEQ is required by the Virginia Water Quality Standards to conduct a public hearing on the issuance of the permit. Should the VMRC and the Virginia Institute of Marine Science (VIMS) certify that the closure will have no effect on the current and future use of the shellfish resource, DEQ may dispense with the hearing.

Virginia Marine Resources Commission (VMRC)

The permit writer must request VMRC comments from:
Mr. Robert W. Grabb

Virginia Marine Resources Commission
2600 Washington Avenue, 3rd Floor
Newport News, VA 23607-0756

The VMRC may recommend time-of-year (TOY) restrictions or other project specific recommendations.

If VMRC determines that a condemned shellfish area contains a shellfish resource of significance, the permit application must be denied. In this case, the proposed activity would not be protective of an existing, instream designated use.

Department of Game and Inland Fisheries (DGIF)

The permit writer must request DGIF comments from:
Mr. Brian Moyer
Department of Game and Inland Fisheries
4010 West Broad Street
P.O. Box 11104
Richmond, Virginia 23230-1104

DGIF may comment on the presence of state proposed or listed, threatened and endangered (T&E) species in the vicinity of the project or recommend TOY restrictions in order to protect fishery resources. If DGIF indicates that the project activities permanently and negatively impact natural or stockable trout waters, the permit application must be denied.

Department of Conservation and Recreation (DCR)

The permit writer must request DCR comments from:

Mr. Derral Jones
Department of Conservation and Recreation
203 Governor Street, Suite 213
Richmond, Virginia 23219-2094

The DCR review may address erosion and sediment control; riprap placement for bank stabilization; stormwater management practices; presence of state proposed or listed, T&E plant or insect species, or proposed or designated critical habitat; state park lands; natural heritage resources; recreational access to state waters; dam safety; and areas or species of interest to the Virginia Heritage Program.

Virginia Department of Agriculture and Consumer Services (VDACS)

Although defined in the VWP Permit Program regulation, the permit writer is not required to directly contact VDACS. VDACS and DCR have signed

an agreement in which DCR will address all VDACS issues concerning the presence of state proposed or listed, T&E plant or insect species listed at the project site; minimum instream flow concerns; and wetlands on agricultural lands issues.

Other Interested or Affected Agencies

The VWP Permit Program regulation states that DEQ must consult with "any other interested or affected agencies". For instance, if the application indicates that a Chesapeake Bay Resource Protection Area (RPA) may be impacted by the project, the permit writer should send a letter to Chesapeake Bay Local Assistance Department (CBLAD) requesting comments. CBLAD can be contacted at the following address or numbers:

Chesapeake Bay Local Assistance Department
Attn: Catherine Harold
James Monroe Building
101 North 14th Street, 17th Floor
Richmond, VA 23219
(804) 225-3440
(800) 243-7229
(804) 225-3447fax

Federal Agencies

The VWP Permit Program regulation does not require the permit writer to contact the federal regulatory agencies concerning the information included in the proposed application. However, for projects involving significant impacts within the purview of one or more federal agencies, those agencies should be asked to comment. The following are the major federal agencies with roles relevant to the VWP Permit Program:

United States Army Corps of Engineers (USACE)

The USACE issues § 404 permits under the Clean Water Act and § 10 permits under the Rivers and Harbors Act. Both permits regulate activities that may result in discharges to surface waters. The permit writer should coordinate with the USACE for the majority of the projects to ensure that the conditions in the VWP individual permit and the USACE permit are complimentary (see DEQNet\VWP Library for USACE contacts).

United States Fish and Wildlife Service (USFWS)

The USFWS should be consulted when any activity may result in an adverse impact to T&E species, as identified by DGIF. Endangered species issues must be resolved before issuance of a VWP individual permit. USFWS may also comment on the proposed compensation plan.

E. Draft Permit Package

As noted previously, the permit writer has **120 calendar days from the date of a complete application** to decide to either issue the permit, issue the permit with conditions, deny the permit, or decide to conduct a public hearing. Because a 30-calender day comment period is required for the Public Notice (as discussed in detail below), the permit writer must actually complete the Draft Permit Package within **60 to 75 calendar days** from the application complete date. The permit writer should discuss complex or potentially controversial projects with his or her supervisor prior to developing the Draft Permit Package.

The Draft Permit Package consists of the following components, as detailed in the sections below:

- Routing and Concurrence Form
- Issuance Fact Sheet (summarizes the proposed permit activities, conditions, and review process)
- Permit Cover Page (includes general information concerning the project)
- Part I - Special Conditions (specific to the proposed permitted activity)
- Part II - General Conditions (required for all VWP individual permits as defined in the VWP Permit Program regulation)
- Public Notice and Public Notice Verification Form (summary of the project to be published by the applicant in a newspaper with circulation in the vicinity of the project)
- Public Notice Transmittal Letter

1. Routing and Concurrence Form

The Routing and Concurrence Form, found on DEQNet\VWP Permit Program or at the end of Chapter IV, should be signed by the package reviewers before the Regional Director (or person with delegated signature authority) signs the permit authorization.

2. Issuance Fact Sheet

The Issuance Fact Sheet (hereafter "Fact Sheet") provides a written assessment of the permitted activity's impacts on water quality and fish and wildlife resources. The Fact Sheet summarizes the application review and issuance process including regulatory agency and public comments and provides the rationale for the conditions included in the VWP individual permit. **The Fact Sheet is considered an internal DEQ document and is not part of the actual permit.** The Fact Sheet is prepared by the permit writer and is addressed to and signed by the Regional Permit Manager or designee. A sample Fact Sheet is provided at the end of this chapter. Note that this sample is a combination of the original versions of the Issuance Fact Sheet and the Memorandum previously used by the VWP Permit Program.

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Not all information detailed on the Fact Sheet can be completed before the draft permit is actually submitted for applicant review and public notice (for example, changes in permit conditions due to public comment). The remaining information can be completed following public notice and prior to final permit issuance.

Each permit warrants a unique Fact Sheet, and the permit writer is encouraged to include additional, useful or pertinent information. The sample Fact Sheet is fairly self-explanatory, but the Fact Sheet elements below are presented here for clarification:

Project Location
The basin, subbasin, section, class, special standards, and HUC can be found using DEQ's Water Quality Standards publication, or various agency web sites

Project Impacts
Present the anticipated effect(s) of the activity on water quality and beneficial uses of waters, detailing the type and quantity of state waters impacted and identifying impacts as either permanent or temporary.

Compensation for Unavoidable Impacts
Provide a brief description of any compensation proposed for permanent losses of wetlands, stream channels, or other surface waters. This should include the compensation site name, location, and compensation ratios.

Part I - Special Conditions
This section provides a summary of the rationale and purpose of each condition as it relates to avoidance and minimization of impacts, the protection of instream beneficial uses, compliance with application water quality standards, the prevention of significant impact of state waters or fish and wildlife resources, and the provision for no net loss of wetland acreage and function.

Part II - General Conditions
This section contains a standard statement regarding conditions applicable to all VWP individual permits in accordance with the VWP Permit Program regulation.

General Standard
Whenever a VWP individual permit is issued, re-issued, or modified, a review of the effect of the permitted activity in relation to the general standard is performed and documented in the Fact Sheet.

3. Permit Cover Page

The Permit Cover Page is ultimately signed and dated by the DEQ Director or designee and includes the permit effective and expiration dates, permittee name and address, activity location, and a brief description of the site activities. The Permit Cover Page should be single-sided, printed on DEQ letterhead, and marked "Draft" at this point in the process. A sample Permit Cover Page is provided at the end of this chapter.

4. Part I - Special Conditions

The Special Conditions should be included in **every** VWP individual permit, printed on both sides of the page, and marked "Draft" until the Final Permit Package is developed. The Part I - Special Conditions are project specific conditions based primarily on the proposed activity and impacted waters. These conditions are included in the permit to protect instream beneficial uses; prevent significant impacts to state waters or fish and wildlife resources; provide for no net loss of wetland acreage and function from permitted activities; ensure that impacts to surface waters are avoided and minimized to the maximum extent practicable; and ensure adequate compensation for all unavoidable impacts.

The Special Conditions are categorized by activity (for example, Authorized Activities, Standard Project Conditions, Construction Monitoring, etc.). An example of typical Part I - Special Conditions that can be used as a guide is provided in Appendix G. Every category, or every condition within each category, is not applicable to every permit. Sections A through E are standard categories that should be in every VWP individual permit, although these may be tailored to the specific project. The remaining sections/categories are to be added, deleted, or edited as necessary for a particular permit. Remember to address all appropriate and pertinent comments received from the state and federal agencies and the public while creating these special conditions.

The permit writer must have a clear understanding of the scope of work and project impacts and incorporate the appropriate conditions in each permit. For example, a permit for a project that involves only stream impacts and associated restoration with no wetland impacts should not include wetland compensation and monitoring conditions. Additionally, a permit may warrant a Special Condition not listed in the example provided in Appendix G.

The permit writer is encouraged to discuss the Special Conditions with the applicant as the Draft Permit Package is being developed. This is the time for the applicant to catch any mistakes or to negotiate the special conditions of the permit.

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5. Part II – General Conditions

The Part II - General Conditions are included in **all** VWP individual permits in accordance with VWP Permit Program regulation. The General Conditions can be found in Appendix H. Because the conditions are stated in the VWP permit regulation, the permit writer **should not alter** the General Conditions.

The General Conditions should also be printed on both sides of the page and marked "Draft" at this point in the process.

6. Public Notice and Public Notice Verification Form

The Public Notice provides a summary of the proposed permit impacts and compensation activities. The Public Notice should be written in clear, concise terms for publication in a local paper circulated in the vicinity of the project. The appropriate newspapers are listed in CEDS. **Publication of the notice is the responsibility of the applicant.** DEQ requires proof of publication, which is documented on the Public Notice Verification Form. The Public Notice procedure is further discussed in Section F of this chapter. A sample Public Notice and Public Notice Verification Form is provided at the end of this chapter.

7. Draft Permit and Public Notice Transmittal Letter

The Transmittal Letter includes directions to the applicant concerning the review of the draft permit and publication requirements. A sample Draft Permit and Public Notice Transmittal Letter is provided at the end of this chapter.

8. DEQ Review of Draft Permit Package

The permit writer should forward the completed Draft Permit Package (Routing and Concurrence Form, Fact Sheet, Permit Cover Page, Part I - Special Conditions, Part II - General Conditions, Public Notice, Public Notice Verification Form, and Transmittal Letter) to the VWP Permit Manager or his/her designee for review. If the reviewer suggests revisions, the permit writer should discuss the revisions and make the appropriate changes.

9. Applicant Review of Draft Permit Package

Once the Draft Permit Package has been reviewed internally and the appropriate changes have been made, the permit writer should send the Public Notice, Public Notice Verification Form, Permit Cover Page, Part I - Special Conditions, and Part II - General Conditions with the Transmittal Letter addressed to the applicant **via regular mail**. The letter and enclosures are copied to the appropriate USACE and VMRC personnel and to the permit file. **The Draft Permit Package cannot be sent to the applicant until the fee has been deposited and the permit writer has received the USACE delineation confirmation.**

The Transmittal Letter requests that the applicant review and comment on the Draft Permit Package within **14 calendar days**. During this period, the applicant may request a meeting to discuss the proposed permit conditions or may elect to withdraw the application and thereby end permit processing. The permit writer should consider the applicant's questions and comments and modify the conditions if appropriate. Any significant changes (those that do not fit the definition of a Minor Modification) to the draft permit that result from applicant comments require review by the permit writer's supervisor and appropriate agencies. In these instances, the permit writer should request that the agencies respond within **15 calendar days** as general rule.

The Transmittal Letter also directs the applicant to publish the Public Notice in a newspaper having general circulation in the project area. The applicant is reminded that if publication does not occur within **14 calendar days** of reviewing and accepting the Draft Permit Package, the **120-calendar day** processing clock is stopped on the **15th calendar day** after the date the Draft Permit Package is mailed to the applicant, to resume on the date of publication, as per Regulation 9 VAC 25-201-140.A. Any incidents affecting the 120-calendar day processing clock should be documented in the Fact Sheet.

On the day that the Draft Permit Package is sent to the applicant, the permit writer should e-mail a copy of the Public Notice page only to Priscilla Royal in the Office of Water Permits at DEQ Central Office. This will serve as a reference for central office managers should they receive phone calls concerning the project.

Should the applicant disagree with the permit conditions and not withdraw his/her application voluntarily, the DEQ regional office may either publish the Public Notice over the objections of the applicant or may process a denial of the proposed project (see Section I below). The permit writer should discuss these situations with his/her supervisor.

All changes to the draft permit package should be summarized in the Fact Sheet.

10. Regulatory Agency Review of Draft Permit Package

Since outside agencies were already solicited for their comments, the permit writer is not required to send a copy of the Draft Permit Package to any federal or state agency, unless an agency specifically requests a copy.

11. Locality Notification of Public Notice

During the Draft Permit stage, the permit writer is required to request comments concerning the Public Notice from various local governments. The permit writer should send a Locality Notification of Public Notice Letter and a copy of the Public Notice (not including the Public Notice Verification Form) via regular mail to the County or City Administrator, the County or City Board of Supervisors,

and the Regional Planning District Commission having jurisdiction over the project area. This should be done at the same time that the Draft Permit Package is mailed to the applicant. The contact name and address for the Administrator and Board of Supervisors can be identified on the appropriate county or city web sites. The name and address of the appropriate Regional Planning District Commission can be found in the Commonwealth of Virginia Telephone Directory or the Commonwealth of Virginia's government web site. These letters are copied to the permit file only. Sample Locality Notification Letters are provided at the end of this chapter.

F. Public Notice and 30-Day Comment Period

DEQ allows a 30-calendar day comment period following the date that the Public Notice is published, during which individuals may submit relevant written comments via mail, fax, or e-mail. As an example, if the Public Notice is published in Wednesday's newspaper, Thursday will be the first day of the 30-calendar day comment period. If the 30th day of the comment period occurs on a weekend or holiday, the next **business** day is considered the 30th day.

Changes in the draft permit Part I - Special Conditions may be necessary due to the receipt of public comments. Regulatory agencies may again comment on the draft permit during the public comment period or later if a public hearing occurs. Changes made to the permit conditions as a result of receiving comments should be for technically sound reasons. For example, if a commenter demonstrates that a specific activity could result in a negative impact to water quality, through data, demonstration, or proof, a change to the permit Special Conditions may be justified. The mere assertion that the proposed activity will be detrimental should not be construed to be sufficient evidence to require a change in the Special Conditions. Changes made to the Special Conditions as a result of public comments should be discussed with the applicant and all applicable parties. When public comments result in changes to the Special Conditions, the Fact Sheet should be updated with the complete rationale for the change(s).

Copies of all public comments must be included in the permit file. At the end of the Public Notice period, the permit writer should send a written response to those individuals who commented during the Public Notice period. The permit writer should specify in the response which provision(s), if any, have been changed and the reason for the change(s). **The response should address all significant comments raised during the Public Notice period.** For convenience, the same response letter may be sent to all that commented. Following these steps will avoid having to public notice the comments and responses.

DEQ requires that the applicant provide proof of publication. Failure to do so prior to the close of the 30-calendar day Public Notice comment period stops the 120-calendar day processing clock on the day that the comment period ends. The processing clock resumes once the permit writer receives the verification. As stated in the Draft Permit Package Transmittal Letter, the applicant is responsible for instructing the publisher to provide

DEQ with the actual copies of pages from the newspaper showing the notice and the date of the newspaper, or instruct the publisher to complete the sworn Public Notice Verification Form. The permit writer should include the actual Public Notice from the newspaper or a photocopy of the ad with a sworn verification form from the newspaper in the permit file. A photocopy without a sworn verification form is **not** acceptable.

G. VWP Individual Permit Public Hearing Process

This section provides basic guidance for the Public Hearing (hereafter, "hearing") process. In the event a hearing is required, the permit writer should immediately discuss the situation with his or her supervisor. The hearing process may require 10 to 12 weeks to complete. **Because each hearing will be specifically tailored to a unique project, sample letters, memos, minutes, etc. are not included in this manual, except for a Sample Public Notice for a Public Hearing.** The permit writer should ask his or her supervisor for example documents generated in their region. The regional office should contact central office personnel if additional guidance is needed.

The permit writer may receive a request for a hearing as a result of a Public Notice. Hearings typically require another Public Notice. At the applicant's request, DEQ may combine the Public Notices for each step and simultaneously publish a Public Notice for both comments and a hearing. However, the permit writer should avoid this situation if possible since a board meeting is required for a final decision. In cases where the owner has requested a hearing and there has been no notice of the comment period, the decision on holding a hearing should be made by the Regional Director within **30 calendar days** after the request for hearing was received. However, the decision to hold a hearing cannot be finalized prior to the development and submittal of the Draft Permit Package.

The basic tasks involved in holding a hearing are listed below and further explained in the following sections of this chapter:

- Conduct a hearing need determination.
- Make the arrangements for a time and location for the hearing, and find a hearing officer.
- Effect a legal Public Notice that a hearing is scheduled, and notify interested parties.
- Prepare the record and presentations for the hearing.
- Hold the hearing.
- Summarize the comments for the Board Book.
- Prepare a board presentation and staff recommendation.

1. Hearing Need Determination

Should a request for a hearing be received by the close of the 30-day comment period, the regional office will conduct a hearing need determination. The final decision to hold a public hearing must be made by the Regional Director within **30 calendar days** after the close of the public comment period.

According to Procedural Rule Number 1 in Regulation 9 VAC 25-230-10 et seq. of the Virginia Administrative Code, public hearings may be granted if the request is filed in a timely manner and the following conditions are met: 1) there is a significant public interest in the issuance, denial, modification, or revocation of the permit in question; 2) there are substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and 3) the action requested is not on its face inconsistent with, or in violation of, the Water Control Law, federal law, or any regulation promulgated thereunder.

The permit writer must determine if a request for a hearing meets the applicable criteria of Procedural Rule Number 1 listed above. The criteria are somewhat subjective. A single comment from a representative of a group can constitute significant public interest. An issue that is relevant may already be addressed in the permit but may not be satisfactorily addressed in view of the public. In this case the Regional Director has wide latitude in interpreting the required criteria and may either convene or deny the hearing. Permit writers should discuss this decision with the Regional Director prior to preparing a recommendation to convene a hearing through the Hearing Need Determination Memorandum (see procedures for preparation below).

If a request does not meet the criteria for holding a hearing, or if a change to the draft permit removes the basis for the dispute, the permit writer will recommend denial of a hearing by preparing the above Hearing Need Determination Memorandum.

The Hearing Need Determination Memorandum is addressed to the Director of DEQ and signed by the Regional Director. The memorandum includes:

- The project scope of work and/or description
- A summary of responses and requests from the Public Notice (attach copies to memorandum)
- A summary of the permit writer 's attempts to address comments from the public
- Recommendation for convening or denying a hearing and the rationale, based on the regulation criteria
- A target date for board action (if recommendation is to convene a hearing)

The Regional Director approves the recommendation and, in the case of denial, signs the permit and associated documents. The permit writer prepares a Notice of Denial of the Request for a Hearing Letter, signed by the Regional Director, to the requestor of the hearing and to each interested part (as per Procedural Rule Number 1) via regular mail.

2. Hearing Coordination and Public Notice

The permit writer must arrange the date and location for the hearing. Hearings are typically held in the evening and in the city/county in which the proposed

project will occur for public convenience. The hearing must be scheduled within **60 calendar days** of the decision to conduct the proceeding.

The permit writer should contact a board member to serve as the Hearing Officer, generally, the one who resides closest to the location of the hearing. A list of current board members is posted on DEQ's web site, but because this manual can be accessed by the public under the Freedom of Information law, their telephone numbers will need to be obtained from the Office of Policy at DEQ's central office.

A Public Notice of the hearing shall be published by DEQ in a newspaper of general circulation within the city or county of the proposed project. **The permit writer should have this notice published at least 30 calendar days before the hearing date.** The permit writer should also verify that the notice is published, but a sworn verification form is not required. The contents of the Public Notice for a hearing shall include:

- The name and address of the applicant; if the location of the activity differs from the address of the applicant, the notice shall also state the location in sufficient detail such that the specific location may be easily identified
- A brief description of the activity to be conducted
- The name of the affected waterway
- A statement of the tentative determination to issue or deny the VWP individual permit and the issues upon which comments will be heard
- A brief description of the public hearing procedures
- The date for closure of the hearing file; closure occurs 15 calendar days after hearing but can be shortened with State Water Control Board (SWCB) approval, generally obtained at a previous board meeting
- The address, phone number, and e-mail address (if applicable) of a specific person at DEQ from whom further information may be obtained (typically the permit writer)

An example of a Public Notice for a hearing is included at the end of this chapter.

The permit writer should send a copy of the Public Notice to Cindy Berndt in the Office of Policy and to William Hayden in the Office of Public Affairs, both within DEQ Central Office. Cindy Berndt will forward the notice to the Registrar, as legally required, and the Office of Public Affairs will place the notice on the public DEQ web site.

3. Preparing for the Hearing

The permit writer must prepare the items listed below for the hearing:

- Briefing Memorandum for board member
- Opening remarks for board member
- Technical presentation for hearing
- A list of items to be found in the hearing file

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The permit writer should prepare a Briefing Memorandum to the board member providing the time, place, and date of the hearing, a brief background on the permit application, and the nature of the request for the public hearing (that is, what are the issues and who has requested the hearing). The Briefing Memorandum can be based on the request for hearing authorization that the permit writer previously prepared or can be a copy of the technical presentation, if it sufficiently covers the background and issues surrounding the proposed permit action.

The permit writer should also provide opening remarks to the board member, written by the permit writer for the board member. The opening remarks should be brief and provide the main points of the proposed permit action. An **example** of opening remarks is provided at the end of this chapter.

Again, formatting of the technical presentation is up to the individual permit writer. However, the targeted audience should be considered when preparing the presentation.

A list of hearing file documents should be prepared and copied for the board member. A typical hearing file should include, at a minimum: the application; correspondence between the applicant, DEQ, and advisory agencies; Draft VWP Individual Permit Issuance Fact Sheet; the Draft Permit; responses to the Public Notice for the proposed activity; documentation that the hearing was authorized as a result of the Hearing Need Determination process; and the Public Notice for the hearing. Additionally, all technical documents necessary to support the staff's anticipated recommendation to the board should be included in the file.

4. Conducting the Hearing

Regional office permit writers and their supervisor should plan to attend the hearing in order to operate all audio/video equipment and to handle sign-in duties for the public.

Details on “how-to” conduct a public hearing can be obtained from either DEQNet or Appendix B. Questions on conducting hearings should be directed to the Regional Office Permit Manager or to Cindy Berndt in the Office of Policy at DEQ’s central office.

5. Post-Hearing Actions

The permit writer should remember that a final decision (for example, to issue, withdraw, or deny) must be made within **90 calendar days** after the hearing date, as in accordance with the VWP permit regulations. Therefore, conducting the post-hearing tasks should not be delayed if at all possible.

After the hearing, the public or other interested parties may submit comments for consideration by the board within **15 calendar days**. At the close of the 15-calendar day comment period, the permit writer must prepare a general summary of the hearing and all the comments, in memorandum format, for presentation to the board. The memorandum reviews technical issues and develops preliminary recommendations. Ideally, the summary memorandum is completed in time for inclusion in the Board Book, which is generally three weeks before a scheduled board meeting.

The permit writer should also prepare a presentation to be given at the next scheduled board meeting. The permit writer or the permit writer's supervisor may give the presentation. The presentation should include a staff recommendation that will likely be adopted by the board after it has been given an opportunity to ask questions.

Once the board has reached its decision, the permit writer must prepare a board Minute, which consists of documenting the board's decision or action in writing. A copy of the board Minute is forwarded to Cindy Berndt at central office.

H. Final VWP Individual Permit Preparation

Once a public hearing has been held (if appropriate) and the decision has been made to issue the permit, the permit writer should prepare the Final VWP Individual Permit Package. This package includes a second Routing and Concurrence Form, the updated Issuance Fact Sheet (including comments from hearing process), a Transmittal Letter, the final Permit Cover Page, the final Part I - Special Conditions, and Part II - General Conditions. The permit must be issued, done so through signature by the appropriate designee, within **120 calendar days** of the application complete date, unless circumstances have warranted the stopping of the processing clock.

The permit writer should prepare a Transmittal Letter for the final permit that is addressed to the permittee from the Regional Permit Manager or his/her designee. A sample Transmittal Letter is provided at the end of this chapter. The permit writer should forward the Routing and Concurrence Form, the Transmittal Letter, and Final Permit Package (Fact Sheet, Permit Cover Page, Part I - Special Conditions, Part II - General Conditions) to the Regional VWP Permit Manager, or his/her designee, for final review and signature. These documents should no longer be labeled as "Draft". **The review signatures are to be obtained prior to that of the Regional Director, or person with delegated signature authority, to document that all appropriate management staff have reviewed and concurred on the permit.** An example of the Routing and Concurrence Form is located at the end of Chapter IV.

The Permit Cover Page is printed on letterhead and signed and dated by the Regional Director or his/her designee. The permit writer must add the effective and expiration dates in the appropriate spaces. **The effective date is the date that the Permit Cover Page is signed.**

Once the documents have been signed and dated, the permit writer sends the original Transmittal Letter, Permit Cover Page, Part I - Special Conditions, and Part II - General Conditions to the permittee **via certified mail**. The Routing and Concurrence Form and the Issuance Fact Sheet are internal documents and should not sent to the permittee.

The permit writer should copy the Transmittal Letter, Permit Cover Page, Part I - Special Conditions, and Part II - General Conditions to the appropriate USACE and VMRC personnel only if the agency commented on the project or has jurisdiction. All documents should be copied to the permit file.

The permit writer may choose to save a copy of the Final Permit Package on a regional office server that is accessible by all DEQ employees. If so, the information should be saved under the permit number.

Once the VWP individual permit has been issued, the permit writer must:
- Complete all CEDS information and ensure that the file is transferred from "application" to "active" status (see Appendix C)
- Ensure that all pertinent information is included and organized in the permit file
- Begin compliance monitoring as detailed in Chapter VII

I. VWP Individual Permit Denial Process

This section details the steps involved with the denial process of a VWP individual permit application.

1. Reasons for Denial

After the administrative and technical review of an application, a permit writer may make a recommendation that the SWCB deny a request for a VWP individual permit when one or more of the following situations exist:
- The proposed project will result in violations of water quality standards or will impair the beneficial uses of state waters
- The proposed project will cause the condemnation of shellfish waters in accordance with the Virginia Water Quality Standards (9 VAC 25-260-5 et seq.)
- The proposed project fails to adequately avoid and minimize impacts to state waters to the maximum extent practicable
- The proposed compensatory mitigation plan fails to achieve no net loss of existing wetland acreage and function
- The Department of Game and Inland Fisheries indicates that natural or stockable trout waters would be permanently and negatively impacted by the proposed project
- The proposed project is prohibited by 9 VAC 25-210-50 (for example, the proposed activity or terms and conditions of the VWP individual permit do not comply with one or more state laws or regulations; the proposed activity

results in the discharge of any radiological, chemical, or biological warfare agent or high level radioactive material into surface waters)

- The effect of the proposed project impacts, 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

Denials are not processed for reasons of failure to provide a complete application. These situations should be handled through permit suspension as detailed in Section C.4. of this chapter.

DEQ expects denials to be rare because the permit writer should work with applicants to remove or minimize the more objectionable impacts in the course of determining a tentative permit action. There may be cases where one of the above reasons is bound to occur if the project is allowed to proceed, and therefore, the permit writer should not delay in proceeding with recommending permit denial.

2. Denial Notification to Applicant

The applicant must be notified that the permit writer intends to recommend that the SWCB deny his/her request for a VWP individual permit. The permit writer should prepare the Notice of Tentative Decision to Deny Application Letter, giving the applicant:

- the reason for the recommendation, based on the VWP permit regulation;
- sufficient information and recommendations for changes in order to allow him/her the opportunity to modify the application and achieve a favorable recommendation;
- an opportunity to withdraw the application, in which case, no permit will be issued; and
- the choice to have DEQ proceed with the processing of the original project application without modification, in which case, the staff will make a recommendation of denial.

The permit writer should forward the notification letter to the Regional VWP Permit Manager or his/her designee for review. A Routing and Concurrence Form should be included with the notification letter (see sample at end of this chapter).

Following review and concurrence, the permit writer sends the letter to the applicant **via certified mail**. The letter is also copied to the USACE, VMRC, and the permit file.

After receiving the above notice, the applicant may choose to withdraw the application. If the applicant elects to proceed with the existing request, DEQ may deny the application and advise the applicant of his/her right to a public hearing for consideration of the denial, as per Section 9 VAC 25-230-10 et seq. of the Virginia Administrative Code.

3. Public Notice of Denial

The DEQ permit writer is responsible for preparing and submitting a Public Notice for the intent to deny a VWP individual permit request. The procedure for Public Notice of a denial is similar to that of the permit issuance. The exceptions are: DEQ pays for the Public Notice; the Public Notice states the board's intention to deny the permit; and the Public Notice states the applicable reason for denial.

Should the Public Notice result in a request for a hearing, follow the public hearing procedures discussed in this chapter, or contact the Office of Policy at DEQ Central Office.

J. Frequently Asked Questions

Q: What should I do if I need to issue a permit prior to the USACE making it's final permit determination?

A: Process the application under the VWP permit type that best covers the proposed activity. Collect the permit application fee. If the USACE later makes a final determination that would have negated the need for a VWP permit, then nothing needs to be done by the permit writer. Do not refund the fee, and continue with the permitting process. The VWP permit can be issued independently of the USACE permit, however, DEQ should strive to avoid permit duplication whenever possible.

Q: What if the applicant states that he or she would like to withdrawal an application?

A: The permit writer should ask the applicant to submit a written request for the application withdrawal. If the applicant fails to submit a written request, the permit writer should prepare a letter to the applicant stating that the application was withdrawn on a specific date. All correspondence concerning the application withdrawal should be maintained in the VWP permit file. The CEDS data entry should be changed from "Issuance" to "Withdrawal", and the appropriate information should be entered to get the withdrawal record to move from application to active.

Q: What should I do if the applicant has submitted a check for the permit application fee and the project results in a lower category of individual permit or in a general permit (for example, from reducing impacts)?

A: If the check is received by the permit writer, return the check to the applicant. If the check is received by DEQ Accounting, the permit writer may initiate a refund of the permit application fee by completing a Permit Fee Refund Request Form and submitting the form to the DEQ Accounting Manager at central office. This form can be obtained from DEQNet at http://deqnet/docs/main/admin/admin_policy/fee_policy_revised_final_6_6_01.doc. The form is included as Attachment C to Agency Policy Statement No. 4-99. If questions arise concerning the refund process, the permit writer should contact Accounting to coordinate the refund.

Q: Is Riparian Landowner Notification required for impacts associated with isolated wetlands only?
A: Riparian Landowner Notification is not required for impacts associated with isolated wetlands because of the limited size and no "downstream" component.

Q: Are applicants required to demonstrate ownership of the site?
A: No. Neither the VWP individual or general permit conveys any property rights to the applicant (see 9 VAC 25-210-70).

Q: What are the timeframe restrictions if the applicant submits only part of the information requested in the Additional Information and Permit Application Fee Request Letter (for example, provide only two of four requested items)?
A: The processing clock will start only after all information detailed in the Additional Information and Permit Application Fee Request Letter has been received with the exception of the permit application fee. Note that upon receipt of any information, the permit writer must review the submittal to determine if all information was received and if the application is legally complete. If all requested information was not received, the permit writer should call the applicant to discuss the omitted information.

Q: What if the Draft Permit Package is prepared but the permit application fee has not been deposited, or the USACE wetland delineation confirmation has not been received, and the processing clock is nearing the 120-calendar day deadline?
A: The application fee must be deposited and the USACE confirmation received prior to submitting the Draft Permit Package to the applicant. Throughout the 120-calendar day timeframe, the permit writer should contact the applicant to determine the status of these requirements. If the fee is not deposited or the confirmation is not received within approximately 30-calendar days of the deadline, the permit writer should contact his or her supervisor and write a Suspension Letter stating that the processing clock has been stopped (modify example letter at end of this chapter). Note that the applicant is not automatically authorized to perform the impacts if the 120-calandar day timeframe is not met.

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Sample VWP Individual Permit Application Review Checklist

Department of Environmental Quality
VWP Individual Permit Application Review Checklist

This checklist is to be used as a **guide** to review a VWP individual permit application for "completeness" and to develop the Additional Information and Permit Application Fee Request Letter. A completed Joint Permit Application, all appropriate maps and appendices, and the DEQ Addendum are the minimum submittal requirements. This checklist details the major points of the Joint Permit Application and attachments. Refer to the VWP permit regulation for details of required information for complete applications.

Permit Number: _ _-_ _ _ _

General Notes:

- **A signed Agent Authorization Form (included in the Joint Permit Application) is required for a consultant to represent the applicant on permit issues.**
- **A signed Applicant and Contractor Authorization Form (included in the Joint Permit Application) is required for a contractor to represent the applicant on permit issues.**

1) General Information

- ❑ Provide permittee contact information including name of owner, mailing address, and telephone and fax numbers.
- ❑ Provide authorized agent information (if applicable) including name, company/firm mailing address, and telephone and fax numbers.
- ❑ Provide the name, address, and telephone number of the newspaper circulated in the project area.
- ❑ Provide project location information including the city/county and name of waterbody(ies).
- ❑ Submit a detailed site location map (for example, USGS 7.5' quadrangle topographic map) of the impact area including the latitude and longitude (to the nearest second) for the project, hydrologic unit code, and stream classification, if applicable (see Water Quality Standards). The location map should be of sufficient detail that the site could be easily located for inspection.
- ❑ Provide project name and a complete narrative description of the project, project purpose and need, and the scope of work in State waters (both temporary and permanent impacts).
- ❑ Provide proposed construction schedule.
- ❑ Submit Joint Permit Application Signature Page with original signature.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample VWP Individual Permit Application Review Checklist
Page 2

2) Project Impacts

- ❑ Provide a complete narrative description of Avoidance and Minimization Efforts. (for example, conduct activities in the dry, spanning bridges, bottomless culverts, coffer dams, alignment of crossings).
- ❑ Surface Water Impact Assessment (wetlands, streams, open water) - Enumerate individual impact areas (temporary and permanent) and include exact location (for example, Impact Site Number 1, Station Number 185+20 to 188+10), acreage or linear feet/dimensions, and type (for example, palustrine forested) of wetlands impacted and impact description and dimensions (for example, 8' by 10' box culvert; 30" diameter by 200' long concrete pipe; fill placement 200' by 225'), DEQ Classification (Water Quality Standards), stream width/depth, pool/riffle/flat ratio, and substrate type.
- ❑ Provide full-size or half-size plan sheets for the project. The limit of all State waters should be included in the plans.
  - ❑ All permit sketches should include, at minimum, north arrow, scale, existing structures, existing contours, proposed contours (if available), limit of jurisdictional areas, direction of flow, impact limits, location and dimension of all proposed structures in impact areas (fill riprap/outlet protection/channel tie-ins, dredging, excavation).
  - ❑ All cross-sections should include structural dimensions, delineation of tidal/non-tidal waters boundary, and low-flow provisions.
- ❑ Provide a complete narrative description of the proposed Erosion and Sediment Controls (as appropriate). (Note: Not required for a complete application so do not delay processing)
- ❑ Provide a complete narrative description of the proposed Stormwater Activities (if applicable).
  (Note: Not required for a complete application so do not delay processing)
  - ❑ Provide a stormwater management plan, including calculations used to determine the basin size and design necessary to meet local retention and treatment requirements. Incorporation of forebays is encouraged. Calculations should also include 2-year pre- and post-development stormwater flow velocities. Design should ensure that additional downstream scouring will not occur. Incorporate infiltration galleries and other methods to reduce stormwater runoff, when practicable.
  - ❑ Provide plan view drawings of location of stormwater management pond(s) including impacts to State waters.

3) Joint Permit Application Appendices

- ❑ Submit Appendix A (Private Piers & Marginal Wharves).
- ❑ Submit Appendix B (Boathouses).
- ❑ Submit Appendix C (Marinas & Community Piers).

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample VWP Individual Permit Application Review Checklist
Page 3

- ❑ Submit Appendix D (Dolphins-Mooring Piles-Buoys not associated with Piers).
- ❑ Submit Appendix E (Boat Ramps).
- ❑ Submit Appendix F (Bulkheads & Associated Backfill).
- ❑ Submit Appendix G (Fill).
  - ❑ Include source and amount, type and composition percentage, purpose of the filling activity and the type of structure to be built, distance from nearest waterbody, acreage and type of wetlands impacted, methods used for sedimentation and erosion control, drainage area and average stream flow, and evidence or certification that the material is free from toxic contaminants.
- ❑ Submit Appendix H (Riprap & Associated Backfill).
- ❑ Submit Appendix I (Marsh Toe Stabilization).
- ❑ Submit Appendix J (Dredging/Mining/Excavating).
  - ❑ Include disposal location and transport method, type and composition percentage, evidence or certification that the material is free from toxic contaminants (as applicable), detailed dewatering design plans and calculations to include erosion and sediment control measures, appropriate drainage area and average stream flow, previous date of dredging (for maintenance dredging only).
  - ❑ Include a scaled plan view and cross-section depicting the dredge area to include existing water depths; mean low water (MLW), mean high water (MHW) (or ordinary high water (OHW), and datum used to determine these lines; dredge dimensions; adjacent shoreline structures; and the location all vegetated wetlands. Please note that a buffer of 4 times the depth of the dredge cut should be provided between the toe of the dredge cut and any adjacent wetlands.
  - ❑ ____ Sample(s) of the sediment from the area to be dredged should be collected and analyzed for the following parameters: **[List]** _____.
    Samples should be collected at locations representative of the proposed dredge area and where the highest probability of contamination exists. All sampling and analysis should be performed using United States Environmental Protection Agency (EPA) approved methods.
  - ❑ A standard elutriate test should be performed prior to analysis of dredged sediment, in accordance with the EPA "Inland Testing Manual".
- ❑ Submit Appendix K (Groins & Jetties).
- ❑ Submit Appendix L (Breakwaters).
- ❑ Submit Appendix M (Beach Nourishment).
- ❑ Submit Appendix N (Intake-Outfall Structures).
- ❑ Submit Appendix O (Stream Channel Modifications).
- ❑ Submit Appendix P (Impoundments/Dams).
- ❑ Submit Appendix Q (Utility Crossings).
- ❑ Submit Appendix R (Road Crossings).
  - ❑ Include narrative description of the materials to be used, method of construction,

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

and the order in which construction will be conducted (including cofferdams); approximate drainage area and average stream flow rate; location and area of fill; hydrologic/hydraulic studies results; vertical distance above MHW, MLW or OHW for bridge crossings.

4) DEQ Addendum

A) General Information

- ❑ Provide latitude and longitude (to the nearest second) at the center of the impact site and topographic map name.
- ❑ Provide hydrologic unit code for project and compensation site.
- ❑ Provide DEQ stream classification (Water Quality Standards).
- ❑ Provide stream drainage area.
- ❑ Include a brief assessment of the functions and values of the wetlands to be impacted (applicable for impacts of 1 to 10 acres and all water withdrawal projects. Include water quality, erosion control, water storage, existing beneficial uses of the surface water, and fish and wildlife resources and habitat.
- ❑ Include a detailed functional values assessment of the wetlands to be impacted (applicable for impacts of 10 or more acres). The methodology for the assessment should be included.

B) Wetland and Stream Projects

1) Delineation

- ❑ Provide an aerial photo, scaled map, or delineation report that clearly shows the property boundaries, wetland and waterway boundaries, limits of RPAs (if applicable), and surface water and wetland impacts at the site. Include latitude and longitude (to the nearest second) of the center of the impact area.
- ❑ Provide a copy of the Flood Emergency Management Agency (FEMA) flood insurance rate map or FEMA-approved local floodplain map for the project site (as applicable).
- ❑ Provide a copy of the wetland delineation data sheets (also required for Conceptual Compensation Plan if existing wetlands are present on compensation site).
- ❑ Provide a copy of the USACE delineation confirmation or evidence of confirmation in progress (also required for Conceptual Compensation Plan).

2) Compensation

- ❑ Provide a complete narrative description of Avoidance and Minimization Efforts. (for example, conduct activities in the dry, spanning bridges, bottomless culverts, coffer dams, alignment of crossings)
- ❑ Attach a description of the intended compensation for unavoidable impacts (a, b, or c below, or a combination).

❑ Discuss the feasibility of in-kind, on-site and off-site compensatory mitigation.

- ❑ If off-site compensation is proposed (including bank or in-lieu-fee fund), complete an alternative analysis of the compensation site to include, at a minimum, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, wetlands functions and values, vegetation type, soil, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructibility, and cost.

a) Creation / Restoration

❑ Submit a Wetland/Stream Creation or Restoration Compensation Plan.

Wetland Creation/Restoration

- ❑ Submit a conceptual wetlands compensatory mitigation plan that includes, at a minimum, the following:
  - ❑ Goals and objectives in terms of replacement wetland acreage and function.
  - ❑ Location map (topo map) including latitude and longitude (to the nearest second) of center of compensation site.
  - ❑ A copy of the wetland delineation data sheets.
  - ❑ A copy of the Corps of Engineers' delineation confirmation or evidence of confirmation in progress.
  - ❑ Source of hydrology and additional ground water data (including elevation, if available) for the proposed compensation site and at reference wetland sites.
  - ❑ Hydrologic budgets to include projected monthly inputs and outputs, a hydrograph showing monthly changes in water level, and projected water level elevations for a "typical", "wet"', and "dry" year.
  - ❑ Proposed location of groundwater monitoring stations and photo stations.
  - ❑ Conceptual grading plans with existing and proposed elevations.
  - ❑ Planting schemes, species list, zonation, and acreage of each vegetation type proposed.
  - ❑ Soil preparation and amendment plans addressing both topsoil and subsoil conditions.
  - ❑ Draft design of any water control structures. Inclusion of buffers.
  - ❑ Additional structures and features necessary for the success of the site.
  - ❑ Proposed construction schedule.

Stream Restoration

- ❑ Submit a detailed stream restoration plan that includes, at a minimum, the following:

- ❑ Goals and objectives in terms of water quality benefits.
- ❑ Stream deficiencies to be addressed.
- ❑ Proposed restoration measures.
- ❑ Location map (topo map) including latitude and longitude (to the nearest second) of center of site.
- ❑ Plan view and cross-section drawings of the stream segments to be restored.
- ❑ Proposed location of vegetative/bank monitoring stations and photo stations.
- ❑ Plant species list and planting scheme.
- ❑ Proposed benthic monitoring plan including proposed baseline study.
- ❑ Type, location, and function of in stream structures (for example, vanes).
- ❑ Plan view and cross-section drawings of in-stream structures.
- ❑ Design flows.
- ❑ Proposed construction schedule.

b) In-Lieu-Fee Fund (see list on DEQNet\VWP Library)

- ❑ Board must have approved Fund for use.
- ❑ Provide proof that the entity is willing to accept the donation.
- ❑ Provide the donation and the assumptions or documentation of how the contribution amount was calculated.

c) Wetland Mitigation Bank (see list on DEQNet\VWP Library)

- ❑ Provide the name of the proposed bank within the same or adjacent hydrologic unit code and same river watershed.
- ❑ Provide the number of credits proposed to be purchased or used.
- ❑ Provide certification from the bank owner of the availability of credits.

C) Water Withdrawal, FERC Hydropower Licensing, and Impoundment Projects

- ❑ Justify water withdrawal requirements.
- ❑ Provide drainage area, average annual flow, median monthly stream flows (cubic feet per second) at the water intake or dam site (include description of stream flow gauges, the type of calculations used, and the period of record), and historical flows (if available).
- ❑ Provide maximum instantaneous withdrawal and maximum daily withdrawal at the water intake or dam site. Include variability of the demand by season.
- ❑ Provide information on how the proposed withdrawal will impact flows in terms of flow reduction.
- ❑ Provide amount of water lost to consumptive use, the average daily return flow of the proposed project, and the location of the return flow.

Sample VWP Individual Permit Application Review Checklist
Page 7

- ❑ Describe the method used to calculate the amount of water withdrawn (include relevant assumptions).
- ❑ Provide proposed use and need of the surface water and information describing how the demand was determined.
- ❑ Describe existing beneficial uses of the surface waterbody affected by the water withdrawal. Include both in-stream and off-stream uses.
- ❑ Provide information on the known aquatic life impacted by proposed withdrawal, including species and habitat requirements.
- ❑ Provide plan view drawings of location of impoundment(s) including impacts to State waters.
- ❑ Justify the need, size, and location of the proposed impoundment(s).
- ❑ Provide a comprehensive analysis of instream flow conditions during a typical year and a dry year.

5) Fee Payment

❑ Provide fee payment and hardcopy of fee form.

Clarifications and Additional Information

❑ _____
_____
_____
_____

DISCLAIMER

This document provides procedural guidance to DEQ VWP permit staff for the review of VWP permit applications. It does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying the State Water Control Law and the implementation regulations on the basis of the site specific facts when permits are issued.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Additional Information and Permit Application Fee Request Letter

[Date]

[Applicant Name]
[c/o Agent, if applicable]
[Applicant or Agent Address]

RE: Joint Permit Application Number **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Additional Information **[and Permit Application Fee]** Request Letter

Dear **[Applicant/Agent]**:

The Virginia Department of Environmental Quality (DEQ) has received your application for the above-referenced project on **[December 20, 2000]**. The Virginia Water Protection (VWP) Permit Regulation 9 VAC 25-210-80.B. defines the informational requirements for a complete VWP permit application. Upon review, DEQ has determined that the application is incomplete and additional information is required in order for DEQ to continue the permitting process. I have enclosed a summary of the information required to complete the application package. Please submit the requested information to my attention at the letterhead address.

In addition to the requested information, a permit application fee is required for the proposed activity in accordance with the Permit Application Fee Regulation 9 VAC 25-20 et seq. DEQ has determined that the proposed activity qualifies as a VWP Permit Category **[#]** Project with a designated fee of **[$]**. Please complete the enclosed Permit Application Fee Form and mail the form with the designated fee to the following address:

DEQ - Receipts Control
Water Division
P.O. Box 10150
Richmond, Virginia 23240

Checks or money orders should be made payable to the Treasurer of Virginia. Please do not send cash.

Although the permit application processing fee is needed to complete the application, DEQ will begin the 120-calendar day processing clock once **all** of the additional information summarized in this letter is received and reviewed. Please note that a draft permit cannot be issued prior to the deposit of this fee. Please submit the information and permit application fee within **30 calendar days** of the date of this letter so DEQ can continue a timely review of the application.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Additional Information and Permit Application Fee Request Letter
Page 2

[Applicant/Agent Name]
[Date]
Page 2 of 2

Please contact me at **[phone number]** or **[e-mail address]** if you have any questions regarding this request, or if you are having difficulty obtaining the requested information. Thank you for your cooperation in this matter.

Sincerely,

[Permit Writer]
[Title]

Attachments: Additional Information Request Summary, Permit Application Fee Form

cc: **[Contact Name, U. S. Army Corps of Engineers]**
[Contact Name, Virginia Marine Resources Commission]
[Agent]
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Additional Information and Permit Application Fee Request Letter
Page 3

Additional Information Request Summary

Joint Permit Application Number **[##-####]**
[Route 250 Widening, Goochland County], Virginia

Please provide the following information to complete the application package:

1. **[Provide the original signature page.**
2. **Provide the channel length of the relocated stream at Site Number 2.**
3. **Provide a detailed alternative analysis for all mitigation sites that were deemed impractical, providing the location and description of each of the sites and justification for eliminating these sites from consideration.**
4. **Provide details of the proposed water control structure for the compensation site.**
5. **DEQ understands that the permittee will compensate for the 2,305 linear feet of stream impacts by stream stabilization activities (2,305 linear feet). Provide the restoration site name, a topographic map identifying the site location, general location information including the stream name, hydrologic unit code, latitude/longitude, and available diagrams or sketches of the proposed stabilization activities.**
6. **Provide justification for the location of Stormwater Management Pond 2, which impacts 0.5 acres of scrub/shrub wetlands. If the pond can not be relocated in an upland area, describe the proposed actions to prevent draining the wetlands in the vicinity of the pond.**
7. **Explain why the impacts associated with the 0.50 acres of scrub/shrub wetlands at Impact Site 2 are considered temporary impacts when the entire area is within the proposed limits of disturbance?**
8. **The conceptual compensation plan must specify the number and type of species to be planted. Please note that red maple is not acceptable species for this site. Please propose alternate species, including oak species, for the site.**
9. **The compensation plan should include the proposed methods for soil preparation for the vegetation.**
10. **Indicate if a jurisdictional determination was performed, and provide the U.S. Army Corps of Engineers wetland delineation verification and appropriate data sheets.]**

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Notice of Application Suspension Letter

[Date]

[Applicant Name]
[c/o Agent, if applicable]
[Applicant or Agent Address]

RE: Joint Permit Application Number **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Notice of Application Suspension

Dear **[Applicant/Agent]**:

The Department of Environmental Quality (DEQ) received your application for the above-referenced project on **[February 2, 2001].** Upon review of the application, DEQ determined that the application was considered incomplete and prepared **[two]** Additional Information and Permit Application Fee Request Letters dated **[February 10, and March 10, 2001]**. DEQ has not received the requested information to date and has contacted you several times to discuss these issues. Therefore, DEQ is suspending the processing of the application in accordance with the VWP Permit Program Regulation 9 VAC 25-210-80.D. Note that impacts to state waters taken without a VWP permit is a violation of state law.

DEQ is willing to meet with you to discuss the required additional information as summarized in the above-referenced letters and to assist you in assembling this information. Please contact me at **[phone number]** or **[e-mail address]** to discuss the suspension of this application.

Sincerely,

[Permit Writer]
[Title]

cc: **[Contact Name]**, U.S. Army Corps of Engineers
[Contact Name], Virginia Marine Resources Commission **(if applicable)**
[Agent] (if applicable)
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Notice of Complete Application Letter

[Date]

[Applicant Name]
[c/o Agent, if applicable]
[Applicant or Agent Address]

RE: Joint Permit Application Number **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Notice of Complete Application

Dear **[Applicant/Agent]**:

The Department of Environmental Quality (DEQ) received the additional information requested for the above-referenced project on **[February 2, 2001]**. Our review of the application and additional information indicates that the application is complete **[(with the exception of the application fee)]** as of **[February 2, 2001]**. The amount of time allowed by § 62.1-44.15:5.D. of the Code of Virginia for DEQ to process a complete VWP individual permit application for any project, excluding water withdrawal projects, is 15 days for a completeness review; 120 days for processing the complete application by issuing a VWP individual permit, issuing a VWP individual permit with conditions, denying the VWP individual permit, or deciding to conduct a public meeting or hearing; 60 days to hold a public meeting or hearing; and 90 days after the public meeting or hearing, if held, to make a final VWP individual permit decision.

Please note that I will contact your office for additional clarifications, as necessary. **[Add if the fee has not yet been deposited: In addition, the application permit fee must be received by DEQ prior to issuance of the Draft Permit Package for your review.]**

Please contact me at **[phone number]** or **[e-mail address]** with questions concerning the above information.

Sincerely,

[Permit Writer]
[Title]

cc: **[Agent] (if applicable)**
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Request for Landowner Information Letter

[Date]

The Honorable **[Commissioner Name]**
Commissioner of the Revenue
[Address]

RE: Joint Permit Application Number **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Local Government Request for Landowner Information

Dear Commissioner **[Name]**:

The Department of Environmental Quality (DEQ) has received an application for a Virginia Water Protection (VWP) individual permit for a proposed project in your locality. The project location is identified on the enclosed **[topographic]** map.

Section 62.1-44.15:4.D of the Code of Virginia requires DEQ to notify landowners in the vicinity of the proposed project and to obtain their names and addresses from local tax rolls from the Commissioner of the Revenue or tax assessor. I respectfully request the names and addresses of all landowners of the shoreline along both sides of **[Tuckahoe Creek and an unnamed tributary of Tuckahoe Creek along the impact site and for a distance of one half mile downstream from the point of the proposed project,]** as indicated by the highlighted areas on the attached **[topographic]** map. **Please format the addresses to comply with the recent change in U.S. Postal Service requirements, using only the "911" street address (house number and street name).**

Please send this information to my attention at the above address at your earliest convenience. Thank you in advance for your cooperation. If you have any questions, do not hesitate to contact me at **[phone number]**.

Sincerely,

[Permit Writer]
[Title]

Enclosure: **[USGS Topographic Map, or other type of map]**

cc: VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Riparian Landowner Notification Letter

[Date]

[Landowner Name]
[Address]

RE: Joint Permit Application Number **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Riparian Landowner Notification

Dear **[Landowner Name]:**

The Department of Environmental Quality (DEQ) has received an application for a Virginia Water Protection (VWP) individual permit for a proposed project in your locality. The **[Applicant Name]** proposes to **[widen Route 250, from approximately Route 632 to Route 634]**. The proposed project will impact approximately **[0.75 acres of non-tidal wetlands along Tuckahoe Creek]**.

DEQ will review the application and may draft a VWP individual permit for this project. If DEQ drafts a permit, a notice will appear in a newspaper circulated in the vicinity of the project site announcing the intention to issue the permit and inviting public comment on the permit contents. This public comment period will run for **30 calendar days** from the date the notice first appears in the newspaper. The public is welcome to review the permit application at the DEQ office by scheduling an appointment during normal business hours.

Issuance of a permit for the proposed activity(ies) in no way conveys property rights to the VWP individual permit applicant, his/her agent, or DEQ.

This letter is sent to your attention as required by Section 62.1-44.15:4.D. of the Code of Virginia. If you have any questions, please contact me at **[phone number]**.

Sincerely,

[Permit Writer]
[Title]

cc: VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Local Government Notification Letter

[Date]

[Bland County] Administrator
[Address]

RE: Joint Permit Application Number **[##-####]**
[Kimberling Creek Dam Replacement Project, Bland Correctional Center, Bland] County, Virginia
Local Government Notification

Dear Administrator:

As per the Code of Virginia, Chapter 3.1, Section §62.1-44.15:4.D., the Virginia Department of Environmental Quality (DEQ) is hereby notifying **[Bland County]** of the above-referenced project **[proposed by EEE Consulting, Inc., agent for the Virginia Department of Corrections]**.

The proposed project is located **[on Kimberling Creek, near the Bland Correctional Center]**, as shown on the attached map. The latitude and longitude are **[37,09,50 and 80,53,22]**, respectively.

The project involves **[the replacement of an existing dam with a new structure approximately 120 feet downstream. The new dam will span approximately 82 feet across Kimberling Creek. A portion of the existing dam will be removed. Riprap will be placed along the creek banks at the new dam site]**. **[Minimal impacts to the environment are expected. -OR- X acres of wetlands and X square feet of stream channel will be impacted.]**.

Should you have any questions concerning this project, please contact me at **[804-698-4516]**.

Sincerely,

[Permit Writer]
[Title]

Attachment: **[USGS Topographic Map, or other type of map]**

cc: **[Agent] (if applicable)**
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Request for Agency Comments Letter

[Date]

Mr. Brian Moyer
Department of Game and Inland Fisheries
Environmental Services Section
4010 West Broad Street
P.O. Box 11104
Richmond, Virginia 23230-1104

RE: Joint Permit Application Number **[##-####]**
[Applicant Name]
[Route 250 Widening, Goochland County], Virginia
Request for Agency Comments

Dear Mr. Moyer:

The Department of Environmental Quality (DEQ) has received an application for a Virginia Water Protection (VWP) individual permit for surface water impacts associated with the **[Applicant Name]** proposed **[Route 250 widening]** project. DEQ respectfully requests your agency comments on Joint Permit Application Number **[##-####]** pursuant to Section 62.1-44.15:5.C. of State Water Control Law. A copy of the pertinent information is enclosed. Please review the information for your agency concerns that may be addressed in the VWP individual permit.

Please submit written comments or concerns to my attention at the above address or at **[e-mail address]** by **[date 45 calendar days from date of this letter]**. If written comments are not received by this date, DEQ will infer your agency has no comments on this permit application and proposed activity.

Please contact me at **[phone number]** or **[e-mail address]** if you require additional information.

Sincerely,

[Permit Writer]
[Title]

Enclosure: Excerpts from Joint Permit Application

cc: VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Request for Agency Comments Letter
Page 2

[Date]

Mr. Derral Jones
Department of Conservation and Recreation
203 Governor Street
Richmond, Virginia 23219

RE: Joint Permit Application Number **[##-####]**
[Applicant Name]
[Route 250 Widening, Goochland County], Virginia
Request for Agency Comments

Dear Mr. Jones:

The Department of Environmental Quality (DEQ) has received an application for a Virginia Water Protection (VWP) individual permit for surface water impacts associated with the **[Applicant Name]** proposed **[Route 250 widening]** project. DEQ respectfully requests your agency comments on Joint Permit Application Number **[##-####]** pursuant to Section 62.1-44.15:5.C. of State Water Control Law. A copy of the pertinent information is enclosed. Please review the information for your agency concerns that may be addressed in the VWP individual permit.

Please submit written comments or concerns to my attention at the above address or at **[e-mail address]** by **[date 45 calendar days from date of this letter]**. If written comments are not received by this date, DEQ will infer your agency has no comments on this permit application and proposed activity.

Please contact me at **[phone number]** or **[e-mail address]** if you require additional information.

Sincerely,

[Permit Writer]
[Title]

Enclosure: Excerpts from Joint Permit Application

cc: VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Request for Agency Comments Letter
Page 3

[Date]

Mr. Robert Grabb
Virginia Marine Resources Commission
P.O. Box 756
Newport News, Virginia 23607

RE: Joint Permit Application Number **[##-####]**
[Applicant Name]
[Route 250 Widening, Goochland County], Virginia
Request for Agency Comments

Dear Mr. Grabb:

The Department of Environmental Quality (DEQ) has received an application for a Virginia Water Protection (VWP) individual permit for surface water impacts associated with the **[Applicant Name]** proposed **[Route 250 widening]** project. DEQ respectfully requests your agency comments on Joint Permit Application Number **[##-####]** pursuant to Section 62.1-44.15:5.C. of State Water Control Law. A copy of the pertinent information is enclosed. Please review the information for your agency concerns that may be addressed in the VWP individual permit.

Please submit written comments or concerns to my attention at the above address or at **[e-mail address]** by **[date 45 calendar days from date of this letter]**. If written comments are not received by this date, DEQ will infer your agency has no comments on this permit application and proposed activity.

Please contact me at **[phone number]** or **[e-mail address]** if you require additional information.

Sincerely,

[Permit Writer]
[Title]

Enclosure: Excerpts from Joint Permit Application

cc: VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Request for Agency Comments Letter
Page 4

[Date]

[Appropriate Name]
Virginia Department of Health
[Appropriate Field Office Address]

RE: Joint Permit Application Number **[##-####]**
[Applicant Name]
[Route 250 Widening, Goochland County], Virginia
Request for Agency Comments

Dear **[Appropriate Name]**:

The Department of Environmental Quality (DEQ) has received an application for a Virginia Water Protection (VWP) individual permit for surface water impacts associated with the **[Applicant Name]** proposed **[Route 250 widening]** project. DEQ respectfully requests your agency comments on Joint Permit Application Number **[##-####]** pursuant to Section 62.1-44.15:5.C. of State Water Control Law. A copy of the pertinent information is enclosed. Please review the information for your agency concerns that may be addressed in the VWP individual permit.

Please submit written comments or concerns to my attention at the above address or at **[e-mail address]** by **[date 45 calendar days from date of this letter]**. If written comments are not received by this date, DEQ will infer your agency has no comments on this permit application and proposed activity.

Please contact me at **[phone number]** or **[e-mail address]** if you require additional information.

Sincerely,

[Permit Writer]
[Title]

Enclosure: Excerpts from Joint Permit Application

cc: VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Issuance Fact Sheet

VIRGINIA WATER PROTECTION INDIVIDUAL PERMIT ISSUANCE FACT SHEET

Department of Environmental Quality
[Regional Office Name and Address]

SUBJECT: Issuance of Virginia Water Protection Individual Permit Number **[##-####]**
[Applicant Name]

TO: **[Regional Permit Manager Name]**
[Title]

FROM: **[Permit Writer Name]**
[Title]

DATE: **[Date]**

COPY: VWP permit file

DEQ has reviewed the application for the Virginia Water Protection (VWP) Individual Permit Number **[##-####]** and has determined that the project qualifies as a VWP Category **[#]** 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. **[This sentence, if applicable - The proposed permit also addresses no net loss of wetland acreage and function through compensatory mitigation and adequately assesses compensation implementation via success monitoring and reporting.]** Permitted wetland impacts have been inventoried in evaluating this proposed permit.

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

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Issuance Fact Sheet
Page 2

1. Contact Information:

Permittee Legal Name and Address:
[Name and Address]

Owner Legal Name and Address (if different from Permittee):
[Name and Address]

Agent Legal Name and Address (if applicable):
[Name and Address]

2. Processing Dates:

Received Application: **[Date]**
Application Complete: **[Date]**
Permit Fee Deposited by Accounting: **[Date]**
Processing Deadline (From Complete Application): **[Date]**
Draft Permit Package Mailed: **[Date]**
Public Notice Published: **[Date]**
Received Verification of Publication: **[Date]**
End of 30-Calendar Day Public Comment Period: **[Date]**
Public Hearing (if applicable): **[Date]**

3. Project Location:

City/County:	**[Goochland County]**
Waterbody:	**[Tuckahoe Creek and an unnamed tributary]**
Basin:	**[James River]**
Subbasin:	**[Middle James River]**
Section:	**[9a]**
Class:	**[III]**
Special Standards:	**[PWS, o]**
HUC:	**[02080205]**

Compensation Site Name:	**[Mountain Site]**
Compensation Site City/ County:	**[Goochland County]**
Compensation Site Basin:	**[James River]**
Compensation Site Sub-basin:	**[Middle James River]**
Compensation Site HUC:	**[02080205]**

[OR]

[On-Site Compensation]

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Issuance Fact Sheet
Page 3

4. Project Description:

The permittee proposes **[Summarize general project scope of work. Example - widening Route 250 (Broad Street) from two lanes to six lanes from approximately 0.4 miles west of the Goochland/Henrico County Line to Route 623 in Goochland County. The project includes the replacement of the existing 40' span bridge with a 70' span bridge over Tuckahoe Creek.]**

5. Project Impacts:

The proposed activity results in the permanent impact of approximately **[Summarize all impacts to surface water. Example: 0.219 acres of palustrine, emergent wetlands, 1.0 acres of palustrine, scrub/shrub wetlands, and 0.527 acres of palustrine, forested wetlands associated with Tuckahoe Creek and an unnamed tributary.]** Water quality impacts are expected to be temporary and minimal provided the permittee abides by the conditions of the permit. A loss of state waters shall occur. However, the impacts have been avoided and minimized to the greatest extent practicable.

6. Avoidance and Minimization Efforts:

[Summarize all avoidance and minimization efforts. Example: The alignment was shifted approximately 2,000 feet north to avoid an additional 0.85 acres of emergent and 1.2 acres of forested wetlands. The original design included a quadruple barrel box culvert. Wetland and stream channel impacts have been minimized with the proposed design of a 70-foot span bridge and by reducing the lateral extent of the fill by approximately 200 feet along each side of the bridge approach.]

7. Compensation for Unavoidable Impacts:

[Summarize all compensation activities. Example: Permanent scrub/shrub wetland impacts will be compensated onsite through the creation of wetlands at the southern limit of Tuckahoe Creek. Impacts will be compensated at a replacement to loss ratio of 1.5:1 for permanent scrub/shrub wetland impacts (1.5 acres created). Permanent emergent and forested wetland impacts will be compensated through the purchase of available credits at the James River Mitigation Landbank in Goochland County, Virginia. Impacts will be compensated at ratios of 1.5:1 for permanent emergent wetland impacts (0.329 acres debited) and 2:1 for permanent forested wetland impacts (1.054 acres debited).]

[Justify off-site compensation, when appropriate.]

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Issuance Fact Sheet
Page 4

8. Site Inspection:

A site visit was conducted on **[November 3, 2000]. [Summarize observations and note problems or concerns that warranted Special Conditions included in the VWP individual permit]**

9. Riparian Landowner Notification:

All riparian landowners located adjacent to the impact area and within one-half mile downstream of each distinct impact area were notified on **[November 3, 2000]**. **[Summarize significant responses.]**

[OR]

[The applicant owns the property adjacent to and within one-half mile downstream of each distinct impact area.]

10. Relevant Regulatory Agency Comments:

As part of the application review process, DEQ contacted the appropriate state regulatory agencies and coordinated with various federal regulatory agencies, including the United States Army Corps of Engineers (USACE). All relevant agency comments were 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

[Summarize all comments and state if they were or were not (with rationale) addressed in the Part I - Special Conditions. The following are typical examples of comments].

The following state agencies were contacted on **[November 1, 2001]. [The Department of Game and Inland Fisheries and Department of Health]** have not provided comments to date. Failure to provide comments within 45 calendar days of the DEQ request for comments infers that the agency has no comments on the project activities.

[The Virginia Marine Resources Commission recommended the time-of-year restriction of February 15 through June 30 for anadromous fish. The time of year restriction is referenced in Part I - Special Conditions, Section B of the permit.]

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Issuance Fact Sheet
Page 5

[The Department of Conservation and Recreation (DCR) indicated that there are no documented natural heritage resources in the project area nor are there any anticipated adverse impacts on existing or planned recreational facilities, streams on the National Park Service Nationwide Inventory, Final List of Rivers, potential Scenic Rivers or existing or potential State Scenic Byways. DCR noted that the activity will not affect any documented state-listed plants or insects. DCR also indicated that VDOT should comply with (1) the VDOT Annual Standards and Specifications for Erosion and Sediment Control (ESC) and the project specific ESC plan, and (2) the VDOT Annual Standards and Specifications for Stormwater Management (SWM) and the project-specific SWM plan. Erosion and sediment control and stormwater management measures are addressed in the Part I – Special Conditions.]

Summary of Federal Agency Comments and Actions

[The project qualifies for a USACE Letter of Permission (LOP-1, which the USACE expects to issue).]

[The United States Fish and Wildlife Service (USFWS) expressed concern over the use of the James River Mitigation Landbank. The USFWS did not sign the banking agreement due to concerns about the crediting ratio for uplands, the lack of a reference wetland, and uncertainty that the bank will meet the required success criteria. The USFWS recommended compensation at replacement ratios of 2:1 for forested and scrub/shrub wetland impacts and a ratio of 1.5:1 for emergent wetland impacts. The USACE LOP-1 also references these compensation ratios, and they are incorporated into this permit.]

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

The public notice was published in **[the Richmond Times Dispatch on January 12, 2001]**.

[EITHER]

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

[OR]

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Issuance Fact Sheet
Page 6

[[Four] public comment letters were received. However, no substantial or disputed issues were presented that warranted revisions to the draft conditions of the permit.]

[OR]

[[Seven] responses were received from the public: two opposed the permit and five requested protection of wetlands. Due to the public response, a public hearing was held on [June 1, 2000.]] [Summarize hearing events and comments]

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:

[Parts A, B, C and D below will be a part of every permit, regardless of the type of permitted activity, but can be tailored for a specific project. The remaining Parts are activity specific and should be added and edited as appropriate]

Part A Authorized Activities:

No. 1 addresses the activities authorized by this permit, including impact types and limits.

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.

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 the permittee adhere to time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission for the protection of fish and wildlife resources.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

No. 4 ensures that dredging and filling operations will minimizes stream bottom disturbances and turbidity.

No. 5 requires that Water Quality Standards downstream of the construction area must not be violated as a result of the site activities.

Nos. 6 and 7 require temporary disturbances to surface waters during construction to be avoided and minimized to the maximum extent practicable.

Nos. 8, 10, 13, 14, 15, 16, and 17 provide requirements and limitations on the entry of various materials (including concrete, fill, construction and waste material, fuels, lubricants, and untreated stormwater runoff) into state waters.

No. 9 requires the identification of all non-impacted surface waters in the vicinity of the proposed activity to prevent unpermitted impacts.

Nos. 10 and 11 require the use of erosion and sedimentation controls during excavation and construction operations to minimize sedimentation of surface waters.

No. 12 requires maintenance of continuous flow of perennial springs for the protection of instream beneficial use.

No. 18 limit the use of machinery and equipment in surface waters to protect beneficial uses.

No. 19 determines that the permit does not take into consideration the structural stability of any proposed structure.

Part C Construction Monitoring

No. 1 requires photographs of the construction so that the board may track the progress of the project and monitor permit compliance.

No. 2 requires water quality monitoring to ensure compliance with the Water Quality Standards.

Part D Required Notifications and Submittals

Nos. 1 through 22 list the notification, submittal, and reporting requirements to ensure compliance with all permit conditions.

[THE FOLLOWING ARE PROJECT SPECIFIC CATEGORIES. THE PERMIT WRITER MUST PREPARE JUSTIFICATION FOR EACH PERMIT. THE CATEGORIES BELOW CORRESPOND TO SPECIAL CONDITIONS IN APPENDIX G]

Part E Road Crossings

No. 1 provides specifications for access road construction to minimize adverse effects to surface waters.

Nos. 2, 3, and 6 summarizes requirements for pipe and culvert construction to provide for the re-establishment of a natural stream bottom and low flow channel to maintain instream beneficial uses.

No. 4 requires that temporary impacts be restored immediately following construction to minimize impacts to water quality and fish and wildlife resources.

No. 5 summarizes the requirements for stream channelization or relocation activities to protect instream beneficial use.

Part F Utilities

No. 1 requires the minimization of disturbance to surface waters and restoration to preconstruction conditions following utility line installation.

No. 2 sets a 90-day time limit for temporary sidecasting during trench excavation to minimize impacts to surface waters.

No. 3 provides the requirements for trench construction to avoid the drainage of surface waters.

Part G Stream Modification and Streambank Protection

No. 1 addresses the requirements for stream channelization or relocation to avoid additional impacts to state waters.

No. 2 prohibits the use of stream substrate for erosion control to avoid additional impacts to state waters.

No. 3 requires upland disposal of material removed from stream substrate to avoid unpermitted impacts to surface waters.

Nos. 4 and 5 provide requirements for riprap placement during bank stabilization activities to minimize sedimentation of surface waters.

Nos. 6 and 7 address the placement of protective measures to minimize impacts to surface waters.

No. 8 prohibits the use of certain materials for the construction of submerged structures to protect water quality and fish and wildlife resources.

Part H Dredging

Nos. 1, 2, 3, and 7 provide limits for dredging to avoid and minimize disturbance and prevent unpermitted impacts.

No. 4 requires the submittal of a dredged material management plan for the designated upland disposal site to avoid unpermitted impacts to surface waters.

No. 5 prohibits double handling of dredge material to prevent unpermitted impacts to surface waters.

No. 6 provides guidance for hydraulic dredging to prevent umpermitted impacts to surface waters.

No. 8 defines requirements for transport of material to disposal site and for dewatering structures and procedures.

No. 9 requires adherence to the transport operation’s spill prevention plan to avoid unpermitted impacts to surface waters.

No. 10 provides guidance on transportation of dredge materials to prevent unpermitted impacts to surface waters.

No. 11 prohibits offloading of material over open water to avoid unpermitted impacts.

Nos. 12, 13, 14, and 15 provide guidance for dewatering activities to protect water quality and fish and wildlife resources.

No. 16 prohibits overtopping of the dredge material containment berm to protect water quality and fish and wildlife resources.
No. 17 defines the requirements for navigation channels.
No. 18 requires a bathymetric survey following dredging activities.

Part I Golf Courses
[permit writer should create justifications here based on applicable Spec. Conds.]

Part J Pond Construction
[permit writer should create justifications here based on applicable Spec. Conds.]

Part K Marina Construction & Operation
[permit writer should create justifications here based on applicable Spec. Conds.]

Part L Stormwater Management Facilities
No. 1 defines the general requirements for stormwater management facility construction to minimize adverse effects to aquatic resources and provide for long-term aquatic resources protection and enhancement.
Nos. 2 and 6 require the use of erosion and sedimentation controls to minimize sedimentation of surface waters.
Nos. 3 and 5 provide limits and guidance for maintenance excavation to avoid unpermitted impacts to surface waters.
No. 4 prohibits credit for compensatory mitigation within maintenance areas of the stormwater facility to ensure no net loss of wetland acreage and function.

Part M Compensation at an Approved Mitigation Bank
No. 1 summarizes compensation requirements.

Part N Compensation Using an Approved In-Lieu Fund
No. 1 summarizes compensation requirements.

Part O Compensation On Site and Off Site
This section lists the requirements to ensure the success of the compensation site to provide appropriate compensation for unavoidable surface water impacts.

General Compensation Requirements
No. 1 summarizes compensation requirements.
No. 2 requires that compensation site construction must start within 180 days of impact site construction.
Nos. 3 and 4 provides guidance on vegetation planting criteria to ensure vegetative success.
No. 5 provide guidance on the identification and control of noxious weeds and acceptable methods of vegetation removal.

No. 6 provides for restrictions on herbicide/algacide use.
No. 7 requires a site stabilization plan for compensation sites that involve land disturbance.
No. 8 prohibits the entry of point sources of untreated stormwater runoff into the mitigation site.
No. 9 provides guidance if the area fails to be established as viable wetlands.

Wetland Compensation
No. 10 states the required compensation.
Nos. 11 and 17 ensure hydrology criteria will be met.
Nos. 12 and 19 ensure hydric soil criteria will be met.
Nos. 13 and 18 ensure vegetation criteria will be met.
No. 14 requires a post-grading survey to ensure proper site conditions for the success of the site.
Nos. 15 and 20 outline the site monitoring requirements.
No. 16 requires photographs of the site so that the board may track the progress of the project and monitor permit compliance.
No. 18 indicates the timing of compensation site monitoring to ensure success of the compensation site.
No. 21 describes the reporting requirements to ensure compliance with the permit conditions.

Stream Compensation
No. 22 states the required compensation.
Nos. 23 and 28 ensure success criteria will be met.
Nos. 24, 25, 27, 29, 30, and 31 outline the site monitoring requirements.
No. 26 requires photographs of the site so that the board may track the progress of the project and monitor permit compliance.
No. 32 ensures that temporary construction measures minimize soil disturbance to the maximum extent practicable.
Nos. 33 and 34 ensure erosion and sediment measures are utilized.
Nos. 35 and 36 detail buffer restoration requirements and measures to take if failure of buffers occurs.

Part P Water Withdrawals

No. 1 ensures withdrawal limits followed and reporting of such withdrawals occurs.

Sample Issuance Fact Sheet
Page 11

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 proposed permit addresses avoidance and minimization of wetland impacts to the maximum extent practicable.
- The effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to significant impairment of state waters or fish and wildlife resources.
- The proposed permit conditions address no net loss of wetland acreage and function through compensatory mitigation and adequately assess compensation implementation via success monitoring and reporting. Compensation will be accomplished by **[the creation of onsite wetlands and by the debit of available credits from the existing James River Mitigation Landbank in Goochland County, Virginia, which is located within the same river watershed as the proposed wetland impact site.]**
- Permitted wetland impacts have been inventoried in evaluating this proposed permit.
- This permit is proposed to prevent unpermitted impacts.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Issuance Fact Sheet
Page 12

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 **[##-####]**.

Approved: _____
VWP Permit Manager or Designee

_____
Date

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Permit Cover Page

VWP Individual Permit Number **[##-####]**
Effective Date: **[May 2, 2001]**
Expiration Date: **[May 2, 2011]**

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: [Virginia Department of Transportation]

Address: [523 North Washington Highway, Ashland, Virginia 23005]

Activity Location: [Route 250, 0.4 miles west of the Goochland/Henrico County Line to Route 623 in Goochland County, Virginia]

Activity Description: [Widen Route 250 (Broad Street) from two lanes to six lanes resulting in the permanent impact of approximately 0.219 acres of palustrine, emergent wetlands and 0.527 acres of palustrine, forested wetlands associated with Tuckahoe Creek and an unnamed tributary.]

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

_____
Director, Department of Environmental Quality

_____
Date

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Public Notice

PUBLIC NOTICE
ISSUANCE OF A VIRGINIA WATER PROTECTION INDIVIDUAL PERMIT AND STATE CERTIFICATION UNDER THE STATE WATER CONTROL LAW

The State Water Control Board (board) has the following Virginia Water Protection (VWP) individual permit under consideration for issuance:

VWP Individual Permit Number:	**[##-####]**
Name of Permittee:	**[Virginia Department of Transportation]**
Permittee Address:	**[523 North Washington Highway, Ashland, Virginia 23005-1316]**
Project Location:	**[Route 250 Widening in Goochland County, Virginia]**
Waterbody:	**[Tuckahoe Creek and an unnamed tributary]**
Basin:	**[James River]**
Subbasin:	**[Middle James River]**
Section:	**[9a]**
Class:	**[III]**
Special Standards:	**[PWS, o]**

Description of VWP individual permit activities: The permittee proposes **[widening Route 250 (Broad Street) from two lanes to six lanes from approximately 0.4 miles west of the Goochland/Henrico County Line to Route 623 in Goochland County resulting in the permanent impact of approximately 0.219 acres of palustrine, emergent wetlands and 0.527 acres of palustrine, forested wetlands from the construction of road crossings and associated fill on Tuckahoe Creek and an unnamed tributary and associated wetlands. Permanent emergent and forested wetland impacts will be debited from available credits at the James River Mitigation Landbank in Goochland County, Virginia. Impacts will be compensated at ratios of 1.5:1 for permanent emergent wetland impacts and 2:1 for permanent forested wetland impacts.]**

On the basis of staff review and application of lawful standards and regulations, the board tentatively proposes to issue the VWP individual permit subject to certain conditions. Persons may comment in writing to the Department of Environmental Quality (DEQ) on this proposed Virginia Water Protection (VWP) individual permit within **30 calendar days** from the date of the notice. Address comments to the contact person listed below. Comments shall include the name, address, and telephone number of the writer and shall contain a complete, concise statement of the factual basis for the comments. Only those comments received within this period will be considered. The Director of the DEQ may decide to hold a public hearing if public response is significant. Requests for public hearings shall state the reason why a hearing is requested, the nature of the issues proposed to be raised in the public hearing, and a brief explanation of how the requester's interests would be directly and adversely affected by the proposed permit action.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Public Notice
Page 2

All pertinent information is on file and may be inspected by contacting **[Permit Writer Name at: DEQ, VWP Permit Program, address; phone number; e-mail address]**.

Following the comment period, the board will make a determination regarding the proposed permit. This determination will become effective, unless the Director grants a public hearing. Due notice of any public hearing will be given.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Public Notice Verification Form

Public Notice Verification Form

Complete this form for the documentation of publication of the Public Notice for VWP Individual Permit Number **[##-####]**. Please return original to: **[Permit Writer Name, Dept. of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009]**

PASTE PRINTED COPY OF NOTICE IN THIS SPACE

I hereby certify that the notice attached hereto in the space above appeared in

_____ on _____.
(Name of Paper) (Date)

_____
(Signature)

_____
(Title)

_____
(Date)

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Draft Permit and Public Notice Transmittal Letter

[Date]

[Applicant/Agent Name]
[c/o Agent, If Applicable]
[Address]

RE: Joint Permit Application Number **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Draft Permit and Public Notice

Dear **[Applicant/Agent]**:

Enclosed is a copy of the Department of Environmental Quality (DEQ) Public Notice and a draft Virginia Water Protection (VWP) individual permit for the above-referenced project for your review. If you have any questions, comments, or objections concerning the Public Notice or draft permit, please contact me within **14 calendar days** of the date of this letter. I am available to meet with you to resolve any questions or concerns.

Acceptance of the permit is evidenced by publishing the enclosed Public Notice, which must be published only once at the applicant's expense in a newspaper of general circulation in the area of the project. Publication of the Public Notice initiates the required 30-calendar day comment period. DEQ requires proof of publication of the Public Notice. Please instruct the publisher to provide DEQ with the actual copies of pages from the newspaper showing the Public Notice and the date of the newspaper, or instruct the publisher to complete the attached, sworn verification statement and forward the statement to this office.

Please note that the verification form must be received by this office in a timely manner. If the Public Notice is not published within **14 calendar days**, DEQ will suspend processing of your permit application until verification of such notice is received by our office.

Should you have any questions, please contact me at **[phone number]**, **[e-mail address]**, or at the above address. Thank you for your cooperation in this matter.

Sincerely,

[Permit Writer]
[Title]

Enclosures: Public Notice, Public Notice Verification Form, Permit Cover Page, Part I - Special Conditions, Part II - General Conditions

cc: **[Contact Name]**, U.S. Army Corps of Engineers **(if applicable)**
[Contact Name], Virginia Marine Resources Commission **(if applicable)**
[Agent] (if applicable)
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Locality Notification of Public Notice Letter

[Date]

Chairman
[Goochland County] Board of Supervisors
[Address]

RE: Joint Permit Application (JPA) Number **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Locality Notification of Public Notice

To Whom It May Concern:

The Department of Environmental Quality (DEQ) has received an application for a Virginia Water Protection (VWP) individual permit for the above-referenced project. Enclosed is a copy of the Public Notice for the proposed permit action for your review pursuant to Section 62.1-44.15:01 of the Code of Virginia. Notice of the proposed action will also be published in a newspaper circulated in the vicinity of the project site. The publication will establish a 30-calendar day public comment period for this proposal. If you wish to comment on this proposed action, please respond to DEQ at the above address.

If no response is received within the 30-day public comment period, DEQ will assume that you have no objections to the proposed action. If you have any questions, please contact me at **[phone number]** or **[e-mail address]**.

Sincerely,

[Permit Writer]
[Title]

Enclosure: Public Notice

cc: VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Locality Notification of Public Notice Letter
Page 2

[Date]

County Administrator
[Goochland County]
[Address]

RE: Joint Permit Application (JPA) Number **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Locality Notification of Public Notice

To Whom It May Concern:

The Department of Environmental Quality (DEQ) has received an application for a Virginia Water Protection (VWP) individual permit for the above-referenced project. Enclosed is a copy of the Public Notice for the proposed permit action for your review pursuant to Section 62.1-44.15:01 of the Code of Virginia. Notice of the proposed action will also be published in a newspaper circulated in the vicinity of the project site. The publication will establish a 30-calendar day public comment period for this proposal. If you wish to comment on this proposed action, please respond to DEQ at the above address.

If no response is received within the 30-day public comment period, DEQ will assume that you have no objections to the proposed action. If you have any questions, please contact me at **[phone number]** or **[e-mail address]**.

Sincerely,

[Permit Writer]
[Title]

Enclosure: Public Notice

cc: VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Locality Notification of Public Notice Letter
Page 3

[Date]

[Richmond] Regional Planning District Commission
[Address]

RE: Virginia Water Protection Individual Permit Number **[**##-####]
[Route 250 Widening, Goochland County], Virginia
Locality Notification of Public Notice

To Whom It May Concern:

The Department of Environmental Quality (DEQ) has received an application for a Virginia Water Protection (VWP) individual permit for the above-referenced project. Enclosed is a copy of the Public Notice for the proposed permit action for your review pursuant to Section 62.1-44.15:01 of the Code of Virginia. Notice of the proposed action will also be published in a newspaper circulated in the vicinity of the project site. The publication will establish a 30-calendar day public comment period for this proposal. If you wish to comment on this proposed action, please respond to DEQ at the above address.

If no response is received within the 30-day public comment period, DEQ will assume that you have no objections to the proposed action. If you have any questions, please contact me at **[phone number]** or **[e-mail address]**.

Sincerely,

[Permit Writer]
[Title]

Enclosure: Public Notice

cc: VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Public Hearing Public Notice

STATE WATER CONTROL BOARD
NOTICE OF PUBLIC HEARING

The State Water Control Board (board) has received an application for a Virginia Water Protection (VWP) individual permit for surface water impacts associated with the **[Virginia Department of Transportation]** proposed **[Route 250 widening]** project which results in the impact of approximately **[0.75 acres of non-tidal wetlands along Tuckahoe Creek]**. The board will hold a public hearing to receive comments on the proposed **[Route 250 widening]** project.

Public Notice Number **[number]** to announce the proposed **[type of action]** was published in the **[name of paper]** on **[date]**. Some individuals who responded to the public notice expressed concern over the **[statement of concern]**.

The hearing will be held in the **[location]** on **[date]** at **[time]**. The Department of Environmental Quality staff will conduct an informational briefing on this **[type of action]** at **[6:30 p.m.]**. The public is invited to hear this brief explanation of the permit, and questions are welcomed. This informal pre-hearing brief is being held pursuant to Title 2.2, Chapter 40, Section 4019 (§ 2.2-4019) of the Code of Virginia.

The hearing is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility should contact **[give name, address, e-mail address, fax number, and phone number of staff member]**. Interpreter services for the deaf will be provided, if requested. Persons needing interpreter services for the deaf must notify **[staff contact] at least ten business days prior to the hearing**.

Anyone wishing to speak at the hearing may do so, subject to any limitations imposed by the Hearing Officer. Anyone wishing to submit written comments for the public comments file may do so at the hearing or by mail. Comments must be received by 5:00 p.m. on **[15 calendar days after the hearing]**, at which time the file will close. Written comments should include the name and address of the presenter and a complete, concise statement of the factual basis for the comments. The comments should be addressed to **[staff contact's name, address, telephone number, fax number, and e-mail address]**.

More specific information on the proposed **[type of action]** including the draft permit and other documents are available by contacting **[give name of permit writer or supervisor]** at the Department of Environmental Quality **[address, telephone number, fax number, and e-mail address]**.

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EXAMPLE OPENING REMARKS

Virginia Water Protection Permit
[Project Name] Hearing

Good evening ladies and gentlemen. My name is **[board hearing officer]** and I am a member of the State Water Control Board. I will serve as Hearing Officer for today's hearing. At this time I would like to introduce the DEQ VWPP staff present: **[names of VWP staff]**.

We will be taping all public testimony for the official record. The public record for this hearing will close at 4 p.m. on **[30 calendar days after hearing conducted]**.

The State Water Control Board is holding this hearing to receive comments on the proposed issuance of a Virginia Water Protection Permit to **[applicant]** to **[brief description of proposed activity]**.

This hearing was authorized by the Department of Environmental Quality. Notice of this hearing was published in the **[list all newspapers]**. This fact finding proceeding is being held pursuant to Sections § 2.2-4019 and 62.1-44.15(10) of the Code of Virginia and the board's Procedural Rule No. 1.

The State Water Control Board will ultimately decide whether to issue modify or deny the proposed permit. The decision will be made at a future meeting of the board, most likely at our next meeting on **[next board meeting after hearing]** in Richmond. Please be assured that we will consider all relevant information that you present regarding these proposals.

The general procedure for this hearing will be as follows: **[Ellen Gilinsky or Regional Office VWPP Manager]** will make the staff presentation. Next, I will call on those people who have indicated on the sign-in cards that they wish to testify. Finally, we will hear from anyone else who would like to make a statement (Note: time limit may be necessary depending upon number of speakers).

In the interest of saving time, and if there are no objections, I will enter the exhibits which we have received to date into the record by incorporating the Exhibit List as Exhibit No. 1. Are there any objections? Hearing none, they are so entered. This list is here for your inspection.

At this time I will call on **[above Manager doing staff presentation]**.

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Sample Final VWP Individual Permit Transmittal Letter

[Date]

[Permittee Name]
[c/o Agent, if applicable] **CERTIFIED MAIL**
[Address] **RETURN RECEIPT REQUESTED**

RE: VWP Individual Permit Number **[##-####]**
[Route 250 Widening, Goochland County,] Virginia
Final VWP Individual Permit

Dear **[Permittee/Agent]**:

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 **[Route 250 widening]** project. The proposed project results in the permanent impact of approximately **[0.219 acres of palustrine, emergent wetlands and 0.527 acres of palustrine, forested wetlands associated with Tuckahoe Creek and an unnamed tributary in Goochland County]**, Virginia.

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 **[Insert # years]** from the date of issuance. Re-issuance of the permit may be necessary if any portion of the authorized activities or any permit requirement (including compensatory mitigation provisions) have not been completed. The permit term, including any extensions, cannot exceed **15 years**. The extension may be requested through written notification to the Department of Environmental Quality **[insert appropriate regional office]**, provided that there are no changes in the authorized activities.

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

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Final VWP Individual Permit Transmittal Letter
Page 2

[Permittee/Agent Name]
[Date]
Page 2 of 2

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 the board has 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 sent to such owner by certified mail.

If you have any questions, please contact **[permit writer]** at **[phone number]**.

Sincerely,

[Regional Permit Manager or Designee]
[Title]

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

cc: **[Contact Name]**, U.S. Army Corps of Engineers
[Contact Name], Virginia Marine Resources Commission **(if agency commented during public notice/hearing process)**
[Agent] (if applicable)
VWP permit file

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Revised 11/30/2001; 5/1/2002

Sample Notice of Tentative Decision to Deny Application Letter

[Date]

[Applicant Name]
[c/o Agent, if applicable]
[Applicant or Agent Address]

RE: Joint Permit Application Number **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Notice of Tentative Decision to Deny Application

Dear **[Applicant/Agent]**:

The Department of Environmental Quality (DEQ) has received your application for the above-referenced project on **[February 2, 2001].** Upon review of the application, DEQ has determined that the **[state reason from list and site reference from regulation. Example: proposed activities will result in violation of water quality standards or will impact the beneficial uses of state waters (9 VAC 25-210-230 A.1.)]** Therefore, the board has tentatively decided to deny the Virginia Water Protection (VWP) individual permit request.

The decision to deny may be withdrawn if the **[state recommendation for changes in order to allow opportunity to modify the application to achieve a favorable recommendation]**.

If you determine that you will not modify the request as detailed above, you may chose to withdraw the application with a written request. If you do not withdraw the application, DEQ will recommend denial of the application.

Please contact me at **[phone number]** to discuss the suspension of this application.

Sincerely,

[Permit Writer]
[Title]

cc: **[Contact Name]**, U.S. Army Corps of Engineers
[Contact Name], Virginia Marine Resources Commission **(if applicable)**
[Agent] (if applicable)
VWP permit file

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CHAPTER VI - PERMIT CHANGES FOR VWP INDIVIDUAL PERMITS

This chapter describes the changes that may be warranted to an issued Virginia Water Protection (VWP) individual permit. The procedures for changes to VWP general permits are discussed in Chapter IV. Permit changes to VWP individual permits include Modification (Minor and Major), Extension, Re-Issuance, Revocation and Re-Issuance, and Termination. Each of these changes is detailed in the following sections.

All requests for permit changes received from the Virginia Department of Transportation (VDOT) on or after August 1, 2001, or these received from other permittees received on or after October 1, 2001, will be processed in accordance with these new procedures regardless of the date of permit issuance.

§ 401 Water Quality Certificates for water withdrawals that were issued prior to December 31, 1989 have the same effect as a VWP permit. Any Water Quality Certificates for water withdrawals issued after this date will remain in effect until re-issued as VWP permits.

A. General Information for All Permit Changes

1. Timeframes

There are no regulatory timeframes for the review of a permit change request or for carrying out such a request. However, the permit writer should strive to review each request, and if necessary, submit an Additional Information (and Permit Application Fee, if applicable) Request Letter to the permittee within **45 calendar days**. Once all requested information has been received, the permit writer should attempt to prepare the permit change documents within **60 to 90 calendar days**.

2. Tracking and Format

The VWP Permit Program regulation requires various submittal packages, notifications, and forms for permit changes. Examples of the required submittals and forms are located at the end of this chapter.

The permit writer is also encouraged to communicate with the applicant during all phases of the process. Note that all documents and correspondence received should be date stamped and included in the permit file. Additionally, all e-mails, telephone conversations, site visits, and meetings should be documented in the file.

The permit writer should update the Comprehensive Environmental Data System (CEDS) as each task is completed and use the CEDS event table to track deadlines.

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3. Fee Refunds

The permit writer may initiate a refund of the permit change application fee in certain cases, such as when the Major Modification changes to a Minor Modification or the applicant withdrawals the modification application. The refund is initiated by completing a Permit Fee Refund Request Form and submitting the form to the DEQ Accounting Manager at central office. This form can be obtained from DEQNet at: http://deqnet/docs/main/admin/admin_policy/fee_policy_revised_final_6_6_01.doc. The form is included as Attachment C to Agency Policy Statement No. 4-99. In most cases, check the 'minor permit modification, which requires no fee' or the 'other' option when completing the form. If questions arise concerning the refund process, the permit writer should contact Accounting to coordinate the refund.

B. Permit Modification

A permit Modification may be warranted to change details or conditions contained in an issued VWP individual permit. The permittee, DEQ staff, or other individuals at the board's discretion may initiate a permit Modification. A Modification may be either a Minor Modification (Section B.2) or Major Modification (Section B.3), based on the requested change.

1. Activities Qualifying for a Modification

In accordance with VWP Permit Program Regulation 9 VAC 25-210-190, a VWP individual permit may only be modified under the following circumstances:

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

Although not required, the permit writer may request a completed Joint Permit Application (JPA) or completed pertinent sections of the JPA if the Modification request involves major changes. Each Modification request should include the following, at a minimum:

- A reference to the existing permit condition in question
- A detailed description of the proposed Modification including the exact site location of required Modification (for example, the roadway station number, the impact area name, etc.)
- Justification for the proposed Modification
- Detailed sketches of proposed activities and/or photographs documenting existing conditions that warrant the Modification

For example, a permittee may request to change the plant species at a proposed compensation site based on the site hydrology observed during construction. The written request letter should include a list of the species approved in the permit, a list of the proposed, alternate plant species, a detailed summary of the site conditions (for example, unexpected groundwater contribution), and photographs.

Once the request has been reviewed, the permit writer must determine if the requested permit change qualifies as a Minor or Major Modification. A Major Modification requires significantly more coordination, public involvement, and documentation than a Minor Modification.

2. Minor Modification

This section describes the steps to follow for processing a Minor Modification to an existing VWP individual permit. Unlike Major Modifications, Minor Modifications do not require public involvement procedures (for example, Public Notice/Hearing, riparian landowner notification, and request for agency comments) or a permit application fee.

Activities Qualifying for a Minor Modification

In accordance with VWP Permit Program Regulation 9 VAC 25-210-210, Minor Modifications may be processed to:

- Correct typographical errors
- Require monitoring and reporting by the permittee at a different frequency than required in the VWP individual permit, based on new information justifying the change in conditions
- Change an interim compliance date to no more than 180 calendar days from the original compliance date, provided it will not interfere with the final compliance date
- Allow for a change in ownership or operational control when the board determines that no other change in the VWP individual permit is necessary, provided that a written agreement containing a specific date for transfer of VWP individual permit responsibility, coverage, and

liability from the current to the new permittee has been submitted to the board
- Change plans and specifications that do not result in an increase to permitted impacts
- Include facility expansion, and/or production increases where the Modification will not cause significant change in the discharge of pollutants
- Delete VWP permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated
- Include additional wetland or stream impacts above those originally permitted, provided that the cumulative increase to wetland impacts is not greater than 1/4 acre; the cumulative increase in stream impacts is less than 50 linear feet; and the additional impacts are fully mitigated at ratios not less than compensatory mitigation ratios for the original impacts

Change in Ownership and Automatic Transfer Minor Modifications

A Change in Ownership and an Automatic Transfer are specific types of Minor Modifications. These require the new owner to submit a written request for the Modification and a statement that the new owner agrees to abide by the conditions and requirements in the existing permit. The request must include a written and signed agreement between the existing and proposed permittee.

According to Section 9 VAC 25-210-200 of the Virginia Administrative Code, a VWP permit may be transferred only if the permit has been modified to reflect the transfer or has been revoked and re-issued to the new permittee. A VWP individual permit may be automatically transferred to a new permittee if:
- The current permittee notifies the board within **30 calendar days** of the proposed transfer of the title to the facility or property;
- The notification includes a written agreement between the existing and proposed permittees containing a specific date of transfer of VWP individual permit responsibility, and/or that the seller will retain such responsibility, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
- The existing permittee and the proposed permittee are not notified by the board, within the **30-calendar day** time period, of its intent to modify or revoke and re-issue the VWP individual permit (in other words, if the board hasn't already initiated the modification or revoke/re-issue process).

The permit writer should note that a change in personnel does not constitute a Change in Ownership, and that a Change of Ownership,

including an Automatic Transfer, does not change the expiration date or any condition of the permit.

Draft Minor Modification Package

Once the permit writer reviews a written request for a Modification, determines that the request is complete and justified, and determines that the proposed activity qualifies as a Minor Modification, the following documents should be prepared as part of the Draft Minor Modification Package. Note that a Fact Sheet or revised Permit Cover Page are not required for most Minor Modifications, **except for Change in Ownership situations**.

Approval of the Request for Minor Modification Letter
This letter is signed by the Regional Permit Manager or designee and summarizes the Modification to the permit. The approval letter should provide justification for the Modification, should cite the modified Special Condition(s), if applicable, and should reference the specific point in VWP Permit Program Regulation 9 VAC 25-210-210.B. which qualifies the change as a Minor Modification. The permit writer should attach the letter to the original permit in the permit file. No changes to the Permit Cover Page are required. An example Approval of Request for Minor Modification Letter is included at the end of this chapter.

Approval of Request for Minor Modification (Change in Ownership) Letter
This letter is also signed by the Regional Permit Manager or designee. The letter should cite the current and new owner name(s) and address(es) and the specific point in the VWP Permit Program Regulation 9 VAC 25-210-210.B.4. which qualifies the change as a Minor Modification. An example of this letter is located at the end of this chapter.

Revised Permit Cover Page (Change in Ownership Only)
The revised Permit Cover Page is signed by the DEQ Director and reflects the new owner and address, the Minor Modification date, and a description of the change(s). An example of the Revised Permit Cover Page is located at the end of this chapter.

Part I - Special Conditions (as appropriate)
When (a) permit replacement page(s) reflecting the modified condition(s) is/are needed, the permit writer should ensure that the existing permit page numbering system is not changed if at all possible. Should the page numbers need to be changed, the permit writer should submit replacement pages for all re-numbered pages.

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Permit replacement pages may not be required for a change that is not detailed in the permit Special Conditions. For example, a request to substitute proposed plant species would not require permit replacement pages because plant species are identified in the compensation plan, not in the permit conditions. Additionally, a Change in Ownership, including an Automatic Transfer request, does not require modified permit pages.

Internal Review of the Draft Minor Modification Package

The Draft Minor Modification Package is internally reviewed by DEQ under the same guidelines as the Draft Permit Package discussed in Chapter V. **Unlike the Major Modification procedures, the permittee does not review the Draft Minor Modification Package.**

Final Minor Modification Package and CEDS Data

Once all documents have been reviewed and signed, the appropriate documents are sent to the permittee **via certified mail**. For most Minor Modifications, these will include the Approval of Request for Minor Modification Letter and any applicable replacement pages in the Special Conditions. For Change of Ownership or Automatic Transfer situations, these will include the Approval of Request for Minor Modification (Change in Ownership) Letter, the Revised Permit Cover Page, and a complete copy of the Special and General Conditions.

The permit writer should copy the appropriate parties (such as former permittee, USACE, and VMRC) via regular mail and file all documents and correspondence in the permit file.

Minor Modifications that increase the wetland impact acreage or stream impact footage should be tracked in CEDS by initiating "Modification" and completing the new record. Minor Modifications that do not increase impact totals are not currently tracked in CEDS (see Appendix C). However, the permit writer should include all Minor Modification information in the "Documentation" section.

3. Major Modification

This section describes the process for issuing a Major Modification. If a Major Modification request is received within 15 months of an individual permit's expiration date, or within 15 months of an individual permit being re-issued, the permit writer should revise and re-issue the permit rather than grant a Major Modification, as a time-saving measure. Determination of the need for a Revocation and Re-Issuance versus a Modification is generally done on a case-by-case basis. Procedures for Revocation and Re-Issuance are presented in Section E below.

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Review of Major Modification Request and Required Notifications

Review of Major Modification Requests:
As stated at the beginning of this section, the permit writer should prepare an Additional Information and Permit Modification Fee Request Letter (see Chapter V). A Permit Application Fee Request Form should also be attached to the letter even though the fee is for a Modification rather than an application. **Since permit application and modification fees are subject to change, the permit writer should check Regulation 9 VAC 25-20 et seq. and the DEQ web site at http://www.deq.state.va.us for updates to these fees.**

If the Major Modification addresses additional impacts, which when combined with the original impacts, would move the project into a higher category, the required Modification fee is that required for the higher category.

Note that a Notification of Complete Application Letter is not required for a Major Modification.

Coordination with Regulatory Agencies:
The permit writer should coordinate with state and federal agencies as discussed in Chapter V. All applicable agency comments concerning the modification request must be addressed prior to its issuance. Examples of the required Request for Agency Comments Letters are included at the end of Chapter V. Note that these letters should clearly state that the request is a Major Modification to an existing permit and should briefly summarize the modification activities. The Major Modification request should be attached to these letters.

Riparian Owner and Locality Notifications:
Notification should only occur when there is an increase in impacts, not for other changes. When applicable, the permit writer should use the sample letters in Chapter V for these notifications. The notification letters should summarize the request and emphasize that the proposed activity is a modification to an existing permit.

Site Visit:
The permit writer should conduct a site visit for a Major Modification involving additional impacts or significant changes to the existing Part I - Special Conditions. Refer to Chapter V of this manual for additional details concerning documentation of the site visit.

Draft Major Modification Permit Package

Once the permit writer reviews a written request for a Modification, determines that the request is complete and justified, and determines that

the proposed activity qualifies as a Major Modification, the following documents should be prepared as part of the Draft Major Modification Package.

Modification Fact Sheet

The Fact Sheet should be prepared as detailed in Chapter V. Note that the Fact Sheet should summarize the existing authorized activities but focus primarily on activities directly associated with the Major Modification (see sample at end of this chapter). For example, the Staff Comments section should detail the regulatory agency comments concerning the Modification, not the original permit action.

Permit Cover Page

The permit writer should insert "Major Modification Date:" between the "Effective Date:" and "Expiration Date:" on the Permit Cover Page. The "Activity Description" on the Permit Cover Page should be updated, if necessary. Refer to Chapter V of this manual for details on developing the Permit Cover Page.

Part I - Special Conditions

The permit writer may change the Part I - Special Conditions to address the Major Modification request and other issues, provided that the changes are discussed with the applicant and the permit writer's supervisor. The heading on each page of the Special Conditions should be changed to "VWP Individual Permit Modification No. **[**##-####**]**". Details concerning Special Conditions are included in Chapter V.

Part II - General Conditions

The General Conditions are standard for all permits and will not change for a Major Modification. However, the heading on each page of the General Conditions should be changed to "VWP Individual Permit Modification No. **[**##-####**]**".

Public Notice

The Public Notice should primarily address the activities and conditions specific to the Major Modification. Refer to Chapter V for additional details concerning the Public Notice. An example of a Public Notice for a Major Modification is provided at the end of this chapter.

Review of the Draft Major Modification Permit Package

The review process for DEQ staff, the permittee, and outside agencies is the same as detailed in Chapter V for VWP individual permit issuance.

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Notifications and Public Hearing Process

The Locality Notification process is the same as detailed in Chapter V. The example letters in Chapter V can be edited to reflect the Major Modification.

Likewise, the Public Notice and comment period procedures and public hearing process outlined in Chapter V apply to all Major Modifications. A sample Public Notice for a Major Modification is provided at the end of this chapter.

Note that only those portions of the permit being modified are open to public comment during the 30-calendar day comment period following the public notice.

Final Major Modification Permit Package and CEDS Data

Once all public comments have been addressed, a public hearing has been held (if appropriate), and the decision has been made to issue the Major Modification, the permit writer should prepare the Final Major Modification Permit Package as detailed in Chapter V. Note that the official "Modification Date" is the date that the Permit Cover Page is signed. The actual modified permit includes the new Permit Cover Page and all pages of the Special Conditions and General Conditions.

An example of the Final VWP Individual Permit Modification Transmittal Letter is provided at the end of this chapter. The permit writer should change this Transmittal Letter to cite the modified Special Conditions (as applicable) and reference the specific point in VWP Permit Program Regulation 9 VAC 25-210-190 which qualifies the change as a Major Modification.

The permit writer should complete all CEDS information in accordance with the guidance included in Appendix C.

4. Denial of a Modification Request

The permit writer may determine that the Modification request is not warranted. In this case, the permit writer should prepare a letter from the Regional Director or designee to the permittee providing justification for the denial (see sample Denial of Request for Modification Letter at the end of this chapter). The permittee may appeal the denial by following the procedures outlined in Section F (Permit Termination) of this chapter.

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C. Permit Extension

An Extension is used to lengthen the term of the coverage when no other permit condition is altered (for example, for completion of compensation monitoring requirements). The permit writer should attempt to contact the permittee via telephone, electronic mail, or written letter as a courtesy reminder prior to the permit expiration.

The VWP Permit Program Regulation 9 VAC 25-210-185 allows for permit terms to be Extended, such that *"A 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 should be taken to* allow for *sufficient time for the board to evaluate the extension request and to process a full VWP permit amendment, if required.*" The purpose of this provision is to allow the original term of the permit to be extended in certain cases without going through a full permit Modification.

The permit writer should extend a permit under the following situations:

- The impacts originally authorized have not occurred at the time the permit is expiring. These permits may be extended at the option of the permit holder but cannot be extended for more than a total of 15 years.
- The mitigation monitoring is on going or needs to continue because the permit is in its last year and the mitigation has not been successful. In this case, the extension should cover a time period adequate for monitoring to show that the success criteria has been reached for two succesive years.
- Synchronizing permit Terminations with other agency permits, for example on maintenance dredging permits that require permits from the USACE and VMRC.
- VDOT projects are delayed for budget reasons.

The permit writer should not extend a permit under the following situations:

- The permittee has not initiated the required mitigation (see DEQ Enforcement web page at http://www.deq.state.va.us/enforcement/overview.html) .
- The proposed activity has not proceeded. An example may be a permit application for a water withdrawal project where financing has not been secured, and the project has not begun in a timely manner.

Upon receiving a request for a permit Extension, the permit writer should review the request and respond within **15 calendar days**. Should the permit writer determine that the request is not warranted, he/she should prepare a denial letter explaining DEQ's decision. The VWP Individual Permit Extension Transmittal Letter at the end of this chapter may be modified for this purpose. Should the request be warranted, the permit writer should change the expiration date based on the projected duration of the project, the length of any required monitoring or other project operations, or permit conditions.

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The VWP Individual Permit Extension Transmittal Letter and a revised Permit Cover Page reflecting the new expiration date should be sent to the permittee **via certified mail**.

Note that following items are not required for a permit Extension: local government and riparian owner notification, permit application fee, request for agency comments, Public Notice/Public Hearing, or Fact Sheet. The permit writer should update CEDS to document the permit Extension in accordance with Appendix C.

D. Permit Re-Issuance

VWP individual permits are typically re-issued for on going activities, such as maintenance dredging and water withdrawals. Although rare, a permit writer may also need to re-issue an individual permit for a large, phased development project.

The permittee may either submit a new JPA or a letter requesting re-issuance if there are no expected changes to the permit and DEQ is re-authorizing the same activity (for example, continued water withdrawal at the same rate). If there are additional surface water impacts, a new application is required. The Re-Issuance will have the same permit number as the original permit.

The following list summarizes the required steps for a Re-Issuance. See the corresponding sections in Chapter V for details on how to accomplish each step.

- New Application Required — Variable
- Local Government Notification — Yes
- Riparian Notification — No
- Permit Fee — Yes (same fee as a permit issuance)
- Seek State Agency Comments — Yes
- Public Notice * — Yes
- Public Hearing — As Applicable
- Permit Package** — Yes
- CEDS Entry — Yes

*Use the terms “re-issue” instead of “issue”, and “Re-Issuance” instead of “Issuance” in the notice.

** A permit package consists of the Fact Sheet, the Transmittal Letter, and the new permit.

E. Permit Revocation and Re-Issuance

Since a VWP individual permit Modification cannot be used to extend the term of a permit, as this is prohibited by regulation, the Revocation and Re-Issuance process is used instead. This process is a combination of modifying the permit to change a significant condition and re-issuing the permit with a new permit term.

Generally the Revocation and Re-Issuance process is not used for permits that will be valid for longer than half of their original term. The permit writer should modify the

permit with the original expiration date in these instances.

The following list summarizes the required steps for a Revocation and Re-Issuance (see Chapter V):

- New Application Required — Yes
- Local Government Notification — Yes
- Riparian Notification — No
- Permit Fee — Yes (same fee as permit issuance)
- Seek State Agency Comments — Yes
- Public Notice * — Yes
- Public Hearing — As Applicable
- Permit Package** — Yes
- CEDS Entry — Yes

*Use the terms "Revoke and Re-Issue" instead of "Issue" in the notice.
** A permit package consists of the Fact Sheet, the Transmittal Letter, and the new permit.

F. Permit Termination

Typically, if a VWP individual permit is within **six months** of expiring, the permit writer should consider allowing the permit to expire rather than process a Termination, provided that the permittee is finished with the impact activity(ies) and has completed all compensation requirements.

Although Terminations can be initiated by DEQ staff, the permittee, or an interested third party, **only the State Water Control Board can grant a Termination**. Details on processing a Termination are provided below.

1. Causes for Permit Termination

One of following circumstances may necessitate a Termination:

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

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

2. Termination Process and Permittee Notification of Pending Action

When DEQ staff or an interested third party initiates a Termination, he/she must notify the permittee of the proposed Termination and of the permittee's right to a hearing, as per VWP Permit Program regulation and Section 62.1-44.15(5) of the State Water Control Law. The permittee must complete and submit a Termination Agreement Form to DEQ. If the permittee is in agreement with the proposed Termination **and does not desire the hearing**, he/she should return a signed Termination Agreement Form to DEQ within **14 calendar days** of receipt of the Termination notice. A sample Notice of Intent to Terminate Permit Letter and the Termination Agreement Form are provided at the end of this chapter.

In order for a permittee to initiate the Termination **without a hearing**, he/she should return a signed Termination Agreement Form to DEQ.

In either situation described above, the permit writer forwards a copy of the signed Termination Agreement Form to Cindy Berndt at central office so that the permit Termination is placed on the next board meeting agenda.

When a permittee **does not waive his/her right to a public hearing**, the permit writer should prepare a Public Notice for a termination hearing and coordinate such with Cindy Berndt. The permit writer should also notify the permittee, and any third-party(ies) requesting the Termination, that a hearing is to be held. This notification should occur within **30 calendar days** of the hearing request.

In cases where the permittee refuses to sign the Termination Agreement Form, the permit writer must prepare a memorandum, addressed to the Regional Director for signature by the Regional Permit Manager, that briefly summarizes the situation and recommends holding a public hearing.

If the Regional Director approves the hearing recommendation, the permit writer should prepare a Public Notice for a termination hearing and coordinate such with Cindy Berndt. The permit writer should also notify the permittee, and any third-party(ies) requesting the Termination, that a hearing is to be held. This notification should occur within **30 calendar days** of the hearing request.

After the termination hearing is held, and the subsequent 30-caledar day comment period closes, the permit writer should prepare a Permit Termination Summary Form (formerly the Letter Ballot) detailing the termination request and any public comments received. A copy of this form should be forwarded to Cindy Berndt so that the termination can be placed on the next board meeting agenda. A sample summary form is provided at the end of this chapter.

3. Termination Notification

If the Termination is approved by the board, Cindy Berndt will notify the permit

writer or Regional VWP Manager by distributing the approved board minute.

The permit writer will notify the permittee and/or any third-party(ies) of the board's decision to terminate the permit, or its decision to deny the request for termination. The Notice of Permit Termination Approval/Denial Letter (sample at end of chapter) should be sent **via certified mail** and should include a copy of the board minute. If applicable, the permit writer should include the reason for denial in this letter.

Denials of requests for Termination are not subject to Public Notice, comment, or public hearings. A permittee who disagrees with the denial may opt to appeal the decision to the DEQ Director for a formal hearing in front of the State Water Control Board, or to a civil court of law. When an interested third party is denied his/her request for the termination, he/she has no recourse through DEQ administrative procedures but may pursue the matter in civil court.

4. CEDS Data

As with any other modification to a VWP individual permit, the permit writer must modify CEDS to reflect the facility's change in status (see Appendix C).

Sample Approval of Request for Minor Modification Letter

[Date]

[Permittee Name]
[c/o Agent, if Applicable] **CERTIFIED MAIL**
[Address] **RETURN RECEIPT REQUESTED**

RE: Virginia Water Protection Individual Permit No. **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Approval of Request for Minor Modification

Dear **[Permittee Name]:**

The Virginia Department of Environmental Quality (DEQ) has received your request to modify Virginia Water Protection (VWP) Individual Permit No. **[##-####]** issued on **[July 19, 2000]**.

In the letter dated **[March 16, 2001]**, you indicated the **[need to lengthen a pipe culvert from 148 feet to 296 feet to prevent stream flow of an unnamed tributary of the North Fork of the Mayo River from entering a stormwater basin. The originally designed pipe outlet directed the stream into the basin, which would reduce the hydraulic capacity of the basin and cause maintenance problems]**.

In accordance with your request and pursuant to the VWP Permit Program Regulation 9 VAC 25-210-210 and § 401 of the Clean Water Act Amendments of 1977, Public Law 95-217, DEQ approves **[lengthening the pipe culvert from 148 feet to 296 feet at Station Number 30+20]**. DEQ has determined that this request qualifies for a Minor Modification in accordance with VWP Permit Program Regulation 9 VAC 25-210-210.B.**[#]** under **[quote specific point here]. [Special Condition x, Page # of #, of the VWP Individual Permit No. ##-#### has been modified to reflect the Minor Modification. The enclosed page replaces Page [#] of the existing permit Special Conditions.]**

Please note that this letter is an official component of the permit and should be retained in your files. If you have any questions, please contact **[permit writer]** at **[phone number]** or **[e-mail address]**.

Sincerely,

[Regional Permit Manager or Designee]
[Title]

Enclosures: **[Permit Replacement Page(s)]**

cc: **[Contact Name]**, U. S. Army Corps of Engineers
[Contact Name], Virginia Marine Resources Commission **(if applicable)**
[Agent] (if applicable)
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Approval of Request for Minor Modification (Change in Ownership) Letter

[Date]

[New Permittee Name]
[c/o Agent, if Applicable] **CERTIFIED MAIL**
[Address] **RETURN RECEIPT REQUESTED**

RE: Virginia Water Protection Individual Permit No. **[##-####]**
Approval of Request for Minor Modification (Change in Ownership)

Dear **[New Permittee]**:

The Virginia Department of Environmental Quality (DEQ) has received your Change in Ownership request for the Virginia Water Protection (VWP) Individual Permit No.**[##-####]** issued on **[July 19, 2000]**.

In accordance with your request, and pursuant to the VWP Permit Program Regulation 9 VAC 25-210-210 and § 401 of the Clean Water Act Amendments of 1977, Public Law 95-217, DEQ approves the Change in Ownership as noted below:

Former Owner: **[Name and address]**
New Owner: **[Name and address]**

DEQ has determined that this request qualifies for a Minor Modification in accordance with VWP Permit Program Regulation 9 VAC 25-210-210.B.4. under "change in ownership or operational control when the board determines that no other change in the VWP permit is necessary, provided that a written agreement containing a specific date for transfer of VWP permit responsibility, coverage and liability from the current to the new permittee has been submitted to the board". Attached are a new Permit Cover Page reflecting the Minor Modification and a copy of the permit conditions.

If you have any questions, please contact **[permit writer]** at **[phone number]** or **[e-mail address]**.

Sincerely,

[Regional Permit Manager or Designee]
[Title]

Enclosures: Permit Cover Page, Permit Conditions

cc: **[Former Permittee]**
[Contact Name], U. S. Army Corps of Engineers
[Contact Name], Virginia Marine Resources Commission **(if applicable)**
[Agent] (if applicable)
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Revised Permit Cover Page (Change in Ownership)

VWP Individual Permit No. **[##-####]**
Effective Date: **[July 19, 2000]**
Minor Modification Date: **[April 15, 2001]**
Expiration Date: **[July 19, 2005]**

VIRGINIA WATER PROTECTION PERMIT
ISSUED PURSUANT TO THE STATE WATER CONTROL LAW
AND § 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 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 posed impacts to wetlands, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

Permittee: **[New Name]**

Address: **[New Address]**

Activity Location: **[Route 250, 0.4 miles west of the Goochland/Henrico County Line to Route 623 in Goochland County, Virginia]**

Activity Description: **[Widen Route 250 (Broad Street) from two lanes to six lanes resulting in the permanent impact of approximately 0.219 acres of palustrine, emergent wetlands and 0.527 acres of palustrine, forested wetlands associated with Tuckahoe Creek and an unnamed tributary. The project includes the replacement of the existing 40' span bridge with a 70' span bridge over Tuckahoe Creek]**. This permit cover page reflects the requested change in ownership.

The permitted activity shall be in accordance with this cover page, Part I - Special Conditions, and Part II - General Conditions.

_____
Director, Department of Environmental Quality

_____
Date

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Fact Sheet for a Major Modification

VIRGINIA WATER PROTECTION INDIVIDUAL PERMIT MAJOR MODIFICATION FACT SHEET

Department of Environmental Quality
[Regional Office and Address]

SUBJECT: Issuance of Virginia Water Protection Individual Permit Modification No. **[##-####]**
[Applicant Name]

TO: **[Regional Permit Manager Name]**
[Title]

FROM: **[Permit Writer Name]**
[Title]

DATE: **[Date]**

COPY: VWP Permit File

DEQ has reviewed the application for the Virginia Water Protection (VWP) Individual Permit Modification No. **[##-####]** and has determined that the project qualifies as a VWP Category **[#]** Major Modification 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 Major Modification to the VWP individual 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.

[This paragraph if applicable – Surface water impacts have been avoided and minimized to the maximum extent practicable. The proposed modification also addresses no net loss of wetland acreage and function through compensatory mitigation and adequately assesses compensation implementation via success monitoring and reporting. Permitted wetland impacts have been inventoried in evaluating this proposed permit.]

The following details the Major Modification application review process.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Fact Sheet for a Major Modification
Page 2

1. Contact Information:

Permittee Legal Name and Address:
[Name and Address]

Owner Legal Name and Address (if different from Permittee):
[Name and Address]

Agent Legal Name and Address (if applicable):
[Name and Address]

2. Processing Dates:

Received Application: **[Date]**
Application Complete: **[Date**]
Permit Fee Deposited by Accounting: **[Date]**
Draft Modification Permit Package Mailed: **[Date]**
Public Notice Published: **[Date]**
End of 30-Calendar Day Public Comment Period: **[Date]**
Public Hearing (if applicable): **[Date]**

3. Project Location:

City/County:	**[Mecklenberg County]**
Waterbody:	**[Blue Creek and unnamed tributaries to Blue Creek]**
Basin:	**[Roanoke River]**
Subbasin:	**[--]**
Section:	**[1]**
Class:	**[III]**
Special Standards:	**[PWS]**
HUC:	**[02080205]**

Compensation Site Name:	**[Mountain Site]**
Compensation Site City/ County:	**[Mecklenberg County]**
Compensation Site Basin:	**[Roanoke River]**
Compensation Site Sub-basin:	**[--]**
Compensation Site HUC:	**[02080205]**

[OR]

[On-Site Compensation]

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Fact Sheet for a Major Modification
Page 3

4. Project Description:

This action is a Major Modification to the permit issued on **[June 16, 1999]**, which addressed the proposed **[construction of the Clarksville Bypass]**. The Modification is warranted due to the **[Summarize Major Modification activities and provide final impact totals, if applicable. Example: addition of 0.30 acres of emergent wetlands and 0.7 acres of scrub/shrub wetlands due to a change in the design of drainage structures and impacts not included in the original permit. The finalized project activities result in the impact of approximately 0.50 acres of emergent wetlands and 1.40 acres of scrub/shrub wetlands]**.

5. Project Impacts:

The proposed activity results in the permanent impact of approximately **[Summarize total impacts to surface water. Example: 0.50 acres of emergent wetland, and 1.40 acres of scrub/shrub wetland].** Water quality impacts are expected to be temporary and minimal provided the permittee abides by the conditions of the permit. A loss of state waters shall occur. However, the impacts have been avoided and minimized to the greatest extent practicable.

6. Avoidance and Minimization Efforts:

[Summarize all avoidance and minimization efforts for the Major Modification activities only. No need to included avoidance and minimization efforts for original permit. Example: The drainage structure was shifted approximately 2,000 feet north to avoid an additional 0.85 acres of forested wetlands.]

7. Compensation for Unavoidable Impacts:

[Summarize all compensation activities for final totals (for example, include compensation for both original permit and Major Modification activities). Example: The Dick Cross Compensation Site shall provide for a 1:1 replacement to loss ratio for 0.50 acres of emergent wetland impacts (0.50 acres created) and a 1.5:1 replacement to loss ratio for 1.40 acres of scrub/shrub impacts (2.10 acres created) associated with this project.]

8. Site Inspection:

[Only include information for the Major Modification – not the original permit]. A site visit was conducted on **[November 3, 2000]. [Summarize observations and note problems or concerns that warranted Special Conditions included in the VWP individual permit]**

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Fact Sheet for a Major Modification
Page 4

9. Riparian Landowner Notification:

[Only include information for the Major Modification – not the original permit]

All riparian landowners located adjacent to the impact area and within one-half mile downstream of each distinct impact area were notified on **[November 3, 2000]**. **[Summarize significant responses.]**

[OR]

[The applicant owns the property adjacent to and within one-half mile downstream of each distinct impact area.]

10. Relevant Regulatory Agency Comments:

[Only include information for the Major Modification – not the original permit]

As part of the application review process, DEQ contacted the appropriate state regulatory agencies and coordinated with various federal regulatory agencies, including the United States Army Corps of Engineers (USACE). All relevant agency comments were 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

[Summarize all comments and state if they were or were not (with rationale) addressed in the Special Conditions. The following are typical examples of comments.]

[The Department of Game and Inland Fisheries] has not provided comments to date. Failure to provide comments within **45 calendar days** of the DEQ request for comments infers that the agency has no comments on the project activities.

[The Virginia Marine Resources Commission recommended the time-of-year restriction of February 15 through June 30 for anadromous fish. The time of year restriction is referenced in Special Conditions Section B of the permit.]

[The Department of Agriculture and Consumer Services records indicated that there are no threatened or endangered plant or insect species listed at the project site.]

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

[The Department of Conservation and Recreation (DCR) indicated that there are no documented natural heritage resources in the project area nor are there any anticipated adverse impacts on existing or planned recreational facilities, streams on the National Park Service Nationwide Inventory, Final List of Rivers, potential Scenic Rivers or existing or potential State Scenic Byways. DCR noted that the activity will not affect any documented state-listed plants or insects. DCR also indicated that VDOT should comply with (1) the VDOT Annual Standards and Specifications for Erosion and Sediment Control (ESC) and the project specific ESC plan, and (2) the VDOT Annual Standards and Specifications for Stormwater Management (SWM) and the project-specific SWM plan.]

Summary of Federal Agency Comments and Actions

[The project qualifies for a USACE Letter of Permission (LOP-1, which the USACE expects to issue).]

11. Changes in Permit Special Conditions Due to Public Comment:

[Only include information for the Major Modification – not the original permit]

The Public Notice was published in **[the Richmond Times Dispatch on January 12, 2001]**.

[EITHER]

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

[OR]

[[Four] public comment letters were received. However, no substantial or disputed issues were presented that warranted revisions to the draft conditions of the permit.]

[OR]

[[Seven] responses were received from the public: two opposed the permit and five requested protection of wetlands. Due to the public response, a Public Hearing was held on [June 1, 2000.]] [Summarize hearing events and comments]

Sample Fact Sheet for a Major Modification
Page 6

12. Permit Special 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:

[use the original Fact Sheet for conditions and edit as necessary]

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 proposed permit addresses avoidance and minimization of wetland impacts to the maximum extent practicable.
- The effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to significant impairment of state waters or fish and wildlife resources.
- The proposed permit conditions address no net loss of wetland acreage and function through compensatory mitigation and adequately assess compensation implementation

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

via success monitoring and reporting. Compensation will be accomplished by **[the creation of wetlands at the Dick Cross Compensation Site in Goochland County, Virginia, which is located within the same river watershed as the proposed wetland impact site.]**

- Permitted wetland impacts have been inventoried in evaluating this proposed permit.
- 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 Major Modification and conditions.
(3) Direct the staff to issue VWP Individual Permit Modification No. **[##-####]**.

Approved: _____
VWP Permit Manager or Designee

_____
Date

Sample Public Notice for a Major Modification

PUBLIC NOTICE
MODIFICATION OF A VIRGINIA WATER PROTECTION INDIVIDUAL PERMIT
AND
STATE CERTIFICATION UNDER THE STATE WATER CONTROL LAW

The State Water Control Board has under consideration modification of the following Virginia Water Protection (VWP) individual permit:

VWP Individual Permit No.:	**[##-####]**
Name of Permittee:	**[Virginia Department of Transportation]**
Permittee Address:	**[523 North Washington Highway, Ashland, Virginia 23005-1316]**
Project Location:	**[Route 58, Clarksville Bypass in Mecklenburg County Intersection of Route 58 and Route 722 to the existing alignment on the east bank of the Occoneechee Harbor]**
Waterbody:	**[Blue Creek and unnamed tributaries to Blue Creek]**
Basin:	**[Roanoke River]**
Subbasin:	**[--]**
Section:	**[1]**
Class:	**[III]**
Special Standards:	**[PWS]**

Description of VWP individual permit activities: **[This action is a Major Modification to the VWP individual permit issued on June 16, 1999, which addressed the proposed construction of the Clarksville Bypass. The Modification was warranted due to additional impacts from the drainage structures and associated material. The Modification activity results in the additional impact of 0.30 acres of emergent wetlands and 0.7 acres of scrub/-shrub wetlands. The finalized project activities result in the impact of approximately 0.50 acres of emergent wetlands and 1.40 acres of scrub/shrub wetlands. All wetland impacts will be compensated at the Dick Cross Mitigation Site in Goochland County. Impacts will be compensated at ratios of 1:1 for permanent emergent wetland impacts and 2:1 for permanent scrub/shrub wetland impacts.]**

On the basis of staff review and application of lawful standards and regulations, the board tentatively proposes to issue the VWP individual permit Modification subject to certain conditions. Persons may comment in writing to the Department of Environmental Quality (DEQ) on the proposed VWP individual permit Modification within **30 calendar days** from the date of the notice. Address comments to the contact person listed below. Comments shall include the name, address, and telephone number of the writer and shall contain a complete, concise statement of the factual basis for the comments. Only those comments received within this period, and those concerning the change(s) to the permit,

Sample Public Notice for a Major Modification
Page 2

will be considered. The Director of DEQ may decide to hold a Public Hearing if public response is significant. Requests for Public

Hearings shall state the reason why a hearing is requested, the nature of the issues proposed to be raised in the Public Hearing, and a brief explanation of how the requester's interests would be directly and adversely affected by the proposed permit action.

All pertinent information is on file and may be inspected by contacting **[permit writer name at: DEQ, Virginia Water Protection Permit Program; address; phone number; e-mail address]**.

Following the comment period, the board will make a determination regarding the proposed Modification of the permit. This determination will become effective, unless the Director grants a Public Hearing. Due notice of any Public Hearing will be given.

Sample Public Notice for a Major Modification
Page 3

Complete this form for the documentation of publication of the Public Notice for a VWP individual permit Modification. Please return original to: **[Permit Writer Name, Dept. of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009]**

PASTE PRINTED COPY OF NOTICE IN THIS SPACE

I hereby certify that the notice attached hereto in the space above appeared in

_____ on _____.
(Name of Paper) (Date)

_____
(Signature)

_____
(Title)

_____
(Date)

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Final VWP Individual Permit Modification Transmittal Letter

[Date]

[Permittee Name]
[c/o Agent, if applicable]
[Address]

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: VWP Individual Permit Modification No. **[##-####]**
[Route 250 Widening, Goochland County,] Virginia
Final VWP Individual Permit Modification

Dear **[Permittee/Agent]**:

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 granted a Modification of the VWP individual permit for the **[Route 250 widening]** project. The proposed project results in the permanent impact of approximately **[0.219 acres of palustrine, emergent wetlands and 0.527 acres of palustrine, forested wetlands associated with Tuckahoe Creek and an unnamed tributary in Goochland County, Virginia. Unavoidable impacts are compensated at the Newman compensation site.]**

[Summarize the Modification activities. Example: Site activities include the discharge of effluent to Newman Creek from dewatering activities during compensation site construction. The issued permit (Part I, Special Condition B.4.) required the permittee to monitor Newman Creek to ensure that site activities do not violate Water Quality Standards for Class III waters. Based on information provided in your Modification request, the existing pH and dissolved oxygen levels in Newman Creek are already in violation of the Water Quality Standards for Class III waters. Therefore, the monitoring requirements listed in the issued permit are not applicable for the project activities. The modification requires that the permittee monitor the effluent to ensure that the discharge itself meets the Water Quality Standards for Class III waters.]

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

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Final VWP Individual Permit Modification Transmittal Letter
Page 2

[Permittee/Agent Name]
[Date]
Page 2 of 2

applicable provisions of sections 301, 302, 303, 306, and 307 of this Act…."

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 calendar 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 §§ 62.1-4.16, 62.1-44.17 and 62.1-44.19 of the State Water Control Law aggrieved by any action that the board has 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 No. 1. 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 **[permit writer]** at **[phone number]**.

Sincerely,

[Regional Permit Manager or Designee Name]
[Title]

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

cc: **[Contact Name]**, U.S. Army Corps of Engineers
[Contact Name], Virginia Marine Resources commission **(if applicable)**
[Agent] (if applicable)
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Denial of Request for Modification Letter

[Date]

[Applicant Name]
[c/o Agent, if applicable]
[Applicant or Agent Address]

RE: VWP Individual Permit Number **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Denial of Request for Modification

Dear **[Applicant/Agent]**:

The Department of Environmental Quality (DEQ) has received your request to modify the above-referenced permit on **[February 2, 2001].** In your request, you indicated the **[summarize the requested modification]**. Upon review of the request, DEQ determined that the request does not qualify for a modification in accordance with 9 VAC 25-210-190. Therefore, the board has tentatively decided to deny the Virginia Water Protection (VWP) individual permit modification request.

[The decision to deny may be withdrawn if the… state recommendation for changes in order to allow opportunity to modify the application to achieve a favorable recommendation, if applicable].

If you determine that you will not adjust the request as detailed above, you may chose to withdraw the modification with a written request. If you do not withdraw the modification, DEQ will recommend denial of the modification.

If you have any questions, do not hesitate to contact **[permit writer]** at **[phone number]** or **[e-mail address].**

Sincerely,

[Regional Permit Manager or designee]
[Title]

cc: **[Contact Name]**, U.S. Army Corps of Engineers
[Contact Name], Virginia Marine Resources Commission **(if applicable)**
[Agent] (if applicable)
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample VWP Individual Permit Extension Transmittal Letter

[Date]

[Permittee Name]
[c/o Agent, if applicable] **CERTIFIED MAIL**
[Address] **RETURN RECEIPT REQUESTED**

RE: VWP Individual Permit Number **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Notice of Permit Extension Approval **[Denial]** Letter

Dear **[Permittee/Agent]**:

The Virginia Department of Environmental Quality (DEQ) has received your request to extend the permit term for the Virginia Water Protection (VWP) Individual Permit Number **[##-####].** The permit was issued on **[July 19, 2000]** for the impact of **[0.45 acres of emergent wetlands and 0.40 acres of scrub/shrub wetlands, including 50 linear feet of Maidens Creek]**. The required compensatory mitigation consists of the **[creation of 0.45 acres of emergent wetlands and 0.60 acres of scrub/shrub wetlands and 50 linear feet of stream restoration at the impact site].** The permit will expire on **[July 19, 2005].**

In your letter dated **[January 16, 2005]**, you indicated that all impact activities **[have not been completed for the project. Therefore, you requested that the authorization be extended to complete the impact activities.] -OR- [have been completed for the project. However, you requested that the authorization be extended to ensure compliance with the compensation and monitoring conditions.]**

In accordance with your request and pursuant to the VWP Permit Program Regulation 9 VAC 25-210-185, DEQ **[approves the term extension for this permit. The new expiration date is [July 19, 2010.]] -OR- [is denying the term extension for this permit because (give reason). The current permit expiration date is valid.]**

[If Approved, add this statement: I have enclosed a revised Permit Cover Page reflecting the new permit term. Please note that this letter is an official component of the permit and should be retained in your files.]

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample VWP Individual Permit Extension Transmittal Letter
Page 2

[Permittee/Agent Name]
[Date]
Page 2 of 2

If you have any questions, please contact **[permit writer]** at **[phone number]** or **[e-mail address]**.

Sincerely,

[Regional Permit Manager or Designee Name]
[Title]

Enclosure Revised Permit Cover Page

cc: **[Contact Name]**, U. S. Army Corps of Engineers
[Contact Name], Virginia Marine Resources Commission **(if applicable)**
[Agent] (if applicable)
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Notice of Intent to Terminate Permit Letter

[Date]

[Permittee Name]
[c/o Agent, if applicable]
[Address]

RE: VWP Individual Permit No. **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Notice of Intent to Terminate Permit

Dear **[Permittee/Agent]**:

Pursuant to the Virginia Water Protection (VWP) Permit Program Regulation 9 VAC 25-210-180, the Department of Environmental Quality (DEQ) intends to recommend that the State Water Control Board terminate the referenced VWP individual permit for the following reason(s): **[provide an explanation]**

If you agree with the proposed termination and wish to waive your right to a public hearing, please sign and date the attached Termination Agreement Form and return it to this office within **14 calendar days**.

If you do not agree with to the termination of this permit and wish to exercise your right to a public hearing (as per Procedural Rule No. 1, Section 9 VAC 25-230-100 of the Virginia Administrative Code), please contact me as soon as possible.

If you have any comments or questions, please call me at **[phone number]**.

Sincerely,

[Permit Writer]
[Title]

Enclosure: Termination Agreement Form

cc: **[Agent] (if applicable)**
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample Termination Agreement Form

Termination Agreement Form

To: **[Permit Writer Name]**
[DEQ Regional Office Address]

Subject: Termination of VWP Individual Permit No. **[**##-####**]**

I hereby agree to the termination of VWP Individual Permit No. **[**##-####**]** and waive my right to a public hearing in accordance with VWP Permit Regulation 9 VAC 25-210-180 and Procedural Rule No. 1, Section 9 VAC 25-230-100. The Termination is being requested for the following reasons: **[provide reason for Termination]**

I certify that the permit is ☐ / is not ☐ subject to a pending state or federal enforcement action, including citizen suits, brought under state or federal law.

Permittee: **[Name as on Permit]**
[Address]
[City, State, Zip]

Signed: _____
(Permittee)

_____
(Title)

_____
(Date)

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Example Permit Termination Summary Form

STATE WATER CONTROL BOARD MEETING
[insert date if known]

Item:	**[Name of Permittee]** **[Address]**
Office:	**[insert regional office]**
State Water Affected:	**[insert water body and river basin]**
Proposed Board Action:	Terminate **[VWP Individual Permit No. ##-####]**
Discussion:	**[explain the basis for the termination, for example, work in jurisdictional areas completed]**
Public Comment:	**[provide the status of any required public notice of the proposed termination and, if applicable, a summary of the public comment received to date]**
Attachment:	Termination Agreement Form

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Revised 11/30/2001; 5/1/2002

Sample Notice of Permit Termination Letter

[Date]

[Permittee Name]
[c/o Agent, if applicable] **CERTIFIED MAIL**
[Address] **RETURN RECEIPT REQUESTED**

RE: VWP Individual Permit No. **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Notice of Permit Termination Approval **[Denial]**

Dear **[Permittee/Agent]**:

The State Water Control Board has approved **[denied]** the termination of VWP Individual Permit No. **[##-####]** on **[board meeting date]**. A copy of the approved board minute is enclosed for your information.

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have **30 calendar days** from the date you actually received this decision, or the date that it was mailed to you, (whichever occurred first) to appeal this decision. Appeals may be filed in one of the following manners:

1) File a Notice of Appeal in accordance with the Rules of the Supreme Court of Virginia. In the event that this decision was served on you via regular mail, you have an additional three calendar days to appeal. Submit the Notice of Appeal to Virginia Department of Environmental Quality, Attention: **[Director]** at the address on this letterhead.

2) File a petition requesting a formal hearing of the owner's grievance as per §§ 62.1-44.16, 62.1-44.17 and 62.1-44.19 of the State Water Control Law. The petition must meet the requirements set forth in § 1.23 (b) of the board's Procedural Rule No. 1 (9 VAC 25-230-100 et seq. of the Virginia Administrative Code).

If you have any questions, please call **[permit writer]** at **[phone number]**.

Sincerely,

[Regional Permit Manager or Designee Name]
[Title]

Attachment: Approved Board Minute

cc: **[Agent] (if applicable)**
VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

CHAPTER VII – INSPECTION AND COMPLIANCE

This chapter provides guidance for conducting permit compliance site inspections and reviewing required plans and reports once a VWP individual permit or VWP general permit authorization has been issued. The permit writer is responsible for ensuring that all site conditions and activities are conducted in accordance with the permit/permit authorization conditions and that the required plans, reports, photographs, etc. are complete and submitted on time. A permittee's failure to comply with permit conditions may lead to enforcement actions, and therefore, a brief overview of enforcement is provided at the end of this chapter. Please refer to DEQ Enforcement staff and the DEQ web site http://www.deq.state.va.us/enforcement/overview.html for specific enforcement protocols and procedures.

For the purposes of this chapter, "inspector" refers to the VWP permit writer. Staff from DEQ's enforcement section may ultimately take over the duty of performing the site inspections in the future.

A. Site Inspections

The following sections should be used as a guide for Construction (or Impact) Site Inspection and Compensation Site Inspection procedures. Note that each site inspection should be tailored to the specific VWP permit.

1. Construction (Impact) Site

The inspector should conduct at least one site inspection of the permitted impact areas during construction for projects involving major construction impacts, when problems arise during the site activities, or when there are public complaints about the project. The need for and frequency of the construction site inspections are project specific.

The permit writer should document existing site conditions with notes and photographs of the proposed impact areas, any adjacent waterbodies, or areas of potential concern. The guidelines below should be followed when documenting site conditions:

- Photographs should be clearly labeled with the permit number, impact site name or number, date and time, name of the person taking the photograph, directional view, and a brief description of the subject.
- Site observation notes should be made in a bound field book that has consecutively numbered pages. The site name, permit number (when applicable), and the date should be listed on all pages used during each site visit. Each individual observation should list the time that the observation was made and a description of the observation. The name, title, address, and telephone number of anyone interviewed during the site visit should be listed in the field book. Approximate locations of any photographs, their directional views, and their descriptions should also be listed in the field book. Upon returning to the office, the permit writer should copy the appropriate field book pages for that site visit and place the copies into the permit file.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

The permit writer may find that answering the following questions is helpful when taking notes:

- Has the movement of aquatic life been impeded?
- Is there evidence of the entry of unpermitted material into state waters (for example, wet or uncured concrete, fill, construction and waste material, fuels, lubricants, and untreated stormwater runoff)?
- Are erosion and sediment control measures in place and effective?
- Is equipment being used for unauthorized work in jurisdictional areas?
- Is equipment in jurisdictional areas being placed on mats, etc.?
- Have non-impacted surface waters within fifty feet of any activity been properly flagged?
- Is construction occurring outside of the permitted boundaries within jurisdictional areas?
- Are temporary impacts being avoided and minimized to the greatest extent practicable?
- Are time of year restrictions being enforced?
- What are the appearance and characteristics of waterbodies (for example, is water turbid, high/low in dissolved oxygen)?
- Does aquatic life appear impacted or stressed?
- Are all stormwater management and/or best management practices in place?
- Have stockpiled materials in wetlands been placed on mats, etc.?
- Is there progress of disturbed areas towards preconstruction conditions?
- Is work being performed in the dry?

If the inspector determines that the field practices are in accordance with the permit conditions, no additional action is required. However, if problems or concerns are noted during the inspection, the inspector should contact the permittee to discuss the issues and submit a written notification detailing the areas of concern. A sample letter is included at the end of this chapter.

2. Compensation Site

The inspector should conduct at least two site inspections of the compensation site, once during or immediately after grading activities and once during or immediately after planting, to ensure that permit conditions are being met and that required compensation is successful. The need for and frequency of the compensation site inspections are project specific.

The inspector should note the construction activities and site conditions during his/her visit to ensure compliance with the permit, particularly the Part I - Special Conditions for VWP individual permits and the Part II - Mitigation, Monitoring, & Reporting conditions for VWP general permit authorizations.

In addition to the previous questions, the permit writer may find that answering

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

the following compensation-specific questions is helpful when taking notes:

- Have stockpiled hydric soils, if being used, been kept moist?
- Do water control structures appear to conform to the design plans?
- Do grade transitions in the field appear to be within tolerances set in the design plan?
- Has (or will) the surface layer been disked once heavy equipment has been removed?
- Have monitoring wells, if required, been installed properly and field located?
- Have As-Built grading surveys been conducted and submitted to DEQ as required in the permit conditions?
- Have soil amendments been applied in the proper locations and quantities as specified in the plan?
- Has plant material delivery been timed with installation to minimize the out-of-ground period?
- Was plant material installed correctly, according to the plan?
- Does plant material appear healthy?
- How and where was plant material stored prior to planting (for example, in a trailer, in direct sun)?
- Was plant material kept sufficiently moist prior to planting?
- Were tree whips properly staked, if required?
- Were plants watered after installation?

If the inspector determines that the field practices are in accordance with the permit conditions, no additional action is required. However, if problems or concerns are noted during the inspection, the inspector should contact the permittee to discuss the issue and submit a written notification detailing the areas of concern. A sample letter is provided at the end of this chapter.

B. Required Notifications and Submittals for Permit Compliance

The objective of this section is to familiarize the permit writer with the typical notifications and submittals a permittee must prepare and submit for compliance with a VWP permit. Examples of required submittals include notifications, final plans, specifications, photographic documentation, and monitoring reports. **In accordance with the VWP permit regulations, a signed Certification Statement should accompany all reports and submittals required by either a VWP general or individual permit, including notices of termination.**

1. Typical Required Submittals

Each VWP permit specifies the reporting and submittal requirements for the authorized activities covered by the permit. While certain submittals are required for all VWP permits, each permit will require specific submittals based on the specific activities authorized under the permit.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Tables VII-1 through VII-3 at the end of this chapter summarize the typical submittals for VWP general and individual permits. The tables are divided into main sections with subdivisions for specific project activities. Typical due dates for compliance are listed next to each submittal. Actions required by the permit writer following receipt of the submittal are also listed. These tables are a representative sample of typical submittals and should not be viewed as an inclusive list for all permits.

2. Tracking Required Submittals

One of the functions of the CEDS system is to track permit submittals to assist the permit writer in determining compliance with submittal dates. The permit writer may choose to prepare a tracking record specifically tailored for that permit to assist them in organizing and documenting the submittal process. The tracking record should list the required submittals and due dates described in the specific VWP permit. The tracking record should be organized so that the permit writer will have an easy reference to determine when a submittal is due and to review the actions on the submittal (for example, is there a document outstanding?, when was a document reviewed and approved?, was the submittal deemed incomplete and did it require additional information?, etc.). The tracking record can also serve as documentation of the permit writer's actions when it includes specific dates. An example tracking sheet (prepared as a Microsoft Excel spreadsheet) is provided at the end of this chapter.

3. Review of Required Submittals

The permit writer should review submittals and prepare written comments, including approval notifications, in a timely manner. Guidelines for review times for typical submittals are located in Tables VII-1 through VII-3 at the end of this chapter. The following sections provide guidance for review of the typical documents.

Construction (Impact) Site Monitoring Reports

The Construction (Impact) Site Monitoring Reports should include a detailed description of the work that has been performed in permitted jurisdictional areas, including timelines, for the designated reporting month(s). Each report should also include photographs of each jurisdictional area. Each photograph should be properly labeled to include the permit number, impact site name or number, date and time, name of the person taking the photograph, directional view, and a brief description of the activity.

As part of the report review, the permit writer should determine if the site is in compliance with the VWP permit conditions. The permit writer may use the questions in Section A.1 to assist in the review.

If the permit writer determines that the field practices are in accordance with the permit conditions, no additional action is required. However, if problems or concerns are noted following report review, the permit writer should contact the permittee to discuss the issue and submit a written notice of concern. A sample letter is provided at the end of this chapter.

Final Compensatory Mitigation Plan

In accordance with the VWP **general** permit regulations, the permit writer has **30 calendar days** from receipt of a VWP general permit final compensatory mitigation plan to provide written comments. If written comments are not prepared within this timeframe, the plan is automatically approved as written. The final plan must be approved prior to commencement of work in permitted areas.

There are no regulatory timeframes for the review of a VWP **individual** permit final compensatory mitigation plan. However, the permit writer should attempt to review and provide comments within **30 calendar days** to provide consistency to the public. If the permit writer cannot meet the 30-calendar day review timeframe, he/she should contact the permittee and provide him/her with an estimate of the review completion date.

The following groups of questions may assist the permit writer in his/her review of the final compensation plan:

<u>General Site Selection and Screening</u>

- What are the goals/objectives of the compensation plan? Do these meet the requirements of the proposed permit?
- Does the compensation site replace the acreage and functions of the impacted wetlands?
- Is the compensation site located within the same watershed as the impact(s)?
- Have existing wetlands on the proposed compensation site been delineated? If no existing wetlands are present, what is the biological benchmark or reference for the compensation site?
- Have endangered species/cultural resources been addressed at the compensation site?
- Has a Phase I Environmental Site Assessment been conducted on the compensation site? Is the site a known dump or brownfield?
- What is the primary source of hydrology? Secondary source?

Note: DO NOT ASSUME that an existing wetland can be enlarged for compensation. A water budget must confirm that there will be ample water for BOTH the existing wetland and the compensation site.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Site Hydrology (Tidal Components)

- What is the tidal amplitude and periodicity at the site? Is this confirmed with on-site gauges?
- What is the fetch at the site? A fetch of greater than one mile may require protective breakwaters as part of the design.
- Will the site be exposed to high-energy wake from boat traffic? If so, wake limits or protective measures should be considered.

Site Hydrology (Non-tidal Components)

- What are the surface water inputs (streams, lakes, ponds, rain/surface runoff)?
- What is the average water volume during the seasonal drought period?
- Do stream gauges confirm ordinary high water? What is the average annual stream velocity?
- For large lakes/ponds, is fetch a potential problem? What are the seasonal water fluctuations? Is the water body subject to regular man-induced drawdown, as with a reservoir? Is natural drawdown from evapotranspiration high?
- Are there water quality issues associated with the general area (for example, heavy metals, acidic drainage, heavy sediment loads, etc.)? If so, does the compensation plan incorporate appropriate measures?
- Is there groundwater input?
- What are the rates of groundwater discharge/recharge at the compensation site?
- Have observation wells been correctly installed and monitored during the early part of the growing season (typically March through early May, depending on the location)?
- What other watershed pressures affect the groundwater? Is there a regional pumping station nearby?

Note: If groundwater discharge is the primary water source, then discharge rates should be based upon seasonal drought periods NOT the annual average discharge rate.

Site Hydrology-Water Budget (Non-tidal only)

- Has a water budget been calculated? Does it include all of the necessary elements?
- What is the drainage area and surrounding land use upgradient of the compensation site?
- What is the evapotranspiration rate?
- What is the historic precipitation for the general area? A good rule of thumb is 20 years of precipitation data.
- How far from the compensation site is the precipitation gauge? If the precipitation gauge is more than 10 miles from the compensation site, then an on-site precipitation gauge may be necessary.

- What is the rainfall average during a normal year? A dry year? A wet year?

Note: The water budget can be determined using the following formula: Net Available Water – Precipitation + Runoff + GW Discharge – Outflow – Infiltration – Evapotranspiration

Site Soils

- Are subsurface soils subject to iron precipitates (pyritic)?
- What is the depth to bedrock? Has this been confirmed with geotechnical studies?
- What is the depth to the groundwater table from the existing elevation? From the proposed elevation?
- What are the soil types and infiltration rates at the proposed finished grade?
- Were field permeability tests conducted? Do these confirm permeability rates in the soil survey? Ideal soil permeability is 0.14 to 0.014 inches/hour.
- Are soils stable for proposed slopes and dams? If not, will appropriate fill material be used? What is the source of the fill material?
- If hydric soils from off-site are to be used, where will they be stockpiled? Stabilized? Will they be kept moist?

Site Vegetation

- What is the biological benchmark or reference for proposed plantings? Is there an adjacent or nearby wetland?
- Have vegetation zones been correlated with proposed hydrologic regimes?
- Will soil amendments be necessary? Too much of a good thing can be bad!
- Will topsoil or hydric soil be used for backfill to final grade? To what depth?
- Will the site be overseeded? Will a wetland seed mix be used?

Site Construction

- What is the construction schedule? Excavation activities during the early growing season may not be advisable due to groundwater levels. A table showing typical growing seasons for counties in Virginia is located in Appendix B.
- Will temporary haul roads be necessary?
- Are appropriate E&S controls included in the compensation plan?
- Is a spill prevention and countermeasure plan included? How will equipment spills be contained?
- Will existing wetlands be identified and protected during construction?

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Site Post-Construction Monitoring

- Is the appropriate number of monitoring wells specified?
- What is the monitoring protocol?
- What are the site success criteria? Do they meet the permit conditions?

Other Concerns

- Is there an invasive species plan?
- Is there a "problem wildlife" plan?
- Is there a vandalism plan?

Note: Clarification on the terms invasive, noxious, and undesirable can be found in Appendix B of this permit manual.

If the permit writer determines that the field practices are in accordance with the permit conditions, no additional action is required. However, if problems or concerns are noted following report review, the permit writer should contact the permittee to discuss the issue and submit a written notice of concern.

Annual Compensation Monitoring Reports

The Annual Compensation Site Monitoring Reports should include a detailed analysis of all information required by the permit and any special conditions regarding the success criteria. Each report should also include a map of the site depicting the locations of all monitoring stations and photographs of the site from each permanent photograph station. Each photograph should be properly labeled to include the permit number, site name or number, date and time, name of the person taking the photograph, directional view, and a brief description of the activity.

As part of the report review, the permit writer should determine if the site is in compliance with the VWP permit conditions and final plan.

The following groups of questions may assist the permit writer in his/her review of annual compensation plans:

Hydrology

- Were monitoring wells gauged during the appropriate growing season?
- Were monitoring well data compared/correlated with precipitation data (both on-site and from an official NOAA weather station)?
- Does hydrology meet the success criteria required in the permit? If not, are corrective actions planned?
- Is the monitoring data presented in a consistent and easily understood format?

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Vegetation

- Were the appropriate number of permanent vegetation monitoring stations sampled?
- Does mean percent cover of herbaceous plants meet the minimum success criteria required in the permit?
- Does the mean density of live woody plants meet the minimum success criteria required in the permit?
- Is there any discussion on mortality of woody plants?
- What percentage of volunteer species are Facultative or wetter?
- Is the monitoring data presented in a consistent and easily understood format?

Other Observations

- What are the number and types of wildlife species using the compensation site?
- Are invasive species a problem? If so, what corrective action is planned?
- What types of maintenance activities are necessary or were undertaken?
- What are the appearance and characteristics of on-site and nearby waterbodies (for example, is the water turbid, high/low in dissolved oxygen)?

If the permit writer determines that the field monitoring practices are in accordance with the permit conditions and final plan, no additional action is required. However, if problems or concerns are noted following report review, the permit writer should contact the permittee to discuss the issue and submit a written notice of concern. This notice should be copied to the appropriate USACE representative. A sample letter is provided at the end of this chapter.

C. Compliance and Enforcement Issues

As indicated above, the permit writer should actively communicate with the permittee to correct noted problems. However, if the problem is severe and continues to persist, or the permittee is uncooperative or unresponsive, the permit writer should begin coordination with DEQ compliance and enforcement staff according to their established regional protocols. Note that in the case of VDOT and water withdrawal permits, which are managed in the central office, the permit writer should coordinate with the enforcement staff in the region in which the project is located.

When an enforcement action is necessary, the permit writer should prepare and transmit an inspection report to the regional compliance auditor or other appropriate compliance and enforcement staff according to regional protocols. The inspection report is reviewed and points are assigned to any alleged violations. Points are assigned as described in the

Point Assessment Criteria set forth in Chapter 3 of the Enforcement Manual. In general, the seriousness of an alleged violation depends upon its gravity, duration, magnitude, and willfulness, and its impact or threat of impact on human health and the environment.

The individuals responsible for the various compliance and enforcement responses will be determined by each regional office. For more information on the various compliance and enforcement tools, the process for evaluating cases for response, boilerplate documents, and other enforcement procedures, please refer to the Enforcement Manual on DEQ's web site at http://www.deq.state.va.us/enforcement/overview.html.

In summary, should the permit writer suspect a violation, coordinate with the appropriate regional compliance and enforcement staff in a timely manner.

Sample [Construction/Compensation] Site Visit Letter

[Date]

[Applicant Name]
[c/o Agent, if applicable]
[Applicant or Agent Address]

RE: Virginia Water Protection **[Individual or General]** Permit **[Authorization]** No. **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Summary of Concerns Identified During the **[January 10, 2001]** Site Visit

Dear **[Applicant/Agent]**:

The Virginia Department of Environmental Quality (DEQ) conducted a site visit of the construction activities associated with the **[Route 250 widening]** project on **[January 10, 2001]**. The concerns listed below must be addressed **[and corrected]** with in **[#]** days from the receipt of this letter to remain in compliance with the VWP **[individual or general]** permit conditions.

[Edit the following examples as per observations made during site visit]
[For Construction visits:

- **The rutting problem at Impact Site No. 1 should be addressed by restoring site to natural contours, seeding, and/or other stabilization methods prior to the continuation of work in this area.**
- **Active construction was occurring during the site visit at Impact Site 2. A track hoe was being used for sewer line work. The rutting problem at this site needs to be addressed immediately by using mats, or other appropriate sediment and erosion control measures. Adjacent wetlands or other water bodies could be affected by the erosion and sediment control problems at this site.**
- **Impact Sites 3 through 12 appeared to be stabilized and well maintained, and require no further action.]**

[For Compensation visits:

- **Erosion and sedimentation controls are not being properly maintained between the excavation area and existing wetlands.**
- **Stockpiled hydric soils, which will be used to backfill the compensation site to final grade are not being kept moist as required in the special conditions to the permit authorization.**
- **The plant material, purchased for this compensation site, is being stored in a closed trailer without proper air circulation and watering.]**

[As discussed with your on-site representative], DEQ requests that you take immediate action to correct these concerns and ensure compliance with the permit conditions. Failure to take this action, or to contact me to discuss the deficiencies, within 30 calendar days may result in an enforcement action by DEQ. Please contact me once the concerns noted in this letter have been fully addressed to schedule a follow-up site inspection. I will also review the future construction monitoring reports for progress in addressing DEQ's concerns at the above-mentioned areas.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

Sample [Construction/Compensation] Site Visit Letter
Page 2

[Permittee/Agent]
[Date]
Page 2 of 2

Please contact me at **[phone number]** if you have any questions. Thank you for your cooperation in this matter.

Sincerely,

[Permit Writer]
[Title]

cc: VWP permit file

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

TABLE VII-1 Typical Notifications and Submittals Required for VWP General Permit No. WP1 Authorizations

Note: This table summarizes typical notification, monitoring, and reporting requirements outlined in the general permit authorization and should not be considered an all-inclusive list for authorization compliance.

Description and Condition Reference	Due	DEQ Action
Impact/Construction Site		
Notification of activity initiation (Part II.D.2.)	10 days prior to activities	
Pre-Construction Photos (Part II.C.1.)	prior to site activities	
Post-Construction Photos (Part II.C.1.)	w/in one week of project completion	
Construction Monitoring Reports to include (Part II.D.3.)	30 days from monitoring event	written comments/concerns w/in 30 days
Statement of when work in permitted areas began		
Details of the work performed and completed in permitted areas		
Labeled photographs depicting representative site activities - Month 1, 2, 12, 24, 36, etc. until end of construction		
Water quality parameters for rerouting live streams (Part II.C.4.)	w/in one week of activity completion *	
Stream bottom elevations (inlet and outlet) at road crossings (Part II.C.3.)	w/in 30 days of activity completion **	
Notification of project completion (Part II.D.4.)	w/in 30 days of project completion	
Compensation at an Approved Compensation Bank		
Documentation of debited credits (Part II.B.)	w/in 60 days of authorization issuance	
Compensation Using an Approved In-Lieu Fee Fund		
Documentation contribution was received (Part II.B.)	w/in 60 days of authorization issuance	
Request for Authorization Changes		
Notice of Planned Change (Part I.A.2)	45 days prior to additional impacts*	add info letter w/in 15 days; approval w/in 45 days*
Continuation of Coverage (Part I.B.)	sufficient time for review	add info letter w/in 15 days; approval w/in 45 days*

* Not specified in General Permit.
** Not specified in General Permit, but permit writer should request during this timeframe.

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Revised 11/30/2001; 5/1/2002

TABLE VII-2 Typical Notifications and Submittals Required for VWP General Permit Nos. WP 2, 3, and 4 Authorizations

Note: This table summarizes typical notification, monitoring, and reporting requirements outlined in the general permit authorizations and should not be considered an all-inclusive list for authorization compliance.

Description and Condition Reference	Due	DEQ Action
Impact/Construction Site		
Notification of activity initiation (Part II.E.2.)	10 days prior to activities	
Pre-Construction Photos (Part II.D.1.)	prior to site activities	
Post-Construction Photos (Part II.D.1.)	w/in one week of project completion	
Construction Monitoring Reports to include (Part II.E.3.)	30 days from monitoring event	written comments/concerns w/in 30 days
Statement of when work in permitted areas began		
Details of the work performed and completed in permitted areas		
Labeled photographs depicting representative site activities - Month 1, 2, 12, 24, 36, etc. until end of construction		
Water quality parameters for rerouting live streams (Part II.D.4.)	w/in one week of activity completion *	
Stream bottom elevations (inlet and outlet) at road crossings (Part II.D.3.)	w/in 30 days of activity completion *	
Notification of project completion (Part II.E.5.)	w/in 30 days of project completion	
On-Site and Off-Site Wetland Compensation		
Final Compensatory Mitigation Plan (Part II.A.3.)	prior to work in jurisdictional areas	written comments/approval w/in 30 days**
State waters survey (Part II.A.3.)	w/in 120 days of Final Comp Plan approval	written comments/approval w/in 30 days
Proof of Recordation (Part II.A.3.)	w/in 60 days of survey approval	
Site Stabilization Plan (if land disturbance) (Part II.A.6.)		written comments/approval w/in 30 days
Post-Grading Survey (Part II.B.1)***	prior to seeding/planting	
Annual Compensation Monitoring Reports (Part II.E.4.):	Year 1 through #: Nov 30th of monitoring year	written comments/concerns w/in 30 days
	Final Year: 60 days prior to expiration	
Boundary survey showing limits and total acreage (Part II.A.14.)	end of the monitoring cycle	

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Revised 11/30/2001; 5/1/2002

TABLE VII-2 Typical Notifications and Submittals Required for VWP General Permit Nos. WP 2, 3, and 4 Authorizations (Cont'd)

Description and Condition Reference	Due	DEQ Action
Stream Creation/Restoration		
Final Compensatory Mitigation Plan (Part II.A.3.)	30 days prior to work in jurisdictional areas	written comments/approval w/in 30 days**
State waters survey (Part II.A.3.)	w/in 120 days of Final Comp Plan approval	written comments/approval w/in 30 days
Proof of Recordation (Part II.A.3.)	w/in 60 days of survey approval	
Annual Compensation Monitoring Reports (Part II.C.3.):	Year 1 through #: Nov 30th of monitoring year Final Year: 60 days prior to expiration	written comments/concerns w/in 30 days
Compensation at an Approved Compensation Bank		
Documentation of debited credits (Part II.A.2.)	w/in 60 days of authorization issuance	
Compensation Using an Approved In-Lieu Fee Fund		
Documentation contribution was received (Part II.A.2.)	w/in 60 days of authorization issuance	
Dredging		
Dredge Material Management Plan (Part I.G.7.)	30 days prior to dredging activities	written comments/approval w/in 30 days
Request for Authorization Changes		
Notice of Planned Change (Part I.A.2)	45 days prior to additional impacts*	add info letter w/in 15 days; approval w/in 45 days*
Continuation of Coverage (Part I.B. and II.A.16)	60 days prior to expiration	add info letter w/in 15 days; approval w/in 45 days*

* Not specified in General Permit.
** Final Compensation Plan will be automatically approved if written comments are not mailed within 30 calendar days of receipt.
*** May be required based on site conditions.

Created 9/28/2001
Revised 11/30/2001; 5/1/2002

TABLE VII-3 Typical Notifications and Submittals Required for VWP Individual Permits

Note: This table summarizes typical notification, monitoring, and reporting requirements referenced in VWP Individual Permit Part I - Special Conditions and should not be considered an all-inclusive list for permit compliance.

Description and Condition Reference	Due	DEQ Action
Impact/Construction Site		
Notification of activity initiation (D.8.)	10 days prior to activities	
Pre-Construction Photos (C.1.)	prior to site activities	
Post-Construction Photos (C.1.)	w/in one week of project completion	
Construction Monitoring Reports (D.9.)	30 days from monitoring event	written comments/concerns w/in 30 days
Water quality parameters for rerouting live streams (C.2.)	w/in one week of activity completion	
Notification of project completion (D.12.)	w/in 30 days of project completion	
On-Site and Off-Site Wetland Compensation		
Notification of activity initiation (D.16.)	10 days prior to activities	
Final Compensatory Mitigation Plan (O.1.)	prior to work in permitted areas*	written comments/approval w/in 30 days*
State waters survey (D.15.)	w/in 120 days of Final Comp Plan approval	written comments/approval w/in 30 days
Proof of Recordation (D.15.)	w/in 60 days of survey approval	
Site Stabilization Plan (if land disturbance) (O.7.)	60 days prior to activity	written comments/approval w/in 30 days
Post-Grading Survey (O.14.)	prior to seeding/planting	
Annual Compensation Monitoring Reports (D.17.):	Year 1 through #: Nov 30th of monitoring year	written comments/concerns w/in 30 days
Boundary survey showing limits and total acreage (D.18; O.20.)	w/in 30 days of final monitoring event	
Stream Creation/Restoration		
Notification of activity initiation (D.16.)	10 days prior to activities	
Final Compensatory Mitigation Plan (O.1.)	prior to work in jurisdictional areas*	written comments/approval w/in 30 days*
State waters survey (D.15.)	w/in 120 days of Final Comp Plan approval	written comments/approval w/in 30 days
Proof of Recordation (D.15.)	w/in 60 days of survey approval	
Annual Compensation Monitoring Reports (D.19.):	Year 1 through #: Nov 30th of monitoring year Final Year: 60 days prior to expiration	written comments/concerns w/in 30 days
Compensation at an Approved Compensation Bank		
Documentation of debited credits (M.1.)	w/in 60 days of permit issuance	

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TABLE VII-3 Typical Notifications and Submittals Required for VWP Individual Permits (continued)

Compensation Using an Approved In-Lieu Fund		
Documentation contribution was received (N.1.)	w/in 60 days of permit issuance	
General		
Final Plans and Specs for all authorized activities (D.7.)	prior to each activity	written comments/approval w/in 30 days
Dredging		
Dredge Material Management Plan (H.4.)	30 days prior to dredging activities	written comments/approval w/in 30 days
Post dredging bathymetric survey (H.18.)	30 days following dredging activities	written comments/approval w/in 30 days
Golf Courses		
Water withdrawal information (I.4.)	Jan 31st of the year following the withdrawal	
Marinas		
Fuel Spill Control Plan (K.7.)	prior to operations	written comments/approval w/in 30 days
Boat Cleaning and Maintenance Plan (K.7.)	prior to operations	written comments/approval w/in 30 days
Stormwater Management Plan (K.7.)	prior to operations	written comments/approval w/in 30 days
Spill Prevention Control and Countermeasures Plan (K.11.)	w/in six months of operations commencement	

* There are no regulatory submittal or review timeframes for the Final Compensation Plan. The final plan will not be automatically approved if written comments are not mailed within 30 calendar days of receipt; however, the permit writer should attempt to submit comments/approval within this timeframe.

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Example Tracking Sheet for [Permit Type] [Permit #]

Submittal Description **(Permit writer should change to reflect specific permit and add additional columns/rows, as applicable)**	**Date Due**	**Date Received**	**Complete (Yes or No)**	**Date Approval Letter Sent**	**Date Comment Letter Sent**	**Notes**
Impact/Construction Site						
Notice of Construction Letter						
Pre-Construction Photos						
Construction Monitoring Reports						
Month 1						
Month 2						
Month 12, etc.						
End of Construction Letter with Post-Construction Photos						
Compensation Site						
Final Compensatory Mitigation Plan						
State Waters Survey						
Proof of Recordation						
Site Stabilization Plan						
Post Grading Survey						
Annual Compensation Reports						
Year 1						
Year 2						
Year 3						
Year 5						

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Revised 11/30/2001; 5/1/2002

Sample Construction Monitoring Report Comment Letter

[Date]

[Applicant Name]
[c/o Agent, if applicable]
[Applicant or Agent Address]

RE: Virginia Water Protection **[Individual or General]** Permit **[Authorization]** No. **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Review of **[Title of Report]** for **[January 2001]**

Dear **[Applicant/Agent]**:

The Virginia Department of Environmental Quality (DEQ) has reviewed the Construction Site Monitoring Report dated **[February 3, 2001]** for the **[Route 250 widening]** project. During the review of the report, DEQ noted several concerns that must be addressed and corrected to remain in compliance with the Virginia Water Protection (VWP) **[individual or general]** permit conditions.

[Edit as per report review]

- **[As illustrated in Photograph 2, several sections of erosion and sediment control fencing in Impact Area No. 1 are not properly installed to prevent unnecessary runoff to Tuckahoe Creek.]**
- **[Heavy equipment appears to have impacted wetland areas outside of the permitted construction limits (for example, obvious rutting west of Impact Area No. 3 as illustrated in Photograph 5).]**

DEQ requests that you take immediate action to correct these concerns and ensure compliance with the permit conditions. Failure to take this action to comply with the permit or to contact me to discuss the deficiencies within 30 calendar days may result in an enforcement action by DEQ.

Please contact me at **[phone number]** if you have any questions. Thank you for your cooperation in this matter.

Sincerely,

[Permit Writer]
[Title]

cc: VWP permit file

Created 9/28/2001;
Revised 11/30/2001; 5/1/2002

Sample Compensation Monitoring Report Comment Letter

[Date]

[Applicant Name]
[c/o Agent, if applicable]
[Applicant or Agent Address]

RE: Virginia Water Protection **[Individual or General]** Permit **[Authorization]** No. **[##-####]**
[Route 250 Widening, Goochland County], Virginia
Review of **[Title of Report]** for **[January 2001]**

Dear **[Applicant/Agent]:**

The Department of Environmental Quality (DEQ) has reviewed your Mitigation Monitoring Report (Report) for the **[First]** Growing Season of the **[Route 250 Wetlands Mitigation]** Site. **[DEQ would like to thank you for a well-written report that thoroughly evaluates the site according to the requirements outlined in your permit.]**

[Both vegetation and hydrology success criteria exceed the minimum required in the permit. The site is progressing well. DEQ has just a few concerns addressing potential problem areas. The following items of concern should be watched to prevent any future problem areas:

1. **The monitoring report identifies a higher-than-expected amount of surface water, and suggests that a wetter-than-normal summer may be responsible for these anomalies. Certainly, this supposition is reasonable, and the second year's monitoring event will confirm whether this supposition is valid. Other possible explanations, not all-inclusive, for the higher-than-expected amount of surface water are (1) compaction of the soil during grading; (2) surface exposure of a previously subsurface clay lens; and (3) creation of microtopographic depressions during construction. Also, the report reasonably suggests that once woody species become better established, evapotranspiration rates will increase. Again, this supposition seems reasonable at this time; however, should woody vegetation in these areas die in subsequent years, another explanation may be valid.**

2. **Broad-leaved cattail (Typha latifolia) and barnyard grass (Echinochloa crus-galli), both considered undesirable native species, have colonized a number of areas of the mitigation site (particularly the northern portions of the site). However, both hand-removal and herbicidal efforts were employed to control these species.]**

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Revised 11/30/2001; 5/1/2002

Sample Compensation Monitoring Report Comment Letter
Page 2

[Permittee/Agent]
[Date]
Page 2 of 2

[The following recommendations address the above concerns as well as other issues discussed in the report:

1. **Several rain gauges should be placed on-site and monitored immediately after rainfall events throughout the monitoring period. In particular, 1-2 rain gauges should be installed in the areas of higher-than-expected water levels. Although the Richmond International Airport (the official weather station for the metro-Richmond area) is approximately 8 miles from the mitigation site, localized weather cells passing over the site are likely having a greater influence on on-site water levels. These potential differences, if any, in localized rainfall cannot be teased from the existing precipitation data.**

2. **Given areas of higher-than-expected water levels, it is premature to quantify the relative amounts of mitigation types on-site. Certainly, additional monitoring events may yield more relevant information for future quantification.**

3. **Control of broad-leaved cattail and barnyard grass should continue, as necessary, throughout the monitoring period.**

4. **At a minimum, panoramic photos should be taken at each monitoring well station in the areas of higher-than-expected water levels.**

5. **Vigilance should continue in regard to on-site water levels affected by down-stream beaver activity.]**

Please contact me at **[phone number]** or **[e-mail address]** if you have any questions.

Sincerely,

[Permit Writer]
[Title]

cc: **[Contact Name]**, U.S. Army Corps of Engineers
VWP permit file

Created 9/28/2001;
Revised 11/30/2001; 5/1/2002

Title 62.1.
Waters of the State, Ports and Harbors.

Chapter 2.
State Policy as to Waters.

§ 62.1-10.	Definitions.
§ 62.1-11.	Waters declared natural resource; state regulation and conservation; limitations upon right to use.
§ 62.1-12.	Valid uses not affected; chapter not applicable to proceedings determining rights.
§ 62.1-13.	Construction with reference to rights, etc., of counties, cities and towns.

Chapter 3.1
State Water Control Law

§ 62.1-44.2.	Short title; purpose.
§ 62.1-44.3.	Definitions.
§ 62.1-44.4.	Control by Commonwealth as to water quality.
§ 62.1-44.5.	Prohibition of waste discharges or other alterations of state waters except as authorized by permit.
§ 62.1-44.6.	Chapter supplementary to existing laws.

Article 2.
Control Board Generally.

§ 62.1-44.7.	Board continued.
§ 62.1-44.8.	Number, appointment and terms of members.
§ 62.1-44.9.	Qualifications of members.
§ 62.1-44.10.	[Repealed.]
§ 62.1-44.11.	Meetings.
§ 62.1-44.12.	Records of proceedings; special orders, standards, policies, rules and regulations.
§ 62.1-44.13.	Inspections and investigations, etc.
§ 62.1-44.14.	Chairman; Executive Director; employment of personnel; supervision; budget preparation.
§ 62.1-44.15.	Powers and duties.
§ 62.1-44.15.01	Further Duties of Board; localities particularly affected.
§ 62.1-44.15:1.	Limitation on power to require construction of sewerage systems or sewage or other waste treatment works.
§ 62.1-44.15:1.1	Special orders; penalties.
§ 62.1--44.15:1.2	Lake level contingency plans.
§ 62.1-44.15:2.	Extraordinary hardship program.
§ 62.1-44.15:3.	When application for certificate to discharge considered complete.
§ 62.1-44.15:4.	Notification of local governments and property owners.
§ 62.1-44.15:4.1	Listing and notice of confirmed oil releases and discharges.
§ 62.1-44.15:5.	Virginia Water Protection Permit.
§ 62.1-44.15:5.1	General permit for certain water quality improvement activities.

§ 62.1-44.15:5.2 General permits for ready-mix concrete plant discharges.

Article 2.1.
Permit Fees.

§ 62.1-44.15:6. Permit fee regulations.
§ 62.1-44.15.7. Permit program fund established, use of moneys.
§ 62.1-44.15:8. Conformance with federal requirements.

Article 3.
Regulation of Industrial Establishments.

§ 62.1-44.16. Industrial wastes.
§ 62.1-44.17. Other wastes.
§ 62.1-44.17.01 General Permits for confined animal feeding operations.
§ 62.1-44.17:1.1 Poultry waste management program.

Article 3.1.
Toxics Discharge Reduction.

§ 62.1-44.17:2. Definitions.
§ 62.1-44.17:3. Toxics reduction in state waters; report required.
§ 62.1-44.17:4. Evaluation of toxics removal and remediation technology.

Article 4.
Regulation of Sewage Discharges.

§ 62.1-44.18. Sewerage systems, etc., under joint supervision of Board and Department of Health.
§ 62.1-44.18:1. Repealed.
§ 62.1-44.18:2. When Board may prohibit discharge; permits.
§ 62.1--44.18:3. Permit for private sewerage facility; financial assurance; violations.
§ 62.1-44.19. Approval of sewerage systems and sewage treatment works.
§ 62.1-44.19:1. Sewage discharge under certain conditions prohibited in Virginia Beach.
§ 62.1-44.19:2. Requirements on the discharge of sewage in Norfolk, Newport News, Hampton, Virginia Beach and Chesapeake.
§ 62.1-44.19.3 Prohibition on land application, marketing and distribution of sewage sludge without permit.

Article 4.01.
Water Quality Monitoring, Information and Restoration Act.

§ 62.1-44.19:4. Definitions.
§ 62.1-44.19:5. Water quality monitoring and reporting.
§ 62.1-44.19:6. Citizen right-to-know provisions.
§ 62.1-44.19:7. Plans to address impaired waters.
§ 62.1-44.19:8. Control of discharges to toxic-impaired water.
§ 62.1-44.19:9. Transmission of toxics information.
§ 62.1-44.19:10. Assessment of sources of toxic contamination.

Article 5.
Enforcement and Appeal Procedure.

§ 62.1-44.20. Right to entry to obtain information, etc.
§ 62.1-44.21. Information to be furnished to Board.
§ 62.1-44.22. Private rights not affected.
§ 62.1-44.23. Enforcement by injunction, etc.
§ 62.1-44.23:1. Intervention of Commonwealth in actions involving surface water withdrawals.
§ 62.1-44.24. Testing validity of regulations; judicial review.
§ 62.1-44.25. Right to hearing.
§ 62.1-44.26. Hearings.
§ 62.1-44.27. Rules of evidence in hearings.
§ 62.1-44.28. Decisions of the Board in hearings pursuant to □□ 62.1-44.15 and 62.1-44.25.
§ 62.1-44.29. Judicial review.
§ 62.1-44.30. Appeal to Court of Appeals.

Article 6.
Offenses and Penalties.

§ 62.1-44.31. Violation of special order or certificate or failure to cooperate with Board.
§ 62.1-44.32. Penalties.

Article 7.
Pollution From Boats.

§ 62.1-44.33. Board to make rules and regulations.
§ 62.1-44.34. [Repealed.]

Article 8.
Discharge of Oil Into Waters.

§ 62.1-44.34:1 and § 62.1-44.34:7 [Repealed.]

Article 9.
Underground Storage Tanks.

§ 62.1-44.34:8. Definitions.
§ 62.1-44.34:9. Powers and duties of Board.

Article 10.
Underground Petroleum Storage Tank Fund.

§ 62.1-44.34:10. Definitions.
§ 62.1-44.34:11. Virginia Underground Petroleum Storage Tank Fund.
§ 62.1-44.34:12. Financial responsibility.
§ 62.1-44.34:13. Levy of tax for fund maintenance.

Article 11.
Discharge of Oil into Waters.

§ 62.1-44.34:14. Definitions.
§ 62.1-44.34:15. Oil discharge contingency plans.
§ 62.1-44.34:15.1. Regulations for aboveground storage tanks.
§ 62.1-44.34:16. Financial responsibility.
§ 62.1-44.34:17. Exemptions.
§ 62.1-44.34:18. Discharge of oil prohibited; liability for permitting discharge.
§ 62.1-44.34:19. Reporting of discharge.
§ 62.1-44.34:19.1. Registration of aboveground storage tanks.
§ 62.1-44.34:19.2. Recordkeeping and access to records and facilities.
§ 62.1-44.34:20. Enforcement and penalties.
§ 62.1-44.34:21. Administrative fees.
§ 62.1-44.34:22. Applicability of Administrative Process Act.
§ 62.1-44.34:23. Exceptions.

Article 12.
Virginia Spill Response Council.

§ 62.1-44.34:24. Definitions.
§ 62.1-44.34:25. Virginia Spill Response Council created; purpose membership.
§ 62.1-44.34:26. Responsibilities of the Council.
§ 62.1-44.34:27. Cooperation of agencies and institutions.
§ 62.1-44.34:28. Council to submit annual report.

Chapter 3.2.
Conservation of Water Resources; State Water Control Board.

§ 62.1-44.35. [Repealed.]
§ 62.1-44.36. Responsibility of State Water Control Board; formulation of policy.
§ 62.1-44.37. Resolution of conflicts as to water use; public hearings.
§ 62.1-44.38. Plans and programs; registration of certain data by water users; advisory committees; committee membership for federal, state, local agencies; water supply planning assistance.
§ 62.1-44.39. Technical advice and information.
§ 62.1-44.40. Governor and General Assembly to be advised; annual report.
§ 62.1-44.41. Board authorized to speak and act for Commonwealth.
§ 62.1-44.42. Cooperation with other agencies.
§ 62.1-44.43. Additional powers of Board.
§ 62.1-44.44. Construction of chapter.

Chapter 3.4.
The Groundwater Act of 1973.

§ 62.1-44.83.- § 62.1-44.107.[Repealed].

Chapter 3.6.
Potomac River Riparian Rights Act.

§ 62.1-44.113. Short title.

§ 62.1-44.114. Use of Potomac River; riparian rights.
§ 62.1-44.115. Review of uses by Water Control Board; report.
§ 62.1-44.116. Assistance by Board in riparian disputes.

Chapter 8.
Impoundment of Surface Waters.

§ 62.1-104. Definitions.
§ 62.1-104.1. [Repealed.]
§ 62.1-105. Impoundment of diffused surface waters.
§ 62.1-106. When floodwaters may be captured and stored by riparian owners.
§ 62.1-107. Application for leave to store floodwaters; notice to interested persons and to State Water Control Board.
§ 62.1-108. Time and place of hearing on petition; parties.
§ 62.1-109. Board to examine petition and report to court.
§ 62.1-110. Court to hear and determine issues; reference to commissioner.
§ 62.1-111. When leave not granted; terms and conditions; appeals.
§ 62.1-112. When leave shall expire.
§ 62.1-113. Use of bed of watercourse.
§ 62.1-114. Exceptions to application of chapter.
§ 62.1-115. Use of waters stored.

Chapter 8.1.
Dam Safety Act.

§ 62.1-115.1.- § 62.1-115.10.[Repealed.]

Chapter 20.
Miscellaneous Offenses.

§ 62.1-194. Casting garbage, etc., into waters.
§ 62.1-194.1. Obstructing or contaminating state waters.
§ 62.1-194.1:1. Removal of obstructing or hazardous property from state waters.
§ 62.1-194.2. Throwing trash, etc., into or obstructing river, creek, stream or swamp.
§ 62.1-194.3. Obstructing tributaries of Big Sandy River; dumping refuse, etc., into Big Sandy River or its tributaries.
§ 62.1-195. [Repealed.]
§ 62.1-195.1. Chesapeake Bay; drilling for oil or gas prohibited.
§ 62.1-195.2 [Expired]
§ 62.1-196. [Repealed.]

Chapter 21.
Virginia Resources Authority.

§ 62.1-197. Short title.
§ 62.1-198. Legislative findings and purposes.
§ 62.1-199. Definitions.
§ 62.1-200. Creation of Authority.
§ 62.1-201. (Effective until April 1, 1993) Board of Directors.
§ 62.1-202. Appointment and duties of Executive Director.

§ 62.1-203. Powers of Authority.
§ 62.1-204. Power to borrow money and issue bonds.
§ 62.1-205. Power to issue refunding bonds.
§ 62.1-206. Sources of payment and security for bonds.
§ 62.1-207. Liability of Commonwealth, political subdivisions and members of board of directors.
§ 62.1-208. Authorization, content and sale of bonds.
§ 62.1-209. Provisions of resolution or trust indenture authorizing issuance of bonds.
§ 62.1-210. Pledge by Authority.
§ 62.1-211. Purchase of bonds by Authority.
§ 62.1-212. Bonds as negotiable instruments.
§ 62.1-213. Validity of signatures of prior members or officers.
§ 62.1-214. Bondholder protection.
§ 62.1-215. Establishment of capital reserve funds.
§ 62.1-216. Purchase of local obligations.
§ 62.1-216.1 Investigation by Governor of alleged defaults; withholding state funds from defaulting locality; payment of funds withheld; receipts, reports, etc.
§ 62.1-217. Grants from Commonwealth.
§ 62.1-218. Grants to local governments. (Effective April 1, 1993).
§ 62.1-219. Exemption from taxation.
§ 62.1-220. Bonds as legal investments and securities.
§ 62.1-221. Deposit of money; expenditures; security for deposits.
§ 62.1-222. Annual reports; audit.
§ 62.1-223. Liberal construction of chapter.

Chapter 22.
Virginia Water Facilities Revolving Fund.

§ 62.1-224. Definitions.
§ 62.1-225. Creation and management of Fund.
§ 62.1-226. Deposit of money; expenditures; investments.
§ 62.1-227. Annual audit.
§ 62.1-228. Collection of money due Fund.
§ 62.1-229. Loans to local governments.
§ 62.1-229.1 Loans for agricultural best management practices.
§ 62.1-230. Grants to local governments.
§ 62.1-230.1. Loans and grants for regional projects, etc.
§ 62.1-231. Pledge of loans to secure bonds of Authority.
§ 62.1-231.1. Sale of Loans.
§ 62.1-231.2 Powers of Authority.
§ 62.1-232. Liberal construction of chapter.

[Note: §§ 62.1-233 through 62.1-241 establish the Virginia Water Supply Revolving Fund]

Chapter 23.2.
Combined Sewer Overflow Matching Fund.

§ 62.1-241.11. Definitions.
§ 62.1-241.12. Combined Sewer Overflow Matching Fund established;

purposes.

Chapter 24.
Surface Water Management Areas.

§ 62.1-242. Definitions.
§ 62.1-243. Withdrawals for which surface water withdrawal permit not required.
§ 62.1-244. Board may require information from persons withdrawing surface water.
§ 62.1-245. Agreements among persons withdrawing surface water.
§ 62.1-246. When Board may initiate a surface water management study proceeding; hearing required.
§ 62.1-247. Use of surface water in surface water management area.
§ 62.1-248. Permits.
§ 62.1-248.1. When application for permit considered complete.
§ 62.1-249. Applicability of permit conditions.
§ 62.1-250. State agency review.
§ 62.1-251. Cancellation or suspension of permit.
§ 62.1-252. Penalties; injunctions.
§ 62.1-253. Riparian rights.

Chapter 25.
Ground Water Management Act of 1992.

§ 62.1-254. Findings and purpose.
§ 62.1-255. Definitions.
§ 62.1-256. Duties of Board.
§ 62.1-257. When Board may initiate a ground water management area study proceeding; hearing required.
§ 62.1-258. Use of ground water in ground water management area.
§ 62.1-259. Certain withdrawals; permit not required.
§ 62.1-260. Permits for existing ground water withdrawals in existing ground water management areas.
§ 62.1-261. Permits for existing ground water withdrawals in newly established ground water management areas.
§ 62.1-262. Permits for other ground water withdrawals.
§ 62.1-263. Criteria for issuance of permits.
§ 62.1-264. Permits for public water supplies.
§ 62.1-265. Drought relief wells.
§ 62.1-266. Ground water withdrawal permits.
§ 62.1-267. Issuance of special exceptions.
§ 62.1-268. Issuance of special orders.
§ 62.1-269. Enforcement by injunction, etc.
§ 62.1-270. Penalties.

Title 9.
Commissions, Boards and Institutions Generally.

Chapter 22.3.
State Water Commission.

§ 9-145.8. Commission established; functions.
§ 9-145.9. Membership, compensation; chairman and vice chairman.
§ 9-145.10. Staff.

Title 15.2
Counties, Cities and Towns.

Chapter 9.
General Powers of Local Governments.

Title 32.1.
Health.

Chapter 6.
Environmental Health Services.

Title 45.1.
Mines and Mining.

Chapter 15.1.
Geothermal Energy.

Chapter 19.
Virginia Coal Surface Mining Control and
Reclamation Act of 1979.

Chapter 23.
Surface Mining of Coal for Operations
Disturbing Two Surface Acres of Land or Less.

§ 62.1-10. Definitions.

As used in this chapter, the following terms shall have the meanings respectively ascribed to them:

(a) "Water" includes all waters, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction and which affect the public welfare.

(b) "Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.

§ 62.1-11. Waters declared natural resource; state regulation and conservation; limitations upon right to use.

A. Such waters are a natural resource which should be regulated by the Commonwealth.

B. The regulation, control, development and use of waters for all purposes beneficial to the public are within the jurisdiction of the Commonwealth which in the exercise of its police powers may establish measures to effectuate the proper and comprehensive utilization and protection of such waters.

C. The changing wants and needs of the people of the Commonwealth may require the water resources of the Commonwealth to be put to uses beneficial to the public to the extent of which they are reasonably capable; the waste or unreasonable use or unreasonable method of use of water should be prevented; and the conservation of such water is to be exercised with a view to the welfare of the people of the Commonwealth and their interest in the reasonable and beneficial use thereof.

D. The public welfare and interest of the people of the Commonwealth require the proper development, wise use, conservation and protection of water resources together with protection of land resources, as affected thereby.

E. The right to the use of water or to the flow of water in or from any natural stream, lake or other watercourse in this Commonwealth is and shall be limited to such water as may reasonably be required for the beneficial use of the public to be served; such right shall not extend to the waste or unreasonable use or unreasonable method of use of such water.

F. The quality of state waters is affected by the quantity of water and it is the intent of the Commonwealth, to the extent practicable, to maintain flow conditions to protect instream beneficial uses and public water supplies for human consumption.

§ 62.1-12. Valid uses not affected; chapter not applicable to proceedings determining rights.

Nothing in this chapter shall operate to affect any existing valid use of such waters or interfere with such uses hereafter acquired, nor shall it be construed as applying to the determination of rights in any proceeding now pending or hereafter instituted.

§ 62.1-13. Construction with reference to rights, etc., of counties, cities and towns.

Nothing in this chapter contained shall be construed as a declaration of policy of the Commonwealth to divest any county, city or town of its title or right to any water or of its powers conferred by law with respect to the disposition thereof; nor shall anything in this chapter be construed to authorize the impairment of any contract to which such county, city or town is a party, or to obligate any county, city or town to appropriate or expend any funds. The purpose of this chapter is to recognize the public use to which such water is devoted.

§ 62.1-44.2. Short title; purpose.

The short title of this chapter is the State Water Control Law. It is the policy of the Commonwealth of Virginia and the purpose of this law to: (1) protect existing high quality state waters and restore all other state waters to such condition of quality that any such waters will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (2) safeguard the clean waters of the Commonwealth from pollution; (3) prevent any increase in pollution; (4) reduce existing pollution; (5) promote and encourage the reclamation and reuse of wastewater in a manner protective of the environment and public health; and (6) promote water resource conservation, management and distribution, and encourage water consumption reduction in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth.

§ 62.1-44.3. Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the meanings hereinafter respectively ascribed to them:

"Board" means the State Water Control Board.

"Member" means a member of the Board.

"Certificate" means any certificate issued by the Board.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands;

"Owner" means the Commonwealth or any of its political subdivisions, including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution" for the terms and purposes of this chapter.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

"Other wastes" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar, oil, chemicals, and all other substances, except industrial wastes and sewage, which may cause pollution in any state waters.

"Establishment" means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal mine, colliery, breaker or coal-processing operations, quarry, oil refinery, boat, vessel, and every other industry or plant or works the operation of which produces industrial wastes or other wastes or which may otherwise alter the

physical, chemical or biological properties of any state waters.
"Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting sewage or industrial wastes or other wastes to a point of ultimate disposal.
"Reuse" means the use of reclaimed water for a direct beneficial use or a controlled use that is in accordance with the requirements of the Board.
"Reclaimed water" means water resulting from the treatment of domestic, municipal or industrial wastewater that is suitable for a direct beneficial or controlled use that would not otherwise occur. Specifically excluded from this definition is "gray water."
"Reclamation" means the treatment of domestic, municipal or industrial wastewater or sewage to produce reclaimed water for a direct beneficial or controlled use that would not otherwise occur.
"The law" or "this law" means the law contained in this chapter as now existing or hereafter amended.
"Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to § 62.1-44.15 (7).
"Special order" means a special order issued under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.
"Ruling" means a ruling issued under § 62.1-44.15 (9).
"Regulation" means a regulation issued under § 62.1-44.15 (10).
"Standards" means standards established under subdivisions (3a) and (3b) of § 62.1-44.15.
"Policies" means policies established under subdivisions (3a) and (3b) of § 62.1-44.15.
"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation or any other legal entity.
"Pretreatment requirements" means any requirements arising under the Board's pretreatment regulations including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the Board.
"Pretreatment standards" means any standards of performance or other requirements imposed by regulation of the Board upon an industrial user of a publicly owned treatment works.
"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.
"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.1-22.29, and any activity that is conducted as part of or in furtherance of such agricultural operation, but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.
"Normal silvicultural activities" means any silvicultural activity, as defined in § 10.1-1181.1, and any activity that is conducted as part of or in furtherance of such silvicultural activity, but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.
"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.
§ 62.1-44.4. Control by Commonwealth as to water quality.
(1) No right to continue existing quality degradation in any state water shall exist nor shall such right be or be deemed to have been acquired by virtue of past or future discharge of sewage, industrial wastes or other wastes or other action by any owner. The right and control of the Commonwealth in and over all state waters is hereby expressly reserved and reaffirmed.
(2) Waters whose existing quality is better than the established standards as of the date on which such standards become effective will be maintained at high quality; provided that the Board has the power to authorize any project or development, which would constitute a new or an increased discharge of effluent to high quality water, when it has been affirmatively demonstrated that a change is justifiable to provide necessary economic or social development; and provided, further, that the necessary degree of waste treatment to maintain high water quality will be required where physically

and economically feasible. Present and anticipated use of such waters will be preserved and protected.

§ 62.1-44.5. Prohibition of waste discharges or other quality alterations of state waters except as authorized by permit; notification required.

A. Except in compliance with a certificate issued by the Board, it shall be unlawful for any person 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, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage 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.

B. Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act.

§ 62.1-44.6. Chapter supplementary to existing laws.

This chapter is intended to supplement existing laws and no part thereof shall be construed to repeal any existing laws specifically enacted for the protection of health or the protection of fish, shellfish and game of the Commonwealth, except that the administration of any such laws pertaining to the pollution of state waters, as herein defined, shall be in accord with the purpose of this chapter and general policies adopted by the Board.

§ 62.1-44.7. Board continued.

The State Water Control Board established in the Executive Department of the Commonwealth, is continued.

§ 62.1-44.8. Number, appointment and terms of members.

The Board shall consist of seven members appointed by the Governor subject to confirmation by the General Assembly. Members appointed before July 1, 1970, shall continue in office for the terms for which appointed. Effective July 1, 1970, two members shall be appointed for a term of one year, and two members shall be appointed for a term of four years. Thereafter the successors of all members shall be appointed for the terms of four years each. Vacancies other than by expiration of a term shall be filled by the Governor by appointment for the unexpired term.

§ 62.1-44.9. Qualifications of members.

A. Members of the Board shall be citizens of the Commonwealth; shall be selected from the Commonwealth at large for merit without regard to political affiliation; and shall, by character and reputation, reasonably be expected to inspire the highest degree of cooperation and confidence in the work of the Board. No person shall become a member of the Board who receives, or during the previous two years has received, a significant portion of his income directly or indirectly from certificate or permit holders or applicants for a certificate or permit.

For the purposes of this section, "significant portion of income" means ten percent or more of gross personal income for a calendar year, except that it means fifty percent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension, or similar arrangement. Income includes retirement benefits, consultant fees, and stock dividends. Income is not received directly or indirectly from certificate or permit holders or applicants for certificates or permits when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

B. Notwithstanding any other provision of this section relating to Board membership, the qualifications for Board membership shall not be more strict than those which may be required by federal statute or regulations of the United States Environmental Protection Agency.

§ 62.1-44.10.

Repealed by Acts 1980, c. 728.

§ 62.1-44.11. Meetings.

The Board shall meet at least four times a year, and other meetings may be held at any time or place determined by the Board or upon call of the chairman or upon written request of any two members. All members shall be duly notified of the time and place of any regular or other meeting at least five days in advance of such meeting.

§ 62.1-44.12. Records of proceedings; special orders, standards, policies, rules and regulations.

The Board shall keep a complete and accurate record of the proceedings at all its meetings, a copy of which shall be kept on file in the office of the Executive Director and open to public inspection. Any standards, policies, rules or regulations adopted by the Board to have general effect in part or all of the Commonwealth shall be filed in accordance with the Virginia Register Act (§ 9-6.15 et seq.). The owner to whom any special order is issued under the provisions of § 62.1-44.15 shall be notified by certified mail sent to the last known address of such owner and the time limits specified shall be counted from the date of mailing.

§ 62.1-44.13. Inspections and investigations, etc.

The Board shall make such inspections, conduct such investigations and do such other things as are necessary to carry out the provisions of this chapter, within the limits of appropriation, funds, or personnel which are, or become, available from any source for this purpose.

§ 62.1-44.14. Chairman; Executive Director; employment of personnel; supervision; budget preparation.

The Board shall elect its chairman, and the Executive Director shall be appointed as set forth in § 2.1-41.2. The Executive Director shall serve as executive officer and devote his whole time to the performance of his duties, and he shall have such administrative powers as are conferred upon him by the Board; and, further, the Board may delegate to its Executive Director any of the powers and duties invested in it by this chapter except the adoption and promulgation of standards, rules and regulations; the revocation of certificates; and the issuance, modification, or revocation of orders. The Executive Director is authorized to issue, modify or revoke orders in cases of emergency as described in § 62.1-44.15 (8b) and § 62.1-44.34:20 of this chapter. The Executive Director is further authorized to employ such consultants and full-time technical and clerical workers as are necessary and within the available funds to carry out the purposes of this chapter.

It shall be the duty of the Executive Director to exercise general supervision and control over the quality and management of all state waters and to administer and enforce this chapter, and all certificates, standards, policies, rules, regulations, rulings and special orders promulgated by the Board. The Executive Director shall prepare, approve, and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations.

§ 62.1-44.15. Powers and duties.

It shall be the duty of the Board and it shall have the authority:

(1) [Repealed.]

(2) To study and investigate all problems concerned with the quality of state waters and to make reports and recommendations.

(2a) To study and investigate methods, procedures, devices, appliances, and technologies which could assist in water conservation or water consumption reduction.

(2b) To coordinate its efforts toward water conservation with other persons or groups, within or without the Commonwealth.

(2c) To make reports concerning, and formulate recommendations based upon, any such water conservation studies to ensure that present and future water needs of the citizens of the Commonwealth are met.

(3a) To establish such standards of quality and policies for any state waters consistent with the general policy set forth in this chapter, and to modify, amend or cancel any such standards or policies established and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or policies thus established, except that a description of provisions of any proposed standard or policy adopted by regulation which are more restrictive than applicable federal

requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the standard or policy are most properly referable. The Board shall, from time to time, but at least once every three years, hold public hearings pursuant to subsection B of § 9-6.14:7.1 but, upon the request of an affected person or upon its own motion, hold hearings pursuant to § 9-6.14:8, for the purpose of reviewing the standards of quality, and, as appropriate, adopting, modifying, or canceling such standards. Whenever the Board considers the adoption, modification, amendment or cancellation of any standard, it shall give due consideration to, among other factors, the economic and social costs and benefits which can reasonably be expected to obtain as a consequence of the standards as adopted, modified, amended or cancelled. The Board shall also give due consideration to the public health standards issued by the Virginia Department of Health with respect to issues of public health policy and protection. If the Board does not follow the public health standards of the Virginia Department of Health, the Board's reason for any deviation shall be made in writing and published for any and all concerned parties.

(3b) Except as provided in subdivision (3a), such standards and policies are to be adopted or modified, amended or cancelled in the manner provided by the Administrative Process Act (§ 9-6.14:1 et seq.).

(4) To conduct or have conducted scientific experiments, investigations, studies, and research to discover methods for maintaining water quality consistent with the purposes of this chapter. To this end the Board may cooperate with any public or private agency in the conduct of such experiments, investigations and research and may receive in behalf of the Commonwealth any moneys which any such agency may contribute as its share of the cost under any such cooperative agreement. Such moneys shall be used only for the purposes for which they are contributed and any balance remaining after the conclusion of the experiments, investigations, studies, and research, shall be returned to the contributors.

(5) To issue, revoke or amend certificates under prescribed conditions for: (a) the discharge of sewage, industrial wastes and other wastes into or adjacent to state waters; (b) the alteration otherwise of the physical, chemical or biological properties of state waters; (c) excavation in a wetland; or (d) on and after October 1, 2001, the conduct of the following activities in a wetland: (i) new activities to cause draining that significantly alters or degrades existing wetland acreage or functions, (ii) filling or dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant alteration or degradation of existing wetland acreage or functions.

(5a) All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia Pollution Discharge Elimination System permit shall not exceed five years. The term of a Virginia Water Protection Permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed fifteen years. The term of a Virginia Pollution Abatement permit shall not exceed ten years, except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be ten years. The Department of Environmental Quality shall inspect all facilities for which a Virginia Pollution Abatement permit has been issued at least once every five years, except that the Department shall inspect all facilities covered by the Virginia Pollution Abatement permit for confined animal feeding operations annually. Department personnel performing inspections of confined animal feeding operations shall be certified under the voluntary nutrient management training and certification program established in § 10.1-104.2. The term of a certificate issued by the Board shall not be extended by modification beyond the maximum duration and the certificate shall expire at the end of the term unless an application for a new permit has been timely filed as required by the regulations of the Board and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.

(5b) Any certificate issued by the Board under this chapter may, after notice and opportunity for a hearing, be amended or revoked on any of the following grounds or for good cause as may be provided by the regulations of the Board:

1. The owner has violated any regulation or order of the Board, any condition of a certificate, any provision of this chapter, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which, in the opinion of the Board, demonstrates the owner's disregard for or inability to comply with applicable laws, regulations, or requirements;
2. The owner has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a certificate, or in any other report or document required under this law or under the regulations of the Board;
3. The activity for which the certificate was issued endangers human health or the environment and can be regulated to acceptable levels by amendment or revocation of the certificate; or
4. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the certificate necessary to protect human health or the environment.
(6) To make investigations and inspections, to ensure compliance with any certificates, standards, policies, rules, regulations, rulings and special orders which it may adopt, issue or establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance. In recognition of §§ 32.1-164 and 62.1-44.18, the Board and the State Department of Health shall enter into a memorandum of understanding establishing a common format to consolidate and simplify inspections of sewage treatment plants and coordinate the scheduling of the inspections. The new format shall ensure that all sewage treatment plants are inspected at appropriate intervals in order to protect water quality and public health and at the same time avoid any unnecessary administrative burden on those being inspected.
(7) To adopt rules governing the procedure of the Board with respect to: (a) hearings; (b) the filing of reports; (c) the issuance of certificates and special orders; and (d) all other matters relating to procedure; and to amend or cancel any rule adopted. Public notice of every rule adopted under this section shall be by such means as the Board may prescribe.
(8a) To issue special orders to owners (i) who are permitting or causing the pollution, as defined by § 62.1-44.3, of state waters to cease and desist from such pollution, (ii) who have failed to construct facilities in accordance with final approved plans and specifications to construct such facilities in accordance with final approved plans and specifications, (iii) who have violated the terms and provisions of a certificate issued by the Board to comply with such terms and provisions, (iv) who have failed to comply with a directive from the Board to comply with such directive, (v) who have contravened duly adopted and promulgated water quality standards and policies to cease and desist from such contravention and to comply with such water quality standards and policies, (vi) who have violated the terms and provisions of a pretreatment permit issued by the Board or by the owner of a publicly owned treatment works to comply with such terms and provisions or (vii) who have contravened any applicable pretreatment standard or requirement to comply with such standard or requirement; and also to issue such orders to require any owner to comply with the provisions of this chapter and any decision of the Board.
(8b) Such special orders are to be issued only after a hearing with at least thirty days' notice to the affected owners, of the time, place and purpose thereof, and they shall become effective not less than fifteen days after service as provided in § 62.1-44.12; provided that if the Board finds that any such owner is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, it may issue, without advance notice or hearing, an emergency special order directing the owner to cease such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If an owner who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § 62.1-44.23, and where the order is based on a finding of an imminent and

substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a discharge, the Board shall provide an opportunity for a hearing within forty-eight hours of the issuance of the injunction.

(8c) The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-44.32 for any past violation or violations of any provision of this chapter or any regulation duly promulgated hereunder.

(8d) With the consent of any owner who has violated or failed, neglected or refused to obey any regulation or order of the Board, any condition of a permit or any provision of this chapter, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in § 62.1-44.32 (a). Such civil charges shall be instead of any appropriate civil penalty which could be imposed under § 62.1-44.32 (a) and shall not be subject to the provisions of § 2.1-127. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of Title 10.1, excluding civil charges assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1 of this title, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

The amendments to this section adopted by the 1976 Session of the General Assembly shall not be construed as limiting or expanding any cause of action or any other remedy possessed by the Board prior to the effective date of said amendments.

(9) To make such rulings under §§ 62.1-44.16, 62.1-44.17 and 62.1-44.19 as may be required upon requests or applications to the Board, the owner or owners affected to be notified by certified mail as soon as practicable after the Board makes them and such rulings to become effective upon such notification.

(10) To adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.

(11) To investigate any large-scale killing of fish.

(a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state waters in such quantity, concentration or manner that fish are killed as a result thereof, it may effect such settlement with the owner as will cover the costs incurred by the Board and by the Department of Game and Inland Fisheries in investigating such killing of fish, plus the replacement value of the fish destroyed, or as it deems proper, and if no such settlement is reached within a reasonable time, the Board shall authorize its executive secretary to bring a civil action in the name of the Board to recover from the owner such costs and value, plus any court or other legal costs incurred in connection with such action.

(b) If the owner is a political subdivision of the Commonwealth, the action may be brought in any circuit court within the territory embraced by such political subdivision. If the owner is an establishment, as defined in this chapter, the action shall be brought in the circuit court of the city or the circuit court of the county in which such establishment is located. If the owner is an individual or group of individuals, the action shall be brought in the circuit court of the city or circuit court of the county in which such person or any of them reside.

(c) For the purposes of this subsection the State Water Control Board shall be deemed the owner of the fish killed and the proceedings shall be as though the State Water Control Board were the owner of the fish. The fact that the owner has or held a certificate issued under this chapter shall not be raised as a defense in bar to any such action.

(d) The proceeds of any recovery had under this subsection shall, when received by the Board, be applied, first, to reimburse the Board for any expenses incurred in investigating such killing of fish. The balance shall be paid to the Board of

Game and Inland Fisheries to be used for the fisheries' management practices as in its judgment will best restore or replace the fisheries' values lost as a result of such discharge of waste, including, where appropriate, replacement of the fish killed with game fish or other appropriate species. Any such funds received are hereby appropriated for that purpose.

(e) Nothing in this subsection shall be construed in any way to limit or prevent any other action which is now authorized by law by the Board against any owner.

(f) Notwithstanding the foregoing, the provisions of this subsection shall not apply to any owner who adds or applies any chemicals or other substances that are recommended or approved by the State Department of Health to state waters in the course of processing or treating such waters for public water supply purposes, except where negligence is shown.

(12) To administer programs of financial assistance for planning, construction, operation, and maintenance of water quality control facilities for political subdivisions in this Commonwealth.

(13) To establish policies and programs for effective area-wide or basin-wide water quality control and management. The Board may develop comprehensive pollution abatement and water quality control plans on an area-wide or basin-wide basis. In conjunction with this, the Board, when considering proposals for waste treatment facilities, is to consider the feasibility of combined or joint treatment facilities and is to ensure that the approval of waste treatment facilities is in accordance with the water quality management and pollution control plan in the watershed or basin as a whole. In making such determinations, the Board is to seek the advice of local, regional, or state planning authorities.

(14) To establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter; however, no treatment shall be less than secondary or its equivalent, unless the owner can demonstrate that a lesser degree of treatment is consistent with the purposes of this chapter.

(15) To promote and establish requirements for the reclamation and reuse of wastewater that are protective of state waters and public health as an alternative to directly discharging pollutants into waters of the state. The requirements shall address various potential categories of reuse and may include general permits and provide for greater flexibility and less stringent requirements commensurate with the quality of the reclaimed water and its intended use. The requirements shall be developed in consultation with the Department of Health and other appropriate state agencies. This authority shall not be construed as conferring upon the Board any power or duty duplicative of those of the State Board of Health.

(16) To establish and implement policies and programs to protect and enhance the Commonwealth's wetland resources. Regulatory programs shall be designed to achieve no net loss of existing wetland acreage and functions. Voluntary and incentive-based programs shall be developed to achieve a net resource gain in acreage and functions of wetlands. The Board shall seek and obtain advice and guidance from the Virginia Institute of Marine Science in implementing these policies and programs.

§ 62.1-44.15:01. Further duties of Board; localities particularly affected.

After June 30, 1994, before promulgating any regulation under consideration or granting any variance to an existing regulation, or issuing any permit, if the Board finds that there are localities particularly affected by the regulation, variance or permit, the Board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least thirty days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall include information on the specific pollutants involved and the total quantity of each which may be discharged.

2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the Board for at least fifteen days after any hearing on the regulation, variance or permit, unless the Board votes to shorten the period.

For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material water

quality impact which would not be experienced by other localities.

§ 62.1-44.15:1. Limitation on power to require construction of sewerage systems or sewage or other waste treatment works.

Nothing contained in this chapter shall be construed to empower the Board to require the Commonwealth, or any political subdivision thereof, or any authority created under the provisions of § 15.2-5102 or §§ 19.2-5152 through 19.2-5197, to construct any sewerage system, sewage treatment works, or water treatment plant waste treatment works or system necessary to (1) upgrade the present level of treatment in existing systems or works to abate existing pollution of state waters, or (2) expand a system or works to accommodate additional growth, unless the Board shall have previously committed itself to provide financial assistance from federal and state funds equal to the maximum amount provided for under § 8 or other applicable sections of the Federal Water Pollution Control Act (P.L. 84-660, as amended), or unless the Commonwealth or political subdivision or authority voluntarily agrees, or is directed by the Board with the concurrence of the Governor, to proceed with such construction, subject to reimbursement under § 8, or other applicable sections of such federal act.

The foregoing restriction shall not apply to those cases where existing sewerage systems or sewage or other waste treatment works cease to perform in accordance with their approved certificate requirements.

Nothing contained in this chapter shall be construed to empower the Board to require the Commonwealth, or any political subdivision thereof, to upgrade the level of treatment in any works to a level more stringent than that required by applicable provisions of the Federal Water Pollution Control Act, as amended.

§ 62.1-44.15:1.1. Special orders; penalties.

The Board is authorized to issue special orders in compliance with the Administrative Process Act (§ 9-6.14:1 et seq.) requiring that an owner file with the Board a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the establishment of an escrow account, the creation of a trust fund to be maintained within the Board, submission of a bond, corporate guarantee based upon audited financial statements, or such other instruments as the Board may deem appropriate. The Board may require that such plan and instruments be updated as appropriate. The Board shall give due consideration to any plan submitted by the owner in accordance with §§ 10.1-1309.1, 10.1-1410, and 10.1-1428, in determining the necessity for and suitability of any plan submitted under this section.

For the purposes of this section, "ceases operation" means to cease conducting the normal operation of a facility which is regulated under this chapter under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner at the facility. The term shall not include the sale or transfer of a facility in the ordinary course of business or a permit transfer in accordance with Board regulations.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

§ 62.1-44.15:1.2. Lake level contingency plans.

Any Virginia Pollutant Discharge Elimination System permit issued for a surface water impoundment whose primary purpose is to provide cooling water to power generators shall include a lake level contingency plan to allow specific reductions in the flow required to be released when the water level above the dam drops below designated levels due to drought conditions. The

plan shall take into account and minimize any adverse effects of any release reduction requirements on beneficial uses, as defined in § 62.1-10, within the impoundment, and on downstream users. The reduction in release amounts required by a lake level contingency plan shall not be implemented to the extent they result in an adverse impact to (i) the ability to meet water quality standards based upon permitted discharge amounts, (ii) the ability to provide adequate water supplies for consumptive purposes such as drinking water and fire protection, and (iii) fish and wildlife resources. In the event there is an imminent threat of such an adverse impact, the permit holder and the Department of Environmental Quality shall be notified. Upon such notification, the permit holder may increase release amounts as specified in the permit for up to forty-eight hours or until such time as the Department of Environmental Quality determines whether or not the increase in release amounts is necessary. This section shall not apply to any such facility that addresses releases and flow requirements during drought conditions in a Virginia Water Protection Permit.

§ 62.1-44.15:2. Extraordinary hardship program.

There is hereby established a supplemental program of financial assistance for the construction of water quality control facilities by political subdivisions of the Commonwealth. All sums appropriated for this program shall be apportioned by the Board among the political subdivisions qualifying, to provide financial assistance in addition to that otherwise available to help relieve extraordinary hardship in local funding of the construction of such facilities.

§ 62.1-44.15:3. When application to discharge sewage considered complete.

A. No application submitted to the Board for a new individual Virginia Pollutant Discharge Elimination permit authorizing a new discharge of sewage, industrial wastes, or other wastes shall be considered complete unless it contains notification from the county, city, or town in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The county, city or town shall inform in writing the applicant and the Board of the discharging facility's compliance or noncompliance not more than thirty days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the county, city or town fail to provide such written notification within thirty days, the requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid certificate had been issued prior to March 10, 2000.

B. No application for a certificate to discharge sewage into or adjacent to state waters from a privately owned wastewater treatment system serving fifty or more residences shall be considered complete unless the applicant has provided the Executive Director with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

§ 62.1-44.15:4. Notification of local governments and property owners.

A. Upon determining that there has been a violation of a regulation promulgated under this chapter and such violation poses an imminent threat to the health, safety or welfare of the public, the Executive Director shall immediately notify the chief administrative officer of any potentially affected local government. Neither the Executive Director, the Commonwealth, nor any employee of the Commonwealth shall be liable for a failure to provide, or a delay in providing, the notification required by this subsection.

B. Upon receiving a nomination of a waterway or segment of a waterway for designation as an exceptional state water pursuant to the Board's antidegradation policy, as required by 40 C.F.R. § 131.12, the Board shall notify each locality in which the waterway or segment lies and shall make a good faith effort to provide notice to impacted riparian property owners. The written notice shall include, at a minimum: (i) a description of the location of the waterway or segment; (ii) the procedures and criteria for designation as well as the impact of designation; (iii) the name of the person making the nomination; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the nomination and the waterway or segment. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's

office of the affected jurisdictions upon request by the Board. After receipt of the notice of the nomination localities shall be provided sixty days to comment on the consistency of the nomination with the locality's comprehensive plan.

C. Upon determining that a waterway or any segment of a waterway does not meet its water quality standard use designation as set out in the Board's regulations and as required by § 1313 (d) of the federal Clean Water Act (33 U.S.C. § 1251 et seq.) and 40 C.F.R. § 130.7 (b), the Board shall notify each locality in which the waterway or segment lies. The written notification shall include, at a minimum: (i) a description of the reasons the waters do not meet the water quality standard including specific parameters and criteria not met; (ii) a layman's description of the location of the waters; (iii) the known sources of the pollution; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the failure of the waterway or segment to meet the standards. After receipt of the notification, local governments shall have thirty days to comment.

D. Upon receipt of an application for the issuance of a new or modified permit other than those for agricultural production or aquacultural production activities, the Board shall notify, in writing, the locality wherein the discharge does or is proposed to take place of, at a minimum: (i) the name of the applicant; (ii) the nature of the application and proposed discharge; (iii) the availability and timing of any comment period; and (iv) upon request, any other information known to, or in the possession of, the Board or the Department regarding the applicant not required to be held confidential by this chapter. The Board shall make a good faith effort to provide this same notice and information to (i) each locality and riparian property owner to a distance one quarter mile downstream and one quarter mile upstream or to the fall line whichever is closer on tidal waters, and (ii) each locality and riparian property owner to a distance one half mile downstream on nontidal waters. Distances shall be measured from the point, or proposed point, of discharge. If the receiving river, at the point or proposed point of discharge, is two miles wide or greater, the riparian property owners on the opposite shore need not be notified. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdictions upon request by the Board.

E. Upon the commencement of public notice of an enforcement action pursuant to this chapter, the Board shall notify, in writing, the locality where the alleged offense has or is taking place of: (i) the name of the alleged violator; (ii) the facts of the alleged violation; (iii) the statutory remedies for the alleged violation; (iv) the availability and timing of any comment period; and (v) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the alleged violation.

F. The comment periods established in subsections B and C shall in no way impact a locality's ability to comment during any additional comment periods established by the Board.

§ 62.1-44.15:4.1. Listing and notice of confirmed oil releases and discharges.

The Department of Environmental Quality shall notify the Department of Health of any confirmed release or discharge of oil, as defined in §§ 62.1-44.34:8 and 62.1-44.34:14, respectively, which requires that a site characterization investigation be conducted. Monthly notification to the Department of Health shall occur within one week from the last day of the previous month and shall include information on the location of the site of each confirmed release or discharge during the monthly reporting period. The reporting of such information shall begin for releases or discharges of oil that have been confirmed on and after January 1, 1999.

§ 62.1-44.15:5. Virginia Water Protection Permit.

A. Issuance of a Virginia Water Protection Permit shall constitute the certification required under § 401 of the Clean Water Act.

B. The Board shall, after providing an opportunity for public comment, issue a Virginia Water Protection Permit if it has determined that the proposed activity is consistent with the provisions of the Clean Water Act and the State Water Control Law and will protect instream beneficial uses.

C. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural, and aesthetic values is a beneficial use of Virginia's waters. Conditions contained in a

Virginia Water Protection Permit may include, but are not limited to, the volume of water which may be withdrawn as a part of the permitted activity. Domestic and other existing beneficial uses shall be considered the highest priority uses.

D. Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this subsection, it shall be unlawful to excavate in a wetland. On and after October 1, 2001, except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this subsection, it shall also be unlawful to conduct the following activities in a wetland: (i) new activities to cause draining that significantly alters or degrades existing wetland acreage or functions, (ii) filling or dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant alteration or degradation of existing wetland acreage or functions. Permits shall address avoidance and minimization of wetland impacts to the maximum extent practicable. A permit shall be issued only if the Board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. Permits shall contain requirements for compensating impacts on wetlands. Such compensation requirements shall be sufficient to achieve no net loss of existing wetland acreage and functions, and may be met through wetland creation or restoration, purchase or use of mitigation bank credits pursuant to subsection E, or contributing to a fund that is approved by the Board and is dedicated to achieving no net loss of wetland acreage and functions. When utilized in conjunction with creation, restoration or mitigation bank credits, compensation may incorporate (i) preservation or restoration of upland buffers adjacent to wetlands or other state waters or (ii) preservation of wetlands. The Board shall assess compensation implementation, inventory permitted wetland impacts, and work to prevent unpermitted impacts. Within 15 days of receipt of an individual permit application, the Board shall review the application for completeness and either accept the application or request additional specific information from the applicant. Within 120 days of receipt of a complete application, the Board shall issue the permit, issue the permit with conditions, deny the permit or decide to conduct a public meeting or hearing. If a public meeting or hearing is held, it shall be held within 60 days of the decision to conduct such a proceeding and a final decision as to the permit shall be made within ninety days of completion of the public meeting or hearing.

The Board shall develop general permits for such activities in wetlands as it deems appropriate. General permits shall include such terms and conditions as the Board deems necessary to protect state waters and fish and wildlife resources from significant impairment. The Board shall deny, approve or approve with conditions any application for coverage under a general permit within forty-five days of receipt of a complete preconstruction application. The application shall be deemed approved if the Board fails to act within forty-five days. The Board is authorized to waive the requirement for a general permit, or deem an activity in compliance with a general permit, when it determines that an isolated wetland is of minimal ecological value.

The Board shall develop general permits for:

1. Activities causing wetland impacts of less than one-half of an acre;
2. Facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or State Corporation Commission. No Board action on an individual or general permit for such facilities shall alter the siting determination made through Federal Energy Regulatory Commission or State Corporation Commission approval. The Board and the State Corporation Commission shall develop a memorandum of agreement pursuant to §§ 56-46.1, 56-265.2, 56-265.2:1 and 56-580 to ensure that consultation on wetland impacts occurs prior to siting determinations;
3. Coal, natural gas, and coalbed methane gas mining activities authorized by the Department of Mines, Minerals and Energy, and sand mining;
4. Virginia Department of Transportation or other linear transportation projects; and
5. Activities governed by nationwide or regional permits approved by the Board and issued by the U.S. Army Corps of Engineers. Conditions contained in the general permits shall include, but not be limited to, filing with the Board copies of any preconstruction notification, postconstruction

report and certificate of compliance required by the U.S. Army Corps of Engineers.

The Board shall utilize the U.S. Army Corps of Engineers' "Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" as the approved method for delineating wetlands. The Board shall adopt appropriate guidance and regulations to ensure consistency with the U.S. Army Corps of Engineers' implementation of delineation practices. The Board shall also adopt guidance and regulations for review and approval of the geographic area of a delineated wetland. Any such approval of a delineation shall remain effective for a period of five years; however, if the Board issues a permit pursuant to this subsection for an activity in the delineated wetland within the five-year period, the approval shall remain effective for the term of the permit. Any delineation accepted by the U.S. Army Corps of Engineers as sufficient for its exercise of jurisdiction pursuant to § 404 of the Clean Water Act shall be determinative of the geographic area of that delineated wetland.

This subsection shall not apply to activities governed under Chapter 13 (§ 28.2-100 et seq.) of Title 28.2 or normal agricultural activities or normal silvicultural activities. This subsection shall also not apply to normal residential gardening, lawn and landscape maintenance, or other similar activities which are incidental to an occupant's ongoing residential use of property and of minimal ecological impact; the Board shall develop criteria governing this exemption and shall specifically identify the activities meeting these criteria in its regulations.

No locality may impose wetlands permit requirements duplicating state or federal wetlands permit requirements.

E. When a Virginia Water Protection Permit is conditioned upon compensatory mitigation for adverse impacts to wetlands, the applicant may be permitted to satisfy all or part of such mitigation requirements by the purchase or use of credits from any wetlands mitigation bank, including any banks owned by the permit applicant, that has been approved and is operating in accordance with applicable federal and state guidance, laws or regulations for the establishment, use and operation of mitigation banks as long as: (1) the bank is in the same U.S.G.S. cataloging unit, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), or an adjacent cataloging unit within the same river watershed, as the impacted site, or it meets all the conditions found in clauses (i) through (iv) and either clause (v) or (vi) of this subsection; (2) the bank is ecologically preferable to practicable on-site and off-site individual mitigation options, as defined by federal wetland regulations; and (3) the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment. When the bank is not located in the same cataloging unit or adjacent cataloging unit within the same river watershed as the impacted site, the purchase or use of credits shall not be allowed unless the applicant demonstrates to the satisfaction of the Department of Environmental Quality that (i) the impacts will occur as a result of a Virginia Department of Transportation linear project or as the result of a locality project for a locality whose jurisdiction crosses multiple river watersheds; (ii) there is no practical same river watershed mitigation alternative; (iii) the impacts are less than one acre in a single and complete project within a cataloging unit; (iv) there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either (v) impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or (vi) impacts within U.S.G.S. cataloging units 02080108, 02080208, and 03010205, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), are mitigated in-kind within those hydrologic cataloging units, as close as possible to the impacted site. After July 1, 2002, the provisions of clause (vi) shall apply only to impacts within subdivisions of the listed cataloging units where overlapping watersheds exist, as determined by the Department of Environmental Quality, provided the Department has made such a determination by that date. The Department of Environmental Quality is authorized to serve as a signatory to agreements governing the operation of wetlands mitigation banks. The Commonwealth, its officials, agencies, and employees shall not be liable for any action taken under any agreement developed pursuant to such authority. State agencies are authorized to purchase credits from wetland mitigation banks.

F. Prior to the issuance of a Virginia Water Protection Permit, the Board shall consult with, and

give full consideration to the written recommendations of, the following agencies: the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, the Department of Agriculture and Consumer Services and any other interested and affected agencies. Such consultation shall include the need for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within forty-five days after notification by the Board. The Board shall assume that if written comments are not submitted by an agency within this time period, the agency has no comments on the proposed permit.

G. No Virginia Water Protection Permit shall be required for any water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal.

H. No Virginia Water Protection Permit shall be required for any water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

I. On and after July 1, 2000, and prior to the adoption of regulations promulgated pursuant to subsection D, absent the issuance of a permit by the U.S. Army Corps of Engineers pursuant to § 404 of the Clean Water Act, no person shall excavate in a wetland without compensating for the impact to the wetland to the satisfaction of the Board in a manner sufficient to achieve no net loss of existing wetland acreage and functions.

§ 62.1-44.15:5.1. General permit for certain water quality improvement activities.

A. The Board shall coordinate the development of a general permit for activities such as bioengineered streambank stabilization projects and livestock stream crossings that: (i) are coverable by the Nationwide Permit Program (33 C.F.R. Part 330) of the United States Army Corps of Engineers and for which certification has not been waived by the Board; (ii) are conservation practices designed and supervised by a soil and water conservation district; (iii) meet the design standards of the Department of Conservation and Recreation and the United States Department of Agriculture's Natural Resource Conservation Service; and (iv) are intended to improve water quality. The development of the general permit shall be exempt from Article 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act.

B. The development of the general permit shall be a coordinated effort between the Department of Environmental Quality, the Virginia Marine Resources Commission and such other agencies as may be needed to develop a single, unified, process that will expedite the implementation of the projects described in subsection A and unify and streamline the permitting process for such projects.

C. A general permit pursuant to this section shall be promulgated as final by July 1, 1998.

§ 62.1-44.15:5.2. General permits for ready-mix concrete plant discharges.

Any general permit issued by the Board for discharges of stormwater and process wastewater from industrial activities associated with the manufacture of ready-mix concrete shall apply to both permanent and portable plants. The general permit may include a requirement that settling basins for the treatment and control of process wastewater and commingled stormwater be lined with concrete or other impermeable materials for settling basins constructed on or before February 1, 1998, and shall include such a requirement for all settling basins constructed on or after February 2, 1998.

§ 62.1-44.15:6. Permit fee regulations.

A. The Board shall promulgate regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, the Department of Game and Inland Fisheries' and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, amend or modify any permit or certificate, which the Board has authority to issue under this chapter and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of this title, from the applicant for such permit or certificate for the purpose of more efficiently and expeditiously processing permits. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts. The Board shall have no authority to charge such fees where the authority to

issue such permits has been delegated to another agency which imposes permit fees.

B. Permit fees charged an applicant shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions. However, notwithstanding any other provision of law, in no instance shall the Board charge a fee for a permit pertaining to a farming operation engaged in production for market or for a permit pertaining to maintenance dredging for federal navigation channels or other Corps of Engineers sponsored dredging projects, and in no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

Type of Permit/Certificate Category	Maximum Amount
1. Virginia Pollutant Discharge Elimination System	
Major	$ 8,000
Minor	$ 3,500
General	$ 400
2. Virginia Pollution Abatement	
Industrial/Wastewater	$ 5,000
Industrial/Sludge	$ 2,500
Municipal/Wastewater	$ 5,000
Municipal/Sludge	$ 2,500
Other	$ 250
3. 401 Certification/Virginia Water Protection	
Individual	$ 3,000
General	$ 400
Waiver	$ 400
4. Ground Water Withdrawal	$ 2,000
5. Surface Water Withdrawal	$ 4,000

When modifications in these permits or certificates have been initiated by the Board, the fee for the modified permit or certificate shall not exceed seventy-five percent of the maximum amount established by this subsection. Payments for the costs of processing applications by the Department of Game and Inland Fisheries and the Department of Conservation and Recreation shall be limited to the lesser of twenty-five percent of the fees prescribed by regulation or $100 per permit or certificate and shall further be limited to those permits or certificates these agencies are required to review by the Code of Virginia.

C. When promulgating regulations establishing permit fees, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage.

D. Beginning January 1, 1998, and January 1 of every even-numbered year thereafter, the Board shall make a report on the implementation of the water permit program to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House Committee on Appropriations, the House Committee on Conservation and Natural Resources and the House Committee on Finance. The report shall include the following: (i) the total costs, both direct and indirect, including the costs of overhead, water quality planning, water quality assessment, operations coordination, and surface water and ground water investigations, (ii) the total fees collected by permit category, (iii) the amount of general funds allocated to the Board, (iv) the amount of federal funds received, (v) the Board's use of the fees, the general funds, and the federal funds, (vi) the number of permit applications received by category, (vii) the number of permits issued by category, (viii) the progress in eliminating permit backlogs, (ix) the timeliness of permit processing, and (x) the direct and indirect costs to neighboring states of administering their water permit programs, including what activities each state categorizes as direct and indirect costs, and the fees charged to the permit holders and applicants. In addition, the 1998 report shall include an analysis and estimate of the annual costs to permit holders and permit applicants if the direct and indirect costs of administering the water permit program were to be apportioned in a manner that would require the permit holders and applicants to pay fifty, seventy-five, and one hundred percent of the program's total cost through annual permit fees. The Department shall propose how the following factors could be used to adjust individual permit fees: (i) the average time and complexity of processing a permit in each of the various categories of permits and permit actions, (ii) the permit holder's compliance history, (iii) whether the permit holder has implemented pollution prevention

plans, (iv) whether the applicant or permit holder has used innovative technology and (v) the financial hardship of the applicant or permit holder.
E. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Board.
F. Permit fee schedules shall apply to permit programs in existence on July 1, 1992, any additional permits which may be required by the federal government and administered by the Board, or any new permit required pursuant to any law of the Commonwealth.
G. The Board is authorized to promulgate regulations establishing a schedule of reduced permit fees for facilities which have established a record of compliance with the terms and requirements of their permits.
§ 62.1-44.15:7. Permit Program Fund established; use of moneys.
A. There is hereby established a special, nonreverting fund in the state treasury to be known as the State Water Control Board Permit Program Fund, hereafter referred to as the Fund. Notwithstanding the provisions of § 2.1-180, all moneys collected pursuant to § 62.1-44.15:6 shall be paid into the state treasury to the credit of the Fund.
B. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it.
C. The Board is authorized and empowered to release moneys from the Fund, on warrants issued by the State Comptroller, for the purposes of recovering portions of the costs of processing applications under this chapter and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of this title under the direction of the Executive Director.
D. An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller and furnished upon request to the Governor or the General Assembly.
§ 62.1-44.15:8. Conformance with federal requirements.
Notwithstanding the provisions of this article, any fee system developed by the Board may be modified by regulation promulgated by the Board, as may be necessary to conform with the requirements of the federal Clean Water Act and any regulations promulgated thereunder. Any modification imposed under this section shall be submitted to the members of the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Conservation and Natural Resources, and Finance.
§ 62.1-44.16. Industrial wastes.
(1) Any owner who erects, constructs, opens, reopens, expands or employs new processes in or operates any establishment from which there is a potential or actual discharge of industrial wastes or other wastes to state waters shall first provide facilities approved by the Board for the treatment or control of such industrial wastes or other wastes. Application for such discharge shall be made to the Board and shall be accompanied by pertinent plans, specifications, maps, and such other relevant information as may be required, in scope and details satisfactory to the Board.
(a) Public notice of every such application shall be given by notice published once a week for two successive weeks in a newspaper of general circulation in the county or city where the certificate is applied for or by such other means as the Board may prescribe.
(b) The Board shall review the application and the information that accompanies it as soon as practicable and making a ruling within a period of four months from the date the application is filed with the Board approving or disapproving the application and stating the grounds for conditional approval or disapproval. If the application is approved, the Board shall grant a certificate for the discharge of the industrial wastes or other wastes into state waters or for the other alteration of the physical, chemical or biological properties of state waters, as the case may be. If the application is disapproved, the Board shall notify the owner as to what measures, if any, the owner may take to secure approval.
(2) (a) Any owner operating under a valid certificate issued by the Board who fails to meet water quality standards established by the Board solely as a result of a change in water quality standards or in the law shall provide the necessary facilities approved by the Board within a reasonable time to meet such new requirements; provided, however, that such facilities shall be reasonable and practicable of attainment giving consideration to the public interest and the equities of the case. The

Board may amend such certificate, or revoke it and issue a new one to reflect such facilities after proper hearing, with at least thirty days' notice to the owner of the time, place and purpose thereof. If such revocation or amendment of a certificate is mutually agreeable to the Board and the owner involved, the hearing and notice may be dispensed with.

(b) The Board shall revoke the certificate in case of a failure to comply with all such requirements and may issue a special order under subdivisions (8a), (8b), and (8c) of § 62.1-44.15 (8).

§ 62.1-44.17. Other wastes.

(1) Any owner who handles, stores, distributes or produces other wastes as defined in § 62.1-44.3, any owner who causes or permits same to be handled, stored, distributed or produced or any owner upon or in whose establishment other wastes are handled, stored, distributed or produced shall upon request of the Board install facilities approved by the Board or adopt such measures approved by the Board as are necessary to prevent the escape, flow or discharge into any state waters when the escape, flow or discharge of such other wastes into any state waters would cause pollution of such state waters.

(2) Any owner under this section requested by the Board to provide facilities or adopt such measures shall make application therefor to the Board. Such application shall be accompanied by a copy of pertinent plans, specifications, maps, and such other relevant information as may be required, in scope and details satisfactory to the Board.

(3) The Board shall review the application and the information that accompanies it as soon as practicable and make a ruling within a period of four months from the date the application is filed with the Board approving or disapproving the application and stating the grounds for conditional approval or disapproval. If the application is approved, the Board shall grant a certificate for the handling, storing, distribution or production of such other wastes. If the application is disapproved, the Board shall notify the owner as to what measures the owner may take to secure approval.

§ 62.1-44.17:1. General Permits for confined animal feeding operations.

A. For the purposes of this chapter, "confined animal feeding operation" means a lot or facility, together with any associated treatment works, where both of the following conditions are met:

1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and

2. Crops, vegetation, forage growth or post-harvest residues are not sustained over any portion of the operation of the lot or facility.

Two or more confined animal feeding operations under common ownership are considered to be a single confined animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of liquid waste.

B. A confined animal feeding operation with 300 or more animal units utilizing a liquid manure collection and storage system, upon fulfillment of the requirements of this section, shall be permitted by a General Virginia Pollution Abatement permit (hereafter referred to as the "General Permit"), adopted by the Board. In adopting the General Permit the Board shall:

1. Authorize the General Permit to pertain to confined animal feeding operations having 300 or more animal units;

2. Establish procedures for submitting a registration statement meeting the requirements of subsection C. Submitting a registration statement shall be evidence of intention to be covered by the General Permit; and

3. Establish criteria for the design and operation of confined animal feeding operations only as described in subsection E.

C. For coverage under the General Permit, the owner of the confined animal feeding operation shall file a registration statement with the Department of Environmental Quality providing the name and address of the owner of the operation, the name and address of the operator of the operation (if different than the owner), the mailing address and location of the operation, and a list of the types, maximum number and average weight of the animals which will be maintained at the facility. The owner shall attach to the registration statement:

1. A copy of a letter of approval of the nutrient management plan for the operation from the Department of Conservation and Recreation;

2. A copy of the approved nutrient management plan;

3. A notification from the governing body of the locality where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2;
4. A certification that the owner or operator meets all the requirements of the Board for the General Permit; and
5. A certification that the owner has given notice of the registration statement to all owners or residents of property that adjoins the property on which the proposed operation will be located. Such notice shall include (i) the types and maximum number of animals which will be maintained at the facility and (ii) the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. Such certification of notice shall be waived whenever the registration is for the purpose of renewing coverage under a permit for which no expansion is proposed and the Department of Environmental Quality has not issued any special or consent order relating to violations under the existing permit.
D. Any person may submit written comments on the proposed operation to the Department within thirty days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the Director determines that the proposed operation will not be capable of complying with the provisions of this section, the Director shall require the owner to obtain an individual permit for the operation. Any such determination by the Director shall be made in writing and received by the owner not more than forty-five days after the filing of the registration statement or, if in the Director's sole discretion additional time is necessary to evaluate comments received from the public, not more than sixty days after the filing of the registration statement.
E. The criteria for the design and operation of a confined animal feeding operation shall be as follows:
1. The operation shall have a liquid manure collection and storage facility designed and operated to: (i) prevent any discharge to state waters, except a discharge resulting from a storm event exceeding a twenty-five-year, twenty-four-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste;
2. The operation shall implement and maintain on site a nutrient management plan approved pursuant to subdivision 1 of subsection C. The nutrient management plan shall contain at a minimum the following information: (i) a site map indicating the location of the waste storage facilities and the fields where waste will be applied; (ii) site evaluation and assessment of soil types and potential productivities; (iii) nutrient management sampling including soil and waste monitoring; (iv) storage and land area requirements; (v) calculation of waste application rates; (vi) waste application schedules; and (vii) a plan for waste utilization in the event the operation is discontinued;
3. Adequate buffer zones, where waste shall not be applied, shall be maintained between areas where waste may be applied and (i) water supply wells or springs, (ii) surface water courses, (iii) rock outcroppings, (iv) sinkholes, and (v) occupied dwellings unless a waiver is signed by the occupants of the dwellings;
4. The operation shall be monitored as follows: (i) waste shall be monitored at least once per year; (ii) soil shall be monitored at least once every three years; (iii) ground water shall be monitored at new earthen waste storage facilities constructed to an elevation below the seasonal high water table or within one foot thereof; and (iv) all facilities previously covered by a Virginia Pollution Abatement permit that required ground water monitoring shall continue such monitoring. In such facilities constructed below the water table, the top surface of the waste must be maintained at a level of at least two feet above the water table. The Department of Environmental Quality and the Department of Conservation and Recreation may include in the permit or nutrient management plan more frequent or additional monitoring of waste, soils or groundwater as required to protect state waters. Records shall be maintained to demonstrate where and at what rate waste has been applied, that the application schedule has been followed, and what crops have been planted. Such records shall be available for inspection by the Department of Environmental Quality and shall be maintained for

a period of five years after recorded application is made;
5. New earthen waste storage facilities shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least twenty mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A licensed professional engineer, an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority, or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this section;
6. New waste storage facilities shall not be located on a 100-year flood plain;
7. All facilities must maintain one foot of freeboard at all times, up to and including a twenty-five-year, twenty-four-hour storm;
8. All equipment needed for the proper operation of the permitted facilities shall be maintained in good working order. Manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate;
9. The owner or operator of the operation shall notify the Department of Environmental Quality at least fourteen days prior to animals being placed in the confined facility; and
10. Each operator of a facility covered by the General Permit on July 1, 1999, shall, by January 1, 2000, complete the training program offered or approved by the Department of Conservation and Recreation under subsection F. Each operator of a facility permitted after July 1, 1999, shall complete such training within one year after the registration statement required by subsection C has been submitted. Thereafter, all operators shall complete the training program at least once every three years.

F. The Department of Conservation and Recreation, in consultation with the Department of Environmental Quality and the Virginia Cooperative Extension Service, shall develop or approve a training program for persons operating confined animal feeding operations covered by the General Permit. The program shall include training in the requirements of the General Permit; the use of best management practices; inspection and management of liquid manure collection, storage and application systems; water quality monitoring and spill prevention; and emergency procedures.
G. Operations having an individual Virginia Pollution Abatement permit or a No Discharge Certificate may submit a registration statement for operation under the General Permit pursuant to this section.
H. The Director of the Department of Environmental Quality may require the owner of a confined animal feeding operation to obtain an individual permit for an operation subject to this section upon determining that the operation is in violation of the provisions of this section. New or reissued individual permits shall contain criteria for the design and operation of confined animal feeding operations including, but not limited to, those described in subsection E.
I. No person shall operate a confined animal feeding operation with 300 or more animal units utilizing a liquid manure collection and storage system after July 1, 2000, without having submitted a registration statement as provided in subsection C or being covered by an individual permit.
J. Any person violating this section shall be subject only to the provisions of §§ 62.1-44.23 and 62.1-44.32 (a), except that any civil penalty imposed shall not exceed $2,500.
§ 62.1-44.17:1.1. Poultry waste management program.
A. As used in this section, unless the context requires a different meaning:
"Commercial poultry processor" means any animal food manufacturer, as defined in § 3.1-884.18, that contracts with poultry growers for the raising of poultry.
"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry.
"Nutrient management plan" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment and management of poultry waste, including dry litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters.
"Poultry grower" means any person who owns or operates a confined poultry feeding operation.

B. The Board shall develop a regulatory program governing the storage, treatment and management of poultry waste, including dry litter, that:
1. Requires the development and implementation of nutrient management plans for any person owning or operating a confined poultry feeding operation;
2. Provides for waste tracking and accounting; and
3. Ensures proper storage of waste consistent with the terms and provisions of a nutrient management plan.
C. The program shall include, at a minimum:
1. Provisions for permitting confined poultry feeding operations under a general permit; however, the Board may require an individual permit upon determining that an operation is in violation of the program developed under this section;
2. Provisions requiring that:
a. Nitrogen application rates contained in nutrient management plans developed pursuant to this section shall not exceed crop nutrient needs as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff, leaching, and volatilization losses, and reduce adverse water quality impacts from nitrogen;
b. For all nutrient management plans developed pursuant to this section after October 1, 2001, phosphorus application rates shall not exceed the greater of crop nutrient needs or crop nutrient removal, as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous;
c. By December 31, 2005, the Department of Conservation and Recreation, in consultation with the Department of Environmental Quality, shall (i) complete an examination of current developments in scientific research and technology which shall include a review of land application of poultry waste, soil nutrient retention capacity, and water quality degradation and (ii) adopt and implement regulatory or other changes, if any, to its nutrient management plan program that it concludes are appropriate as a result of this examination; and
d. For all nutrient management plans developed pursuant to this section after December 31, 2005, and not prior thereto, phosphorous application rates shall conform to the provisions of subdivision 2 b of this subsection and shall be in accordance with other regulatory criteria and standards, if any, amended or adopted by the Department of Conservation and Recreation pursuant to subdivision 2 c of this subsection to protect water quality or to reduce soil concentrations of phosphorous or phosphorous loadings. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.
D. The program shall reflect Board consideration of existing state-approved nutrient management plans and existing general permit programs for other confined animal feeding operations, and may include such other provisions as the Board determines appropriate for the protection of state waters.
E. After October 1, 2001, all persons owning or operating a confined poultry feeding operation shall operate in compliance with the provisions of this section and any regulations promulgated thereunder.
F. Any person violating this section shall be subject only to the provisions of §§ 62.1-44.23 and 62.1-44.32 (a), except that any civil penalty shall not exceed $2,500.
G. On or before January 1, 2000, or prior to commencing operations, each commercial poultry processor operating in the Commonwealth shall file with the Board a plan under which the processor, either directly or under contract with a third party, shall:
1. Provide technical assistance to the poultry growers with whom it contracts on the proper management and storage of poultry waste in accordance with best management practices;
2. Provide education programs on poultry waste nutrient management for the poultry growers with whom it contracts as well as for poultry litter brokers and persons utilizing poultry waste;
3. Provide a toll-free hotline and advertising program to assist poultry growers with excess amounts of poultry waste to make available such waste to persons in other areas who can use such waste as a fertilizer consistent with the provisions of subdivision C 2 or for other alternative purposes;

4. Participate in the development of a poultry waste transportation and alternative use equal matching grant program between the Commonwealth and commercial poultry processors to (i) facilitate the

transportation of excess poultry waste in the possession of poultry growers with whom it contracts to persons in other areas who can use such waste as a fertilizer consistent with the provisions of subdivision C 2 or for other alternative purposes and (ii) encourage alternative uses to land application of poultry waste;
5. Conduct research on the reduction of phosphorus in poultry waste, innovative best management practices for poultry waste, water quality issues concerning poultry waste, or alternative uses of poultry waste; and
6. Conduct research on and consider implementation of nutrient reduction strategies in the formulation of feed. Such nutrient reduction strategies may include the addition of phytase or other feed additives or modifications to reduce nutrients in poultry waste.
H. Any amendments to the plan required by subsection G shall be filed with the Board before they are implemented. After January 1, 2000, each commercial poultry processor shall implement its plan and any amendments thereto. Each commercial poultry processor shall report annually to the Board on the activities it has undertaken pursuant to its plan and any amendments thereto. Failure to comply with the provisions of this section or to implement and follow a filed plan or any amendments thereto shall constitute a violation of this section.
§ 62.1-44.17:2. Definitions.
As used in this article, unless the context requires a different meaning:
"Toxicity" means the inherent potential or capacity of a material to cause adverse effects on a living organism, including acute or chronic effects on aquatic life, detrimental effects on human health or other adverse environmental effects.
"Toxics" or "toxic substance" means any agent or material listed by the USEPA Administrator pursuant to § 307(a) of the Clean Water Act and those substances on the "toxics of concern" list of the Chesapeake Bay Program as of January 1, 1997.

§ 62.1-44.17:3. Toxics reduction in state waters; report required.
A. The Board shall (i) conduct ongoing assessments of the amounts of toxics in Virginia's waters and (ii) develop and implement a plan for the reduction of toxics in Virginia's waters.
B. The status of the Board's efforts to reduce the level of toxic substances in state waters shall be reported annually, no later than January 1, to the House Committees on Conservation and Natural Resources and Chesapeake and Its Tributaries, and the Senate Committee on Agriculture, Conservation and Natural Resources. The initial report shall be submitted no later than January 1, 1998, and shall include data from the previous five years on the trends of the reduction and monitoring of toxics in state waters. The initial report and each subsequent annual report shall include, but not be limited to, the following information:
1. Compliance data on permits that have limits for toxics
2. The number of new permits or reissued permits that have toxic limits and the location of each permitted facility;
3. The location and number of monitoring stations and the period of time that monitoring has occurred at each location;
4. A summary of pollution prevention and pollution control activities for the reduction of toxics in state waters;
5. The sampling results from the monitoring stations for the previous year;
6. The Board's plan for continued reduction of the discharge of toxics which shall include, but not be limited to, additional monitoring activities, a work plan for the pollution prevention program, and any pilot projects established for the use of innovative technologies to reduce the discharge of toxics;
7. The identification of any segments for which the Board or the Director of the Department of Environmental Quality has made a decision to conduct additional evaluation or monitoring. Information regarding these segments shall include, at a minimum, the geographic location of the stream segment within a named county or city; and
8. The identification of any segments that are designated as toxic impaired waters as defined in § 62.1-44.19:4 and any plans to address the impairment.
§ 62.1-44.17:4. Evaluation of toxics removal and remediation technology.
The Board shall conduct a review of instream toxics removal or remediation technologies, a minimum of once every five years, to determine whether (i) new technologies for responding to toxic contamination will necessitate any changes in the selection of

removal or remediation strategies previously included as provisions of Board agreements and (ii) any of the Department of Environmental Quality's current strategies for responding to toxic contamination need to be revised.

§ 62.1-44.18. Sewerage systems, etc., under joint supervision of Board and Department of Health.

A. All sewerage systems and sewage treatment works shall be under the general supervision of the State Department of Health and the Board jointly as prescribed in this article.

B. The State Department of Health shall, when requested, consult with and advise the authorities of cities, towns, sanitary districts, and any owner having or intending to have installed sewage treatment works as to the most appropriate type of treatment, but the Department shall not prepare plans, specifications, or detailed estimates of cost for any improvement of an existing or proposed sewage treatment works.

C. It shall be the duty of the owner of any such sewerage system or sewage treatment works from which sewage is being discharged into any state waters to furnish, when requested by the Board, to the State Department of Health from time to time information with regard to the quantities and character of the raw and treated sewage and the operation results obtained in the removal and disposal of organic matter and other pertinent information as is required. The State Department of Health shall furnish the Board with such available information as the Board requires.

§ 62.1-44.18:1.

Repealed by Acts 1991, c. 194.

§ 62.1-44.18:2. When Board may prohibit discharge; permits.

A. Notwithstanding any other provision of this chapter, the Board shall have the authority to prohibit any present or proposed discharge of sewage, industrial wastes, or other wastes into any sewerage system or treatment works when it has determined that such discharge would threaten the public health and safety, or would substantially interfere or be incompatible with the treatment works, or would substantially interfere with usage of state waters as designated by the Board. Before making any such determination, the Board shall consult with and receive the advice of the State Department of Health.

B. The Board shall have the authority to issue permits which prescribe the terms and conditions upon which the discharge of sewage, industrial wastes, or other wastes may be made into any sewerage system or treatment works. The Board may revoke or amend any such permit for good cause and after proper hearing. Notwithstanding the requirement for notice and a hearing, the Board may, after consultation with the State Department of Health, summarily revoke or amend such permit when it determines that the permitted discharge poses a threat to the public health and safety, or is interfering substantially with the treatment works, or is grossly affecting usage of state waters as designated by the Board. In such case, the Board shall hold a hearing as soon as practicable but in no event later than twenty days after the revocation or amendment with reasonable notice to the owner as to the time and place thereof to affirm, modify, or rescind the summary revocation or amendment of such permit.

C. Nothing in this section shall limit the authority of the Board to proceed against such owner directly under § 62.1-44.23 or § 62.1-44.32 after the Board has prohibited discharge, or after the Board has summarily amended or revoked the permit which authorized the discharge. If a proposed revocation or amendment of a permit is mutually agreeable to the Board and the owner, the hearing and notice thereof may be dispensed with.

§ 62.1-44.18:3. Permit for private sewerage facility; financial assurance; violations.

A. No person shall operate a privately owned sewerage system or sewerage treatment works, including an LHS 120 facility, that discharges more than 1,000 gallons per day and less than 40,000 gallons per day without obtaining a Virginia Pollutant Discharge Elimination System permit. Any owner of such a facility shall file with the Board a plan to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the creation of a trust fund, a submission of a bond, a corporate guarantee based upon audited financial statements, or such other instruments as the Board may deem

appropriate. The Board may require that such plan and instruments be updated as appropriate.
For the purposes of this section, "ceases operation" means to cease conducting the normal operation of a facility that is regulated under this chapter under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner at the facility. The term shall not include the sale or transfer of a facility in the ordinary course of business or a permit transfer in accordance with Board regulations.
Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat. This shall not in any way limit other recourse available to the Board.
Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.
B. The Board may waive the filing of the plan required pursuant to subsection A for any person who operates a privately owned sewerage system or sewerage treatment works that was permitted prior to January 1, 2001, and discharges less than 5,000 gallons per day upon a finding that such person has not violated any regulation or order of the Board, any condition of a permit to operate the facility, or any provision of this chapter for a period of not less than five years; provided, that no waiver may be approved by the Board until after the governing body of the locality in which the facility is located approves the waiver after a public hearing. The Board may revoke such waiver at any time for good cause. Any person receiving a waiver who ceases operations shall, if such cessation of operation results in a significant harm or an imminent and substantial risk of significant harm to human health and the environment, be guilty of a Class 4 felony and liable to the Commonwealth and any political subdivision thereof, for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.
C. The Department of Environmental Quality shall promulgate regulations necessary to carry out the provisions of this section. The Department shall identify by January 1, 2001, those facilities regulated under this section.
§ 62.1-44.19. Approval of sewerage systems and sewage treatment works.
A. Before any owner may erect, construct, open, expand or operate a sewerage system or sewage treatment works which will have a potential discharge or actual discharge to state waters, such owner shall file with the Board an application for a certificate in scope and detail satisfactory to the Board.
B. If the application involves a system or works from which there is or is to be a discharge to state waters, the application shall be given public notice by publication once a week for two successive weeks in a newspaper of general circulation in the county or city where the certificate is applied for or by such other means as the Board may prescribe. Before issuing the certificate, the Board shall consult with and give consideration to the written recommendations of the State Department of Health pertaining to the protection of public health. Upon completion of advertising, the Board shall determine if the application is complete, and if so, shall act upon it within twenty-one days of such determination. The Board shall approve such application if it determines that minimum treatment requirements will be met and that the discharge will not result in violations of water quality standards. If the Board disapproves the application, it shall state what modifications or changes, if any, will be required for approval.
C. After the certificate has been issued or amended by the Board, the owner shall acquire from the State Department of Health (i) authorization to construct the systems or works for which the Board has issued a discharge certificate and (ii) upon completion of construction, authorization to operate the sewerage system or sewage treatment works. These authorizations shall be obtained in accordance with regulations promulgated by the State Board of Health under § 32.1-164. The State

Department of Health shall promptly notify the Board when such authorizations are granted.
D. Any owner operating under a valid certificate issued by the Board who fails to meet water quality standards established by the Board solely as a result of a change in water quality standards or in the law shall provide the necessary facilities approved by the State Department of Health, in accordance with the provisions of subsection C of this section, within a reasonable time to meet such new requirements. The Board may amend such certificate, or revoke it and issue a new one to reflect such facilities after proper hearing, with at least thirty days' notice to the owner of the time, place and purpose thereof. If such revocation or amendment of a certificate is mutually agreeable to the Board and the owner involved, the hearing and notice may be dispensed with.
E. The Board shall revoke the certificate in case of a failure to comply with all such requirements and may issue a special order under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.
§§ 62.1-44.19:1. , 62.1-44.19:2.
Not set out.
§ 62.1-44.19:3. Prohibition on land application, marketing and distribution of sewage sludge without permit.
A. No owner of a sewage treatment works shall land apply, market or distribute sewage sludge from such treatment works except in compliance with a valid Virginia Pollutant Discharge Elimination System Permit issued by the Board.
B. No person shall contract or propose to contract, with the owner of a sewage treatment works, to land apply, market or distribute sewage sludge in the Commonwealth, nor shall any person land apply, market or distribute sewage sludge in the Commonwealth without a current Virginia Pollution Abatement Permit from the Board or a current permit from the State Health Commissioner authorizing land application, marketing or distribution of sewage sludge and specifying the location or locations, and the terms and conditions of such land application, marketing or distribution.
C. Any county, city or town may adopt an ordinance that provides for the testing and monitoring of the land application of sewage sludge within its political boundaries to ensure compliance with applicable laws and regulations.
D. Not later than January 1, 2003, the Board of Health shall adopt regulations requiring the payment of a fee for the land application of sewage sludge, pursuant to permits issued under subsection B, in counties, cities or towns that have adopted ordinances in accordance with subsection C. The person land applying sewage sludge shall (i) provide advance notice of the estimated fee to the generator of the sewage sludge unless notification is waived, (ii) collect the fee from the generator, and (iii) remit the fee to the Department of Health as provided for by regulation. The fee shall not exceed the amount necessary to reimburse the direct costs for a reasonable amount of testing and for the monitoring of the land application of sewage sludge by counties, cities and towns that have adopted such ordinances. The fee shall be imposed on each dry ton of sewage sludge that is land applied in such counties, cities and towns in accordance with the regulations adopted by the Board of Health. The regulations shall include requirements and procedures for:
1. Collection of fees by the Department of Health;
2. Retention of proceeds in a special nonreverting fund to be administered by the Department of Health; and
3. Disbursement of proceeds by the Department of Health to reimburse counties, cities and towns with duly adopted ordinances providing for the testing and monitoring of the land application of sewage sludge, as provided for in this subsection.
§ 62.1-44.19:4. Definitions.
As used in this article unless the context requires a different meaning:
"Clean Water Act" means the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1251 et seq.).
"Fully supporting" means those waters meeting the fishable and swimmable goals of the Clean Water Act.
"Impaired waters" means those water bodies or water body segments that are not fully supporting or are partially supporting of the fishable and swimmable goals of the Clean Water Act and include those waters identified in subdivision C 1 of § 62.1-44.19:5 as impaired waters.
"Toxic impaired waters" means those water bodies or water body segments identified as impaired due to one or more toxic substances in the reports prepared pursuant to § 62.1-44.19:5.

"Toxic substance" or "toxics" means any agent or material listed by the USEPA Administrator pursuant to § 307(a) of the Clean Water Act and those substances on the "toxics of concern" list of the Chesapeake Bay Program as of January 1, 1997.

§ 62.1-44.19:5. Water quality monitoring and reporting.

A. The Board shall develop the reports required by § 1313(d) (hereafter the 303(d) report) and § 1315(b) (hereafter the 305(b) report) of the Clean Water Act in a manner such that the reports will: (i) provide an accurate and comprehensive assessment of the quality of state surface waters; (ii) identify trends in water quality for specific and easily identifiable geographically defined water segments; (iii) provide a basis for developing initiatives and programs to address current and potential water quality impairment; (iv) be consistent and comparable documents; and (v) contain accurate and comparable data that is representative of the state as a whole. The reports shall be produced in accordance with the schedule required by federal law, but shall incorporate at least the preceding five years of data. Data older than five years shall be incorporated when scientifically appropriate for trend analysis. The Board shall conduct monitoring as described in subsection B and consider and incorporate factors as described in subsection C into the reports. The Board may conduct additional monitoring and consider and incorporate other factors or information it deems appropriate or necessary.

B. Monitoring shall be conducted so that it:

1. Establishes consistent siting and monitoring techniques to ensure data reliability, comparability of data collected throughout the state, and ability to determine water quality trends within specific and easily identifiable geographically defined water segments.

2. Expands the percentage of river and stream miles monitored so as ultimately to be representative of all river and stream miles in the state according to a developed plan and schedule. Contingent upon the appropriation of adequate funding for this purpose, the number of water quality monitoring stations and the frequency of sampling shall be increased by at least five percent annually, until such representative monitoring is achieved, and shall be expanded first to water bodies for which there is credible evidence to support an indication of impairment.

3. Monitors, according to a plan and schedule, for all substances that are discharged to state waters and that are: (i) listed on the Chesapeake Bay Program's "toxics of concern" list as of January 1, 1997; (ii) listed by the USEPA Administrator pursuant to § 307(a) of the Clean Water Act; (iii) subject to water quality standards; or (iv) necessary to determine water quality conditions. The Board shall update the plan annually. The Board shall develop and implement the plan and schedule for the phasing in of monitoring required by this subdivision. The Board shall, upon development of the plan, publish notice in the Virginia Register that the plan is available for public inspection.

4. Provides, according to the plan in subdivision B 3, for increased use, as necessary, beyond 1996 levels, of sediment monitoring as well as benthic macro-invertebrate organisms and fish tissue monitoring, and provides for specific assessments of water quality based on the results of such monitoring. Contingent upon the appropriation of adequate funding for this purpose, all fish tissue and sediment monitoring for the segments identified in the water quality monitoring plan shall occur at least once every three years.

5. Increases frequency of sample collection at each chemical monitoring station to one or more per month when scientifically necessary to provide accurate and usable data. If statistical analysis is necessary to resolve issues surrounding potentially low sampling frequency, a sensitivity analysis shall be used to describe both potential overestimation and underestimation of water quality.

6. Utilizes a mobile laboratory or other laboratories to provide independent monitoring and assessments of effluent from permitted industrial and municipal establishments and other discharges to state waters.

7. Utilizes announced and unannounced inspections, and collection and testing of samples from establishments discharging to state surface waters.

C. The 303(d) report shall:

1. In addition to such other categories as the Board deems necessary or appropriate, identify geographically defined water segments as impaired if monitoring or other evidence shows: (i) violations of ambient water quality standards or human health standards; (ii) fishing restrictions or advisories; (iii)

shellfish consumption restrictions due to contamination; (iv) nutrient over-enrichment; (v) significant declines in aquatic life biodiversity or populations; or (vi) contamination of sediment at levels which violate water quality standards or threaten aquatic life or human health. Waters identified as "naturally impaired," "fully supporting but threatened," or "evaluated (without monitoring) as impaired" shall be set out in the report in the same format as those listed as "impaired." The Board shall develop and publish a procedure governing its process for defining and determining impaired water segments and shall provide for public comment on the procedure.

2. Include an assessment, conducted in conjunction with other appropriate state agencies, for the attribution of impairment to point and nonpoint sources. The absence of point source permit violations on or near the impaired water shall not conclusively support a determination that impairment is due to nonpoint sources. In determining the cause for impairment, the Board shall consider the cumulative impact of (i) multiple point source discharges, (ii) individual discharges over time, and (iii) nonpoint sources.

D. The 303(d) and 305(b) reports shall:

1. Be developed in consultation with scientists from state universities prior to its submission by the Board to the United States Environmental Protection Agency.

2. Indicate water quality trends for specific and easily identifiable geographically defined water segments and provide summaries of the trends as well as available data and evaluations so that citizens of the Commonwealth can easily interpret and understand the conditions of the geographically defined water segments.

E. The Board shall refer to the 303(d) and 305(b) reports in determining proper staff and resource allocation.

F. The Board shall accept and review requests from the public regarding specific segments that should be included in the water quality monitoring plan described in subdivision B 3 of this section. Each request received by December 31 of the preceding year shall be reviewed when the agency develops or updates the water quality monitoring plan. Such requests shall include (i) a geographical description of the waterbody recommended for monitoring, (ii) the reason the monitoring is requested, and (iii) any water quality data that the petitioner may have collected or compiled. The Board shall respond in writing, either approving the request or stating the reasons a request under this subsection has been denied, by April 30 for requests received by December 31 of the preceding year. Such determination shall not be a regulation or case decision as defined by § 9-6.14:4.

§ 62.1-44.19:6. Citizen right-to-know provisions.

A. The Board, based on the information in the 303(d) and 305(b) reports, shall:

1. Request the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission to post notices at public access points to all toxic impaired waters. The notice shall be prepared by the Board and shall contain (i) the basis for the impaired designation and (ii) a statement of the potential health risks provided by the Virginia Department of Health. The Board shall annually notify local newspapers, and persons who request notice, of any posting and its contents. The Board shall coordinate with the Virginia Marine Resources Commission and the Department of Game and Inland Fisheries to assure that adequate notice of posted waters is provided to those purchasing hunting and fishing licenses.

2. Maintain a "citizen hot-line" for citizens to obtain, either telephonically or electronically, information about the condition of waterways, including information on toxics, toxic discharges, permit violations and other water quality related issues.

3. Make information regarding the presence of toxics in fish tissue and sediments available to the public on the Internet and through other reasonable means for at least five years after the information is received by the Department of Environmental Quality. The Department of Environmental Quality shall post on the Internet and in the Virginia Register on or about January 1 and July 1 of each year an announcement of any new data that has been received over the past six months and shall make a copy of the information available upon request.

B. The Board shall provide to a local newspaper the discharge information reported to the Director of the Department of Environmental Quality pursuant to § 62.1-44.5, when the Virginia Department of Health determines that the discharge may be detrimental to the public health or the Board

determines that the discharge may impair beneficial uses of state waters.

§ 62.1-44.19:7. Plans to address impaired waters.

A. The Board shall develop and implement a plan to achieve fully supporting status for impaired waters, except when the impairment is established as naturally occurring. The plan shall include the date of expected achievement of water quality objectives, measurable goals, the corrective actions necessary, and the associated costs, benefits, and environmental impact of addressing impairment and the expeditious development and implementation of total maximum daily loads when appropriate and as required pursuant to subsection C.

B. The plan required by subsection A shall include, but not be limited to, the promulgation of water quality standards for those substances: (i) listed on the Chesapeake Bay Program's "toxics of concern" list as of January 1, 1997; (ii) listed by the USEPA Administrator pursuant to § 307 (a) of the Clean Water Act; or (iii) identified by the Board as having a particularly adverse effect on state water quality or living resources. The standards shall be promulgated pursuant to a schedule established by the Board following public notice and comment. Standards shall be adopted according to applicable federal criteria or standards unless the Board determines that an additional or more stringent standard is necessary to protect public health, aquatic life or drinking water supplies.

C. The plan required by subsection A shall, upon identification by the Board of impaired waters, establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. The Board shall develop and implement pursuant to a schedule total maximum daily loads of pollutants that may enter the water for each impaired water body as required by the Clean Water Act.

D. The plan required by subsection A shall, upon identification by the Board of toxic-impaired waters, include provisions as required by § 62.1-44.19:8.

§ 62.1-44.19:8. Control of discharges to toxic-impaired water.

Owners of establishments that discharge toxics to toxic-impaired waters shall evaluate the options described in §§ 10.1-1425.10 and 10.1-1425.11 in determining the appropriate means to control such discharges. Prior to issuing or reissuing any permit for the discharge of toxics to toxic-impaired waters, the Board shall review and consider the owner's evaluation of the options in determining the conditions and limitations of the permit.

§ 62.1-44.19:9. Transmission of toxics information.

The Virginia Department of Health and the Department of Environmental Quality shall cooperate, in accordance with a memorandum of agreement to be signed by the Commissioner of Health and the Director of the Department of Environmental Quality, to ensure the timely transmission and evaluation of reliable water quality and fish advisory information. The memorandum of agreement, at a minimum, shall include specific time frames for the (i) transfer of information from the Department of Environmental Quality to the Virginia Department of Health; (ii) assessments and recommendations to be made by the Virginia Department of Health, when the toxicity of the substance is known; and (iii) transmission of the Virginia Department of Health's assessments and recommendations to the Department of Environmental Quality and the dissemination of the assessments and recommendations to the public. Copies of the proposed memorandum of agreement shall be provided to the Chairmen of the House Committees on Conservation and Natural Resources and Chesapeake and Its Tributaries and the Senate Committee on Agriculture, Conservation and Natural Resources at least one month prior to final signature by the heads of the two agencies but no later than December 1, 2000. Any revision of the agreement shall be submitted to the chairmen of these committees no later than one month prior to adoption by the Virginia Department of Health and the Department of Environmental Quality.

§ 62.1-44.19:10. Assessment of sources of toxic contamination.

The Department of Environmental Quality shall develop a written policy describing the circumstances or factors that indicate the need to conduct an assessment of potential sources of toxic contamination. The Department of Environmental Quality shall conduct source assessments as provided for in the written policy and shall develop strategies to remediate the contamination. A copy of the written policy shall be provided to the Chairmen of the House Committees on Conservation and Natural Resources and Chesapeake and Its

Tributaries and the Senate Committee on Agriculture, Conservation and Natural Resources no later than one month prior to the adoption of the policy but no later than December 1, 2000. Any revision of the policy shall be submitted to the chairmen of these committees no later than one month prior to the adoption of the revision by the Department.

§ 62.1-44.20. Right to entry to obtain information, etc.

Any duly authorized agent of the Board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this chapter.

§ 62.1-44.21. Information to be furnished to Board.

The Board may require every owner to furnish when requested such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this chapter. The Board shall not at any time disclose to any person other than appropriate officials of the Environmental Protection Agency pursuant to the requirements of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) any secret formulae, secret processes, or secret methods other than effluent data used by any owner or under that owner's direction.

§ 62.1-44.22. Private rights not affected.

The fact that any owner holds or has held a certificate issued under this chapter shall not constitute a defense in any civil action involving private rights.

§ 62.1-44.23. Enforcement by injunction, etc.

Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, water quality standard, pretreatment standard, or requirement of or any provision of any certificate issued by the Board, or by the owner of a publicly owned treatment works issued to an industrial user, or any provisions of this chapter may be compelled in a proceeding instituted in any appropriate court by the Board to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

§ 62.1-44.23:1. Intervention of Commonwealth in actions involving surface water withdrawals.

The Board, in representing the public's interest, shall have the authority and standing to intervene as an interested party in any civil action, including actions both within and without the Commonwealth, pertaining to the withdrawal of any of the surface waters of the Commonwealth.

§ 62.1-44.24. Testing validity of regulations; judicial review.

(1) The validity of any regulation may be determined through judicial review in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

(2) [Repealed.]

(3) An appeal may be taken from the decision of the court to the Court of Appeals as provided by law.

§ 62.1-44.25. Right to hearing.

Any owner under §§ 62.1-44.16, 62.1-44.17, and 62.1-44.19 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. In cases involving actions of the Board, such petition must be filed within thirty days after notice of such action is mailed to such owner by certified mail.

§ 62.1-44.26. Hearings.

A. The hearings held under this chapter may be conducted by the Board itself at a regular or special meeting of the Board, or by at least one member of the Board designated by the chairman to conduct such hearings on behalf of the Board at any other time and place authorized by the Board.

B. A verbatim record of the proceedings of such hearings shall be taken and filed with the Board. Depositions may be taken and read as in actions at law.

C. The Board shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Board in the manner prescribed in § 9-6.14:13. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions.

§ 62.1-44.27. Rules of evidence in hearings.

In all hearings under this chapter:

(1) All relevant and material evidence shall be received, except that (a) the rules relating to privileged communications and privileged topics shall be observed; (b) hearsay evidence shall be received only if the declarant is not readily available as a witness; and (c) secondary evidence of the contents of a document shall be received only if the original is not readily available. In deciding whether a witness or document is readily available, the Board or hearing officer shall balance the importance of the evidence against the difficulty of obtaining it, and the more important the evidence is the more effort should be made to produce the eyewitness or the original document.
(2) All reports of inspectors and subordinates of the Board and other records and documents in the possession of the Board bearing on the case shall be introduced by the Board at the hearing.
(3) Subject to the provisions of subdivision (1) of this section every party shall have the right to cross-examine adverse witnesses and any inspector or subordinate of the Board whose report is in evidence and to submit rebuttal evidence.
(4) The decision of the Board shall be based only on evidence received at the hearing and matters of which a court of record could take judicial notice.
§ 62.1-44.28. Decisions of the Board in hearings pursuant to §§/n 62.1-44.15 and 62.1-44.25.
To be valid and operative, the decision by the Board rendered pursuant to hearings under subdivisions (8a), (8b), and (8c) of §§ 62.1-44.15 and 62.1-44.25 must be reduced to writing and contain the explicit findings of fact and conclusions of law upon which the decision of the Board is based and certified copies thereof must be mailed by certified mail to the parties affected by it.
§ 62.1-44.29. Judicial review.
Any owner aggrieved by, or any person who has participated, in person or by submittal of written comments, in the public comment process related to, a final decision of the Board under §§ 62.1-44.15 (5), 62.1-44.15 (8a), (8b), and (8c), 62.1-44.15:5, 62.1-44.16, 62.1-44.17, 62.1-44.19 or § 62.1-44.25, whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.
§ 62.1-44.30. Appeal to Court of Appeals.
From the final decision of the circuit court an appeal may be taken to the Court of Appeals as provided in § 17.1-405.
§ 62.1-44.31. Violation of special order or certificate or failure to cooperate with Board.
It shall be unlawful for any owner to fail to comply with any special order adopted by the Board, which has become final under the provisions of this chapter, or to fail to comply with a pretreatment condition incorporated into the permit issued to it by the owner of a publicly owned treatment works or to fail to comply with any pretreatment standard or pretreatment requirement, or to discharge sewage, industrial waste or other waste in violation of any condition contained in a certificate issued by the Board or in excess of the waste covered by such certificate, or to fail or refuse to furnish information, plans, specifications or other data reasonably necessary and pertinent required by the Board under this chapter.
For the purpose of this section, the term "owner" shall mean, in addition to the definition contained in § 62.1-44.3, any responsible corporate officer so designated in the applicable discharge permit.
§ 62.1-44.32. Penalties.
(a) Any person who violates any provision of this chapter, or who fails, neglects or refuses to comply with any order of the Board, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed $25,000 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial

order, or term or condition of approval relating to or issued under those articles.
Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred, to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the owner in violation is such county, city or town itself, or its agent, the court shall direct such penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article 9 or 10 of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.
In the event that a county, city, or town, or its agent, is the owner, such county, city, or town, or its agent, may initiate a civil action against any user or users of a waste water treatment facility to recover that portion of any civil penalty imposed against the owner proximately resulting from the act or acts of such user or users in violation of any applicable federal, state, or local requirements.
(b) Any person who willfully or negligently violates any provision of this chapter, any regulation or order of the Board, any condition of a certificate or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than twelve months and a fine of not less than $2,500 nor more than $25,000, either or both. Any person who knowingly violates any provision of this chapter, any regulation or order of the Board, any condition of a certificate or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not less than $5,000 nor more than $50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than $10,000. Each day of violation of each requirement shall constitute a separate offense.
(c) Any person who knowingly violates any provision of this chapter, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than fifteen years and a fine of not more than $250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of $1,000,000 or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.
(d) Criminal prosecution under this section shall be commenced within three years of discovery of the offense, notwithstanding the limitations provided in any other statute.
§ 62.1-44.33. Board to make rules and regulations.
The State Water Control Board is empowered and directed to adopt and promulgate all necessary rules and regulations for the purpose of controlling the discharge of sewage and other wastes from both documented and undocumented boats and vessels on all navigable and nonnavigable waters within this Commonwealth. No such regulation shall impose restrictions which are more restrictive than the regulations applicable under federal law; provided, however, the Board may adopt such regulations as are reasonably necessary with respect to vessels regularly berthed in marinas or other places where vessels are moored, in order to limit or avoid the closing of shellfish grounds. The regulations controlling the discharge of sewage and other wastes from both documented and undocumented boats and vessels shall become effective no later than July 1, 2002. Documented and undocumented boats and vessels are prohibited from discharging into the Chesapeake Bay and the tidal portions of its tributaries sewage that has not been treated by a Coast Guard-approved Marine Sanitation Device (MSD Type 1 or Type 2); however, the discharge of treated or untreated sewage by such boats and vessels is prohibited in

areas that have been designated as no discharge zones by the United States Environmental Protection Agency.
In formulating rules and regulations pursuant to this section, the Board shall consult with the State Department of Health, the Department of Game and Inland Fisheries and the Marine Resources Commission for the purpose of coordinating such rules and regulations with the activities of such agencies.
Violation of such rules and regulations and violations of the prohibitions created by this section on the discharge of treated and untreated sewage from documented and undocumented boats and vessels shall, upon conviction, be a Class 1 misdemeanor. Every law-enforcement officer of this Commonwealth and its subdivisions shall have the authority to enforce the rules and regulations adopted and promulgated under the provisions of this section and to enforce the prohibitions on the discharge of treated and untreated sewage created by this section.
§ 62.1-44.34.
Repealed by Acts 1978, c. 816.
§§ 62.1-44.34:1 through 62.1-44.34:6.
Repealed by Acts 1990, c. 917.
§ 62.1-44.34:7.
Repealed by Acts 1989, c. 627.
§ 62.1-44.34:8. Definitions.
The following terms as used in this article shall have the meanings ascribed to them:
"Aboveground storage tanks" means any one or combination of tanks, including pipes used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include (i) line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended, and (ii) flow through process equipment used in processing or treating oil by physical, biological, or chemical means.
"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes aboveground storage tanks. This term does not include underground storage tanks or pipelines.
"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.
"Operator of an underground storage tank" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.
"Owner of an underground storage tank" means:
1. In the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank for the storage, use, or dispensing of regulated substances; and
2. In the case of an underground storage tank in use before November 8, 1984, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.
The term "owner" shall not include any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.
"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.
"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:
1. Any substance defined in § 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976; or
2. Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or facility into ground water, surface water, or upon lands, subsurface soils or storm drain systems.
"Responsible person" means any person who is an owner or operator of an underground storage tank or an aboveground storage tank at the time a release is reported to the Board.
"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground connecting pipes, is ten percent or more beneath the surface of the ground. Exemptions from this definition and regulations promulgated under this article include:
1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;
2. Tanks used for storing heating oil for consumption on the premises where stored;
3. Septic tanks;
4. Pipeline facilities, including gathering lines, regulated under: (i) the Natural Gas Pipeline Safety Act of 1968, (ii) the Hazardous Liquid Pipeline Safety Act of 1979, or (iii) any intrastate pipeline facility regulated under state laws comparable to the provisions of law in (i) or (ii) of this subdivision;
5. Surface impoundments, pits, ponds, or lagoons;
6. Storm water or waste water collection systems;
7. Flow-through process tanks;
8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and
9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.
§ 62.1-44.34:9. Powers and duties of Board.
The Board is responsible for carrying out the provisions of this article and compatible provisions of federal acts and is authorized to:
1. Enforce the interim prohibition provisions in § 9003 (g) of United States Public Law 98-616. Until state underground storage tank standards promulgated by regulation become effective, the Board shall enforce the federal interim standard which prohibits installation of an underground storage tank for the purpose of storing regulated substances unless such tank:
a. Will prevent releases due to corrosion or structural failure for the operational life of the tank;
b. Is cathodically protected against corrosion, constructed of noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and
c. The material used in the construction or lining of the tank is compatible with the substance to be stored.
2. Exercise general supervision and control over underground storage tank activities in this Commonwealth.
3. Provide technical assistance and advice concerning all aspects of underground storage tank management.
4. Collect such data and information as may be necessary to conduct the state underground storage tank program.
5. Apply for such federal funds as may become available under federal acts and transmit such funds to appropriate persons.
6. Require notification by owners of underground storage tanks in accordance with the provisions of § 9002 of United States Public Law 98-616.
7. Require notification by owners of property who have actual knowledge of underground storage tanks on such property that were taken out of service before January 1, 1974; however, the civil penalties specified in § 9006 (d) of United States Public Law 98-616 shall not apply to the foregoing notification requirement.
8. Promulgate such regulations as may be necessary to carry out its powers and duties with regard to underground storage tanks in accordance with applicable federal laws and regulations.
9. Require the owner or operator of an underground storage tank who is the responsible person for the release to undertake corrective action for any release of petroleum or any other regulated substance when the Board determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs, regardless of when the release occurred; or undertake corrective action for any release of petroleum or any other regulated substance into the environment from an underground storage tank if such action is necessary, in the judgment of the

Board, to protect human health and the environment.
10. Seek recovery of costs incurred, excluding moneys expended from the Virginia Petroleum Storage Tank Fund which are governed by § 62.1-44.34:11, for undertaking corrective action or enforcement action with respect to the release of a regulated substance from an underground storage tank or oil from a facility.
§ 62.1-44.34:10. Definitions.
The following terms as used in this article shall have the meanings ascribed to them:
"Aboveground storage tanks" means any one or combination of tanks, including pipes used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include (i) line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended, and (ii) flow through process equipment used in processing or treating oil by physical, biological, or chemical means.
"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes aboveground storage tanks. This term does not include underground storage tanks or pipelines.
"Fund" means the Virginia Petroleum Storage Tank Fund.
"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.
"Operator of a facility" means any person who owns, operates, rents or otherwise exercises control over or responsibility for a facility.
"Operator of an underground storage tank" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.
"Owner of an underground storage tank" means:
1. In the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances; and
2. In the case of an underground storage tank in use before November 8, 1984, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.
The term "owner" shall not include any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.
"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.
"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:
1. Any substance defined in § 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976; or
2. Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (sixty degrees F and 14.7 pounds per square inch absolute).
"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or facility into ground water, surface water, or upon lands, subsurface soils or storm drain systems.
"Responsible person" means any person who is an owner or operator of an underground storage tank or an aboveground storage tank at the time the release is reported to the Board.
"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground connecting pipes, is ten

percent or more beneath the surface of the ground. Exemptions from this definition include:
1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;
2. Tanks used for storing heating oil for consumption on the premises where stored;
3. Septic tanks;
4. Pipeline facilities, including gathering lines, regulated under: (i) the Natural Gas Pipeline Safety Act of 1968, (ii) the Hazardous Liquid Pipeline Safety Act of 1979, or (iii) any intrastate pipeline facility regulated under state laws comparable to the provisions of law in (i) or (ii) of this definition;
5. Surface impoundments, pits, ponds, or lagoons;
6. Storm water or waste water collection systems;
7. Flow-through process tanks;
8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and
9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

§ 62.1-44.34:11. Virginia Petroleum Storage Tank Fund.

A. The Virginia Petroleum Storage Tank Fund is hereby established as a nonlapsing revolving fund to be used by the Board for (i) administering the state regulatory programs authorized by Articles 9, 10 and 11 (§ 62.1-44.34:8 et seq.) of this chapter, (ii) demonstrating financial responsibility, and (iii) other purposes as provided for by applicable provisions of state and federal law. All expenses, costs, civil penalties, charges and judgments recovered by or on behalf of the Board pursuant to Articles 9, 10 and 11 of this chapter, and all moneys received as reimbursement in accordance with applicable provisions of federal law and all fees collected pursuant to §§ 62.1-44.34:19.1 and 62.1-44.34:21, shall be deposited into the Fund. Interest earned on the Fund shall be credited to the Fund. No moneys shall be credited to the balance in the Fund until they have been received by the Fund. The Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund.

The Fund shall be administered by the Board consistent with the provisions of Subtitle I of the federal Solid Waste Disposal Act (P.L. 98-616, § 9001 et seq.) and any approved state underground storage tank program and in accordance with the following provisions:

1. The Fund shall be maintained in a separate account. An accounting of moneys received and disbursed shall be kept, and furnished upon request to the Governor or the General Assembly.
2. Disbursements from the Fund may be made only for the following purposes:

a. Reasonable and necessary per occurrence costs incurred for releases reported after December 22, 1989, by the owner or operator who is the responsible person, in taking corrective action for any release of petroleum into the environment from an underground storage tank which are in excess of the per occurrence financial responsibility requirement imposed in subsection B of § 62.1-44.34:12, up to one million dollars.

b. Reasonable and necessary per occurrence costs incurred for releases reported after December 22, 1989, by the owner or operator who is the responsible person for compensating third parties, including payment of judgments for bodily injury and property damage caused by the release of petroleum into the environment from an underground storage tank, which are in excess of the per occurrence financial responsibility requirement imposed by subsection B of § 62.1-44.34:12, up to one million dollars. Disbursements for third party claims shall be subordinate to disbursements for the corrective action costs in subdivision A 2 a of this section.

c. Reasonable and necessary per occurrence costs incurred by an operator whose net annual profits from all facilities do not exceed ten million dollars for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 as follows: (i) for an operator of a facility with a storage capacity less than 25,000 gallons, per occurrence costs in excess of $2,500 up to one million dollars; (ii) for an operator of a facility with a storage capacity from 25,000 gallons to 100,000 gallons, per occurrence costs in excess of $5,000 up to one million dollars; (iii) for an operator of a facility with a storage capacity from 100,000 gallons to four million gallons, per occurrence costs in excess of five cents per gallon of aboveground storage capacity up to one million dollars; and (iv) for an operator of a facility with a storage capacity

greater than four million gallons, per occurrence costs in excess of $200,000 up to one million dollars. For purposes of this subdivision (2c), the per occurrence financial responsibility requirements for an operator shall be based on the total storage capacity for the facility from which the discharge occurs.

d. Reasonable and necessary per occurrence costs incurred by an operator whose net annual profits from all facilities exceed ten million dollars for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 as follows: (i) for an operator of a facility with a storage capacity less than four million gallons, per occurrence costs in excess of $200,000 up to one million dollars; (ii) for an operator of a facility with a storage capacity from four million gallons to twenty million gallons, per occurrence costs in excess of five cents per gallon of aboveground storage capacity up to one million dollars; and (iii) an operator of a facility with a storage capacity greater than twenty million gallons shall have no access to the Fund. For purposes of this subdivision, the per occurrence financial responsibility requirements for an operator shall be based on the total storage capacity for all facilities located within the Commonwealth.

e. Costs incurred by the Board in taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an underground storage tank or from underground storage tanks exempted in subdivisions 1 and 2 of the definition of underground storage tank in § 62.1-44.34:10, if such action is necessary, in the judgment of the Board, to protect human health and the environment.

f. Costs of corrective action up to one million dollars for any release of petroleum into the environment from underground storage tanks or from underground storage tanks exempted in subdivisions 1 and 2 of the definition of underground storage tank in § 62.1-44.34:10 (i) whose owner or operator cannot be determined by the Board within ninety days; or (ii) whose owner or operator is incapable, in the judgment of the Board, of carrying out such corrective action properly.

g. Costs of corrective action incurred by the Board for any release of petroleum into the environment from underground storage tanks which are otherwise specifically listed in exemptions 1 through 9 of the definition of an underground storage tank in § 62.1-44.34:10.

h. Reasonable and necessary per occurrence costs of corrective action incurred for releases reported after December 22, 1989, by the owner or operator in excess of $500 up to one million dollars for any release of petroleum into the environment from an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in § 62.1-44.34:10 and aboveground storage tanks with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

i. The "cost share" of corrective action with respect to any release of petroleum into the environment from underground storage tanks undertaken under a cooperative agreement with the Administrator of the United States Environmental Protection Agency, as determined by the Administrator of the United States Environmental Protection Agency in accordance with the provisions of § 9003 (h) (7) (B) of the United States Public Law 98-616 (as amended in 1986 by United States Public Law 99-662).

j. Administrative costs incurred by the Board in carrying out the provisions of regulatory programs authorized by Articles 9, 10, and 11 (§ 62.1-44.34:8 et seq.) of this chapter.

k. All costs and expenses, including but not limited to personnel, administrative, and equipment costs and expenses, directly incurred by the Board or by any other state agency acting at the direction of the Board, in and for the abatement, containment, removal and disposal of oil pursuant to Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title.

l. Procurement, maintenance and replenishment of materials, equipment and supplies, in such quantities and at such locations as the Board may deem necessary, for the abatement, containment, removal and disposal of oil pursuant to Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title.

m. Costs and expenses, incurred by the Board or by any other state agency, acting at the direction of the Board, for the protection, cleanup and rehabilitation of waterfowl, wildlife, shellfish beds and other natural resources, damaged or threatened by the discharge of oil, owned by the Commonwealth or

held in trust by the Commonwealth for the benefit of its citizens.
n. Refund of cash deposits held in escrow pursuant to Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title and reasonable interest thereon, and refunds of fees collected pursuant to § 62.1-44.34:21 as authorized by this chapter.
o. Administrative costs incurred by the Department of Motor Vehicles in the collection of fees specified in § 62.1-44.34:13.
p. Reasonable and necessary costs incurred by the Virginia Department of Transportation in taking corrective action on property acquired for transportation purposes. If the costs of taking corrective action are recovered, in whole or in part, from any responsible party, the recovery shall be deposited to the Fund.
q. Reasonable and necessary per occurrence costs for releases reported after December 22, 1989, in taking corrective action for any release of petroleum into the environment from an underground storage tank, which are in excess of $5,000 up to one million dollars, by any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.
3. No funds shall be paid for reimbursement of costs incurred for corrective action taken prior to December 22, 1989, by an owner or operator of an underground storage tank, or an owner of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in § 62.1-44.34:10, or an owner of an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.
4. No funds shall be paid for reimbursement of costs incurred prior to January 1, 1992, by an operator of a facility for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13
5. No funds shall be paid for reimbursement of moneys expended for payment of interest or other finance charges on loans which were used for corrective action or containment and cleanup of a release by a person in subdivisions A 3 or A 4 of this section, except for an owner or operator which is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, provided that: (i) the loan moneys have been paid for corrective action that was pre-approved by the Board, (ii) any and all disbursements received from the Fund shall be paid against the loan or for interest and points, and (iii) the payment of interest and points under this subdivision shall be limited to five years from the date the release is reported to the Board. The Board may extend the period for payment of interest and points if, in the judgment of the Board, such action is necessary. The restrictions imposed in clauses (i), (ii) and (iii) shall not apply to loans made prior to June 1, 1992, to an owner or operator exempt from taxation under § 501 (c) (3) of the Internal Revenue Code.
6. No funds shall be paid for penalties, charges or fines imposed pursuant to any applicable local, state or federal law.
7. No funds shall be paid for containment and cleanup costs that are reimbursed or are reimbursable from other applicable state or federal programs.
8. No funds shall be paid if the operator of the facility has not complied with applicable statutes or regulations governing reporting, prevention, containment and cleanup of a discharge of oil.
9. No funds shall be paid if the owner or operator of an underground storage tank or the operator of an aboveground storage tank facility fails to report a release of petroleum or a discharge of oil to the Board as required by applicable statutes, laws or regulations.
10. No funds shall be paid from the Fund unless a reimbursement claim has been filed with the Board within two years from the date the Board issues a site remediation closure letter for that release or July 1, 2000, whichever date is later.
11. The Fund balance shall be maintained at a level sufficient to ensure that the Fund can serve as a financial responsibility demonstration mechanism for the owners and operators of underground storage tanks. Any disbursements made by the Board pursuant to subdivision 2 of this subsection may be temporarily reduced or delayed, in whole or in part, if such action is necessary, in the judgment of the Board, to maintain the Fund balance.
B. The Board shall seek recovery of moneys expended from the Fund for corrective action under this section where the owner or operator of an underground storage tank has violated substantive

environmental protection rules and regulations pertaining to underground storage tanks which have been promulgated by the Board.
C. For costs incurred for corrective action as authorized in subdivision A 2 e of this section, the Board shall seek recovery of moneys from the owner or operator of an underground storage tank up to the minimum financial responsibility requirement imposed on the owner or operator in subsection B of § 62.1-44.34:12 if any, or seek recovery of such costs incurred from any available federal government funds.
D. For costs incurred for corrective action taken resulting from a release from underground storage tanks specified in subdivision A 2 f of this section, the Board shall seek recovery of moneys from the owner or operator up to the minimum financial responsibility requirement imposed on the owner or operator in subsection B of § 62.1-44.34:12 if any, or seek recovery of such costs incurred from any available federal government funds.
E. The Board shall seek recovery of moneys expended from the Fund for costs incurred for corrective action as authorized in subdivision A 2 g of this section or seek recovery of such costs incurred from any available federal government funds. However, the Board shall not seek recovery of moneys expended from the Fund for costs of corrective action in excess of $500 from the owner or operator of an underground tank exempted in subdivisions 1 and 2 of the definition of underground storage tank in § 62.1-44.34:10 and aboveground storage tanks with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.
F. The Board shall have the right of subrogation for moneys expended from the Fund as compensation for personal injury, death or property damage against any person who is liable for such injury, death or damage.
G. The Board shall promptly initiate an action to recover all costs and expenses incurred by the Commonwealth for investigation, containment and cleanup of a discharge of oil or threat of discharge against any person liable for a discharge of oil as specified in Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title; however, the Board shall seek recovery from an operator of expenditures from the Fund only in the amount by which such expenditures exceed the amount authorized to be disbursed to the operator under subdivisions A 2 through A 8 of this section.

§ 62.1-44.34:12. Financial responsibility.

A. The Board shall adopt regulations that conform to the federal financial responsibility requirements of 42 U.S.C. § 6991b(d) and any regulations adopted thereunder. Owners and operators of underground storage tanks shall annually demonstrate and maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage in accordance with regulations adopted by the Board. Financial responsibility established in accordance with regulations adopted by the Board may be demonstrated by any combination of the following mechanisms: insurance, guarantee, surety bond, letter of credit, irrevocable trust fund, qualification as a self-insurer, or the Fund. The Fund may be used as a mechanism to demonstrate the portion of the federal financial responsibility requirements that are in excess of the state financial responsibility requirements contained in subsection B.
B. State requirements for owners and operators of underground storage tanks for maintaining evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage shall be as follows:
1. Owners and operators with 600,000 gallons or less of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $5,000 per occurrence for taking corrective action and $15,000 per occurrence for compensating third parties, with an annual aggregate of $20,000;
2. Owners and operators with between 600,001 to 1,200,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $10,000 per occurrence for taking corrective action and $30,000 per occurrence for compensating third parties, with an annual aggregate of $40,000;
3. Owners and operators with between 1,200,001 to 1,800,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $20,000 per occurrence for taking corrective action and $60,000 per occurrence for compensating third parties, with an annual aggregate of $80,000;
4. Owners and operators with between 1,800,001 to 2,400,000 gallons of petroleum pumped on an

annual basis into all underground storage tanks owned or operated, $30,000 per occurrence for taking corrective action and $120,000 per occurrence for compensating third parties, with an annual aggregate of $150,000;
5. Owners and operators with in excess of 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $50,000 per occurrence for taking corrective action and $150,000 per occurrence for compensating third parties, with an annual aggregate of $200,000; and
6. Other owners and operators, $50,000 per occurrence for taking corrective action and $150,000 per occurrence for compensating third parties, with an annual aggregate of $200,000.
C. Any claim arising out of conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the person guaranteeing or providing evidence of financial responsibility. In such a case, the person against whom the claim is made shall be entitled to invoke all rights and defenses which would have been available to the owner or operator had such action been brought directly against the owner or operator.
This section shall not limit any other state or federal statutory, contractual, or common law liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This section does not diminish the liability of any person under § 107 or § 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or other applicable law.
The Board shall adopt regulations specifying compliance dates for the demonstration of financial responsibility required by this section, in accordance with the compliance dates established in federal regulations by the United States Environmental Protection Agency.
D. Owners and operators of underground storage tanks who are unable to demonstrate financial responsibility in the minimum amounts specified in subsection B, and operators of facilities who are unable to demonstrate financial responsibility in amounts established pursuant to subsection D of § 62.1-44.34:16, may establish an insurance pool in order to demonstrate such financial responsibility. Any contract establishing such an insurance pool shall provide:
1. For election by pool members of a governing authority for the pool, which may be a board of directors, a majority of whom shall be elected or appointed officials of pool members.
2. A financial plan setting forth in general terms:
a. The insurance coverages to be offered by the insurance pool, applicable deductible levels, and the maximum level of claims which the pool will self-insure;
b. The amount of cash reserves to be set aside for the payment of claims;
c. The amount of insurance to be purchased by the pool to provide coverage over and above the claims which are not to be satisfied directly from the pool's resources; and
d. The amount, if any, of aggregate excess insurance coverage to be purchased and maintained in the event that the insurance pool's resources are exhausted in a given fiscal period.
3. A plan of management which provides for all of the following:
a. The means of establishing the governing authority of the pool;
b. The responsibility of the governing authority for fixing contributions to the pool, maintaining reserves, levying and collecting assessments for deficiencies, disposing of surpluses, and administration of the pool in the event of termination or insolvency;
c. The basis upon which new members may be admitted to, and existing members may leave, the pool;
d. The identification of funds and reserves by exposure areas; and
e. Such other provisions as are necessary or desirable for the operation of the pool.
E. The formation and operation of an insurance pool under this section shall be subject to approval by the State Corporation Commission which may, after notice and hearing, establish reasonable requirements and regulations for the approval and monitoring of such pools, including prior approval of pool administrators and provisions for periodic examinations of financial condition.
The State Corporation Commission may disapprove an application for the formation of an insurance pool, and may suspend or withdraw such approval whenever it finds that such applicant or pool:

1. Has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the Commission or its representative;
2. Has refused, or its officers or agents have refused, to furnish satisfactory evidence of its financial and business standing or solvency;
3. Is insolvent, or is in such condition that its further transaction of business in this Commonwealth is hazardous to its members and creditors in this Commonwealth, and to the public;
4. Has refused or neglected to pay a valid final judgment against it within sixty days after its rendition;
5. Has violated any law of this Commonwealth or has violated or exceeded the powers granted by its members;
6. Has failed to pay any fees, taxes or charges imposed in this Commonwealth within sixty days after they are due and payable, or within sixty days after final disposition of any legal contest with respect to liability therefor; or
7. Has been found insolvent by a court of any other state, or by the Insurance Commissioner or other proper officer or agency of any other state, and has been prohibited from doing business in such state.

§ 62.1-44.34:13. (Effective until January 1, 2001) Levy of fee for Fund maintenance.

A. In order to generate revenue for the Fund and to make the Fund available to owners and operators of underground storage tanks and to owners and operators of aboveground storage tanks, there shall be imposed a fee of one-fifth of one cent on each gallon of the following fuels sold and delivered or used in the Commonwealth: motor fuel; aviation motor fuel; diesel fuel; dyed diesel fuel and heating oil, as such terms are defined in § 58.1-2101, except:
1. Motor fuel, diesel fuel, dyed diesel fuel or heating oil sold to the United States or its departments, agencies and instrumentalities thereof;

2. Motor fuel sold to a duly licensed dealer; or
3. Diesel fuel, dyed diesel fuel or heating oil sold to a licensed supplier.

Any dealer or supplier, as defined in § 58.1-2101, or any other person licensed with the Department of Motor Vehicles to sell such fuels in the Commonwealth shall be liable for payment thereof to the Department of Motor Vehicles.

B. The fee shall be remitted to the Department of Motor Vehicles in the same manner and subject to the same provisions specified in Article 4 (§ 58.1-2128 et seq.) of Chapter 21 of Title 58.1, except § 58.1-2129 shall not apply.

C. Any person who purchases motor fuel, aviation motor fuel, dyed diesel fuel, diesel fuel, or heating oil upon which the fee imposed by this article has been paid shall be entitled to a refund for the amount of the fee paid if such person subsequently transports and delivers such fuel to another state, district or country for sale or use outside the Commonwealth. The application for refund shall be accompanied by a paid ticket or invoice covering the sales of such fuel and shall be filed with the Commissioner of the Department of Motor Vehicles within one year of the date of payment of the fee for which the refund is claimed. A refund shall not be granted pursuant to this article on any fuel which is transported and delivered outside the Commonwealth in the fuel supply tank of a highway vehicle or aircraft.

D. To maintain the Fund at an appropriate operating level, the Commissioner of the Department of Motor Vehicles shall increase the fee to three-fifths of one cent when notified by the Comptroller that the Fund has been or is likely in the near future to be reduced below three million dollars, exclusive of fees collected pursuant to § 62.1-44.34:21, and he shall reinstitute the one-fifth of one cent fee when the Comptroller notifies him that the Fund has been restored to twelve million dollars exclusive of fees collected pursuant to § 62.1-44.34:21.

E. The Comptroller shall report to the Commissioner quarterly regarding the Fund expenditures and Fund total for the preceding quarter.

F. Revenues from such fees, less refunds and administrative expenses, shall be deposited in the Fund and used for the purposes set forth in this article.

§ 62.1-44.34:13. (Effective January 1, 2001) Levy of fee for Fund maintenance

A. In order to generate revenue for the Fund and to make the Fund available to owners and operators of underground storage tanks and to owners and operators of aboveground storage tanks, there shall be imposed a fee of one-fifth of one cent on each gallon of the following fuels sold and delivered or used in the Commonwealth: gasoline, aviation

gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil, as such terms are defined in § 58.1-2201; however, such fee shall not be imposed on (i) gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered to the United States or its departments, agencies and instrumentalities for the exclusive use by the United States or its departments, agencies and instrumentalities, (ii) alternative fuel as defined in § 58.1-2201, or (iii) aviation jet fuel as defined in § 58.1-2201.

B. The fee shall be remitted to the Department of Motor Vehicles in the same manner and subject to the same provisions specified in Chapter 22 (§ 58.1-2200 et seq.) of Title 58.1, except § 58.1-2236 shall not apply.

C. Any person who purchases gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, or heating oil upon which the fee imposed by this article has been paid shall be entitled to a refund for the amount of the fee paid if such person subsequently transports and delivers such fuel to another state, district or country for sale or use outside the Commonwealth. The application for refund shall be accompanied by a paid ticket or invoice covering the sales of such fuel and shall be filed with the Commissioner of the Department of Motor Vehicles within one year of the date of payment of the fee for which the refund is claimed. A refund shall not be granted pursuant to this article on any fuel which is transported and delivered outside the Commonwealth in the fuel supply tank of a highway vehicle or aircraft.

D. To maintain the Fund at an appropriate operating level, the Commissioner of the Department of Motor Vehicles shall increase the fee to three-fifths of one cent when notified by the Comptroller that the Fund has been or is likely in the near future to be reduced below three million dollars, exclusive of fees collected pursuant to § 62.1-44.34:21, and he shall reinstitute the one-fifth of one cent fee when the Comptroller notifies him that the Fund has been restored to twelve million dollars exclusive of fees collected pursuant to § 62.1-44.34:21.

E. The Comptroller shall report to the Commissioner quarterly regarding the Fund expenditures and Fund total for the preceding quarter.

F. Revenues from such fees, less refunds and administrative expenses, shall be deposited in the Fund and used for the purposes set forth in this article.

§ 62.1-44.34:14. Definitions.

As used in this article unless the context requires a different meaning:

"Aboveground storage tank" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended.

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.

"Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.

"Pipeline" means all new and existing pipe, rights-of-way, and any equipment, facility, or building used in the transportation of oil, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel or plastic, which provide structural support. This term does not include flow-through process tanks as defined in 40 CFR Part 280.

"Tank vessel" means any vessel used in the transportation of oil as cargo.
"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.
"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.
§ 62.1-44.34:15. Oil discharge contingency plans.
A. No operator shall cause or permit the operation of a facility in the Commonwealth unless an oil discharge contingency plan applicable to the facility has been filed with and approved by the Board. No operator shall cause or permit a tank vessel to transport or transfer oil in state waters unless an oil discharge contingency plan applicable to the tank vessel has been filed with and approved by the Board.
B. Application for approval of an oil discharge contingency plan shall be made to the Board and shall be accompanied by plans, specifications, maps and such other relevant information as may be required, in scope and detail satisfactory to the Board. An oil discharge contingency plan must conform to the requirements and standards determined by the Board to be necessary to ensure that the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of an oil discharge, and to contain, clean up and mitigate an oil discharge within the shortest feasible time. Each such plan shall provide for the use of the best available technology at the time the plan is submitted for approval. The applicant shall notify the Board immediately of any significant change in the operation or capacity of or the type of product dealt in, stored, handled, transported or transferred in or by any facility or vessel covered by the plan that will necessitate a change in the plan and shall update the plan periodically as required by the Board, but in no event more frequently than once every thirty-six months. The Board, on a finding of need, may require an oil discharge exercise designed to demonstrate the facility's or vessel's ability to implement its oil discharge contingency plan either before or after the plan is approved.
C. The Board, after notice and opportunity for a conference pursuant to § 9-6.14:11, may modify its approval of an oil discharge contingency plan if it determines that:
1. A change has occurred in the operation of any facility or vessel covered by the plan that necessitates an amended or supplemented plan;
2. The facility's or vessel's discharge experience or its inability to implement its plan in an oil discharge exercise demonstrates a necessity for modification; or
3. There has been a significant change in the best available technology since the plan was approved.
D. The Board, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:
1. Approval was obtained by fraud or misrepresentation;
2. The plan cannot be implemented as approved; or
3. A term or condition of approval has been violated.
§ 62.1-44.34:15.1. Regulations for aboveground storage tanks.
The Board shall adopt regulations and develop procedures necessary to prevent pollution of state waters, lands, or storm drain systems from the discharge of oil from new and existing aboveground storage tanks. These regulations shall be developed in substantial conformity with the current codes and standards recommended by the National Fire Protection Association. To the extent that they are consistent with the Board's program, the Board shall incorporate accepted industry practices contained in the American Petroleum Institute publications and other accepted industry standards when developing the regulations contemplated by this section. The regulations shall provide the following:
1. For existing aboveground storage tanks at facilities with an aggregate capacity of one million gallons or greater:
a. To prevent leaks from aboveground storage tanks, requirements for inventory control, testing for significant inventory variations (e.g., test procedures in accordance with accepted industry practices, where feasible, and approved by the Board) and formal tank inspections every five years in accordance with accepted industry practices and procedures approved by the Board. Initial testing shall be on a schedule approved by the Board. Aboveground storage tanks totally off ground with all associated piping off ground, aboveground

storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil, and aboveground storage tanks containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control and testing for significant variations. In accordance with subdivision 5 of this section, the Board shall promulgate regulations which provide for variances from inventory control and testing for significant variation for (i) aboveground storage tanks with Release Prevention Barriers (RPBs) with all associated piping off ground, (ii) aboveground storage tanks with a de minimis capacity (12,000 gallons or less), and (iii) other categories of aboveground storage tanks, including those located within a building or structure, as deemed appropriate;

b. To prevent overfills, requirements for safe fill and shut down procedures, including an audible staged alarm with immediate and controlled shut down procedures, or equivalent measures established by the Board;

c. To prevent leaks from piping, requirements for cathodic protection, and pressure testing to be conducted at least once every five years, or equivalent measures established by the Board;

d. To prevent and identify leaks from any source, requirements (i) for a visual inspection of the facility each day of normal operations and a weekly inspection of the facility with a checklist approved by the Board, performed by a person certified or trained by the operator in accordance with Board requirements, (ii) for monthly gauging and inspection of all ground water monitoring wells located at the facility, and monitoring of the well head space for the presence of vapors indicating the presence of petroleum, and (iii) for quarterly sampling and laboratory analysis of the fluids present in each such monitoring well to determine the presence of petroleum or petroleum by-product contamination; and

e. To ensure proper training of individuals conducting inspections, requirements for proper certification or training by operators relative to aboveground storage tanks.

2. For existing aboveground storage tanks at facilities with an aggregate capacity of less than one million gallons but more than 25,000 gallons:

a. To prevent leaks from aboveground storage tanks, requirements for inventory control and testing for significant inventory variations (e.g., test procedures in accordance with accepted industry practices, where feasible, and approved by the Board). Initial testing shall be on a schedule approved by the Board. Aboveground storage tanks totally off ground with all associated piping off ground, aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil, and aboveground storage tanks containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control and testing for significant variations. In accordance with subdivision 5 of this section, the Board shall promulgate regulations which provide for variances from inventory control and testing for significant variation for (i) aboveground storage tanks with Release Prevention Barriers (RPBs) with all associated piping off ground, (ii) aboveground storage tanks with a de minimis capacity (12,000 gallons or less), and (iii) other categories of aboveground storage tanks, including those located within a building or structure, as deemed appropriate;

b. To prevent overfills, requirements for safe fill and shut down procedures;

c. To prevent leaks from piping, requirements for pressure testing to be conducted at least once every five years or equivalent measures established by the Board; and

d. To prevent and identify leaks from any source, requirements for a visual inspection of the facility each day of normal operations and a weekly inspection of the facility with a checklist approved by the Board, performed by a person certified or trained by the operator in accordance with Board requirements developed in accordance with subdivision 1 of this section.

3. For aboveground storage tanks existing prior to the effective date of the regulations required by this section, when the results of a tank inspection indicate the need for replacement of the tank bottom, the operator of a facility shall install a release prevention barrier (RPB) capable of: (i) preventing the release of the oil and (ii) containing or channeling the oil for leak detection. The decision to replace an existing tank bottom shall be

based on the criteria established by regulations pursuant to this section.

4. The Board shall establish performance standards for aboveground storage tanks installed, retrofitted or brought into use after the effective date of the regulations promulgated pursuant to this subsection that incorporate all technologies designed to prevent oil discharges that have been proven in accordance with accepted industry practices and shown to be cost-effective.

5. The Board shall establish criteria for granting variances from the requirements of the regulations promulgated pursuant to this section (i) on a case-by-case basis and (ii) by regulation for categories of aboveground storage tanks, except that the Board shall not grant a variance that would result in an unreasonable risk to the public health or the environment. Variances by regulation shall be based on relevant factors such as tank size, use, and location. Within thirty days after the grant of a variance for a facility, the Board shall send written notification of the variance to the chief administrative officer of the locality in which the facility is located.

§ 62.1-44.34:16. Financial responsibility for vessels and facilities.

A. The operator of any tank vessel entering upon state waters shall deposit with the Board cash or its equivalent in the amount of $500 per gross ton of such vessel. Any such cash deposits received by the Board shall be held in escrow in the Virginia Petroleum Storage Tank Fund.

B. If the Board determines that oil has been discharged in violation of this article or that there has been a substantial threat of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under this chapter.

C. The Board shall exempt an operator of a tank vessel from the cash deposit requirements specified in this section if the operator of the tank vessel provides evidence of financial responsibility pursuant to the terms and conditions of this subsection. The Board shall adopt requirements for operators of tank vessels for maintaining evidence of financial responsibility in an amount equivalent to the cash deposit which would be required for such tank vessel pursuant to this section.

D. The Board is authorized to promulgate regulations requiring operators of facilities to demonstrate financial responsibility sufficient to comply with the requirements of this article as a condition of operation. Operators of facilities shall demonstrate financial responsibility based on the total storage capacity of all facilities operated within the Commonwealth. Regulations governing the amount of any financial responsibility required shall take into consideration the type, oil storage or handling capacity and location of a facility, the risk of a discharge of oil at that type of facility in the Commonwealth, the potential damage or injury to state waters or the impairment of their beneficial use that may result from a discharge at that type of facility, the potential cost of containment and cleanup at that type of facility, and the nature and degree of injury or interference with general health, welfare and property that may result from a discharge at that type of facility. In no instance shall the financial responsibility requirements for facilities exceed five cents per gallon of aboveground storage capacity or five million dollars for a pipeline. In no instance shall any financial test of self-insurance require the operator of a facility to demonstrate more than one dollar of net worth for each dollar of required financial responsibility. If such net worth does not equal the required financial responsibility, then the operator shall demonstrate the minimum required amount by a combination of financial responsibility mechanisms in accordance with subsection E of this section. No governmental agency shall be required to comply with any such regulations.

E. Financial responsibility may be demonstrated by self-insurance, insurance, guaranty or surety, or any other method approved by the Board, or any combination thereof, under the terms the Board may prescribe. To obtain an exemption from the cash deposit requirements under this section: the operator of a tank vessel and insurer, guarantor or surety shall appoint an agent for service of process in the Commonwealth; any insurer must be authorized by the Commonwealth to engage in the insurance business; and any instrument of insurance, guaranty or surety must provide that actions may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for any violation of this chapter by the operator up to, but not exceeding, the

amount insured, guaranteed or otherwise pledged. An operator of a tank vessel or facility whose financial responsibility is accepted by the Board under this subsection shall notify the Board at least thirty days before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety. Operators of facilities who are unable to demonstrate financial responsibility in the amounts established pursuant to subsection D may establish an insurance pool pursuant to the requirements of § 62.1-44.34:12 in order to demonstrate such financial responsibility.

F. Acceptance of proof of financial responsibility for tank vessels shall expire:

1. One year from the date on which the Board exempts an operator from the cash deposit requirement based on evidence of self-insurance, except that the Board may establish by regulation a different expiration date for acceptance of evidence of self-insurance submitted by public agencies;

2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety; or

3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

Application for renewal of acceptance of proof of financial responsibility shall be filed thirty days before the date of expiration.

G. Operators of facilities shall annually demonstrate and maintain evidence of financial responsibility for containment and cleanup in accordance with regulations adopted by the Board.

H. The Board, after notice and opportunity for hearing, may revoke its acceptance of evidence of financial responsibility if it determines that:

1. Acceptance has been procured by fraud or misrepresentation; or

2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility under this section or the requirements established by the Board pursuant to this section.

I. It is not a defense to any action brought for failure to comply with the cash deposit requirement or to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the tank vessel or facility or the operator of the tank vessel or facility had made the required cash deposit or possessed evidence of financial responsibility accepted by the Board.

§ 62.1-44.34:17. Exemptions.

A. Sections 62.1-44.34:15 and 62.1-44.34:16 do not apply to a facility having a maximum storage or handling capacity of less than 25,000 gallons of oil or to a tank vessel having a maximum storage, handling or transporting capacity of less than 15,000 gallons of oil or to a tank used to contain oil for less than 120 days and only in connection with activities related to the containment and cleanup of oil or to any vessel engaged only in activities within state waters related to the containment and cleanup of oil, including response-related training or drills.

B. Facilities having a maximum storage or handling capacity of between 25,000 gallons and one million gallons of oil shall be exempt until July 1, 1993, from any requirement under § 62.1-44.34:15 to install ground water monitoring wells or other ground water protection devices.

C. For purposes of §§ 62.1-44.34:15 and 62.1-44.34:16, the definition of oil does not include nonpetroleum hydrocarbon-based animal and vegetable oils, or petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601) and which is subject to the provisions of that Act.

D. Facilities not engaged in the resale of oil from aboveground storage tanks shall not be subject to regulations promulgated pursuant to § 62.1-44.34:15.1 until July 1, 1995, or any date later specified by the Board.

E. Aboveground storage tanks with a capacity of 5,000 gallons or less containing heating oil for consumption on the premises where stored shall be exempt from the provisions of § 62.1-44.34:15.1.

F. For purposes of §§ 62.1-44.34:15.1 and 62.1-44.34:16, and for the purposes of any requirement under § 62.1-44.34:15 to install ground water monitoring wells, ground water protection devices, or to conduct ground water characterization studies, the definition of oil does not include asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute).

§ 62.1-44.34:18. Discharge of oil prohibited; liability for permitting discharge.

A. The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited. For purposes of this section, discharges of oil into or upon state waters include discharges of oil that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

B. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or from which there is a substantial threat of such discharge shall, immediately upon learning of such discharge or threat of discharge, implement any applicable oil spill contingency plan approved under this article or take such other action as may be deemed necessary in the judgment of the Board to contain and clean up such discharge or threat of such discharge. In the event of such discharge or threat of discharge, if it cannot be determined immediately the person responsible therefor, or if the person is unwilling or unable to promptly contain and clean up such discharge or threat of discharge, the Board may take such action as is necessary to contain and clean up the discharge or threat of discharge, including the engagement of contractors or other competent persons.

C. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or from which there is a substantial threat of such discharge, shall be liable to:

1. The Commonwealth of Virginia or any political subdivision thereof for all costs and expenses of investigation, containment and cleanup incurred as a result of such discharge or threat of discharge, including, but not limited to, reasonable personnel, administrative, and equipment costs and expenses directly incurred by the Commonwealth or political subdivision, in and for preventing or alleviating damage, loss, hardship, or harm to human health or the environment caused or threatened to be caused by such discharge or threat of discharge;
2. The Commonwealth of Virginia or any political subdivision thereof for all damages to property of the Commonwealth of Virginia or the political subdivision caused by such discharge;
3. The Commonwealth of Virginia or any political subdivision thereof for loss of tax or other revenues caused by such discharge, and compensation for the loss of any natural resources that cannot be restocked, replenished or restored; and
4. Any person for injury or damage to person or property, real or personal, loss of income, loss of the means of producing income, or loss of the use of the damaged property for recreational, commercial, industrial, agricultural or other reasonable uses, caused by such discharge.

D. Notwithstanding any other provision of law, a person who renders assistance in containment and cleanup of a discharge of oil prohibited by this article or a threat of such discharge shall be liable under this section for damages for personal injury and wrongful death caused by that person's negligence, and for damages caused by that person's gross negligence or willful misconduct, but shall not be liable for any other damages or costs and expenses of containment and cleanup under this section that are caused by the acts or omissions of such person in rendering such assistance; however, such liability provision shall not apply to a person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge, or to such person's employee. Nothing in

this article shall affect the right of any person who renders such assistance to reimbursement for the costs of the containment and cleanup under the applicable provisions of this article or the Federal Water Pollution Control Act, as amended, or any rights that person may have against any third party whose acts or omissions caused or contributed to the prohibited discharge of oil or threat of such discharge. In addition, a person, other than an operator, who voluntarily, without compensation, and upon the request of a governmental agency, assists in the containment or cleanup of a discharge of oil, shall not be liable for any civil damages resulting from any act or omission on his part in the course of his rendering such assistance in good faith; nor shall any person or any organization exempt from income taxation under § 501 (c) (3) of the Internal Revenue Code who notifies or assists in notifying the membership of such organization to assist in the containment or cleanup of a discharge of oil, voluntarily, without compensation, and upon the request of a government agency, be liable for any civil damages resulting from such notification rendered in good faith.

E. In any action brought under this article, it shall not be necessary for the Commonwealth, political subdivision or any person, to plead or prove negligence in any form or manner.

F. In any action brought under this article, the Commonwealth, political subdivision or any person, if a prevailing party, shall be entitled to an award of reasonable attorneys' fees and costs.

G. It shall be a defense to any action brought under subdivision C 2, C 3, or C 4 of this section that the discharge was caused solely by (i) an act of God, (ii) an act of war, (iii) a willful act or omission of a third party who is not an employee, agent or contractor of the operator, or (iv) any combination of the foregoing; however, this subsection shall not apply to any action brought against (a) a person or operator who failed or refused to report a discharge as required by § 62.1-44.34:19; or (b) a person or operator who failed or refused to cooperate fully in any containment and cleanup or who failed or refused to effect containment and cleanup as required by subsection B of this section.

H. In any action brought under subdivision C 2, C 3, or C 4 of this section, the total liability of a person or operator under this section for each discharge of oil or threat of such discharge shall not exceed the amount of financial responsibility required under § 62.1-44.34:16 or $10,000,000, whichever is greater; however, there shall be no limit of liability imposed under this section: (a) if the discharge of oil or threat of such discharge was caused by gross negligence or willful misconduct on the part of the person or the operator discharging or causing or permitting discharge or threat of discharge or by an agent, employee or contractor of such person or operator, or by the violation of any applicable safety, construction or operation regulations by such person or operator or an agent, employee or contractor of such person or operator; or (b) if the operator or person discharging or causing or permitting a discharge or threat of discharge failed or refused to report the discharge as required by § 62.1-44.34:19, or failed or refused to cooperate fully in any containment and cleanup or to effect containment and cleanup as required by subsection B of this section.

I. An operator that incurs costs pursuant to subsection B shall have the right to recover all or part of such costs in an action for contribution against any person or persons whose acts or omissions caused or contributed to the discharge or threat of discharge. In resolving contribution claims under this article, the court may allocate costs among the parties using such equitable factors as the court deems appropriate.

J. Any person or operator who pays costs or damages pursuant to subsection C shall have the right to recover all or part of such costs or damages in an action for contribution against any person or persons whose act or omission has caused or contributed to the discharge or threat of discharge. In resolving contribution claims under this article, the court may allocate costs or damages among the parties using such equitable factors as the court deems appropriate.

§ 62.1-44.34:19. Reporting of discharge.

A. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth or discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems within the Commonwealth, and any operator of any facility, vehicle or vessel from which there is a discharge of oil into state waters, lands, or storm drain systems, or from which there is a discharge of oil which may

reasonably be expected to enter state waters, lands, or storm drain systems, shall, immediately upon learning of the discharge, notify the Board, the director or coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision in which the discharge occurs and any other political subdivision reasonably expected to be affected by the discharge, and appropriate federal authorities of such discharge. Notice will be deemed to have been given under this section for any discharge of oil to state lands in amounts less than twenty-five gallons if the recordkeeping requirements of subsection C of § 62.1-44.34:19.2 have been met and the oil has been cleaned up in accordance with the requirements of this article.

B. Observations and data gathered as a result of the monthly and quarterly inspection activities required by § 62.1-44.34:15.1 (1) (d) shall be maintained on site pursuant to § 62.1-44.34:19.2, and compiled into a summary, on a form developed by the Board, such summary to be submitted to the Board annually on a schedule established by the Board. Should any such observations or data indicate the presence of petroleum hydrocarbons in ground water, the results shall be reported immediately to the Board and to the local director or coordinator of emergency services appointed pursuant to § 44-146.19.

§ 62.1-44.34:19.1. Registration of aboveground storage tanks.

A. The Board shall compile an inventory of facilities with an aboveground storage capacity of more than 1320 gallons of oil or individual aboveground storage tanks having a storage capacity of more than 660 gallons of oil within the Commonwealth. To develop such an inventory, the Board is hereby authorized to develop regulations regarding registration requirements for facilities and aboveground storage tanks. In adopting such regulations, the Board shall consider whether any registration program required under federal law or regulations is sufficient for purposes of this section.

B. Within ninety days of the effective date of the regulations referred to in subsection A, the operators of a facility shall register the facility with the Board and the local director or coordinator of emergency services appointed pursuant to § 44-146.19, and provide an inventory of aboveground storage tanks at the facility. If the Board determines that registration under federal law or regulations is inadequate for the purpose of compiling its inventory and that additional registration requirements are necessary, the Board is authorized to assess a fee, according to a schedule based on the size and type of the facility or tank, not to exceed $100 per facility or $50 per tank, whichever is less. Such fee shall be paid at the time of registration or registration renewal. Registration shall be renewed every five years or whenever title to a facility or tank is transferred, whichever first occurs.

C. The operator shall, within thirty days after the upgrade, repair, replacement, or closure of an existing tank or installation of a new tank, notify the Board in writing of such upgrade, repair, replacement, closure or installation.

§ 62.1-44.34:19.2. Recordkeeping and access to records and facilities.

A. All records relating to compliance with the requirements of this article shall be maintained by the operator of a facility at the facility or at an alternate location approved by the Board for a period of at least five years. Such records shall be available for inspection and copying by the Board and shall include books, papers, documents and records relating to the daily measurement and inventory of oil stored at a facility, all information relating to tank testing, all records relating to spill events or other discharges of oil from the facility, all supporting documentation for developed contingency plans, and any records required to be kept by regulations of the Board.

B. In the case of a pipeline, all records relating to compliance with the requirements of the Hazardous Liquid Pipeline Safety Act of 1979, all records relating to spill events or other discharges of oil from the pipeline in the Commonwealth, and all supporting documentation for approved contingency plans shall be maintained by the operator of a pipeline at the facility or at an alternate location approved by the Board for a period of at least five years.

C. A record of all discharges of oil to state lands in amounts less than twenty-five gallons shall be established and maintained for a period of five years in accordance with subsections A and B of this section.

D. Every operator of a facility shall, upon reasonable notice, permit at reasonable times and under reasonable circumstances a duly designated

official of the political subdivision in which the facility is located or of any political subdivision within one mile of the facility or duly designated agent retained or employed by such political subdivisions to have access to and to copy all information required to be kept in subsections A, B and C.

E. Any duly designated official of the political subdivision in which the facility is located or of any political subdivision within one mile of the facility or duly designated agent retained or employed by such political subdivisions may, at reasonable times and under reasonable circumstances, enter and inspect any facility, provided that in nonemergency situations such local official, agent or employee shall be accompanied by the operator or his designee.

§ 62.1-44.34:20. Enforcement and penalties.

A. Upon a finding of a violation of this article or a regulation or term or condition of approval issued pursuant to this article, the Board is authorized to issue a special order requiring any person to cease and desist from causing or permitting such violation or requiring any person to comply with any such provision, regulation or term or condition of approval. Such special orders shall be issued only after notice and an opportunity for hearing except that, if the Board finds that any discharge in violation of this article poses a serious threat to (i) the public health, safety or welfare or the health of animals, fish, botanic or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, the Board may issue, without advance notice or hearing, an emergency special order requiring the operator of any facility, vehicle or vessel to cease such discharge immediately, to implement any applicable contingency plan and to effect containment and cleanup. Such emergency special order may also require the operator of a facility to modify or cease regular operation of the facility, or any portion thereof, until the Board determines that continuing regular operation of the facility, or such portion thereof, will not pose a substantial threat of additional or continued discharges. The Board shall affirm, modify, amend or cancel any such emergency order after providing notice and opportunity for hearing to the operator charged with the violation. The notice of the hearing and the emergency order shall be issued at the same time. If an operator who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with subsection B of this section, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires modification or cessation of operations, the Board shall provide an opportunity for a hearing within forty-eight hours of the issuance of the injunction.

B. In the event of a violation of this article or a regulation, administrative or judicial order, or term or condition of approval issued under this article, or in the event of failure to comply with a special order issued by the Board pursuant to this section, the Board is authorized to proceed by civil action to obtain an injunction of such violation, to obtain such affirmative equitable relief as is appropriate and to recover all costs, damages and civil penalties resulting from such violation or failure to comply. The Board shall be entitled to an award of reasonable attorneys' fees and costs in any action in which it is a prevailing party.

C. Any person who violates or causes or permits to be violated a provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article, shall be subject to a civil penalty for each such violation as follows:

1. For failing to obtain approval of an oil discharge contingency plan as required by § 62.1-44.34:15, not less than $1,000 nor more than $50,000 for the initial violation, and $5,000 per day for each day of violation thereafter;

2. For failing to maintain evidence of financial responsibility as required by § 62.1-44.34:16, not less than $1,000 nor more than $100,000 for the initial violation, and $5,000 per day for each day of violation thereafter;

3. For discharging or causing or permitting a discharge of oil into or upon state waters, or owning or operating any facility, vessel or vehicle from which such discharge originates in violation of § 62.1-44.34:18, up to $100 per gallon of oil discharged;

4. For failing to cooperate in containment and cleanup of a discharge as required by § 62.1-44.34:18 or for failing to report a discharge as

required by § 62.1-44.34:19, not less than $1,000 nor more than $50,000 for the initial violation, and $10,000 for each day of violation thereafter; and
5. For violating or causing or permitting to be violated any other provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article, up to $25,000 for each violation. Each day of violation of each requirement shall constitute a separate offense.
D. Civil penalties may be assessed under this article either by a court in an action brought by the Board pursuant to this section or with the consent of the person charged, in a special order issued by the Board. All penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Underground Petroleum Storage Tank Fund as established in § 62.1-44.34:11. In determining the amount of any penalty, consideration shall be given to the willfulness of the violation, any history of noncompliance, the actions of the person in reporting, containing and cleaning up any discharge or threat of discharge, the damage or injury to state waters or the impairment of their beneficial use, the cost of containment and cleanup, the nature and degree of injury to or interference with general health, welfare and property, and the available technology for preventing, containing, reducing or eliminating the discharge.
E. Any person who knowingly violates, or causes or permits to be violated, a provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article shall be guilty of a misdemeanor punishable by confinement in jail for not more than twelve months and a fine of not more than $100,000, either or both. Any person who knowingly or willfully makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by this article or by administrative or judicial order issued under this article shall be guilty of a felony punishable by a term of imprisonment of not less than one nor more than three years and a fine of not more than $100,000, either or both. In the case of a discharge of oil into or upon state waters:
1. Any person who negligently discharges or negligently causes or permits such discharge shall be guilty of a misdemeanor punishable by confinement in jail for not more than twelve months and a fine of not more than $50,000, either or both.
2. Any person who knowingly and willfully discharges or knowingly and willfully causes or permits such discharge shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than ten years and a fine of not more than $100,000, either or both.
F. Each day of violation of each requirement shall constitute a separate offense. In the event the violation of this article follows a prior felony conviction under subdivision E 2 of this section, such violation shall constitute a felony and shall be punishable by a term of imprisonment of not less than two years nor more than ten years and a fine of not more than $200,000, either or both.
G. Upon conviction for a violation of any provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article, a defendant who is not an individual shall be sentenced to pay a fine not exceeding the greater of:
1. $1,000,000; or
2. An amount that is three times the economic benefit, if any, realized by the defendant as a result of the offense.
H. Any tank vessel entering upon state waters which fails to provide evidence of financial responsibility required by § 62.1-44.34:16, and any vessel from which oil is discharged into or upon state waters, may be detained and held as security for payment to the Commonwealth of any damages or penalties assessed under this section. Such damages and penalties shall constitute a lien on the vessel and the lien shall secure all costs of containment and cleanup, damages, fines and penalties, as the case may be, for which the operator may be liable. The vessel shall be released upon posting of a bond with surety in the maximum amount of such damages or penalties.
§ 62.1-44.34:21. Administrative fees.
A. The Board is authorized to collect from any applicant for approval of an oil discharge contingency plan and from any operator seeking acceptance of evidence of financial responsibility fees sufficient to meet, but not exceed, the costs of the Board related to implementation of § 62.1-44.34:15 as to an applicant for approval of an oil discharge contingency plan and of § 62.1-44.34:16 as to an operator seeking acceptance of evidence of

financial responsibility. The Board shall establish by regulation a schedule of fees that takes into account the nature and type of facility and the effect of any prior professional certification or federal review or approval on the level of review required by the Board. All such fees received by the Board shall be used exclusively to implement the provisions of this article.
B. Fees charged an applicant should reflect the average time and complexity of processing approvals in each of the various categories.
C. When adopting regulations for fees, the Board shall take into account the fees charged in neighboring states, and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage.
Within six months of receipt of any federal moneys that would offset the costs of implementing this article, the Board shall review the amount of fees set by regulation to determine the amount of fees which should be refunded. Such refunds shall only be required if the fees plus the federal moneys received for the implementation of the program under this article as it applies to facilities exceed the actual cost to the Board of administering the program.
D. On October 1, 1995, and every two years thereafter, the Board shall make an evaluation of the implementation of the fee programs and provide this evaluation in writing to the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Chesapeake and Its Tributaries, and Finance.

§ 62.1-44.34:22. Applicability of Administrative Process Act.

The Administrative Process Act (§ 9-6.14:1 et seq.) shall govern the activities and the proceedings of the Board under this article.

§ 62.1-44.34:23. Exceptions.

A. Nothing in this article shall apply to: (i) normal discharges from properly functioning vehicles and equipment, marine engines, outboard motors or hydroelectric facilities; (ii) accidental discharges from farm vehicles or noncommercial vehicles; (iii) accidental discharges from the fuel tanks of commercial vehicles or vessels that have a fuel tank capacity of 150 gallons or less; (iv) discharges authorized by a valid permit issued by the Board pursuant to § 62.1-44.15 (5) or by the United States Environmental Protection Agency; (v) underground storage tanks regulated under a state program; (vi) releases from underground storage tanks as defined in § 62.1-44.34:8, regardless of when the release occurred; (vii) discharges of hydrostatic test media from a pipeline undergoing a hydrostatic test in accordance with federal pipeline safety regulations; or (viii) discharges authorized by the federal on-scene coordinator and the Executive Director or his designee in connection with activities related to the recovery of spilled oil where such activities are undertaken to minimize overall environmental damage due to an oil spill into or on state waters. However, the exception provided in clause (viii) shall in no way reduce the liability of the person who initially spilled the oil which is being recovered.
B. Notwithstanding the exemption set forth in clause (vi) of subsection A of this section, a political subdivision may recover pursuant to subsection C of § 62.1-44.34:18 for a discharge of oil into or upon state waters, lands, or storm drain systems from an underground storage tank regulated under a state program at facilities with an aggregate capacity of one million gallons or greater.

§ 62.1-44.34:24. Definitions.

As used in this article, unless the context requires otherwise:
"Council" means the Virginia Spill Response Council.
"Discharge" means spillage, leakage, pumping, pouring, seepage, emitting, dumping, emptying, injecting, escaping, leaching, fire, explosion, or other releases.
"Hazardous materials" means substances or materials which may pose unreasonable risks to health, safety, property, or the environment when used, transported, stored, or disposed of, which may include materials which are solid, liquid, or gas. Hazardous materials may include toxic substances, flammable and ignitable materials, explosives, corrosive materials, and radioactive materials and include (i) those substances or materials in a form or quantity which may pose an unreasonable risk to health, safety, or property when transported, and which the Secretary of Transportation of the United States has so designated by regulation or order; (ii) hazardous substances as defined or designated by law or regulation of the Commonwealth or law or

regulation of the United States government; and (iii) hazardous waste as defined or designated by law or regulation of the Commonwealth.
"Oil" means oil of any kind and in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with waste, crude oils, and other liquid hydrocarbons regardless of specific gravity.
§ 62.1-44.34:25. Virginia Spill Response Council created; purpose; membership.
A. There is hereby created the Virginia Spill Response Council. The purpose of the Council is to (i) improve the Commonwealth's capability to respond in a timely and coordinated fashion to incidents involving the discharge of oil or hazardous materials which pose a threat to the environment, its living resources, and the health, safety, and welfare of the people of the Commonwealth and (ii) provide an ongoing forum for discussions between agencies which are charged with the prevention of, and response to, oil spills and hazardous materials incidents, and those agencies responsible for the remediation of such incidents.
B. The Secretary of Natural Resources and the Secretary of Public Safety, upon the advice of the director of the agency, shall select one representative from each of the following agencies to serve as a member of the Council: Department of Emergency Management, State Water Control Board, Department of Environmental Quality, Virginia Marine Resources Commission, Department of Game and Inland Fisheries, Department of Health, Department of Fire Programs, and the Council on the Environment.
C. The Secretary of Natural Resources or his designee shall serve as chairman of the Council.
§ 62.1-44.34:26. Responsibilities of the Council.
The Council shall have the following responsibilities:
1. To foster the exchange of information between the federal, state, and local government;
2. To enhance Virginia's participation in the United States Environmental Protection Agency's Region III Response Team;
3. To review and evaluate the response to emergency situations and recommend changes to the Commonwealth of Virginia's Oil and Hazardous Materials Emergency Response Plan;
4. To provide ongoing analysis of the most recent technical developments for the remediation of discharges; and
5. To coordinate its activities with the State Hazardous Materials Emergency Response Advisory Council and the Virginia Emergency Response Council.
§ 62.1-44.34:27. Cooperation of agencies and institutions.
Technical support shall be made available to the Council by the appropriate state agencies and educational institutions.
§ 62.1-44.34:28. Council to submit annual report.
The Council shall submit a report annually to the Secretaries of Natural Resources and Transportation and Public Safety, which includes (i) an evaluation of the emergency response preparedness activities undertaken and the emergency response activities conducted during the year and (ii) a description of the activities of the Council during the year.

Title 62.1 - Chapter 3.2 - Conservation of Water Resources: State Water Control Board

§ 62.1-44.35.
Repealed by Acts 1984, c. 750.

§ 62.1-44.36. Responsibility of State Water Control Board; formulation of policy.

Being cognizant of the crucial importance of the Commonwealth's water resources to the health and welfare of the people of Virginia, and of the need of a water supply to assure further industrial growth and economic prosperity for the Commonwealth, and recognizing the necessity for continuous cooperative planning and effective state-level guidance in the use of water resources, the State Water Control Board is assigned the responsibility for planning the development, conservation and utilization of Virginia's water resources.

The Board shall continue the study of existing water resources of this Commonwealth, means and methods of conserving and augmenting such water resources, and existing and contemplated uses and needs of water for all purposes. Based upon these studies and such policies as have been initiated by the Division of Water Resources, and after an opportunity has been given to all concerned state agencies and political subdivisions to be heard, the Board shall formulate a coordinated policy for the use and control of all the water resources of the Commonwealth and issue a statement thereof. In formulating the Commonwealth's water resources policy, the Board shall, among other things, take into consideration but not be limited to the following principles and policies:

(1) Existing water rights are to be protected and preserved subject to the principle that all of the state waters belong to the public for use by the people for beneficial purposes without waste;

(2) Adequate and safe supplies should be preserved and protected for human consumption, while conserving maximum supplies for other beneficial uses. When proposed uses of water are in mutually exclusive conflict or when available supplies of water are insufficient for all who desire to use them, preference shall be given to human consumption purposes over all other uses;

(3) It is in the public interest that integration and coordination of uses of water and augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development thereof for the benefit of the Commonwealth as a whole;

(4) In considering the benefits to be derived from drainage, consideration shall also be given to possible harmful effects upon ground water supplies and protection of wildlife;

(5) The maintenance of stream flows sufficient to support aquatic life and to minimize pollution shall be fostered and encouraged;

(6) Watershed development policies shall be favored, whenever possible, for the preservation of balanced multiple uses, and project construction and planning with those ends in view shall be encouraged;

(7) Due regard shall be given in the planning and development of water recreation facilities to safeguard against pollution.

The statement of water resource policy shall be revised from time to time whenever the Board shall determine it to be in the public interest.

The initial statement of state water resource policy and any subsequent revisions thereof shall be furnished by the Board to all state agencies and to all political subdivisions of the Commonwealth.

§ 62.1-44.37. Resolution of conflicts as to water use; public hearings.

The Board shall upon application of any state agency or political subdivision, and may upon its own motion, recommend a plan to resolve any conflict as to actual or proposed water use or other practice directly affecting water use that involves a potential or existing conflict between water use functions under the jurisdiction of different state agencies. If requested by any state agency or political subdivision directly affected, or at the Board's discretion, the Board shall hold public hearings on such question at which all persons concerned shall be heard.

§ 62.1-44.38. Plans and programs; registration of certain data by water users; advisory committees; committee membership for federal, state, and local agencies; water supply planning assistance.

A. The Board shall prepare plans and programs for the management of the water resources of this Commonwealth in such a manner as to encourage, promote and secure the maximum beneficial use and control thereof. These plans and programs shall be prepared for each major river basin of this Commonwealth, and appropriate subbasins therein, including specifically the Potomac-Shenandoah

River Basin, the Rappahannock River Basin, the York River Basin, the James River Basin, the Chowan River Basin, the Roanoke River Basin, the New River Basin, the Tennessee-Big Sandy River Basin, and for those areas in the Tidewater and elsewhere in the Commonwealth not within these major river basins. Reports for each basin shall be published by the Board.

B. In preparing river basin plan and program reports enumerated in subsection A of this section, the Board shall (i) estimate current water withdrawals and use for agriculture, industry, domestic use, and other significant categories of water users; (ii) project water withdrawals and use by agriculture, industry, domestic water use, and other significant categories of water users; (iii) estimate, for each major river and stream, the minimum instream flows necessary during drought conditions to maintain water quality and avoid permanent damage to aquatic life in streams, bays, and estuaries; (iv) evaluate, to the extent practicable, the ability of existing subsurface and surface waters to meet current and future water uses, including minimum instream flows, during drought conditions; (v) evaluate, in cooperation with the Virginia Department of Health and local water supply managers, the current and future capability of public water systems to provide adequate quantity and quality of water; (vi) identify water management problems and alternative water management plans to address such problems; and (vii) evaluate hydrologic, environmental, economic, social, legal, jurisdictional, and other aspects of each alternative management strategy identified.

C. The Board may, by regulation, require each water user withdrawing surface or subsurface water or both during each year to register, by a date to be established by the Board, water withdrawal and use data for the previous year including the estimated average daily withdrawal, maximum daily withdrawal, sources of water withdrawn, and volume of wastewater discharge, provided that the withdrawal exceeds one million gallons in any single month for use for crop irrigation, or that the daily average during any single month exceeds 10,000 gallons per day for all other users.

D. The Board shall establish advisory committees to assist it in the formulation of such plans or programs and in formulating recommendations called for in subsection E of this section. In this connection, the Board may include committee membership for branches or agencies of the federal government, branches or agencies of the Commonwealth, branches or agencies of the government of any state in a river basin located within that state and Virginia, the political subdivisions of the Commonwealth, and all persons and corporations interested in or directly affected by any proposed or existing plan or program.

E. The Board shall prepare plans or programs and shall include in reports prepared under subsection A of this section recommended actions to be considered by the General Assembly, the agencies of the Commonwealth and local political subdivisions, the agencies of the federal government, or any other persons that the Board may deem necessary or desirable for the accomplishment of plans or programs prepared under subsection B of this section.

F. In addition to the preparation of plans called for in subsection A of this section, the Board, upon written request of a political subdivision of the Commonwealth, shall provide water supply planning assistance to such political subdivision, to include assistance in preparing drought management strategies, water conservation programs, evaluation of alternative water sources, state enabling legislation to facilitate a specific situation, applications for federal grants or permits, or other such planning activities to facilitate intergovernmental cooperation and coordination.

§ 62.1-44.39. Technical advice and information to be made available.

The Board may make available technical advice and information on water resources to any agency or political subdivision of this Commonwealth, any committee, association or person interested in the conservation or use of water resources, any interstate agency or any agency of the federal government, all for the purpose of assisting in the preparation or effectuation of any plan or program concerning the use or control of the water resources of this Commonwealth in harmony with the state water resources policy or otherwise with the public interest in encouraging, promoting and securing the maximum beneficial use and control of the water resources of this Commonwealth.

§ 62.1-44.40. Governor and General Assembly to be advised; annual report.

The Board shall submit an annual report to the Governor and the General Assembly on or before October 1 of each year on matters relating to the state's water resources policy and the status of the state's water resources, including ground water. The annual report shall be distributed in accordance with the provisions of § 2.1-467.

§ 62.1-44.41. Board authorized to speak and act for Commonwealth.

(1) In all matters directly related to conservation or use of the Commonwealth's water resources, except as otherwise provided by law, the Board is authorized to speak and act for the Commonwealth in all relations with the federal government or with the government of other states or with interstate agencies or authorities directly concerning conservation or use of the Commonwealth's water resources.

(2) In regard to such matters, the Board, or such person or state agency as may be designated by it, may appear and testify for the Commonwealth before any committee of the United States Congress or any branch or agency of the federal government or the legislature or any court or commission of any state.

§ 62.1-44.42. Cooperation with other agencies.

(1) In order to assist the Board in carrying out its functions as provided by law, the Board may:

(a) Call upon the other agencies and political subdivisions of this Commonwealth to furnish or make available to the Board information concerning the water resources of this Commonwealth which such state agencies or political subdivisions have acquired or may acquire in the performance of their functions.

(b) Cooperate with the other agencies or political subdivisions of the Commonwealth in utilizing the services, records and other facilities of such agencies or political subdivisions to the maximum extent practicable.

(2) All officers and employees of the Commonwealth or the political subdivisions of the Commonwealth shall cooperate with the Board in the discharge of its duties and in effectuating the water resources policy of the Commonwealth.

(3) Upon receipt and approval by the Board of a claim therefor, any special or extraordinary expense incurred by any other agency or political subdivision of this Commonwealth in cooperating with the Board under subsections (1) and (2) of this section shall be paid to such other agency or political subdivision of the Commonwealth.

§ 62.1-44.43. Additional powers of Board.

In addition to other powers conferred by the foregoing sections, the Board shall have the following powers:

(a) To administer all funds available to the Board for carrying out the purposes and duties prescribed in §§ 62.1-44.36 through 62.1-44.43;

(b) To disburse funds to any department, commission, board, agency, officer or institution of the Commonwealth, or any political subdivision thereof for carrying out such purposes but in the disbursement of such funds the Board shall have no power to include, require or consider membership or nonmembership in any group, organization or political entity of whatsoever nature, and any formula for such distribution; except to the extent as may be required for qualification for such federal funds as may be involved in such distribution;

(c) To apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from federal programs respecting or related to conservation or development of the Commonwealth's water and related land resources;

(d) To act either independently or jointly with any department, commission, board, agency, officer or institution of the Commonwealth or any political subdivision thereof in order to carry out the Board's powers and duties;

(e) To accept gifts, bequests and any other things to be used for carrying out its purposes, powers and duties.

§ 62.1-44.44. Construction of chapter.

(a) Nothing in this chapter shall be construed as superseding any provisions of Chapter 5 of Title 10.1, or as limiting or affecting any powers, duties or responsibilities conferred or imposed heretofore or hereafter on the Virginia Soil and Water Conservation Board.

(b) Nothing in this chapter shall be construed as altering, or as authorizing any alteration of, any existing riparian rights or other vested rights in water or water use.

Title 62.1 - Chapter Potomac River Riparian Rights Act

§ 62.1-44.113. Short title.

This chapter shall be known as the "Potomac River Riparian Rights Act."

§ 62.1-44.114. Use of Potomac River; riparian rights.

The Commonwealth and its citizens shall have the right to such use of the Potomac River as may be necessary to the full enjoyment of their riparian ownership as provided at common law and in § 7.1-7 of the Compact of 1785 with Maryland, and confirmed by the Black-Jenkins Determination of 1877 and Article VII, § 1 of § 28.1-203, cited as the Potomac River Compact of 1958.

§ 62.1-44.115. Review of uses by Water Control Board; report.

The State Water Control Board shall annually review the uses and development of the waters of the Potomac River, and make such report thereon as it deems advisable to the Governor and to the General Assembly, together with such recommendations as the Board feels are necessary for the protection and full enjoyment of Virginia's riparian rights in such river.

§ 62.1-44.116. Assistance by Board in riparian disputes.

In the event non-Virginia claimants question or seek to abridge the riparian use of the waters of the Potomac River by Virginia riparian owners, the State Water Control Board shall advise and assist such riparian owners in the proper exercise and protection of their rights, giving due consideration to the rights of others and to the wise use of the water, and the Board shall assist in the resolution of conflicts concerning such rights.

Title 62.1 - Chapter 8 - Impoundment of Surface Waters

§ 62.1-104. Definitions.

(1) Except as modified below, the definitions contained in Title 1 shall apply in this chapter.
(2) "Board" means the State Water Control Board.
(3) "Impounding structure" means a man-made device, whether a dam across a watercourse or other structure outside a watercourse, used or to be used for the authorized storage of flood waters for subsequent beneficial use.
(4) "Watercourse" means a natural channel having a well-defined bed and banks and in which water flows when it normally does flow. For the purposes hereof they shall be limited to rivers, creeks, streams, branches, and other watercourses which are nonnavigable in fact and which are wholly within the jurisdiction of the Commonwealth.
(5) "Riparian land" is land which is contiguous to and touches a watercourse. It does not include land outside the watershed of the watercourse. Real property under common ownership and which is not separated from riparian land by land of any other ownership shall likewise be deemed riparian land, notwithstanding that such real property is divided into tracts and parcels which may not bound upon the watercourse.
(6) "Riparian owner" is an owner of riparian land.
(7) "Average flow" means the average discharge of a stream at a particular point and normally is expressed in cubic feet per second. It may be determined from actual measurements or computed from the most accurate information available.
(8) "Diffused surface waters" are those which, resulting from precipitation, flow down across the surface of the land until they reach a watercourse, after which they become parts of streams.
(9) "Floodwaters" means water in a stream which is over and above the average flow.
(10) "Court" means the circuit court of the county or city in which an impoundment is located or proposed to be located.

§ 62.1-104.1.

Repealed by Acts 1982, c. 583.

§ 62.1-105. Impoundment of diffused surface waters.

Diffused surface waters may be captured and impounded by the owner of the land on which they are present and, when so impounded, become the property of that owner. Such impoundment shall not cause damage to others; however, the owner of land on which an impounding structure as defined in § 10.1-604 is to be located shall comply with the rules and regulations of the State Water Control Board.

§ 62.1-106. When floodwaters may be captured and stored by riparian owners.

Water in watercourses which is over and above the average flow of the stream may, upon approval, be

captured and stored by riparian owners for their later use under the following conditions:
(1) As a result of the capture and storage of such waters, there will be no damage to others.
(2) The title to the land on which the impounding structure and the impounded water will rest are in the person or persons requesting the authority.
(3) All costs incident to such impoundment, including devices above and below for indicating average flow, will be borne by the person or persons requesting the authority.
(4) For impoundments with a capacity of more than fifty acre-feet of storage all construction is approved by a licensed professional engineer. For those with capacities of fifty acre-feet, or less, of storage all construction will be approved by a licensed professional engineer or by some other competent person.
(5) Those requesting the authority will insure that the flow below the impoundment is equal to:
(a) At least the average flow when the flow immediately above the impounding structure is greater than the average flow, or
(b) At least the flow immediately above the impounding structure when that flow is equal to or less than the average flow.
(6) If needed, provision will be made in the impounding structure for an adequate spillway and for means of releasing water to maintain the required flow downstream.
(7) If for the purposes of irrigation, the quantity of water stored (exclusive of foreseeable losses) will not exceed that required for a period of twelve months to irrigate the cleared acreage owned by those participating in the undertaking and lying in the watershed of the stream from which the water is taken.
(8) All structures and equipment incident to such impoundment will be maintained in safe and serviceable condition by the owners and all parts thereof in a watercourse will be removed when no longer required for the purpose.
(9) Priority to the right to store floodwaters, as outlined, will go to upstream riparian owners.
(10) Those impounding floodwaters will, upon request, provide appropriate information concerning the impoundment to the State Water Control Board.

(11) The plans for an impounding structure as defined in § 10.1-604 have the approval of the State Water Control Board and conform to the rules and regulations promulgated by the Board.

§ 62.1-107. Application for leave to store floodwaters; notice to interested persons and to State Water Control Board.

Any riparian owner, or riparian owners, desiring to store floodwaters under the conditions specified in § 62.1-106 may apply for leave so to do to the circuit court of the county or city wherein the impounding structure is proposed to be built. Such application shall be made by petition filed in the clerk's office of the court. It shall set forth the name and address of the riparian owner, or owners, the purpose of the proposed impoundment, the desired storage capacity and the basis on which determined, the stream and the point on it from which floodwaters are proposed to be taken, the estimated cost of the project, and an agreement to abide by the provisions of § 62.1-106. It shall be accompanied by a plat or sketch of the riparian property which he or they own and on which is shown the site of the impounding structure and the area to be flooded by the impounded water. The plat or sketch shall include data sufficient to permit the location of the property on the official highway map of the county or a map of the city or town where appropriate. It shall also be accompanied by a plan of the proposed impounding structure on which appears the approval of the plan by a registered civil engineer or registered agricultural engineer, (or other competent person for storage capacities of fifty acre-feet or less) and agreement thereto by the riparian owner. All interested persons shall be given notice of such application by publication in accordance with §§ 8.01-316 and 8.01-317. A copy of the petition, together with a copy of the plat and a copy of the plan, shall be sent by registered mail to the State Water Control Board.

§ 62.1-108. Time and place of hearing on petition; parties.

Upon the filing of any such petition, the court or judge thereof in vacation shall set a time and place for hearing the same, which time and place shall be set forth in the order of publication. Any person affected may appear and be made a party to such proceeding by leave of court.

§ 62.1-109. Board to examine petition and report to court.

Upon receipt of a copy of any such petition the Board shall examine the same and report thereon to the court upon the following matters:
(1) The average flow of the stream at the point from which water for storage will be taken.
(2) Whether the proposed project conflicts with any other proposed or likely developments on the watershed.
(3) The effect of the proposed impoundment on pollution abatement to be evidenced by a certified statement together with such other relevant comments as the Board desires to make.
(4) Any other relevant matters which the Board desires to place before the court.

§ 62.1-110. Court to hear and determine issues; reference to commissioner.

The court, on the day specified in the order of publication, shall hear and determine the issues in the proceeding based on the report and other evidence. In its discretion the court may refer any matter to a commissioner in chancery to take such evidence as may be proper and to make a report to the court.

§ 62.1-111. When leave not granted; terms and conditions; appeals.

If, on the report and other evidence, it appears to the court that by granting such leave other riparian owners will be injured, or there are other justifiable reasons for denying the petition, the leave shall not be granted; provided that in no case shall leave be granted if the certified statement from the State Water Control Board filed under § 62.1-109 shows that, in the opinion of such Board, the reduction of pollution will be impaired or made more difficult. If it be granted, the court shall place the applicant under such terms and conditions as shall seem to it right. An appeal shall lie to the Court of Appeals.

§ 62.1-112. When leave shall expire.

If the applicant shall not begin his work within two years, and so far finish it within three years after such leave, as then to have his impounding structure in good condition for use; or if such impounding structure be at any time destroyed or rendered unfit for use and the rebuilding or repair thereof shall not within two years from the time of such destruction or unfitness, be commenced, and within five years from that time be so far finished as then to be in good condition for use, the leave so granted shall then expire.

§ 62.1-113. Use of bed of watercourse.

The Commonwealth hereby gives its consent to the use of the bed of any watercourse to which it has title for the construction of any impounding structure under the provisions of this chapter. No right to construct an impounding structure resting upon the bed of any other watercourse shall lie unless the owner or owners seeking to construct the same has title to the bed of such watercourse.

§ 62.1-114. Exceptions to application of chapter.

The provisions of this chapter shall not apply to any construction which should be undertaken under Chapter 7 (§ 62.1-80 et seq.) or 9 (§ 62.1-116 et seq.) of this title nor shall it apply in any case in which the consent of the federal government or of any agency or instrumentality thereof is required.

§ 62.1-115. Use of waters stored.

Any owner constructing an impounding structure under the provisions of this chapter shall have the sole and unrestricted use of the floodwaters thus stored for the purpose for which the storage was authorized.

Title 62.1 - Chapter 20 - Miscellaneous Offenses

§ 62.1-194. Casting garbage, etc., into waters.

Except as otherwise permitted by law, it shall be unlawful for any person to cast, throw or dump any garbage, refuse, dead animal, trash, carton, can, bottle, container, box, lumber, timber or like material, or other solid waste, except fish or crab bait in any form, into any of the waters of this Commonwealth. When a violation of any provision of this section has been observed by any person, and the matter dumped or disposed of in the waters of this Commonwealth has been ejected from a boat, the owner or operator of such boat shall be presumed to be the person ejecting such matter; provided, however, that such presumption shall be rebuttable by competent evidence. Every such act shall be a misdemeanor punishable by a fine not to exceed $100 or confinement in jail not to exceed thirty days, or both. Every law-enforcement officer of this Commonwealth and its subdivisions shall

have authority to enforce the provisions of this section.

§ 62.1-194.1. Obstructing or contaminating state waters.

Except as otherwise permitted by law, it shall be unlawful for any person to dump, place or put, or cause to be dumped, placed or put into, upon the banks of or into the channels of any state waters any object or substance, noxious or otherwise, which may reasonably be expected to endanger, obstruct, impede, contaminate or substantially impair the lawful use or enjoyment of such waters and their environs by others. Any person who violates any provision of this law shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than $100 nor more than $500 or by confinement in jail not more than twelve months or both such fine and imprisonment. Each day that any of said materials or substances so dumped, placed or put, or caused to be dumped, placed or put into, upon the banks of or into the channels of, said streams shall constitute a separate offense and be punished as such.

In addition to the foregoing penalties for violation of this law, the judge of the circuit court of the county or corporation court of the city wherein any such violation occurs, whether there be a criminal conviction therefor or not shall, upon a bill in equity, filed by the attorney for the Commonwealth of such county or by any person whose property is damaged or whose property is threatened with damage from any such violation, award an injunction enjoining any violation of this law by any person found by the court in such suit to have violated this law or causing the same to be violated, when made a party defendant to such suit.

§ 62.1-194.1:1.

Repealed by Acts 1992, c. 836.

§ 62.1-194.2. Throwing trash, etc., into or obstructing river, creek, stream or swamp.

It shall be unlawful for any person to throw or otherwise dispose of trash, debris, tree laps, logs, or fell timber or make or cause to be made any obstruction which exists for more than a week (excepting a lawfully constructed dam) in, under, over or across any river, creek, stream, or swamp, so as to obstruct the free passage of boats, canoes, or other floating vessels, or fish in such waters. The provisions of this section shall be enforceable by duly authorized state and local law-enforcement officials and by game wardens whose general police power under § 29.1-205 and forest wardens whose general police powers under § 10.1-1135 shall be deemed to include enforcement of the provisions of this section. Violations of this section shall be punishable as a misdemeanor under § 18.2-12; and each day for which any violation continues without removal of such obstruction, on and after the tenth day following service of process on the violator in accordance with § 19.2-75, shall constitute a separate offense punishable as a misdemeanor under § 18.2-12.

§ 62.1-194.3. Obstructing tributaries of Big Sandy River; dumping refuse, etc., into Big Sandy River or its tributaries.

(a) If any person place any dam or other obstruction in any tributary of Big Sandy River so as to prevent the free passage of timber, or any raft or boat, he shall be fined not less than $50 nor more than $500; and, upon conviction thereof, the court or judge of the county court shall order the dam or other obstruction to be removed at his expense.

(b) It shall also be unlawful for any person to dump, place or put, or cause to be dumped, placed, or put into, upon the banks of or into the channels of Big Sandy River or any of its tributaries, any dirt, stone, coal, slate, cinders, mine refuse, trees, timber, logs, garbage or any other material or substance so as to in anywise narrow, fill or restrict or partially narrow, fill or restrict the channels of said streams or impede the natural flow of the waters of said river or any of its tributaries or dump, place or put, or cause to be dumped, placed or put any dirt, stone, coal, slate, cinders, mine refuse, trees, timber, logs, garbage or any other material, or substance where the same does by natural rainfall or flow of water become washed or otherwise carried into, upon the banks of, or into the channels of, such river or any of its tributaries so as to in anywise narrow, fill or restrict or partially narrow, fill or restrict the channels of any of said streams or impede the natural flow of the waters thereof. Any person who violates any provision of this law shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than $100 nor more than $500 or by confinement in jail not more than twelve months or both such fine and imprisonment. Each day that any of said materials or substances so dumped, placed or put, or caused to be dumped, placed or put into or so allowed to be washed or otherwise so

carried into, upon the banks of or into the channels of, said streams shall constitute a separate offense and be punished as such.
(c) In addition to the foregoing penalties for violation of this law, the judge of the circuit court of the county wherein any such violation occurs, whether there be a criminal conviction therefor or not shall, upon a bill in equity, filed by the attorney for the Commonwealth of such county or by any person whose property is damaged or whose property is threatened with damage from any such violation, award an injunction enjoining any violation of this law by any person found by the court in such suit to have violated this law or causing the same to be violated, when made a party defendant to such suit.
(d) This section shall not be construed to restrict the construction or reconstruction of highways, or the construction or reconstruction of the right-of-way of any company subject to the Commonwealth Corporation Commission, or the maintenance thereof in either case, provided the channel thereafter continues to permit a flow of water in such stream at least as large as that prevailing theretofore, provided that if the channel above the point of such work be widened or deepened subsequently then such company may be required by the circuit court of the county on petition of any interested person to change its right-of-way where practicable so as to permit the increased flow of water.
§ 62.1-195.
Repealed by Acts 1990, c. 917.
§ 62.1-195.1. Chesapeake Bay; drilling for oil or gas prohibited.
A. Notwithstanding any other law, a person shall not drill for oil or gas in the waters of the Chesapeake Bay or any of its tributaries. In Tidewater Virginia, as defined in § 10.1-2101, a person shall not drill for oil or gas in, whichever is the greater distance, as measured landward of the shoreline:
1. Those Chesapeake Bay Preservation Areas, as defined in § 10.1-2101, which a local government designates as "Resource Protection Areas" and incorporates into its local comprehensive plan. "Resource Protection Areas" shall be defined according to the criteria developed by the Chesapeake Bay Local Assistance Board pursuant to § 10.1-2107; or
2. Five hundred feet from the shoreline of the waters of the Chesapeake Bay or any of its tributaries.
B. In the event that any person desires to drill for oil or gas in any area of Tidewater Virginia where drilling is not prohibited by the provisions of subsection A of this section, he shall submit to the Department of Mines, Minerals and Energy as part of his application for permit to drill an environmental impact assessment. The environmental impact assessment shall include:
1. The probabilities and consequences of accidental discharge of oil or gas into the environment during drilling, production, and transportation on:
a. Finfish, shellfish, and other marine or freshwater organisms;
b. Birds and other wildlife that use the air and water resources;
c. Air and water quality; and
d. Land and water resources;
2. Recommendations for minimizing any adverse economic, fiscal, or environmental impacts; and
3. An examination of the secondary environmental effects of induced economic development due to the drilling and production.
C. Upon receipt of an environmental impact assessment, the Department of Mines, Minerals and Energy shall notify the Department of Environmental Quality to coordinate a review of the environmental impact assessment. The Department of Environmental Quality shall:
1. Publish in the Virginia Register of Regulations a notice sufficient to identify the environmental impact assessment and providing an opportunity for public review of and comment on the assessment. The period for public review and comment shall not be less than thirty days from the date of publication;

2. Submit the environmental impact assessment to all appropriate state agencies to review the assessment and submit their comments to the Department of Environmental Quality; and
3. Based upon the review by all appropriate state agencies and the public comments received, submit findings and recommendations to the Department of Mines, Minerals and Energy, within ninety days after notification and receipt of the environmental impact assessment from the Department.
D. The Department of Mines, Minerals and Energy may not grant a permit under § 45.1-361.29 until it

has considered the findings and recommendations of the Department of Environmental Quality.
E. The Department of Environmental Quality shall, in conjunction with other state agencies and in conformance with the Administrative Process Act (§ 9-6.14:1 et seq.), develop criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments required by this section.
F. A person may drill an exploratory well or a gas well in any area of Tidewater Virginia where drilling is not prohibited by the provisions of subsection A of this section only if:
1. For directional drilling, the person has the permission of the owners of all lands to be directionally drilled into;
2. The person files an oil discharge contingency plan and proof of financial responsibility to implement the plan, both of which have been filed with and approved by the State Water Control Board. For purposes of this section, the oil discharge contingency plan shall comply with the requirements set forth in § 62.1-44.34:15. The Board's regulations governing the amount of any financial responsibility required shall take into account the type of operation, location of the well, the risk of discharge or accidental release, the potential damage or injury to state waters or sensitive natural resource features or the impairment of their beneficial use that may result from discharge or release, the potential cost of containment and cleanup, and the nature and degree of injury or interference with general health, welfare and property that may result from discharge or accidental release;
3. All land-disturbing activities resulting from the construction and operation of the permanent facilities necessary to implement the contingency plan and the area within the berm will be located outside of those areas described in subsection A of this section;
4. The drilling site is stabilized with boards or gravel or other materials which will result in minimal amounts of runoff;
5. Persons certified in blowout prevention are present at all times during drilling;
6. Conductor pipe is set as necessary from the surface;
7. Casing is set and pressure grouted from the surface to a point at least 2500 feet below the surface or 300 feet below the deepest known ground water, as defined in § 62.1-255, for a beneficial use, as defined in § 62.1-10, whichever is deeper;
8. Freshwater-based drilling mud is used during drilling;
9. There is no onsite disposal of drilling muds, produced contaminated fluids, waste contaminated fluids or other contaminated fluids;
10. Multiple blow-out preventers are employed; and

11. The person complies with all requirements of Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 and regulations promulgated thereunder.
G. The provisions of subsection A and subdivisions 1 and 4 through 9 of subsection F of this section shall be enforced consistent with the requirements of Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1.
H. In the event that exploration activities in Tidewater Virginia result in a finding by the Director of the Department of Mines, Minerals and Energy that production of commercially recoverable quantities of oil is likely and imminent, the Director of the Department of Mines, Minerals and Energy shall notify the Secretary of Commerce and Trade and the Secretary of Natural Resources. At that time, the Secretaries shall develop a joint report to the Governor and the General Assembly assessing the environmental risks and safeguards; transportation issues; state-of-the-art oil production well technology; economic impacts; regulatory initiatives; operational standards; and other matters related to the production of oil in the region. No permits for oil production wells shall be issued until (i) the Governor has had an opportunity to review the report and make recommendations, in the public interest, for legislative and regulatory changes, (ii) the General Assembly, during the next upcoming regular session, has acted on the Governor's recommendations or on its own initiatives, and (iii) any resulting legislation has become effective. The report by the Secretaries and the Governor's recommendations shall be completed within eighteen months of the findings of the Director of the Department of Mines, Minerals and Energy.
§ 62.1-195.2.
Expired.
§ 62.1-196.
Repealed by Acts 1987, c. 488.

§ 62.1-197. Short title.

This chapter shall be known and may be cited as the Virginia Resources Authority Act.

§ 62.1-198. Legislative findings and purposes.

The General Assembly finds that there exists in the Commonwealth a critical need for additional sources of funding to finance the present and future needs of the Commonwealth for water supply, wastewater treatment facilities, drainage facilities, solid waste treatment, disposal and management facilities, recycling facilities, resource recovery facilities, professional sports facilities, certain heavy rail transportation facilities, public safety facilities, and the remediation of brownfields and contaminated properties. This need can be alleviated in part through the creation of a resources authority. Its purpose is to encourage the investment of both public and private funds and to make loans, grants, and credit enhancements available to local governments to finance water and sewer projects, drainage projects, solid waste treatment, disposal and management projects, recycling projects, professional sports facilities, resource recovery projects, public safety facilities, and the remediation of brownfields and contaminated properties. The General Assembly determines that the creation of an authority for this purpose is in the public interest, serves a public purpose and will promote the health, safety, welfare, convenience or prosperity of the people of the Commonwealth.

§ 62.1-199. Definitions.

As used in this chapter, unless a different meaning clearly appears from the context:

"Authority" means the Virginia Resources Authority created by this chapter.

"Board of Directors" means the Board of Directors of the Authority.

"Bonds" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, lease and sale-leaseback transactions or any other evidences of indebtedness of the Authority.

"Capital Reserve Fund" means the reserve fund created and established by the Authority in accordance with § 62.1-215.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment, the reasonable costs of financing incurred by the local government in the course of the development of the project, including the cost of any credit enhancements, carrying charges incurred before placing the project in service, interest on local obligations issued to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, the funding of accounts and reserves which the Authority may require and the cost of other items which the Authority determines to be reasonable and necessary. It also includes the amount of any contribution, grant or aid which a local government may make or give to any adjoining state, the District of Columbia or any department, agency or instrumentality thereof to pay the costs incident and necessary to the accomplishment of any project, including, without limitation, the items set forth above.

"Credit enhancements" means surety bonds, insurance policies, letters of credit, guarantees and other forms of collateral or security.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision created by the General Assembly or pursuant to the Constitution and laws of the Commonwealth or any combination of any two or more of the foregoing.

"Local obligations" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, leases or any other evidences of indebtedness of a local government.

"Minimum capital reserve fund requirement" means, as of any particular date of computation, the amount of money designated as the minimum capital reserve fund requirement which may be established in the resolution of the Authority authorizing the issuance of, or the trust indenture securing, any outstanding issue of bonds or credit enhancement.

"Project" means any water supply or wastewater treatment facility including a facility for receiving and stabilizing septage or a soil drainage management facility and any solid waste treatment, disposal, or management facility, recycling facility, or resource recovery facility located or to be located in the Commonwealth, the District of Columbia or any adjoining state, all or part of which facility serves or is to serve any local government. The term includes, without limitation, water supply and intake facilities; water treatment and filtration facilities; water storage facilities; water distribution facilities; sewage and wastewater (including surface and ground water) collection, treatment and disposal facilities; drainage facilities and projects; solid waste treatment, disposal or management facilities; recycling facilities; resource recovery facilities; related office, administrative, storage, maintenance and laboratory facilities; and interests in land related thereto. The term also means any heavy rail transportation facilities operated by a transportation district, created under the Transportation District Act of 1964 (§ 15.2-4500 et seq.), which operates heavy rail freight service, including rolling stock, barge loading facilities, and any related marine or rail equipment. In addition, the term means any project as defined in § 5.1-30.1 and any professional sports facility, including a major league baseball stadium as defined in § 15.2-5800, provided that the specific professional sports facility projects have been designated by General Assembly as eligible for assistance from the Authority. The term also means facilities supporting, related to, or otherwise used for public safety including, but not limited to, law-enforcement training facilities and emergency response, fire, rescue and police stations. The term also means the remediation, redevelopment and rehabilitation of property contaminated by the release of hazardous substances, hazardous wastes, solid wastes or petroleum where such remediation has not clearly been mandated by the United States Environmental Protection Agency, the Department of Environmental Quality, or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or other applicable statutory or common law or where jurisdiction of those statues has been waived.

§ 62.1-200. Creation of Authority.

The Virginia Resources Authority is created, with the duties and powers set forth in this chapter, as a public body corporate and as a political subdivision of the Commonwealth. The exercise by the Authority of the duties and powers conferred by this chapter shall be deemed to be the performance of an essential governmental function of the Commonwealth.

§ 62.1-201. Board of Directors.

A. All powers, rights and duties conferred by this chapter or other provisions of law upon the Authority shall be exercised by a board of directors consisting of the State Treasurer, the State Health Commissioner, the Director of the Department of Environmental Quality or his designee, the Director of the Department of Aviation or his designee, and seven members appointed by the Governor, subject to confirmation by the General Assembly. The members of the Board of Directors appointed by the Governor shall serve terms of four years each, except that the original terms of three members appointed by the Governor shall end on June 30, 1985, 1986, and 1987, respectively, as designated by the Governor. Any appointment to fill a vacancy on the Board of Directors shall be made for the unexpired term of the member whose death, resignation or removal created the vacancy. All members of the Board of Directors shall be residents of the Commonwealth. Members may be appointed to successive terms on the Board of Directors. Each member of the Board of Directors shall be reimbursed for his or her reasonable expenses incurred in attendance at meetings or when otherwise engaged in the business of the Authority and shall be compensated at the rate provided in § 2.1-20.3 for each day or portion thereof in which the

member is engaged in the business of the Authority.

B. The Governor shall designate one member of the Board of Directors as chairman; he shall be the chief executive officer of the Authority. The Board of Directors may elect one member as vice-chairman; he shall exercise the powers of chairman in the absence of the chairman or as directed by the chairman. The State Treasurer, the Director of the Department of Environmental Quality or his designee, the Director of the Department of Aviation or his designee, and the State Health Commissioner shall not be eligible to serve as chairman or vice-chairman.

C. Meetings of the Board of Directors shall be held at the call of the chairman or of any five members. Six members of the Board of Directors shall constitute a quorum for the transaction of the business of the Authority. An act of the majority of the members of the Board of Directors present at any regular or special meeting at which a quorum is present shall be an act of the Board of Directors. No vacancy on the Board of Directors shall impair the right of a majority of a quorum of the members of the Board of Directors to exercise all the rights and perform all the duties of the Authority.

D. Notwithstanding the provisions of any other law, no officer or employee of the Commonwealth shall be deemed to have forfeited or shall have forfeited his or her office or employment by reason of acceptance of membership on the Board of Directors or by providing service to the Authority.

§ 62.1-202. Appointment and duties of Executive Director.

The Governor shall appoint an Executive Director of the Authority, who shall report to, but not be a member of, the Board of Directors. The Executive Director shall serve as the ex officio secretary of the Board of Directors and shall administer, manage and direct the affairs and activities of the Authority in accordance with the policies and under the control and direction of the Board of Directors. He shall attend meetings of the Board of Directors, shall keep a record of the proceedings of the Board of Directors and shall maintain and be custodian of all books, documents and papers of the Authority, the minute book of the Authority and its official seal. He may cause copies to be made of all minutes and other records and documents of the Authority and may give certificates under seal of the Authority to the effect that the copies are true copies, and all persons dealing with the Authority may rely upon the certificates. He shall also perform other duties as instructed by the Board of Directors in carrying out the purposes of this chapter. He shall execute a surety bond in a penalty sum determined by the Board of Directors. The surety bond shall be executed by a surety company authorized to transact business in the Commonwealth and shall be conditioned upon the faithful performance of the duties of the office.

§ 62.1-203. Powers of Authority.

The Authority is granted all powers necessary or appropriate to carry out and to effectuate its purposes, including the following:

1. To have perpetual succession as a public body corporate and as a political subdivision of the Commonwealth;

2. To adopt, amend and repeal bylaws, and rules and regulations, not inconsistent with this chapter for the administration and regulation of its affairs and to carry into effect the powers and purposes of the Authority and the conduct of its business;

3. To sue and be sued in its own name;

4. To have an official seal and alter it at will although the failure to affix this seal shall not affect the validity of any instrument executed on behalf of the Authority;

5. To maintain an office at any place within the Commonwealth which it designates;

6. To make and execute contracts and all other instruments and agreements necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter;

7. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its properties and assets;

8. To employ officers, employees, agents, advisers and consultants, including without limitations, attorneys, financial advisers, engineers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality;

9. To procure insurance, in amounts and from insurers of its choice, or provide self-insurance,

against any loss, cost, or expense in connection with its property, assets or activities, including insurance or self-insurance against liability for its acts or the acts of its directors, employees or agents and for the indemnification of the members of its Board of Directors and its employees and agents;
10. To procure credit enhancements from any public or private entities, including any department, agency or instrumentality of the United States of America or the Commonwealth, for the payment of any bonds issued by the Authority, including the power to pay premiums or fees on any such credit enhancements;
11. To receive and accept from any source aid, grants and contributions of money, property, labor or other things of value to be held, used and applied to carry out the purposes of this chapter subject to the conditions upon which the aid, grants or contributions are made;
12. To enter into agreements with any department, agency or instrumentality of the United States of America or, the Commonwealth, the District of Columbia or any adjoining state for the purpose of planning, regulating and providing for the financing of any projects;
13. To collect, or to authorize the trustee under any trust indenture securing any bonds or any other fiduciary to collect, amounts due under any local obligations owned or credit enhanced by the Authority, including taking the action required by § 15.2-2659 or § 62.1-217 to obtain payment of any sums in default;
14. To enter into contracts or agreements for the servicing and processing of local obligations owned by the Authority;
15. To invest or reinvest its funds as provided in this chapter or permitted by applicable law;
16. Unless restricted under any agreement with holders of bonds, to consent to any modification with respect to the rate of interest, time and payment of any installment of principal or interest, or any other term of any local obligations owned by the Authority;
17. To establish and revise, amend and repeal, and to charge and collect, fees and charges in connection with any activities or services of the Authority;
18. To do any act necessary or convenient to the exercise of the powers granted or reasonably implied by this chapter; and
19. To pledge as security for the payment of any or all bonds of the Authority, all or any part of the Capital Reserve Fund transferred to a trustee for such purpose from the Water Facilities Revolving Fund pursuant to § 62.1-231 or from the Water Supply Revolving Fund pursuant to § 62.1-240 or from the Virginia Solid Waste or Recycling Revolving Fund pursuant to § 62.1-241.9 or from the Virginia Airports Revolving Fund pursuant to § 5.1-30.6.

§ 62.1-204. Power to borrow money and issue bonds and credit enhancements.

The Authority shall have the power to borrow money and issue its bonds in amounts the Authority determines to be necessary or convenient to provide funds to carry out its purposes and powers and to pay all costs and expenses incurred in connection with the issuance of bonds. The Authority shall also have the power to issue credit enhancements with respect to local obligations issued to finance or refinance the cost of any project. The total outstanding aggregate principal amount of bonds issued by the Authority and local obligations guaranteed by the Authority pursuant to credit enhancements, that in either case are secured by a capital reserve fund pursuant to the provisions of § 62.1-215, shall not exceed the sum of $900 million without prior approval of the General Assembly.

Notwithstanding the foregoing, the Authority shall not exceed the sum of eight million dollars in the total principal amount of bonds outstanding at any one time for the purpose of financing any heavy rail transportation facilities.

§ 62.1-205. Power to issue refunding bonds.

The Authority shall have the power: (i) to issue bonds to renew or to pay bonds, including the interest, (ii) whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and (iii) to issue bonds partly to refund bonds then outstanding and partly for its corporate purposes. The refunding bonds may be exchanged for the bonds to be refunded or they may be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded. The amount of the bonds issued by the Authority and refunded with proceeds of refunding bonds issued hereunder shall not be included in the

total of outstanding bonds for purposes of the limit on the amount of bonds issued by the Authority as provided in § 62.1-204.

§ 62.1-206. Sources of payment and security for bonds and credit enhancements.

The Authority shall have the power to pledge any revenue or funds of or under the control of the Authority to the payment of its bonds and credit enhancements, subject only to any prior agreements with the holders of particular bonds or the beneficiaries of particular credit enhancements pledging money or revenue. Bonds or credit enhancements issued by the Authority may be secured by a pledge of any local obligation owned by the Authority, any grant, contribution or guaranty from the United States of America, the Commonwealth or any corporation, association, institution or person, any other property or assets of or under the control of the Authority, or a pledge of any money, income or revenue of the Authority from any source.

§ 62.1-207. Liability of Commonwealth, political subdivisions and members of board of directors.

No bonds or credit enhancements issued by the Authority under this chapter shall constitute a debt or a pledge of the faith and credit of the Commonwealth, or any political subdivision thereof other than the Authority, but shall be payable solely from the revenue, money or property of the Authority as provided for in this chapter. No member of the board of directors or officer, employee or agent of the Authority or any person executing bonds or credit enhancements of the Authority shall be liable personally on the bonds or credit enhancements by reason of their issuance or execution. Each bond or credit enhancement issued under this chapter shall contain on its face a statement to the effect (i) that neither the Commonwealth, nor any political subdivision thereof, nor the Authority shall be obligated to pay the principal of, or interest or premium on, the bond or credit enhancement or other costs incident to the bond or credit enhancement except from the revenue, money or property of the Authority pledged and (ii) that neither the faith and credit nor the taxing power of the Commonwealth, or any political subdivision thereof, is pledged to the payment of the principal of or interests or premium on the bond or credit enhancement.

§ 62.1-208. Authorization, content and sale of bonds and credit enhancements.

A. The bonds and credit enhancements of the Authority shall be authorized by a resolution of the Board of Directors.

B. The bonds shall bear the date or dates and mature at the time or times that the resolution provides, except that no bond shall mature more than fifty years from its date of issue. The bonds may be in the denominations, be executed in the manner, be payable in the medium of payment, be payable at the place or places and at the time or times, and be subject to redemption or repurchase and contain such other provisions as may be determined by the Authority prior to their issuance. The bonds may bear interest payable at such time or times and at such rate or rates as determined by the Authority or as determined in such manner as the Authority may provide, including the determination by agents designated by the Authority under guidelines established by it. Bonds may be sold by the Authority at public or private sale at the price or prices that the Authority determines and approves.

C. The Authority may bring action pursuant to Article 6 (§ 15.2-2650 et seq.) of Chapter 26 of Title 15.2 to determine the validity of any issuance or proposed issuance of its bonds or credit enhancements under this chapter and the legality and validity of all proceedings previously taken, or proposed in a resolution of the Authority to be taken, for the authorization, issuance, sale and delivery of bonds or credit enhancements and for the payment of the principal of and premium, if any, and interest on bonds or payments of amounts due under credit enhancements of the Authority.

§ 62.1-209. Provisions of resolution or trust indenture authorizing issuance of bonds.

A. Bonds may be secured by a trust indenture between the Authority and a corporate trustee, which may be any bank having the power of a trust company or any trust company within or without the Commonwealth. A trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the exercise of its powers and the custody, safekeeping and application of all

money. The Authority may provide by the trust indenture for the payment of the proceeds of the bonds and all or any part of the revenues of the Authority to the trustee under the trust indenture or to some other depository, and for the method of their disbursement with whatever safeguards and restrictions as the Authority specifies. All expenses incurred in carrying out the trust indenture may be treated as part of the operating expenses of the Authority.

B. Any resolution or trust indenture pursuant to which bonds are issued may contain provisions, which shall be part of the contract or contracts with the holders of such bonds as to:

1. Pledging all or any part of the revenue of the Authority to secure the payment of the bonds, subject to any agreements with bondholders that then exist;

2. Pledging all or any part of the assets of, or funds under control of the Authority, including local obligations owned by the Authority, to secure the payment of the bonds, subject to any agreements with bondholders that then exist;

3. The use and disposition of the gross income from, and payment of the principal of and premium, if any, and interest on local obligations owned by the Authority;

4. The establishment of reserves, sinking funds and other funds and accounts and the regulation and disposition thereof;

5. Limitations on the purposes to which the proceeds from the sale of the bonds may be applied, and limitations pledging the proceeds to secure the payment of the bonds;

6. Limitations on the issuance of additional bonds, the terms on which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

7. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds, if any, the holders of which must consent thereto, and the manner in which any consent may be given;

8. Limitations on the amount of money to be expended by the Authority for operating expenses of the Authority;

9. Vesting in a trustee or trustees any property, rights, powers and duties in trust that the Authority may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limit the rights, powers and duties of the trustees;

10. Defining the acts or omissions which shall constitute a default, the obligations or duties of the Authority to the holders of the bonds, and the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver; these rights and remedies may include the general laws of the Commonwealth and other provisions of this chapter;

11. Requiring the Authority or the trustees under the trust indenture to file a petition with the Governor and to take any and all other actions required under § 15.2-2659 or § 62.1-217 to obtain payment of all sums necessary to cover any default as to any principal of and premium, if any, and interest on local obligations owned by the Authority or held by a trustee to which § 15.2-2659 or § 62.1-217 shall be applicable; and

12. Any other matter, of like or different character, relating to the terms of the bonds or the security or protection of the holders of the bonds.

§ 62.1-210. Pledge by Authority.

Any pledge made by the Authority shall be valid and binding from the time when the pledge is made. The revenue, money or property so pledged and thereafter received by the Authority shall immediately be subject to the lien of such a pledge without any physical delivery thereof or further act. Furthermore, the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether the parties have notice of the pledge. No recording or filing of the resolution authorizing the issuance of bonds or credit enhancements, the trust indenture securing bonds or any other instrument, including filings under Title 8.9 (§ 8.9-101 et seq.) of the Uniform Commercial Code of Virginia, shall be necessary to create or perfect any pledge or security interest granted by the Authority to secure any bonds or credit enhancements.

§ 62.1-211. Purchase of bonds by Authority.

The Authority, subject to such agreements with bondholders as may then exist, shall have the power to purchase bonds of the Authority out of any available funds, at any reasonable price. If the bonds are then redeemable, this price shall not exceed the redemption price then applicable

plus accrued interest to the next interest payment date.

§ 62.1-212. Bonds as negotiable instruments.

Whether or not in form and character of negotiable instruments, the bonds of the Authority are hereby made negotiable instruments, subject only to provisions of the bonds relating to registration.

§ 62.1-213. Validity of signatures of prior members or officers.

In the event that any of the members of the board of directors or any officers of the Authority cease to be members or officers before the delivery of any bonds or credit enhancements signed by them, their signatures or authorized substitute signatures shall nevertheless be valid and sufficient for all purposes as if the members or officers had remained in office until delivery.

§ 62.1-214. Bondholder protection.

Subsequent amendments to this chapter shall not limit the rights vested in the Authority with respect to any agreements made with, or remedies available to, the holders of bonds or the beneficiaries of credit enhancements issued under this chapter before the enactment of the amendments until the bonds, together with all premium and interest thereon, and the credit enhancements, and all costs and expenses in connection with any proceeding by or on behalf of the holders or the beneficiaries, are fully met and discharged.

§ 62.1-215. Establishment of capital reserve funds.

A. 1. The Authority may create and establish one or more capital reserve funds and may pay into each capital reserve fund (i) any moneys appropriated and made available by the Commonwealth for the purpose of such a fund, (ii) any proceeds of the sale of bonds of the Authority, to the extent provided in the resolution authorizing the issuance of, or the trust indenture securing, the bonds, and (iii) any other moneys which may be made available to the Authority for the purpose of such a fund from any other source. All moneys held in any capital reserve fund, except as hereinafter provided, shall be used solely for the payment when due of the principal of and premium, if any, and interest on the bonds or obligations under credit enhancements issued by the Authority secured in whole or in part by such a fund. If, however, moneys in any such fund are ever less than the minimum capital reserve fund requirement established for the fund, the Authority shall not use the moneys for any optional purchase or redemption of bonds. Any income or interest earned on, or increment to, any capital reserve fund due to its investment may be transferred by the Authority to other funds or accounts of the Authority to the extent it does not reduce the amount of the capital reserve fund below its minimal requirement.

2. The Authority shall not at any time issue bonds or credit enhancements secured in whole or in part by any capital reserve fund, if upon the issuance of the bonds or credit enhancements, the amount in the capital reserve fund will be less than its minimal requirement unless the Authority, at the time of issuance of the bonds or credit enhancements, deposits in the fund an amount which, together with the amount then in the fund, will not be less than the fund's minimal capital reserve requirement.

B. In order to assure further the maintenance of capital reserve funds, the chairman of the Authority shall annually, on or before December 1, make and deliver to the Governor and the Secretary of Administration a certificate stating the sum, if any, required to restore each capital reserve fund to its minimal requirement. Within five days after the beginning of each session of the General Assembly, the Governor shall submit to the presiding officer of each House of the General Assembly printed copies of a budget including the sum, if any, required to restore each capital reserve fund to its minimal requirement. All sums, if any, which may be appropriated by the General Assembly for any restoration and paid to the Authority shall be deposited by the Authority in the applicable capital reserve fund. All amounts paid to the Authority by the Commonwealth pursuant to the provisions of this section shall constitute and be accounted for as advances by the Commonwealth to the Authority and, subject to the rights of the holders of any bonds of the Authority or the beneficiaries of credit enhancements of the Authority, shall be repaid to the Commonwealth without interest from available operating revenues of the Authority in excess of amounts required for the payment of bonds, credit enhancements or other obligations of the Authority, the maintenance of capital

reserve funds, and operating expenses. In addition, no bonds issued by the Authority to finance a professional sports facility shall be secured by a capital reserve fund.

C. The Authority may create and establish other funds as necessary or desirable for its corporate purposes.

D. Nothing in this section shall be construed as limiting the power of the Authority to issue bonds or credit enhancements not secured by a capital reserve fund.

§ 62.1-216. Purchase and credit enhancements of local obligations.

The Authority shall have the power and authority, with any funds of the Authority available for such a purpose, to purchase and acquire, on terms which the Authority determines, local obligations to finance or refinance the cost of any project. The Authority may pledge to the payment of any bonds all or any portion of the local obligations so purchased. The Authority may also, subject to any such pledge, sell any local obligations so purchased and apply the proceeds of such a sale to the purchase of other local obligations for financing or refinancing the cost of any project or for any other corporate purpose of the Authority.

The Authority shall also have the power and authority to issue credit enhancements, on terms which the Authority determines, to credit enhance local obligations issued to finance or refinance the cost of any project.

The Authority may require, as a condition to the purchase or credit enhancement of any local obligations, that the local government issuing the local obligations covenant to perform any of the following:

A. Establish and collect rents, rates, fees and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of and premium, if any, and interest on the local obligations; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees or charges;

B. Create and maintain a special fund or funds for the payment of the principal of and premium, if any, and interest on the local obligations and any other amounts becoming due under any agreement entered into in connection with the local obligations, or for the operation, maintenance, repair or replacement of the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments as they become due and payable;

C. Create and maintain other special funds as required by the Authority; and

D. Perform other acts, including the conveyance of real and personal property together with all right, title and interest therein to the Authority, or take other actions as may be deemed necessary or desirable by the Authority to secure payment of the principal of and premium, if any, and interest on the local obligations or obligations to the Authority with respect to any credit enhancement and to provide for the remedies of the Authority or other holder of the local obligations in the event of any default by the local government in the payment, including, without limitation, any of the following:

1. The procurement of credit enhancements or liquidity arrangements for local obligations from any source, public or private, and the payment therefor of premiums, fees or other charges.

2. The payment of the allocable shares of the local governments, as determined by the Authority, of any costs, fees, charges or expenses attributable to liquidity arrangements incurred in connection with the issuance of bonds by the Authority to acquire local obligations of one or more local governments. The determination of such allocable shares may be made by the Authority on any reasonable basis.

3. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities and systems to secure local obligations issued in connection with such combination or any part or parts thereof.

4. The payment of the allocable shares of the local governments, as determined by the Authority on any reasonable basis, of rate

stabilization funds established or required by the Authority in connection with the issuance of bonds by the Authority to acquire or provide credit enhancement for local obligations of two or more local governments.

All local governments issuing and selling local obligations to the Authority or to be credit enhanced by the Authority are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts with the Authority that are contemplated by this chapter. Such contracts need not be identical among all participants in financings of the Authority, but may be structured as determined by the Authority according to the needs of the contracting local governments and the Authority.

§ 62.1-216.1. Investigation by Governor of alleged defaults; withholding state funds from defaulting locality; payment of funds withheld; receipts, reports, etc.

Whenever it appears to the Governor from an affidavit filed with him by or on behalf of the Authority as the holder or credit enhancer of local obligations (regardless of the security therefor) issued by any county, city or town that the county, city or town has defaulted in its payment of the principal of or premium, if any, or interest on any of its outstanding local obligations held or credit enhanced by the Authority, the Governor shall immediately make a summary investigation into the facts set forth in the affidavit. The Authority may, but shall not be required to, file such an affidavit unless the Authority has otherwise contracted to make such filing for the benefit of the holders of any of its bonds or the local obligations credit enhanced by it.

If it is established to the satisfaction of the Governor that the county, city or town is in default in the payment of such local obligations or the interest on them, the Governor shall immediately make an order directing the Comptroller to withhold all further payment to the county, city or town of all funds, or of any part of them, appropriated and payable by the Commonwealth to the county, city or town for any and all purposes, until the default is cured. The Governor shall, while the default continues, direct in writing the payment of all sums withheld by the Comptroller, or as much of them as is necessary, to the Authority, so as to cure, or cure insofar as possible, the default as to the local obligations or interest on them.

The Governor shall, as soon as practicable, give notice of the default and of the availability of funds with the Comptroller in writing to the Authority. Any payment so made by the Comptroller to the Authority shall be credited as if made directly by the county, city or town and shall be charged by the Comptroller against the first appropriations otherwise payable to the county, city or town as if paid to the county, city or town. The Authority, at the time of payment or at the time of each payment shall receipt for the payment and deliver to the Comptroller all local obligations or other instruments or documents, in a form satisfactory to the Comptroller, evidencing the Authority's right to receive the amounts satisfied by the payment. The Comptroller shall report each payment made to the governing body of the defaulting county, city or town and deliver or send by registered mail to the governing body all local obligations, or other instruments or documents received by the Comptroller under the provisions of this section.

Nothing in this section shall be construed to create any obligation on the part of the Comptroller or the Commonwealth to make any payment on behalf of the defaulting county, city or town other than from funds appropriated and payable to the defaulting county, city or town.

§ 62.1-217. Grants from Commonwealth.

The Commonwealth may make grants of money or property to the Authority for the purpose of enabling it to carry out its corporate purposes and for the exercise of its powers, including deposits to the capital reserve funds. This section shall not be construed to limit any other power the Commonwealth may have to make grants to the Authority.

§ 62.1-218. Grants to local governments.

The Authority shall have the power and authority, with any funds of the Authority available for this purpose, to make grants to local governments. In determining which local governments are to receive grants, the Department of Environmental Quality, the Department of Health, and the Virginia Waste Management Board shall assist the Authority in determining needs for wastewater treatment facilities, water supply facilities, solid waste treatment, disposal or management facilities, or

recycling facilities, and the method and form of such grants.

§ 62.1-219. Exemption from taxation.

As set forth in § 62.1-200, the Authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter. Accordingly, the Authority shall not be required to pay any taxes or assessments upon any project or any property or upon any operations of the Authority or the income therefrom, or any taxes or assessments upon any project or any property or local obligation acquired, credit enhanced or used by the Authority under the provisions of this chapter or upon the income therefrom. Any bonds and credit enhancements issued by the Authority under the provisions of this chapter, the transfer thereof and the income therefrom, including any profit on the sale thereof, shall at all times be free from taxation and assessment of every kind by the Commonwealth and by the local governments and other political subdivisions of the Commonwealth.

§ 62.1-220. Bonds as legal investments and securities.

The bonds issued by the Authority in accordance with the provisions of this chapter are declared to be legal investments in which all public officers or public bodies of the Commonwealth, its political subdivisions, all municipalities and municipal subdivisions; all insurance companies and associations and other persons carrying on insurance business; all banks, bankers, banking associations, trust companies, savings banks, savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees and other fiduciaries; and all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the Commonwealth, may invest funds, including capital, in their control or belonging to them. The bonds of the Authority are also hereby made securities which may be deposited with and received by all public officers and bodies of the Commonwealth or any agency or political subdivision of the Commonwealth and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may be later authorized by law.

§ 62.1-221. Deposit of money; expenditures; security for deposits.

A. All money of the Authority, except as otherwise authorized by law or provided in this chapter, shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check signed by the Executive Director or other officers or employees and designated by the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies and savings institutions are authorized to give security for the deposits.

B. Notwithstanding the provisions of subsection A the Authority shall have the power to contract with the holders of any of its bonds as to the custody, collection, securing, investment and payment of any money of the Authority and of any money held in trust or otherwise for the payment of bonds and to carry out such a contract. Money held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of money may be secured in the same manner as money of the Authority, and all banks and trust companies are authorized to give security for the deposits.

C. Subject to the provisions of subsection B hereof, funds of the Authority not needed for immediate use or disbursement, including any funds held in reserve, may be invested in (i) obligations or securities which are considered lawful investments for fiduciaries, both individual and corporate, as set forth in § 26-40, (ii) bankers' acceptances, or (iii) repurchase agreements, reverse repurchase agreements, rate guarantee or investment agreements or other similar banking arrangements.

D. Whenever investments are made in accordance with this section, no director, officer or employee of the Authority shall be liable for any loss therefrom in the absence of negligence, malfeasance, misfeasance or nonfeasance on his part.

§ 62.1-222. Annual reports; audit.

The Authority shall, following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor. The Clerk of each House of the General Assembly may receive a copy of the report by making a request for it to the chairman of the Authority. Each report shall set forth a complete operating and financial statement for the Authority during the fiscal year it covers. An independent certified public accountant or the Auditor of Public Accounts shall perform an audit of the books and accounts of the Authority at least once in each fiscal year.

§ 62.1-223. Liberal construction of chapter.

The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may be effectuated. No proceedings, notice or approval shall be required for the issuance of any bonds of the Authority or any instruments or the security thereof, except as provided in this chapter. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special or local, the provisions of this chapter shall be controlling.

Title 62.1 - Chapter 22 - Virginia Water Facilities Revolving Fund

§ 62.1-224. Definitions.

As used in this chapter, unless a different meaning clearly appears from the context:

"Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq.) of Title 62.1.

"Board" means the State Water Control Board.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment, the reasonable costs of financing incurred in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, the funding of accounts and reserves which the Authority may require and the cost of other items which the Authority determines to be reasonable and necessary.

"Fund" means the Virginia Water Facilities Revolving Fund created by this chapter.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision created by the General Assembly or pursuant to the Constitution or laws of the Commonwealth or any combination of any two or more of the foregoing. The term "local government" includes any authority, commission, district, sanitary board or governmental entity issuing bonds on behalf of an authority, commission, district or sanitary board of an adjoining state that operates a wastewater treatment facility located in Virginia.

"Other entities" means owners of private wastewater treatment facilities.

"Project" means any small water facility project as defined in § 62.1-229 and any wastewater treatment facility located or to be located in the Commonwealth, all or part of which facility serves the citizens of the Commonwealth. The term includes, without limitation, sewage and wastewater (including surface and ground water) collection, treatment and disposal facilities; drainage facilities and projects; related office, administrative, storage, maintenance and laboratory facilities; and interests in land related thereto.

§ 62.1-225. Creation and management of Fund.

There shall be set apart as a permanent and perpetual fund, to be known as the "Virginia Water Facilities Revolving Fund," sums appropriated to the Fund by the General Assembly, sums allocated to the Commonwealth expressly for the purposes of establishing a revolving fund concept through the Clean Water Act (33 U.S.C. § 1251 et seq.), as amended from time to time, all receipts by the Fund from loans made by it to local governments or other entities

as permitted by federal law, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source public or private. The Fund shall be administered and managed by the Authority as prescribed in this chapter, subject to the right of the Board, following consultation with the Authority, to direct the distribution of loans or grants from the Fund to particular local governments or other entities and to establish the interest rates and repayment terms of such loans as provided in this chapter. In order to carry out the administration and management of the Fund, the Authority is granted the power to employ officers, employees, agents, advisers and consultants, including, without limitation, attorneys, financial advisers, engineers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality. The Authority may disburse from the Fund its reasonable costs and expenses incurred in the administration and management of the Fund and a reasonable fee to be approved by the Board for its management services.

§ 62.1-226. Deposit of money; expenditures; investments.

All money belonging to the Fund shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check signed by the Executive Director of the Authority or other officers or employees designated by the Board of Directors of the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies and savings institutions are authorized to give security for the deposits. Money in the Fund shall not be commingled with other money of the Authority. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the Authority in obligations or securities which are considered lawful investments for public funds under the laws of the Commonwealth.

§ 62.1-227. Annual audit.

The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the accounts of the Authority, and the cost of such audit services as shall be required shall be borne by the Authority. The audit shall be performed at least each fiscal year, in accordance with generally accepted auditing standards and, accordingly, include such tests of the accounting records and such auditing procedures as considered necessary under the circumstances. The Authority shall furnish copies of such audit to the Governor and to the Board.

§ 62.1-228. Collection of money due Fund.

The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund under any loan to a local government or other entity, including, if appropriate, taking the action required by § 15.2-2659 to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.

§ 62.1-229. Loans to local governments or other entities.

Except as otherwise provided in this chapter, money in the Fund shall be used solely to make loans to local governments or other entities as permitted by federal law to finance or refinance the cost of any project. The local governments or other entities to which loans are to be made, the purposes of the loan, the amount of each such loan, the interest rate thereon and the repayment terms thereof, which may vary between loan recipients, shall be designated in writing by the Board to the Authority following consultation with the Authority. No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses. Loans may also be made from the Fund, in the Board's discretion, to a local government which has developed a low-interest loan program to provide loans or other incentives to facilitate the correction of onsite sewage disposal problems (small water facility projects), provided that the moneys may be used only for the program and that the onsite sewage

disposal systems to be repaired or upgraded are owned by individual citizens of the Commonwealth where (i) public health or water quality concerns are present and (ii) connection to a public sewer system is not feasible because of location or cost.

Except as set forth above, the Authority shall determine the terms and conditions of any loan from the Fund, which may vary between loan recipients. Each loan shall be evidenced by appropriate bonds or notes of the local government or other entity payable to the Fund. The bonds or notes shall have been duly authorized by the local government or other entity and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions and other information as it may deem necessary or convenient. In addition to any other terms or conditions which the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government or other entity receiving the loan covenant to perform any of the following:

A. Establish and collect rents, rates, fees and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of and premium, if any, and interest on the loan from the Fund to the local government or other entity; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees or charges;

B. With respect to local governments, levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan from the Fund to the local government;

C. Create and maintain a special fund or funds for the payment of the principal of and premium, if any, and interest on the loan from the Fund to the local government or other entity and any other amounts becoming due under any agreement entered into in connection with the loan, or for the operation, maintenance, repair or replacement of the project or any portions thereof or other property of the local government or other entity, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable;

D. Create and maintain other special funds as required by the Authority; and

E. Perform other acts, including the conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title and interest therein, to the Fund, or take other actions as may be deemed necessary or desirable by the Authority to secure payment of the principal of and premium, if any, and interest on the loan from the Fund and to provide for the remedies of the Fund in the event of any default in the payment of the loan, including, without limitation, any of the following:

1. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security, liquidity arrangements or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees or other charges;

2. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities and systems to secure the loan from the Fund made in connection with such combination or any part or parts thereof;

3. The maintenance, replacement, renewal and repair of the project; and

4. The procurement of casualty and liability insurance.

All local governments or other entities borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments or other entities, but may be structured as determined by the Authority according to the needs of the contracting local governments or other entities and the Fund. Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the

Authority may consent to and approve any modification in the terms of any loan subject to guidelines adopted by the Board.

§ 62.1-229.1. Loans for agricultural best management practices.

Loans may be made from the Fund, in the Board's discretion, to an individual for the construction of facilities or structures to implement agricultural best management practices to prevent pollution of state waters, to a local government which has developed a low-interest loan program to provide loans or other incentives to facilitate the construction of such facilities or structures, or to a financial institution working with a local government to establish such a program. The Board shall develop guidelines for the administration of such loans and shall determine the terms and conditions of any loan from the Fund.

§ 62.1-229.2. Loans for remediation of contaminated properties.

Loans may be made from the Fund, in the Board's discretion, to local governments, public authorities, partnerships or corporations for necessary remediation activities undertaken pursuant to § 10.1-1429.1 for the purpose of reducing ground water contamination or reducing risk to public health. The Board shall develop guidelines for the administration of such loans and shall determine the terms and conditions of any loan from the Fund.

§ 62.1-230. Grants to local governments.

Subject to any restrictions which may apply to the use of money in the Fund, the Board in its discretion may approve the use of money in the Fund to make grants or appropriations to local governments to pay the cost of any project. The Board may establish such terms and conditions on any grant as it deems appropriate. Grants shall be disbursed from the Fund by the Authority in accordance with the written direction of the Board.

§ 62.1-230.1. Loans and grants for regional projects, etc.

In approving loans and grants, the Board shall give preference to loans and grants for projects that will (i) utilize private industry in operation and maintenance of such projects where a material savings in cost can be shown over public operation and maintenance or (ii) serve two or more local governments to encourage regional cooperation or (iii) both.

§ 62.1-231. Pledge of loans to secure bonds of Authority.

The Authority is empowered at any time and from time to time to transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of and premium, if any, and interest on any or all of the bonds (as defined in § 62.1-199) of the Authority. The interests of the Fund in any obligations so transferred shall be subordinate to the rights of the trustee under the pledge. To the extent funds are not available from other sources pledged for such purpose, any payments of principal and interest received on the assets transferred or held in trust may be applied by the trustee thereof to the payment of the principal of and premium, if any, and interest on such bonds of the Authority to which the obligations have been pledged, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of and premium, if any, and interest on such bonds of the Authority. Any assets of the Fund transferred in trust as set forth above and any payments of principal, interest or earnings received thereon shall remain part of the Fund but shall be subject to the pledge to secure the bonds of the Authority and shall be held by the trustee to which they are pledged until no longer required for such purpose by the terms of the pledge. On or before the tenth day of January in each year, the Authority shall transfer, or shall cause the trustee to transfer, to the Fund any assets transferred or held in trust as set forth above which are no longer required to be held in trust pursuant to the terms of the pledge.

§ 62.1-231.1. Sale of loans.

The Authority is empowered at any time and from time to time to sell, upon such terms and conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to this chapter. The net proceeds of sale remaining after the payment of the costs and expenses of the sale shall be designated for deposit to, and become part of, the fund.

§ 62.1-231.2. Powers of the Authority.

The Authority is authorized to do any act necessary or convenient to the exercise of the

powers granted in this chapter or reasonably implied thereby.

§ 62.1-232. Liberal construction of chapter.
The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special or local, the provisions of this chapter shall be controlling.

Title 62.1 - Chapter 23.2 - Combined Sewer Overflow Matching Fund

§ 62.1-241.11. Definitions.
As used in this chapter, unless the context requires otherwise:
"Combined sewer overflow" or "CSO" means the discharge of untreated sanitary wastes, including industrial wastes and other wastes conveyed through a sanitary sewer system, and stormwater from combined stormwater and sanitary sewers.

§ 62.1-241.12. Combined Sewer Overflow Matching Fund established; purposes.
There is hereby established the Combined Sewer Overflow Matching Fund ("Fund") to match federal money for purposes of providing grants to localities for CSO projects. The Fund shall be established out of the sums appropriated from time to time by the General Assembly for the purpose of matching federal funds allocated to Virginia for CSO controls. The Fund, and all income from the investment of moneys held in the Fund and any other sums designated for deposit to the Fund from any source, public or private, shall be set apart as a permanent and perpetual fund, subject to liquidation only upon the solution of Virginia's combined sewer overflow problems, as may be determined by the General Assembly. The Fund shall be administered and managed by the Virginia Resources Authority, subject to the right of the State Water Control Board, following consultation with the Authority, to direct the distribution of grants from the Fund to particular local governments. The State Water Control Board may establish such terms and conditions on any grant as it deems appropriate, and grants shall be disbursed from the Fund by the Virginia Resources Authority in accordance with the written direction of the State Water Control Board.

Title 62.1 - Chapter 24 - Surface Water Management Act

§ 62.1-242. Definitions.
As used in this chapter, unless the context requires otherwise:
"Beneficial use" means both instream and offstream uses. Instream beneficial uses include but are not limited to protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include but are not limited to domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Domestic and other existing beneficial uses shall be considered the highest priority beneficial uses.
"Board" means the State Water Control Board.
"Nonconsumptive use" means the use of water withdrawn from a stream in such a manner that it is returned to the stream without substantial diminution in quantity at or near the point from which it was taken and would not result in or exacerbate low flow conditions.
"Surface water withdrawal permit" means a document issued by the Board evidencing the right to withdraw surface water.
"Surface water management area" means a geographically defined surface water area in which the Board has deemed the levels or supply of surface water to be potentially adverse to public welfare, health and safety.
"Surface water" means any water in the Commonwealth, except ground water, as defined in § 62.1-255.

§ 62.1-243. Withdrawals for which surface water withdrawal permit not required.
A. No surface water withdrawal permit shall be required for (i) any nonconsumptive use, (ii) any water withdrawal of less than 300,000 gallons in any single month, (iii) any water withdrawal from a farm pond collecting diffuse surface water and not situated on a perennial stream as defined in the United States Geological Survey 7.5-minute series topographic maps, (iv) any withdrawal in any area which has not been declared a surface water management area, or (v) any withdrawal from a wastewater treatment system permitted by the State Water Control

Board or the Department of Mines, Minerals and Energy.

B. No political subdivision or investor-owned water company permitted by the Department of Health shall be required to obtain a surface water withdrawal permit for:

1. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989.

2. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received a § 401 certification from the State Water Control Board pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawal; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.

3. Any withdrawal in existence on July 1, 1989, from an instream impoundment of water used for public water supply purposes; however, during periods when permit conditions in a surface water management area are in force under regulations adopted by the Board pursuant to § 62.1-249, and when the rate of flow of natural surface water into the impoundment is equal to or less than the average flow of natural surface water at that location, the Board may require the release of water from the impoundment at a rate not exceeding the existing rate of flow of natural surface water into the impoundment.

Withdrawals by a political subdivision or investor-owned water company permitted by the Department of Health shall be affected by subdivision 3 of subsection B only at the option of that political subdivision or investor-owned water company.

To qualify for any exemption in subsection B of this section, the political subdivision making the withdrawal, or the political subdivision served by an authority making the withdrawal, shall have instituted a water conservation program approved by the Board which includes: (i) use of water saving plumbing fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code; (ii) a water loss reduction program; (iii) a water use education program; and (iv) ordinances prohibiting waste of water generally and providing for mandatory water use restrictions, with penalties, during water shortage emergencies. The Board shall review all such water conservation programs to ensure compliance with (i) through (iv) of this paragraph.

C. No existing beneficial consumptive user shall be required to obtain a surface water withdrawal permit for:

1. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989.

2. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received a § 401 certification from the State Water Control Board pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawal; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.

To qualify for either exemption in subsection C of this section, the beneficial consumptive user shall have instituted a water management program approved by the Board which includes: (i) use of water-saving plumbing; (ii) a water loss reduction program; (iii) a water use education program; and (iv) mandatory reductions during water shortage emergencies. However, these reductions shall be on an equitable basis with other uses exempted under subsection B of this section. The Board shall review all such water management programs to ensure compliance with (i) through (iv) of this paragraph.

D. The Board shall issue certificates for any withdrawals exempted pursuant to subsections B and C of this section. Such certificates shall include conservation or management programs as conditions thereof.

§ 62.1-244. Board may require information from persons withdrawing surface water.

The Board may require any person withdrawing surface water for any purpose in any surface

water management area to furnish information with regard to such surface water withdrawal and the use thereof.

§ 62.1-245. Agreements among persons withdrawing surface water.

In the administration of this chapter, the Board shall encourage, promote and recognize voluntary agreements among persons withdrawing surface water in the same surface water management area. When the Board finds that any such agreement, executed in writing and filed with the Board, is consistent with the intent, purposes and requirements of this chapter, the Board shall approve the agreement following a public hearing. The Board shall provide at least sixty days' notice of the public hearing to the public in general and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement, and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies. The Board shall be a party to the agreement. The agreement, until terminated, shall control in lieu of a formal order, rule, regulation or permit issued by the Board under the provisions of this chapter, and shall be deemed to be a case decision under the Administrative Process Act (§ 9-6.14:1 et seq.). Any agreement shall specify the amount of water affected thereby.

Any agreement approved by the Board may include conditions which can result in its amendment or termination by the Board, following a public hearing, if the Board finds that it or its effect is inconsistent with the intent, purposes and requirements of this chapter. Such conditions may include (i) a determination by the Board that the agreement originally approved by the Board will not further the purposes of this chapter, (ii) a determination by the Board that circumstances have changed such that the agreement originally approved by the Board will no longer further the purposes by this chapter, or (iii) one or more parties to the agreement is not fulfilling its commitments under the agreement. The Board shall provide at least sixty days' notice of the public hearing to the public in general and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement, and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies.

§ 62.1-246. When Board may initiate a surface water management area study proceeding; hearing required.

A. The Board upon its own motion or, in its discretion, upon receipt of a petition therefor by any county, city or town within the surface water management area in question, or any state agency, may initiate a surface water management area proceeding whenever in its judgment there is evidence to indicate that:

1. A stream has substantial instream values as indicated by evidence of fishery, recreation, habitat, cultural or aesthetic properties; and

2. Historical records or current conditions indicate that a low flow condition could occur which would threaten important instream uses; and

3. Current or potential offstream uses contribute to or are likely to exacerbate natural low flow conditions to the detriment of instream values.

B. If, after a public hearing held pursuant to § 9-6.14:7.1, or at the request of an affected person or on the Board's motion, a hearing shall be held under § 9-6.14:8, and the Board finds that the conditions required above exist and further finds that the public welfare, health and safety require that regulatory efforts be initiated, the Board shall declare the area in question to be a surface water management area. The Board shall cause notice of the surface water management area to be published in a newspaper of general circulation throughout the area, and shall mail a copy of its decision to the mayor or chairman of the governing body of each county, city or town within which any part of the area lies, or which is known by the Board to make offstream use of water from the area, and to the chief administrative officer of any federal facility known by the Board to be using water from within the area. The Board shall include in its decision a definition of the boundaries of the water management area.

§ 62.1-247. Use of surface water in surface water management area.

After an area has been declared a surface water management area by an order of the Board, no person shall withdraw or attempt to withdraw any surface water, except for withdrawals exempted under § 62.1-243 or made pursuant to

a voluntary agreement approved by the Board pursuant to § 62.1-245, without a surface water withdrawal permit issued by the Board.

§ 62.1-248. Permits.

A. Any permit issued by the Board shall include a flow requirement appropriate for the protection of beneficial instream uses. In determining the level of flow in need of protection, the Board shall consider, among other things, recreational and aesthetic factors and the potential for substantial and long-term adverse impact on fish and wildlife found in that particular surface water management area. Should this determination indicate a need to restrict water withdrawal, the Board shall consider, among other things, the availability of alternative water supplies, the feasibility of water storage or other mitigation measures, and the socioeconomic impacts of such restrictions on the potentially affected water users and on the citizens of the Commonwealth in general.

In its permit decision, the Board shall attempt to balance offstream and instream water uses so that the welfare of the citizens of the Commonwealth is maximized without imposing unreasonable burdens on any individual water user or water-using group. The decision to implement this balance may consist of approval of withdrawal without restriction, approval subject to conditions designed to protect instream uses from unacceptable adverse effects, or disapproval of the withdrawal.

Permit conditions may include, but are not limited to, the following: (i) maximum amounts which may be withdrawn, (ii) times of the day or year during which withdrawals may occur, and (iii) requirements for voluntary and mandatory conservation measures.

B. In considering whether to issue, modify, revoke, or deny a permit under this section, the Board shall consider:

1. The number of persons using a stream and the object, extent and necessity of their respective withdrawals or uses;
2. The nature and size of the stream;
3. The types of businesses or activities to which the various uses are related;
4. The importance and necessity of the uses claimed by permit applicants, or of the water uses of the area and the extent of any injury or detriment caused or expected to be caused to instream or offstream water uses;
5. The effects on beneficial uses; and
6. Any other relevant factors.

C. Permits shall be transferable among users, subject to approval by the Board.

D. In developing regulations governing the issuance of permits, the Board shall prioritize among types of users. Domestic and existing uses shall be given the highest priority in the issuance of permits for other beneficial uses. Included among existing uses shall be any projected use which has been relied upon in the development of an industrial project and for which a permit has been obtained by January 1, 1989, pursuant to § 404 of the Clean Water Act.

§ 62.1-248.1. When application for permit considered complete.

No application for a permit shall be considered complete unless the applicant has provided the Executive Director with notification from the governing body of the county, city or town in which the withdrawal is to take place that the location and operation of the withdrawing facility is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The provisions of this section shall not apply to any applicant exempt from compliance under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

§ 62.1-249. Applicability of permit conditions.

A. The Board by regulation shall determine when the level of flow is such that permit conditions in a surface water management area are in force. As a part of this regulation, the Board shall adopt a reasonable system of water-use classification according to classes of beneficial uses. The Board may include provisions for variances and alternative measures to prevent undue hardship and ensure equitable distribution of water resources.

B. The regulations may provide that the Board, or the Board's Executive Director, by order may declare that the level of flow is such that permit conditions are applicable for all or part of a surface water management area.

C. The Board may impose such restrictions on one or more classes of water uses as may be necessary to protect the surface water resources of the area from serious harm.

D. Regulations shall provide for the means for a declaration of water shortage to be rescinded.

E. When permit conditions become applicable in a surface water management area, the Board

shall notify each permittee by mail or cause notice thereof to be published in a newspaper of general circulation throughout the area. Publication of such notice will serve as notice to all permit holders in the area.

§ 62.1-250. State agency review.

Prior to the creation of a surface water management area, or the issuance of a permit within one, the Board shall consult and cooperate with, and give full consideration to the written recommendations of, the following agencies: the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, and any other interested and affected agencies. Such consultation shall include the need for development of a means in the surface water management area for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within forty-five days after notification by the Board. The Board shall assume that if written comments are not submitted by an agency, within the time period, the agency has no comments on the proposed permits.

§ 62.1-251. Cancellation or suspension of permit.

Whenever the Board finds that the holder of a permit is willfully violating any provision of such permit or any other provision of this chapter, the Board may cancel or suspend the permit or impose conditions on its future use in order to prevent future violations. The finding of the Board shall be made in accordance with the Administrative Process Act, § 9-6.14:1 et seq.

§ 62.1-252. Penalties; injunctions.

A. Any person who violates any provision of this chapter shall be subject to a civil penalty not to exceed $1,000 for each violation. Each day of violation shall constitute a separate offense.

B. With the consent of any person in violation of this chapter, the Board may provide, in an order issued by the Board against the person, for the payment of civil charges. These charges shall be in lieu of civil charges imposed by the court.

C. In order to protect the public interest of the Commonwealth, the Board may seek injunctive relief against any person violating any provision of this chapter.

D. The civil penalties and civil charges provided for in this section shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1.

§ 62.1-253. Riparian rights.

Nothing in this chapter shall be construed as altering, or authorizing any alteration of, any existing riparian rights except as set forth in permits issued pursuant to this chapter. The conditions in such permits shall be in force only in those times when low stream flows, or the potential therefor, result in a declaration as provided for in subsection A of § 62.1-249.

Title 62.1 - Chapter 25 - Ground Water Management Act of 1992

§ 62.1-254. Findings and purpose.

The General Assembly hereby determines and finds that, pursuant to the Groundwater Act of 1973, the continued, unrestricted usage of ground water is contributing and will contribute to pollution and shortage of ground water, thereby jeopardizing the public welfare, safety and health. It is the purpose of this Act to recognize and declare that the right to reasonable control of all ground water resources within this Commonwealth belongs to the public and that in order to conserve, protect and beneficially utilize the ground water of this Commonwealth and to ensure the public welfare, safety and health, provision for management and control of ground water resources is essential.

§ 62.1-255. Definitions.

As used in this chapter, unless the context requires otherwise:

"Beneficial use" includes, but is not limited to, domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Ground water withdrawal permit" means a certificate issued by the Board permitting the withdrawal of a specified quantity of ground water in a ground water management area.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country.

§ 62.1-256. Duties of Board.

The Board shall have the following duties and powers:

1. To issue ground water withdrawal permits in accordance with regulations adopted by the Board;

2. To issue special orders as provided in § 62.1-268;

3. To study, investigate and assess ground water resources and all problems concerned with the quality and quantity of ground water located wholly or partially in the Commonwealth, and to make such reports and recommendations as may be necessary to carry out the provisions of this chapter;

4. To require any person withdrawing ground water for any purpose anywhere in the Commonwealth, whether or not declared to be a ground water management area, to furnish to the Board such information with regard to such ground water withdrawal and the use thereof as may be necessary to carry out the provisions of this chapter, excluding ground water withdrawals occurring in conjunction with activities related to exploration for and production of oil, gas, coal or other minerals regulated by the Department of Mines, Minerals and Energy;

5. To prescribe and enforce requirements that naturally flowing wells be plugged or destroyed, or be capped or equipped with valves so that flow of ground water may be completely stopped when said ground water is not currently being applied to a beneficial use;

6. To enter at reasonable times and under reasonable circumstances, any establishment or upon any property, public or private, for the purposes of obtaining information, conducting surveys or inspections, or inspecting wells and springs, and to duly authorize agents to do the same, to ensure compliance with any permits, standards, policies, rules, regulations, rulings and special orders which it may adopt, issue or establish to carry out the provisions of this chapter;

7. To issue special exceptions pursuant to § 62.1-267;

8. To adopt such regulations as it deems necessary to administer and enforce the provisions of this chapter; and

9. To delegate to its Executive Director any of the powers and duties invested in it to administer and enforce the provisions of this chapter except the adoption and promulgation of rules, standards or regulations; the revocation of permits; and the issuance, modification, or revocation of orders except in case of an emergency as provided in subsection B of § 62.1-268.

§ 62.1-257. When Board may initiate a ground water management area study proceeding; hearing required.

A. The Board upon its own motion or, in its discretion, upon receipt of a petition by any county, city or town within the area in question, may initiate a ground water management area proceeding, whenever in its judgment there may be reason to believe that:

1. Ground water levels in the area are declining or are expected to decline excessively;

2. The wells of two or more ground water users within the area are interfering or may reasonably be expected to interfere substantially with one another;

3. The available ground water supply has been or may be overdrawn; or

4. The ground water in the area has been or may become polluted. Such pollution includes any alteration of the physical, chemical or biological properties of ground water which has a harmful or detrimental effect on the quality or quantity of such waters.

B. If the Board finds that any one of the conditions required above exists, and further finds that the public welfare, safety and health require that regulatory efforts be initiated, the Board shall by regulation declare the area in question to be a ground water management area. The Board shall include in its regulation a definition of the boundaries of the ground water management area. The Board shall mail a copy of the regulation to the mayor or chairman of the governing body of each county, city or town within which any part of the area lies.

§ 62.1-258. Use of ground water in ground water management area.

It shall be unlawful in a ground water management area for any person to withdraw, attempt to withdraw, or allow the withdrawal of any ground water, other than in accordance with a ground water withdrawal permit or as provided in § 62.1-259, subsections C, D and F of § 62.1-260, and subsection C of § 62.1-261.

§ 62.1-259. Certain withdrawals; permit not required.

No ground water withdrawal permit shall be required for (i) withdrawals of less than 300,000 gallons a month; (ii) temporary construction dewatering; (iii) temporary withdrawals associated with a state-approved ground water remediation; (iv) the withdrawal of ground water for use by a ground water heat pump where the discharge is reinjected into the aquifer from which it is withdrawn; (v) the withdrawal from a pond recharged by ground water without mechanical assistance; (vi) the withdrawal of water for geophysical investigations, including pump tests; (vii) the withdrawal of ground water coincident with exploration for and extraction of coal or activities associated with coal mining regulated by the Department of Mines, Minerals and Energy; (viii) the withdrawal of ground water coincident with the exploration for or production of oil, gas or other minerals other than coal, unless such withdrawal adversely impacts aquifer quantity or quality or other ground water users within a ground water management area; (ix) the withdrawal of ground water in any area not declared a ground water management area; or (x) the withdrawal of ground water pursuant to a special exception issued by the Board.

§ 62.1-260. Permits for existing ground water withdrawals in existing ground water management areas.

A. Persons holding a certificate of ground water right or a permit to withdraw ground water issued prior to July 1, 1991, in the Eastern Virginia or Eastern Shore Groundwater Management Areas and currently withdrawing ground water pursuant to said certificate or permit shall file an application for a ground water withdrawal permit on or before December 31, 1992, in order to obtain a permit for withdrawals. The Board shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1987, and June 30, 1992, together with such savings as can be demonstrated to have been achieved through water conservation; however, with respect to a political subdivision, an authority serving a political subdivision or a community waterworks regulated by the Department of Health, the permit shall be issued for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1980, and June 30, 1992, together with such savings as can be demonstrated to have been achieved through water conservation.

B. Persons holding a certificate of ground water right issued on or after July 1, 1991, and prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas and currently withdrawing ground water pursuant to the certificate shall file an application for a ground water withdrawal permit on or before December 31, 1993, in order to obtain a permit for withdrawals. The Board shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1988, and June 30, 1993, together with such savings as can be demonstrated to have been achieved through water conservation.

C. Persons holding a permit to withdraw ground water issued on or after July 1, 1991, and prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas shall not be required to apply for a ground water withdrawal permit until the expiration of the term of the permit to withdraw ground water as provided in subsection C of § 62.1-266, and may withdraw ground water pursuant to the terms and conditions of the permit to withdraw ground water. Such persons may apply for a ground water withdrawal permit allowing greater withdrawals of ground water than are allowed under an existing permit, and the Board in its discretion may issue a permit for such greater withdrawals, upon consideration of the factors set forth in § 62.1-263.

D. Persons holding a certificate of ground water right issued prior to July 1, 1992, or a permit to withdraw ground water issued prior to July 1, 1991, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, who have not withdrawn ground water prior to July 1, 1992, may initiate a withdrawal on or after July 1, 1992, pursuant to the terms and conditions of the

certificate or permit. The persons shall file an application for a ground water withdrawal permit on or before December 31, 1995, and may continue withdrawing ground water under the terms and conditions of their certificate or permit until the required ground water withdrawal permit application is acted on by the Board, provided that the ground water withdrawal permit application is filed on or before December 31, 1995. The Board shall issue a ground water withdrawal permit for the total amount of ground water withdrawn and applied to a beneficial use during any consecutive twelve-month period between July 1, 1992, and June 30, 1995, together with (i) such savings as can be demonstrated to have been achieved through water conservation and (ii) such amount as the Board in its discretion deems appropriate upon consideration of the factors set forth in § 62.1-263. This subsection shall not apply to a political subdivision, or an authority serving a political subdivision, holding a permit or certificate for a public water supply well for supplemental water during drought conditions, which shall apply for a ground water withdrawal permit as provided in § 62.1-265.

E. Persons withdrawing ground water for agricultural or livestock watering purposes in the Eastern Virginia or Eastern Shore Groundwater Management Areas on or before July 1, 1992, shall file an application for a ground water withdrawal permit on or before December 31, 1993, in order to obtain a permit for withdrawals. The Board shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1983 and June 30, 1993, together with such savings as can be demonstrated to have been achieved through water conservation.

F. Persons withdrawing ground water for agricultural or livestock watering purposes, or pursuant to certificates of ground water right or permits to withdraw ground water issued prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, may continue such withdrawal until the required permit application is acted on by the Board, provided that the permit application is filed by the appropriate deadline.

G. Persons applying for a ground water withdrawal permit may request that they be permitted to withdraw more ground water than the amount to which they may be entitled based on their historic usage and water conservation as set forth in this section. The Board in its discretion may issue a permit for a greater amount than that which is based on historic usage and water conservation, upon consideration of the factors set forth in § 62.1-263.

H. Failure by any person covered by the provisions of subsection A, B, D or E to file an application for a ground water withdrawal permit prior to the expiration of the applicable period creates a presumption that any claim to withdraw ground water based on history of usage has been abandoned. In reviewing any application for a ground water withdrawal permit subsequently made by such a person, the Board shall consider the factors set forth in § 62.1-263.

§ 62.1-261. Permits for existing ground water withdrawals in newly established ground water management areas.

A. Persons withdrawing ground water in any area declared a ground water management area on or after July 1, 1992, shall file an application within six months after the ground water management area has been declared in order to obtain a permit for withdrawals. The Board shall issue permits for the total amount of ground water withdrawn during any consecutive twelve-month period in the five years preceding said declaration, together with such savings as can be demonstrated to have been achieved through water conservation.

B. Persons withdrawing ground water for agricultural or livestock watering purposes in any area declared a ground water management area on or after July 1, 1992, shall file an application within six months after the ground water management area has been declared in order to obtain a permit for withdrawals. The Board shall issue permits for the total amount of ground water withdrawn during any consecutive twelve-month period in the ten-year period preceding such declaration, together with such savings as can be demonstrated to have been achieved through water conservation.

C. Persons withdrawing ground water in any area declared a ground water management area on or after July 1, 1992, may continue such withdrawal until the required permit application

is acted on by the Board, provided that the permit application is filed within the six-month period following the declaration.

D. Persons applying for a ground water withdrawal permit issued pursuant to this section may request that they be permitted to withdraw more ground water than the amount to which they may be entitled based on their historic usage as set forth in this section. The Board in its discretion may issue a permit for a greater amount than that which is based on historic usage, upon consideration of factors set forth in § 62.1-263.

E. Failure by any person covered by the provisions of subsection A or B to file an application for a ground water withdrawal permit within the six months following the declaration of the ground water management area creates a presumption that any claim to withdraw ground water based on history of usage has been abandoned. In reviewing any application for a ground water withdrawal permit subsequently made by such a person, the Board shall consider the factors set forth in § 62.1-263.

§ 62.1-262. Permits for other ground water withdrawals.

Any application for a ground water withdrawal permit, except as provided in §§ 62.1-260 and 62.1-261, shall include a water conservation and management plan approved by the Board. A water conservation and management plan shall include: (i) use of water-saving plumbing and processes including, where appropriate, use of water-saving fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code; (ii) a water-loss reduction program; (iii) a water-use education program; and (iv) mandatory reductions during water-shortage emergencies including, where appropriate, ordinances prohibiting waste of water generally and providing for mandatory water-use restrictions, with penalties, during water-shortage emergencies. The Board shall approve all water conservation plans in compliance with subdivisions (i) through (iv) of this section.

§ 62.1-263. Criteria for issuance of permits.

When reviewing an application for a permit to withdraw ground water, or an amendment to a permit, the Board may consider the nature of the proposed beneficial use, the proposed use of alternate or innovative approaches such as aquifer storage and recovery systems and surface and ground water conjunctive uses, climatic cycles, unique requirements for nuclear power stations, economic cycles, population projections, the status of land use and other necessary approvals, and the adoption and implementation of the applicant's water conservation and management plan. In no case shall a permit be issued for more ground water than can be applied to the proposed beneficial use.

When proposed uses of ground water are in conflict or when available supplies of ground water are insufficient for all who desire to use them, preference shall be given to uses for human consumption, over all others.

In evaluating permit applications, the Board shall ensure that the maximum possible safe supply of ground water will be preserved and protected for all other beneficial uses.

In evaluating the available ground water with respect to permit applications for new or expanded withdrawals in the Eastern Virginia or Eastern Shore Groundwater Management Areas, the Board shall use the average of the actual historical ground water usage from the inception of the ground water withdrawals of a political subdivision or authority operating a ground water and surface water conjunctive use system and shall not use the total permit capacity of such system in determining such availability.

§ 62.1-264. Permits for public water supplies.

To ensure that any ground water withdrawal permit issued for a public water supply does not impact a waterworks operation permit issued pursuant to § 32.1-172, the maximum permitted daily withdrawal shall be set by the Board at a level consistent with the requirements and conditions contained in the waterworks operation permit. This section shall not limit the authority of the Board to reduce or eliminate ground water withdrawals by a waterworks if necessary to protect human health or the environment. In promulgating regulations to implement this section, and in administering such regulations and this chapter, the Board shall consult and cooperate with the State Health Department to the end that effective, equitable management of ground water and safeguarding of public health will be attained to the maximum extent possible.

§ 62.1-265. Drought relief wells.

A political subdivision, or an authority serving a political subdivision, holding a certificate of ground water right issued prior to July 1, 1992, or a permit to withdraw ground water issued prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, for the operation of a public water supply well for the purpose of providing supplemental water during drought conditions, shall file an application for a ground water withdrawal permit on or before December 31, 1992. The Board shall issue ground water withdrawal permits for supplemental drought relief wells for the amount of ground water needed annually to meet human consumption needs as documented by a water conservation and management plan approved by the Board as provided in § 62.1-262. Any ground water withdrawal permits for supplemental drought relief wells shall be issued with the condition that withdrawals may only be made at times that mandatory water use restrictions have been implemented pursuant to the water conservation and management plan.

§ 62.1-266. Ground water withdrawal permits.

A. The Board may issue any ground water withdrawal permit upon terms, conditions and limitations necessary for the protection of the public welfare, safety and health.

B. Applications for ground water withdrawal permits shall be in a form prescribed by the Board and shall contain such information, consistent with this chapter, as the Board deems necessary.

C. All ground water withdrawal permits issued by the Board under this chapter shall have a fixed term not to exceed ten years. The term of a ground water withdrawal permit issued by the Board shall not be extended by modification beyond the maximum duration, and the permit shall expire at the end of the term unless a complete application for a new permit has been filed in a timely manner as required by the regulations of the Board, and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit. Any permit to withdraw ground water issued by the Board on or after July 1, 1991, and prior to July 1, 1992, shall expire ten years after the date of its issuance.

D. Renewed ground water withdrawal permits shall be for a withdrawal amount that includes such savings as can be demonstrated to have been achieved through water conservation, provided that a beneficial use of the permitted ground water can be demonstrated for the following permit term.

E. Any permit issued by the Board under this chapter may, after notice and opportunity for a hearing, be amended or revoked on any of the following grounds or for good cause as may be provided by the regulations of the Board:

1. The permittee has violated any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit, any provision of this chapter, or any order of a court, where such violation presents a hazard or potential hazard to human health or the environment or is representative of a pattern of serious or repeated violations which, in the opinion of the Board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations, or requirements;

2. The permittee has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a permit, or in any other report or document required under this chapter or under the ground water withdrawal regulations of the Board;

3. The activity for which the permit was issued endangers human health or the environment and can be regulated to acceptable levels by amendment or revocation of the permit; or

4. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of the withdrawal controlled by the permit necessary to protect human health or the environment.

F. No application for a ground water withdrawal permit shall be considered complete unless the applicant has provided the Executive Director of the Board with notification from the governing body of the county, city or town in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The provisions of this subsection shall not apply to any applicant exempt from compliance under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

G. A ground water withdrawal permit shall authorize withdrawal of a specific amount of

ground water through a single well or system of wells, including a backup well or wells, or such other means as the withdrawer specifies.

§ 62.1-267. Issuance of special exceptions.

A. The Board may issue special exceptions to allow the withdrawal of ground water in cases of unusual situations where requiring the user to obtain a ground water withdrawal permit would be contrary to the intended purpose of the Act.

B. In reviewing an application for a special exception, the Board may consider the amount and duration of the proposed withdrawal, the beneficial use intended for the ground water, the return of the ground water to the aquifer, and the effect of the withdrawal on human health and the environment. Any person requesting a special exception shall submit an application to the Board containing such information as the Board shall require by regulation adopted pursuant to this chapter.

C. Any special exception issued by the Board shall state the terms pursuant to which the applicant may withdraw ground water, including the amount of ground water that may be withdrawn in any period and the duration of the special exception. No special exception shall be issued for a term exceeding ten years.

D. A violation of any term or provision of a special exception shall subject the holder thereof to the same penalties and enforcement procedures as would apply to a violation of a ground water withdrawal permit.

E. The Board shall have the power to amend or revoke any special exception after notice and opportunity for hearing on the grounds set forth in subsection D of § 62.1-266 for amendment or revocation of a ground water withdrawal permit.

§ 62.1-268. Issuance of special orders.

A. The Board may issue special orders (i) requiring any person who has violated the terms and provisions of a ground water withdrawal permit issued by the Board to comply with such terms and provisions; (ii) requiring any person who has failed to comply with a directive from the Board to comply with such directive; or (iii) requiring any person who has failed to comply with the provisions of this chapter or any decision of the Board pertaining to ground water to comply with such provision or decision.

B. Such special orders are to be issued only after a hearing with at least thirty days' notice to the affected person of the time, place and purpose thereof, and they shall become effective not less than fifteen days after service by certified mail, sent to the last known address of such person, with the time limits counted from the date of such mailing; however, if the Board finds that any such person is grossly affecting or presents an imminent and substantial danger to (i) the public welfare, safety or health; (ii) a public water supply; or (iii) commercial, industrial, agricultural or other beneficial uses, it may issue, without advance notice or hearing, an emergency special order directing the person to cease such withdrawal immediately and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the person, to affirm, modify, amend or cancel such emergency special order. If a person who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § 62.1-269, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a withdrawal, the Board shall provide an opportunity for a hearing within forty-eight hours of the issuance of the injunction.

C. The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-270 for any past violation or violations of any provision of this chapter or any regulation duly promulgated hereunder.

D. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit or any provision of this chapter, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in § 62.1-270. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection A of § 62.1-270 and shall not be subject to the provisions of § 2.1-127.

§ 62.1-269. Enforcement by injunction, etc.

Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, standard or requirement of the Board pertaining to ground water, any provision of any ground water withdrawal permit issued by the Board, or any provision of this chapter may be compelled to obey same and to comply therewith in a proceeding instituted by the Board in any appropriate court for injunction, mandamus or other appropriate remedy. The Board shall be entitled to an award of reasonable attorneys' fees and costs in any action brought by the Board under this section in which it substantially prevails on the merits of the case, unless special circumstances would make an award unjust.

§ 62.1-270. Penalties.

A. Any person who violates any provision of this chapter, or who fails, neglects or refuses to comply with any order of the Board pertaining to ground water, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed $25,000 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the person in violation is such county, city or town itself, or its agent, the court shall direct such penalty to be paid to the State Treasurer for deposit into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1.

With the consent of any person in violation of this chapter, the Board may provide, in an order issued by the Board against the person, for the payment of civil charges. These charges shall be in lieu of the civil penalties referred to above. Such civil charges shall be deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund.

B. Any person willfully or negligently violating any provision of this chapter, any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than twelve months and a fine of not less than $2,500 nor more than $25,000, either or both. Any person who knowingly violates any provision of this chapter, any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not less than $5,000 nor more than $50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than $10,000. Each day of violation of each requirement shall constitute a separate offense.

C. Any person who knowingly violates any provision of this chapter, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than fifteen years and a fine of not more than $250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of one million dollars or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

D. Criminal prosecution under this section shall be commenced within three years of discovery of the offense, notwithstanding the limitations provided in any other statute.

TITLE 9 - CHAPTER 22.3 - STATE WATER COMMISSION

§ 9-145.8. Commission established; functions.

The State Water Commission, referred to in this chapter as "Commission," is established as a

permanent agency of the Commonwealth. It shall perform the following functions:
1. Study all aspects of water supply and allocation problems in the Commonwealth, whether these problems are of a quantitative or qualitative nature;
2. Coordinate the legislative recommendations of all other state entities having responsibilities with respect to water supply and allocation issues; and
3. Report annually its findings and recommendations to the Governor and the General Assembly.
§ 9-145.9. Membership; compensation; chairman and vice chairman.
A. The Commission shall consist of fifteen members as follows: the Chairmen of the House Committee on Conservation and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources; seven additional members of the House of Delegates at large appointed by the Speaker; four additional members of the Senate at large appointed by the Committee on Privileges and Elections; and two members from the Commonwealth at large appointed by the Governor. The legislative members' terms of office shall coincide with their service in the General Assembly. Gubernatorial appointees shall serve for terms of four years and may succeed themselves, but vacancies during their terms shall be filled only for the unexpired portion of the term.
B. Commission members shall be compensated as specified in § 30-19.12, and shall be reimbursed for expenses incurred in the performance of their duties.
C. The members of the Commission shall elect a chairman and a vice chairman.
§ 9-145.10. Staff.
The Division of Legislative Services shall serve as staff to the Commission. All agencies of the Commonwealth shall assist the Commission upon request.

TITLE 15.2
COUNTIES, CITIES AND TOWNS
CHAPTER 9
GENERAL POWERS OF LOCAL GOVERNMENTS

 15.2-924. Water supply emergency ordinances. - A. Whenever the governing body of any county, city or town finds that a water supply emergency exists, it may adopt an ordinance restricting the use of water by the citizens of such county, city or town for the duration of such emergency; provided, however, such ordinance shall apply only to water supplied by a county, city or town, authority, or company distributing water for a fee or charge. Such ordinance may include appropriate penalties designed to prevent excessive use of water, including, but not limited to, a surcharge on excessive amounts used.

B. After such an emergency has been declared in any jurisdiction, any owner of a water supply system serving that jurisdiction may apply to the State Water Control Board for assistance. If the State Water Control Board confirms the existence of an emergency, and finds that such owner and such jurisdiction have exhausted available means to relieve the emergency and that the owner and jurisdiction are applying all feasible water conservation measures, and in addition finds that there is water available in neighboring jurisdictions in excess of the reasonable needs of such jurisdictions, and that there exists between such neighboring jurisdictions interconnections for the transmission of water, the Board shall so inform the Governor. The Governor, if requested jointly by the jurisdiction and the owner of the systems supplying the jurisdiction, may then appoint a committee consisting of one representative of the jurisdiction declaring the emergency, one representative of the system supplying the jurisdiction under emergency, and those two representatives shall choose a third representative and failing to choose such third representative within seven days he shall be selected by the Governor. The committee shall have the duty and authority to allocate the water available in such jurisdictions for the period of the emergency, provided that the period of the emergency shall not exceed that determined by the jurisdiction declaring the emergency or the State Water Control Board whichever period termination is earlier, so that the best water supply possible will be provided to all water users during the emergency as previously described. Nothing in this section shall be construed as requiring the construction of pipeline interconnections between any jurisdiction or any water supply system.

C. Any water taken from one water supplier for the benefit of another shall be paid for by using the established rate schedule of the supplier for treated water. Raw water shall be furnished at rates which shall reflect all costs to the supplying jurisdiction, including, but not limited to, capital investment costs. Should there be imposed upon the supplier any additional obligation, water production costs or other capital or operating expenditures beyond those normal to the suppliers' system, then the cost of same shall be chargeable to the receiving jurisdiction by single payment or by incorporation in a special rate structure, all of the same as shall be reasonable.

D. Nothing contained in this section shall authorize any county, city or town to regulate the use of water taken from a river or any flowing stream when such water is used for industrial purposes and the approximate same quantity of water is returned to such river or stream after such industrial usage.

TITLE 32.1 HEALTH

CHAPTER 6 ENVIRONMENTAL HEALTH SERVICES

§ 32.1-163. Definitions. - As used in this article, unless the context clearly requires a different meaning:

"Alternative discharging sewage system" means any device or system which results in a point source discharge of treated sewage for which the Board may issue a permit authorizing construction and operation when such system is regulated by the State Water Control Board pursuant to a general Virginia Pollutant Discharge Elimination System permit issued for an individual single family dwelling with flows less than or equal to 1,000 gallons per day.

"Owner" means the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm or association which owns or proposes to own a sewerage system or treatment works.

"Review Board" means the State Sewage Handling and Disposal Appeals Review Board.

"Regulations" means the Sewage Handling and Disposal Regulations, heretofore or hereafter enacted or adopted by the State Board of Health.

"Sewage" means water-carried and non-water-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes, separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sewerage system" means pipelines or conduits, pumping stations and force mains and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

"Subsurface drainfield" means a system installed within the soil and designed to accommodate treated sewage from a treatment works.

"Transportation" means the vehicular conveyance of sewage.

"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power and other equipment and appurtenances, septic tanks, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment.

§ 32.1-164. Powers and duties of Board; regulations; fees. - A. The Board shall have supervision and control over the safe and sanitary collection, conveyance, transportation treatment and disposal of sewage, all sewerage systems and treatment works as they affect the public health and welfare. In discharging the responsibility to supervise and control the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall exercise due diligence to protect the quality of both surface water and groundwater. The regulation of sewage, as it may affect the public health, shall be primarily the responsibility of the Board and, in cases to which the provisions of Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 are applicable, the joint responsibility of the Board and the State Water Control Board in accordance with such chapter. However, upon the final adoption of a general Virginia Pollutant Discharge Elimination permit by the State Water Control Board, the Board of Health shall assume the responsibility for permitting alternative discharging sewage systems as defined

in 32.1-163. All such permits shall comply with the applicable regulations of the State Water Control Board and be registered with the State Water Control Board.

In the exercise of its duty to supervise and control the treatment and disposal of sewage, the Board shall require and the Department shall conduct regular inspections of alternative discharging sewage systems. The Board shall also establish requirements for maintenance contracts for alternative discharging sewage systems. The Board may require, as a condition for issuing a permit to operate an alternative discharging sewage system, that the applicant present an executed maintenance contract. Such contract shall be maintained for the life of any general Virginia Pollutant Discharge Elimination System permit issued by the State Water Control Board.

B. The regulations of the Board shall govern the collection, conveyance, transportation treatment and disposal of sewage. Such regulations shall be designed to protect the public health and promote the public welfare and may include, without limitation:

1. A requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification or operation of a sewerage system or treatment works except in those instances where a permit is required pursuant to Chapter 3.1 of Title 62.1.

2. Criteria for the granting or denial of such permits.

3. Standards for the design, construction, installation, modification and operation of sewerage systems and treatment works.

4. Standards governing disposal of sewage on or in soils.

5. Standards specifying the minimum distance between sewerage systems or treatment works and:

(a) Public and private wells supplying water for human consumption,

(b) Lakes and other impounded waters,

(c) Streams and rivers,

(d) Shellfish waters,

(e) Groundwaters,

(f) Areas and places of human habitation,

(g) Property lines.

6. Standards as to the adequacy of an approved water supply.

7. Standards governing the transportation of sewage.

8. A prohibition against the discharge of untreated sewage onto land or into waters of the Commonwealth.

9. A requirement that such residences, building, structures and other places designed for human occupancy as the Board may prescribe be provided with a sewerage system or treatment works.

10. Criteria for determining the demonstrated ability of alternative onsite systems, which are not permitted through the then current sewage handling and disposal regulations, to treat and dispose of sewage as effectively as approved methods. 11. Standards for inspections of and requirements for maintenance contracts for alternative discharging sewage systems.

12. Notwithstanding the provisions of subdivision 1 above and Chapter 3.1 of Title 62.1, a requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification, or operation of an alternative discharging sewage system as defined in 32.1-163.

13. Criteria for granting, denying, and revoking of permits for alternative discharge sewage systems.

C. The Board may prescribe a reasonable fee, not to exceed fifty dollars, to be charged for filing an application for an onsite sewage disposal system or an alternative discharging sewage system permit with the Department. Funds received in payment of such charges shall be transmitted to the Comptroller for deposit. The funds from the fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying out the provisions of this title. The Board shall establish a procedure for the waiver of fees for persons whose income are below the federal poverty guidelines established by the United States Department of Health and Human Services or when the application is for a pit privy or the repair of a failing onsite sewage disposal system. If the Board prescribes such fee and the Department denies the permit for land on which the applicant seeks to construct his principal place of residence, then such fee shall be refunded to the applicant.

From such funds as are appropriated to the Department from the special fund, the Board shall apportion a share to local or district health

departments to be allocated in the same ratios as provided for the operation of such health departments pursuant to 32.1-31. Such funds shall be transmitted to the local or district health departments on a quarterly basis.

D. In addition to factors related to the Board's responsibilities for the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall, in establishing standards, give due consideration to economic costs of such standards in accordance with the applicable provisions of the Administrative Process Act. (9-6.14:1 et seq.)

E. Further, the Board may prescribe a reasonable fee, not to exceed fifty dollars, to be charged for such installation and monitoring inspections of alternative discharging sewage systems as may be required by the Board. The funds received in payment of such fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying out the provisions of this section. The Board shall establish a procedure for the waiver of fees for persons whose incomes are below the federal poverty guidelines established by the United States Department of Health and Human Services.

F. Any owner who violates any provision of this section or any regulation of the Board of Health or the State Water Control Board relating to alternative discharging sewage systems or who fails to comply with any order of the Board of Health or any special final order of the State Water Control Board shall be subject to the penalties provided in 32.1-27 and 62.1-44.32.

In the event that a county, city, or town, or its agent, is the owner, the county, city, or town, or its agent may initiate a civil action against any user or users of an alternative discharging sewage systems to recover that portion of any civil penalty imposed against the owner which directly resulted from violations by the user or users of any applicable federal, state, or local laws, regulations, or ordinances.

G. The Board shall establish a program for qualifying individuals as authorized onsite soil evaluators. The Board's program shall include, but not be limited to, approved training courses, written and field tests, application fees to cover the costs of the program, renewal fees and schedules, and procedures for listing, removing from the list, and reinstating individuals as authorized onsite soil evaluators. To contain costs, the Board shall use or enhance the written and field tests given to Department of Health sanitarians as the testing vehicle for authorized onsite soil evaluators. Until July 1, 2001, a person holding a certificate as a Virginia certified professional soil scientist from the Board of Professional Soil Scientists shall be deemed to be qualified, upon application and demonstration of the knowledge, skills, and abilities necessary to conduct onsite soil evaluations, as an authorized onsite soil evaluator without completing the Board's training courses and taking the written and field tests. The Board shall furnish the list of authorized onsite soil evaluators to all local and district health departments.

H. The Board shall establish and implement procedures for issuance of letters recognizing the appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits. Such letters shall state, in language determined by the Office of the Attorney General and approved by the Board, the appropriateness of the soil for a traditional septic or other onsite sewage system; no system design shall be required for issuance of such letter. The letter may be recorded in the land records of the clerk of the circuit court in the jurisdiction where all or part of the site or proposed site of the septic or other onsite sewage system is to be located so as to be a binding notice to the public, including subsequent purchases of the land in question. Upon the sale or transfer of the land which is the subject of any letter, the letter shall be transferred with the title to the property. A permit shall be issued on the basis of such letter unless, from the date of the letter's issuance, there has been a substantial, intervening change in the soil or site conditions where the septic system or other onsite sewage system is to be located. The Board, Commissioner, and the Department shall accept evaluations from authorized onsite soil evaluators for the issuance of such letters, if they are produced in accordance with the Board's established procedures for issuance of letters. The Department shall issue such letters within twenty working days of the application filing date when evaluations produced by authorized onsite soil evaluators are submitted as supporting documentation. The Department shall not be required to do a field check

of the evaluation prior to issuing such a letter or a permit based on such letter; however, the Department may conduct such field analyses as deemed necessary to protect the integrity of the Commonwealth's environment.
Applicants for such letters in lieu of onsite sewage system permits shall pay the fee established by the Board for the letters' issuance and, upon application for a septic system permit or other onsite sewage system permit, shall pay the permit application fee.

 32.1-164.3. Septage disposal. - Notwithstanding the provisions of Chapter 3.1 (62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia, the Board of Health shall have the authority to issue permits which prescribe the terms and conditions upon which septage may be disposed of by land application. Application for disposal permits shall be submitted in form and content which are satisfactory to the Board. Upon receipt of a satisfactory application, the Board shall send a copy to the State Water Control Board and comply with the provisions of 32.1-164.2. The State Water Control Board shall review the application without delay and advise the Board within sixty days of the requirements necessary to protect state waters. The Board shall not consider the application complete until comments have been received from the State Water Control Board. The Board shall approve or disapprove the application and issue the permit as appropriate. If the application is disapproved the Board shall advise the applicant of the conditions necessary to obtain approval. The Board may summarily revoke or amend the permit if it determines that the septage disposal is adversely affecting public health or if the State Water Control Board notifies the Board that state waters are being adversely affected.

TITLE 45.1 MINES AND MINING
CHAPTER 15.1 GEOTHERMAL ENERGY
Article 1 General Provisions

 45.1-179.1. Short title; purpose. - This chapter may be cited as the Virginia Geothermal Resource Conservation Act. It is the policy of the Commonwealth of Virginia and the purpose of this law to: (i) foster the development, production, and utilization of geothermal resources, (ii) prevent waste of geothermal resources, (iii) protect correlative rights to the resource, (iv) protect existing high quality state waters, and safeguard potable waters from pollution, (v) safeguard the natural environment, (vi) promote geothermal and water resource conservation and management, and (vii) safeguard the health, safety, and welfare of the citizens of the Commonwealth.

 45.1-179.2. Definitions. - The following terms used in this chapter have the meanings respectively ascribed thereto unless the context clearly requires otherwise:
"Correlative rights" means the right of each geothermal owner in a geothermal system to produce without waste his just and equitable share of the geothermal resources in the geothermal system;
"Geothermal energy" means the usable energy produced or which can be produced from geothermal resources;
"Geothermal resource" means the natural heat of the earth and the energy in whatever form, present in, associated with, created by, or which may be extracted from, that natural heat, as determined by the rules and regulations of the Department;
"Geothermal system" means any aquifer, pool, reservoir, or other geologic formation containing geothermal resources; and
"Board" means the State Water Control Board.

 45.1-179.3. Application. - The provisions of this chapter regarding (i) permitting, well regulations, reservoir management and allocation apply to geothermal resources at temperatures above the minimum temperature set forth by the Department pursuant to 45.1-179.7 of this Code, (ii) leasing requirements, royalties or severance taxes apply to geothermal resource applications producing more than the volumetric rate set forth by the Department pursuant to 45.1-179.7 of this Code.

 45.1-179.4. Ownership. - Ownership rights to geothermal resources shall be in the owner of the surface property underlain by the geothermal resources unless such rights have been otherwise explicitly reserved or conveyed. Nothing in this section shall divest the people or the Commonwealth of any rights, title, or interest they may have in geothermal resources.

 45.1-179.5. Findings; clarification of nature of resource. - Geothermal resources are found and hereby declared to be sui generis, being neither a mineral resource nor a water resource. Mineral estates shall not be construed to include geothermal resources unless explicit in the terms of the deed or other instrument of conveyance.

Article 2
Resource Regulation

 45.1-179.6. Duties and responsibilities of Department. - The Department shall have and is hereby given jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this chapter and shall have the power and authority to make and enforce rules, regulations, and orders and do whatever may reasonably be necessary to carry out the provisions of this chapter. Any such rules and regulations adopted by the Department pursuant to the provisions of this chapter shall be promulgated in compliance with the provisions of the Administrative Process Act (Chapter 1.1:1 of Title 9, 9-6.14:1 et seq.).

 45.1-179.7. Additional powers of Department. - The Department shall:

1. Consult with the Board in carrying out all of its duties and responsibilities pursuant to the provisions of this chapter;
2. Develop a comprehensive geothermal permitting system for the Commonwealth, which shall provide for the exploration and development of geothermal resources;
3. Promulgate such rules and regulations as may be necessary to provide for geothermal drilling and the exploration and development of geothermal resources in the Commonwealth; such rules and regulations shall be based on a system of correlative rights;
4. Establish minimum temperature levels and volumetric rates in order to determine Department jurisdiction over geothermal resource development. In establishing such temperature levels (i) the Department shall set minimum temperature levels for permitting, well regulations, reservoir management, and allocation of the geothermal resource; and (ii) the Department shall set minimum volumetric rates for geothermal leasing, royalties and severance taxes, as necessary. The Department shall also be responsible for reviewing the established temperature level and volumetric rate requirements biennially and revising the figures as necessary. Revision of temperature levels or volumetric rate requirements shall not occur more often than every two years and such revision shall not operate retroactively; and
5. Consult with the State Department of Health as necessary, to protect potable waters of the Commonwealth and in carrying out its duties and responsibilities pursuant to the provisions of this chapter.

 45.1-179.8. Reinjection policy. - The Department, the Board, and Department of Health shall jointly develop and revise as necessary, a policy on reinjection of spent geothermal fluids. Such policy shall refer to the reinjection into the ground of waters extracted from the earth in the process of geothermal development, production, or utilization.

 45.1-179.9. Cancellation or suspension of permit. - Whenever, after a public hearing held in conjunction with the Board, the Department determines that a holder of a permit issued pursuant to the provisions of this chapter is willfully violating any provision of such permit or any provision of this chapter, the Department may cancel or suspend such permit for cause or impose limitations on the future use thereof in order to prevent future violations.

 45.1-179.10. Penalties; injunctions. - Any person who shall be adjudged to have violated any provisions of this chapter shall be guilty of a misdemeanor and shall be liable to a penalty of not less than $10 nor more than $250 for each violation. In addition, upon violation of any of the provisions of this chapter, or the regulations of the Department hereunder, the Department may either before or after the institution of proceedings for such violation, institute a civil action in the circuit court wherein the well is located for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper.

 45.1-179.11. Judicial review. - Any person aggrieved by a final decision of the Department pursuant to the provisions of 45.1-179.9 of this Code is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (9-6.14:1 et seq.).

CHAPTER 19
VIRGINIA COAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1979

Article 3
Miscellaneous Provisions

 45.1-254. National pollutant discharge elimination system permits. - A. Upon request of the Director, the State Water Control Board may delegate to the Director its authority, under the State Water Control Law, Chapter 3.1 (62.1-44.2 et seq.) of Title 62.1 to issue, amend, revoke and enforce national pollutant discharge elimination system permits for the discharge of sewage, industrial wastes and other wastes from coal surface mining operations. Upon receiving such delegation, the authority to issue, amend, revoke and enforce national pollutant discharge elimination system permits under the State Water Control Law for the discharge of sewage, industrial wastes and other wastes from coal surface mining operations, to the extent required under the federal Clean Water Act, P.L. 92-500, as amended, shall be vested solely in the Director, notwithstanding any provision of law contained in Title 62.1, except as provided herein. For the purpose of enforcement under this section, the provisions of 62.1-44.31 and 62.1-44.32 shall apply to permits, orders and regulations issued by the Director in accordance with this section.

B. After having received delegation of authority pursuant to subsection A of this section, the Director shall transmit to the State Water Control Board a copy of each application for a national pollutant discharge elimination system permit received by the Director, and provide written notice to the State Water Control Board of every action related to the consideration of such permit application. C. No national pollutant elimination system permit shall be issued if, within thirty days of the date of the transmittal of the complete application and the proposed national pollution discharge elimination system permit, the State Water Control Board objects in writing to the issuance of such permit. Whenever the State Water Control Board objects to the issuance of such permit under this section, such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permits would include if it were issued by the State Water Control Board.

D. An applicant who is aggrieved by an objection made under subsection C of this section shall have the right to a hearing before the State Water Control Board pursuant to 62.1-44.25. If the State Water Control Board withdraws, in writing, its objection to the issuance of a certificate, the Director may issue the permit. Any applicant, aggrieved by a final decision of the State Water Control Board made pursuant to this subsection, shall have the right to judicial review in accordance with the provisions of the Administrative Process Act (9-6.14:1 et seq.).

E. Whenever, on the basis of any information available to it, the State Water Control Board finds that any person is in violation of any condition or limitation contained in a national pollutant discharge elimination system permit issued by the Director, it shall notify the person in alleged violation and the Director. If beyond the thirtieth day after notification by the State Water Control Board, the Director has not commenced appropriate enforcement action, the State Water Control Board may take appropriate enforcement action pursuant to 62.1-44.15, 62.1-44.23 and 62.1-44.32.

F. The Director shall promulgate such regulations as he deems necessary for the issuance, administration, monitoring and enforcement of national pollutant discharge elimination system permits for coal surface mining operations.

G. For the purpose of this section, the terms "sewage," "industrial wastes" and "other wastes" shall have the meanings ascribed to them in subdivisions (7), (8), and (9) of 62.1-44.3, respectively.

CHAPTER 23
SURFACE MINING OF COAL FOR OPERATIONS
DISTURBING TWO SURFACE ACRES OF LAND OR LESS

Article 1
In General

 45.1-380. NPDES Permits. - The authority to issue, amend, revoke and enforce national pollutant discharge elimination system permits for the discharge of industrial wastes and other wastes from coal mining operations which are regulated under this chapter is vested solely in the Director. The Director shall have the powers of enforcing such permits and adopting regulations as are provided under 45.1-253 of this Code. The State Water Control Board shall have the powers of reviewing, objecting to, and enforcing such permits as are provided under 45.1-253 of this Code.

Acronyms

ASP	Abbreviated Standard Permit
BMP	Best Management Practices
CBLAD	Chesapeake Bay Local Assistance Department
CEDS	Comprehensive Environmental Data System
CO	Central Office
DCR	Virginia Department of Conservation and Recreation
DEQ	Virginia Department of Environmental Quality
DGIF	Virginia Department of Game and Inland Fisheries
DNH	Division of Natural Heritage (under DCR)
EPA	United States Environmental Protection Agency
FEMA	Federal Emergency Management Administration
FP	Floodplain (100 year) Condition
FWS	United States Fish & Wildlife Service
GP	General Permit
GPS	Geographical Positioning System
HUC	Hydrologic Unit Code
IAT	Interagency Transfer
IP	Individual Permit
IWOMEV	Isolated Wetlands of Minimal Ecological Value
JPA	Joint Permit Application (USACE document)
LOP	Letter of Permission
MHW	Mean High Water
MLW	Mean Low Water
N/A	Not Applicable
NPDES	National Pollutant Discharge Elimination System
NPR	No Permit Required
NRCS	Natural Resource Conservation Service
NWP	Nationwide Permit
OD	Office Director
OHW	Ordinary High Water
OU	Originating Unit
PCN	Pre-Construction Notification
PEM	Palustrine Emergent (wetland)
PFO	Palustrine Forested (wetland)
PN	Public Notice
PSS	Palustrine Scrub/Shrub (wetland)
RC	Regional Conditions
RO	Regional Office
RP	Regional Permit
RPA	Resource Protection Area
RS	Registration Statement
SPGP	State Programmatic General Permit
SWCB	State Water Control Board
SWCL	State Water Control Law

T	Notification in Trout Streams
T&E	Threatened and Endangered
TOY	Time-of-Year
URL	Universal Resource Locator
USACE	United States Army Corps of Engineers
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey
VAC	Virginia Administrative Code
VaFWIS	Virginia Fish & Wildlife Information Service
VDACS	Virginia Department of Agriculture and Consumer Services
VDH	Virginia Department of Health
VDOT	Virginia Department of Transportation
VMRC	Virginia Marine Resources Commission
VPA	Virginia Pollution Abatement
VPDES	Virginia Pollutant Discharge Elimination System
VWPP	Virginia Water Protection Program
WD	Wetland Delineation

Cumulative Impacts Guidance

As of September 2001, no guidance is available on assessing cumulative impacts with respect to the permit application review process. The Virginia Institute of Marine Science (VIMS) is currently conducting work on this topic. Once the results of the VIMS work is available, DEQ guidance will be issued on this topic.

HEARING PROCEDURES

STATE WATER CONTROL BOARD

FOR ADDITIONAL INFORMATION CONTACT THE OFFICE OF POLICY AND LEGISLATION

TABLE OF CONTENTS

PART I - INFORMAL PUBLIC HEARINGS FOR PERMIT/CERTIFICATE ACTIONS

VPDES PERMITS, VPA PERMITS, 401 CERTIFICATIONS, GROUNDWATER PERMITS

1. Determining Need for Hearing
2. Authorization to Deny or Convene a Hearing
3. Arrangements for Hearing
4. Conduct of Hearing
5. Board Action

Appendix A - Part 1, Hearings Checklist
Appendix A - Part 2, Submittal Checklist
Appendix B.1 - Notice Content Format
Appendix B.2 - Notice of Content Format, Ground Water Withdrawal Permits
Appendix C - Statutory and Regulatory Considerations

I. Types of Hearings
II. Factors to be Considered in Determining Need for Hearing
III. Factors for Dispensing with Hearing
IV. Notice Requirements for Hearings
V. Requirements for Holding Hearing Record Open

Appendix D - Official File Exhibit List
Appendix E - Example of Opening Remarks For Public Hearings

PART II - FORMAL HEARINGS

(TO BE DEVELOPED - WILL INCLUDE FORMAL HEARINGS, SPECIAL ORDER HEARINGS & REVOCATION OF PERMITS/CERTIFICATES)

PART III - REGULATORY HEARINGS

(TO BE DEVELOPED)

This section sets forth internal Agency procedures for all informal permit public hearings. Its purpose is to identify specific legal requirements for hearings (see Appendix C), specific steps to be taken for authorizing and convening these hearings and acquiring Board action, and the responsibilities of various Agency units in the hearing process. In addition to the detailed procedures, there are several appendices which provide more guidance on certain steps in the hearing process, including Appendix A which provides a checklist that summarizes the steps of the process once a hearing has been authorized. These procedures are to be used by all Division of Water Program Coordination units.

VPDES Permits; VPA Permits; VWPPs; Surface Water Permits; Ground Water Permits. Procedures do not apply to terminations.

1. Determining Need for Hearing on Applications for Permits

   a. VPDES Permits - VPA Permits - VWP Permits - Ground Water Permits

      (1). Originating Unit (OU) causes notice of comment period on application to be issued to the public; to the chief elected official, chief administrative officer and planning district commission for any locality particularly affected; and, in a newspaper of general circulation (once/week for two consecutive weeks) in the area in accordance with the State Water Control Law, federal law, or applicable regulations. For Ground Water Permits, OU sends notice of an application to each local governing body in the ground water management area and to each local governing body having the right to make substantial beneficial uses of ground water.
      (**NOTE**: 30-day comment period begins on date of first publication of the notice in the newspaper.)

      (**NOTE:** The term "locality particularly affected" means any locality which bears any identified disproportionate material water quality impact which would not be experienced by other localities. For example, for a VPDES permit, locality particularly affected would include the locality where the facility is located and if a mixing zone extended into another locality, notice should also be published in that locality; at DEQ's cost)

      (2). OU maintains list of those individuals, organizations, etc. that responded to the notice of the application.

      (3). OU reviews all responses to the public notice and requests for public hearing in order to make a recommendation on the need for a public hearing. (**NOTE**: Final decision on holding a public hearing must be made by the Regional Director (In those cases where the RD's absence may result in an unusual hardship upon an owner, violation of a regulatory deadline, or where the RD may be absent for an extended period of time, the Regional Permit Manager is authorized to convene or deny public hearing requests.) within 30 days after the close of the public comment period above. In those cases where the owner has requested a hearing and there has been no notice of the comment period, the final decision on holding a public hearing should be made by the Regional Director within 30 days after the request for public hearing was received.

      (4). OU makes a determination as to whether the responses and requests meet the applicable provisions of Section II and III of Appendix C.

      (a) If the responses and requests do not meet the provisions of Section II, but meet the provisions of Section III; the OU will proceed under Section 2. for authorization to deny holding a hearing.
      (b) If the responses meet the applicable provisions of Section II, the OU will proceed under Section 2. for authorization to convene a hearing.

   b. Denials of VPDES Permits - VPA Permits - VWP Permits - Ground Water Permits

      (1). OU makes a determination to recommend denial of a permit.

2. OU can proceed to public notice of the proposed denial of the permit or can proceed to seek authorization to do joint public comment and public hearing by proceeding with #2 below to final resolution.

   a. Authorization to Deny or Convene a Hearing

      The OU shall prepare an authorization memorandum to the Regional Director which includes:
      - brief background
      - copy of notification in local paper of general circulation in the localities affected
      - copy of notification to chief elected local official, chief administrative officer, and local planning district commission
      - summary of responses and requests from public notices
      - summary of OU's attempts to address comments from the public
      - analysis of review of responses and requests as they apply to Section 1.a.(4).
      - recommendation for denying or holding a hearing
      - rationale for recommendation
      - target date for Board action
      - copy of responses received (if there is a large number, send representative samples)

   b. OU submits the following to the Regional Director:

      - authorization memorandum (described in 2.a.)
      - copy of public notice (if issued), the name of the newspaper the notice was published in, and the dates of publication
      - addressed envelopes for the owner, chief elected local official, chief administrative officer, local planning district commission, and those individuals and organizations who responded to the public notice to notify persons of the hearing or a sample of the letter for the OU Director's signature to inform persons that a hearing has been denied
      - necessary permit/certificate/certification documents for Regional Director's signature if recommendation is to deny convening a hearing

   c. Regional Director approves recommendation and, (1) in the case of denial, signs the permit/certificate/ certification documents, returns package to OU and directs the OU to sign and mail the notification letters. (2) in the case of approval of convening a hearing, forwards the package to the OU. (**Note:** Any letters prepared to notify persons that a hearing has been authorized should be for the OU Director's signature and mailed upon notification that the Regional Director has authorized a hearing.)

      (Note: Should Regional Director disapprove recommendation, the package will be returned to the OU for appropriate action.)

3. Arrangements for Hearing

   a. OU determines legal requirements for notice of public hearing and completes checklist for hearing (See Appendix A).

   b. OU arranges for a convenient date and location for the hearing allowing for compliance with all legal requirements.

   c. OU arranges for a Hearing Officer by contacting the Board Member that is nearest geographically to the hearing site.

   d. OU establishes date, 15 days after hearing, for close of hearing file.

   e. OU prepares draft notice for review by Policy and Planning Supervisor (See boilerplate language in Appendix B).

   f. OU finalizes notice and forwards a copy to the Policy and Planning Supervisor.

g. OU is responsible for mailing the notice to interested parties, Board Members, and appropriate Agency staff including: copying the notice, acquiring necessary mailing labels from DIS, ensuring availability of sufficient postage, etc.

h. OU sends notice to newspaper for publication in accordance with notice requirements in Appendix B and verifies newspaper receipt of notice.

i. Policy and Legislation causes notice of hearing to be published in the Virginia Register.

j. OU prepares opening remarks for Hearing Officer (See Appendices C & E).

k. OU prepares technical presentation for hearing officer and briefs the hearing officer.

(**NOTE**: Briefing of hearing officer can be an updated hearing authorization memorandum or the technical presentation if it is sufficient to inform the Hearing Officer of the background and the issues surrounding the permit action.)

l. OU starts official file (exhibit list--See Appendix D). Originals should be used when possible.

(**NOTE**: Material for the record should include, at a minimum, the draft permit, responses to the public notice, hearing authorization memorandum, hearing notice certifications, and all technical documents necessary to support the staff's anticipated recommendation to the Board.)

m. OU sends package to Hearing Officer (opening remarks, briefing memorandum, travel arrangements, map, etc.) 10 days prior to hearing.

n. OU Director or appropriate staff member may contact the hearing officer approximately 7 days before the hearing in order to set up a meeting prior to the hearing, if the hearing officer deems necessary.

4. Conduct of Hearing

a. Attendees include technical support personnel from OU, and management representatives from the appropriate headquarters or regional office based on program or geographical areas of responsibility.

b. OU tapes proceedings and receives all written statements for inclusion in the hearing file.

c. OU closes file in accordance with date specified in notice.

d. OU prepares a general summary of the hearing, in memorandum format, for presentation to the Board.

e. OU reviews technical issues and develops preliminary recommendations for concurrence by the Regional Director for Board action.

5. Board Action

a. OU prepares proposed agenda item form, including proposed Board decision, and submits to the Office of Policy and Legislation, in accordance with applicable Board meeting schedule.

b. OU prepares memorandum containing background, reference to the hearing and attaches summary of public comments, discussion of technical issues and recommendations (on separate sheet of paper) for Board action.

c. OU prepares and presents technical presentation and summary of the hearing to the Board and makes staff recommendations.

d. OU prepares minute setting forth Board action.

e. OU prepares documentation to carry out Board action for Regional Director's signature (permit, transmittal letter, etc.) and transmits documents to owner and other appropriate parties

Compensation Plan Review

1. General Site Selection & Screening
    - What are the goals/objectives of the compensation plan? Do these meet the requirements of the proposed permit?
    - Does the compensation site replace the acres and functions of proposed impacted wetlands?
    - Is the compensation site located within the same watershed as the impact?
    - Have existing wetlands on the proposed compensation site been delineated? If no existing wetlands, what is the biological benchmark or reference for the compensation site?
    - Have endangered species/cultural resources been addressed at the compensation site?
    - Has a Phase I ESA been conducted on the compensation site? Is the site a known dump or brownfield?
    - What is the primary source of hydrology? Secondary source?
    - DO NOT ASSUME that an existing wetland can be enlarged for compensation. A water budget must confirm that there will be ample water for BOTH the existing wetland and the compensation site.

2. Site Hydrology
    a. Tidal Components
        - What is the tidal amplitude and periodicity at the site? Is this confirmed with on-site gauges?
        - What is the fetch at the site? A fetch of greater than one-mile may require protective breakwaters as part of the design.
        - Will the site be exposed to high-energy wake from boat traffic? If so, wake limits or protective measures should be considered.
    b. Nontidal Components
        - Surface Water Input (Streams, Lakes, Ponds, Rain/Surface Runoff)
            - What is the average water volume during the seasonal drought period?
            - Do stream gauges confirm ordinary high water? What is the average annual stream velocity?
            - For large lakes/ponds, is fetch a potential problem? What are the seasonal water fluctuations? Is the water body subject to regular man-induced drawdown (e.g. a reservoir)? Is natural drawdown from evapotranspiration high?
            - Are there water quality issues (i.e., heavy metals, acidic drainage, heavy sediment loads, etc.) associated with the general area? If so, does the compensation plan incorporate appropriate measures?
        - Groundwater Input
            - What are the rates of groundwater discharge/recharge at the compensation site?
            - If groundwater discharge is the primary water source, then discharge rates should be based upon seasonal drought periods NOT the annual average discharge rate.
            - Have observation wells been correctly installed and monitored during the early part of the growing season (typically March through early May depending on the location)?
            - What other watershed pressures affect the groundwater? A regional pumping station nearby?
    c. Water Budget
        - Has a water budget been calculated? Does it include all of the necessary elements?

Net Available Water = Precipitation + Runoff + GW discharge – Outflow – Infiltration – Evapotranspiration

- What is the drainage area and surrounding land use upgradient of the compensation site?
- What is the evapotranspiration rate?
- What is the historic precipitation for the general area? A good rule of thumb is 20 years of precipitation data. How far from the compensation is the precipitation gauge? If the precipitation gauge is more than 10 miles from the compensation site, then an on-site precipitation gauge may be necessary. What is the rainfall average during a normal year? A dry year? A wet year?

3. Site Soils
    - Are subsurface soils subject to iron precipitates (pyritic)?
    - What is the depth to bedrock? Has this been confirmed with geotechnical studies?
    - What is the depth to the groundwater table from the existing elevation? From the proposed elevation?
    - What are the soil types and infiltration rates at the proposed finished grade?
    - Were field permeability tests conducted? Do these confirm permeability rates in the soil survey? Ideal soil permeability is 0.14 to 0.014 inches/hour.
    - Are soils stable for proposed slopes and dams? If not, will appropriate fill material be used? What is the source of the fill material?
    - If hydric soils from off-site are to be used, where will they be stockpiled? Stabilized? Will they be kept moist?

4. Site Vegetation
    - What is the biological benchmark or reference for proposed plantings? An adjacent or nearby wetland?
    - Have vegetation zones been correlated with proposed hydrologic regimes?
    - Will soil amendments be necessary? Too much of a good thing can be bad!
    - Will topsoil or hydric soil be used for backfill to final grade? To what depth?
    - Will the site be overseeded? With a wetland seed mix?

5. Site Construction
    - What is the construction schedule? Excavation activities during the early growing season may not be advisable due to groundwater levels.
    - Will temporary haul roads be necessary?
    - Are appropriate E&S controls included in the compensation plan?
    - Is a spill prevention and countermeasure plan included? How will equipment spills be contained?
    - Will existing wetlands be identified and protected during construction?

6. Site Post-Construction Monitoring
    - Is the appropriate number of monitoring wells specified?
    - What is the monitoring protocol?
    - What are the site success criteria? Do they meet the permit conditions?

7. Other Concerns
    - Is there an invasive species plan?
    - Is there a “problem wildlife” plan
    - Is there a vandalism plan?

NRCS Growing Seasons

County	Growing Season Range	# of days	12.50%	Rounded
Accomack	3/17 thru 11/21	251	31.375	31
Albemarle	3/20 thru 11/10	232	29	29
Alleghany	4/18 thru 10/23	187	23.375	23
Augusta	4/18 thru 10/23	187	23.375	23
Bedford	3/31 thru 11/4	214	26.75	27
Campbell	3/21 thru 11/10	234	29.25	29
Carroll	4/22 thru 10/16	176	22	22
Charlotte	3/31 thru 11/1	215	26.875	27
Chesterfield	3/26 thru 11/12	231	28.875	29
Chesapeake	3/10 thru 11/29	264	33	33
Clarke	4/26 thru 10/19	175	21.875	22
Dinwiddie	4/9 thru 10/28	202	25.25	25
Essex	4/5 thru 11/1	210	26.25	26
Fairfax	4/4 thru 11/4	215	26.875	27
Fauquier	4/17 thru10/23	189	23.625	24
Fluvanna	4/17 thru 10/20	186	23.25	23
Frederick	4/1 thru 11/4	213	26.625	27
Giles	4/24 thru 10/16	175	21.875	22
Gloucester	3/30 thru 11/12	226	28.25	28
Goochland	4/7 thru 10/29	204	25.5	26
Greene	3/20 thru 11/10	232	29	29
Greensville	3/25 thru 10/29	218	27.25	27
Hanover	4/7 thru 10/29	204	25.5	26
Henrico	3/28 thru 11/10	227	28.375	28
Isle of Wight	3/29 thru 11/7	222	27.75	28
James City	3/30 thru 11/12	226	28.25	28
King George	3/20 thru 11/22	247	30.875	31
Lancaster	4/15 thru 10/25	194	24.25	24
Lee	3/31 thru 11/3	217	27.125	27
Loudoun	4/18 thru 10/18 (ave. frost-free)	183	22.875	23
Louisa	4/18 thru 10/27	222	27.75	28
Lunenburg	4/4 thru 10/28	207	25.875	26
Madison	4/4 thru 11/2	184	23	23
Mathews	3/31 thru 11/8	222	27.75	28
Mecklenburg	4/1 thru 10/30 (estimation) 4/7 thru 10/27 (frost-free)	212	26.5	27
Middlesex	3/30 thru 11/12	226	28.25	28
Montgomery	4/17 thru 10/19	178	22.25	22
New Kent	3/23 thru 11/8	223	27.875	28

Northhampton	3/14 thru 11/24	263	32.875	33
Northumberland	4/15 thru 10/25	194	24.25	24
Nottoway	4/16 thru 10/24	191	23.875	24
Pittsylvania	3/21 thru 11/10	234	29.25	29
Powhatan	4/10 thru 10/27	257	32.125	32
Prince Edward	4/16 thru 10/24	191	23.875	24
Prince George	3/22 thru 11/6	228	28.5	29
Prince William	4/4 thru 11/4	215	26.875	27
Pulaski	4/20 thru 10/21	184	23	23
Rappahannock	4/15 thru 10/24	192	24	24
Richmond	4/2 thru 11/5	216	27	27
Rockingham	4/18 thru 10/23	187	23.375	23
Shenandoah	4/14 thru 10/21	192	24	24
Spotsylvania	4/22 thru 10/16	176	22	22
Stafford	3/20 thru 11/22	222	27.75	28
Tazewell	5/1 thru 11/15	151	18.875	19
Warren	4/26 thru 10/19	175	21.875	22
Washington	6/1 thru 9/26	167	20.875	21
Westmoreland	3/20 thru 11/14	228	28.5	29
York	3/30 thru 11/12	226	28.25	28

Note: This information has been compiled from soil surveys published prior to 12/31/2000. For localities not having a published soil survey, comparisons should be made between the growing season dates for at least 2 adjacent localities having a published soil survey to interpolate the appropriate date(s). If an applicant chooses to install soil temperature sensors to assess site-specific growing season data, one full year of site-specific data should be collected and analyzed before approving growing season dates different from those published in the local soil survey.

Guidance for Groundwater Monitoring Wells in Mitigation Sites

The purpose of this guidance is to provide consistency for evaluating and reviewing the success of the hydrology criterion for proposed compensatory mitigation sites and mitigation banks. Monitoring wells installed and gauged prior to mitigation site construction may differ in the number and placement from that listed below, since pre-construction wells are installed to evaluate proposed design grade elevations only. This guidance is meant to serve as a general "rule of thumb" and should not preclude the discretion of the DEQ permit writer and/or site specific realities.

Number and Placement of Monitoring Wells

The final mitigation design plan should specify the number of monitoring wells and their locations within the context of site success criteria. The following minimum numbers are suggested for sites that have a groundwater component and are not homogeneous in nature.

- The minimum number of monitoring wells, based upon design acreage, should be[1]:
  - <10.0 acres: 1 monitoring well / 1.0 acre (rounded to the next whole acre); every site should have a minimum of 3 monitoring wells.
  - 10.0 acres to 50.0 acres: 1 monitoring well / 1.0 acre (rounded to the next whole acre) for the first 10.0 acres, then 1 monitoring well / 2.0 acres for the remaining acreage.
  - >50.0 acres: 1 monitoring well / 1.0 acre (rounded to the next whole acre) for the first 10.0 acres, then 1 monitoring well / 5.0 acres for the remaining acreage.

    *For sites larger than 300 acres, the maximum number of monitoring wells should be left to the discretion of the permit writer.

- Given the minimum numbers above and the specific design plan:
  - There should be at least one (1) monitoring well located in each vegetation zone or type (if more than one vegetation zone is specified in the design plan).
  - There should be at least one (1) monitoring well located in each hydrologic regime (if more than one hydrologic regime is specified in the design plan).

- If the design plan incorporates biological benchmarks from a reference wetland area, at least one (1) monitoring well should be placed in the reference wetland area. If the reference wetland area contains more than one hydrologic regime and the design plan incorporates all hydrologic regimes found in the reference wetland area into the design plan, then a minimum of one (1) monitoring well should be placed in each hydrologic regime in the reference wetland area.

- For sites whose primary hydrology source is surface water: 1 monitoring well / 1.0 acre (rounded to the next whole acre) for the first 5.0 acres, then 1 monitoring well / 5.0 acres for the remaining acreage. Every site should have a minimum of three (3) monitoring wells.

Monitoring wells should be placed outside of designed drainageways and/or designed impoundments. Some mitigation sites are purposefully designed to mimic the small, natural variations (called "microtopographic variations") found in many natural wetlands. For sites

[1] An example is given at the end of this guidance memo.

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having microtopographic variations of the final design grade, monitoring wells should be placed within the higher elevation areas to verify that these higher elevations meet the hydrology success criterion. Monitoring wells should be randomly placed within the above listed criteria (i.e., not in transects) unless site-specific goals warrant other placements. The position of each monitoring well should be surveyed in (either with traditional or sub-meter GPS survey methods or with field triangulation from known points).

Installation of Monitoring Wells

Monitoring wells should be installed to a minimum depth of 24" below ground surface (bgs). The wells should be constructed using 0.050" factory-slotted well screen from 6" bgs to the invert elevation of the well. The bottom of the well should be capped. The remainder of the well should be constructed from solid material from the top of the screen to the top of the well. The screen and solid riser may be connected by either threaded joints or glued couplings. The well riser should extend at least 12" above the ground surface. A uniformly graded, sand pack (preferably No. 2 Morie sand or comparable material) should be placed in the annular space from the invert elevation of the well to 3" above the screen (or to 3" bgs). The remainder of the annular space should be filled with hydrated bentonite (pellets or chips) or other similar impermeable material. Cuttings from the well boring mixed with hydrated bentonite should be mounded around the base of the well at the ground surface to provide positive drainage away from the well. A small hole (approximately 1/16 inch diameter) should be placed in the solid riser near the end cap to equilibrate barometric pressure. A removable end cap should be placed on the top of the well riser. Steel well casings or lockable end caps may be required, if the site is located in an area having increased vandalism potential.

Alternately, wells may be constructed by hand slotting solid well material, if the slots are narrow enough to prevent the sand pack material and sediment from entering the well. Slotting should not occur from the ground surface to 6" bgs. The annular spaces should be filled with a sand pack and hydrated bentonite in a manner similar to that described above.

Gauging the Monitoring Wells

Before commencing well gauging, the invert elevation of the well and the ground elevation immediately adjacent to the well must be established. Traditional survey methods are not required to establish specific benchmark elevations. However, the relative elevations of the well bottom and the adjacent ground are essential for accurate evaluation of the subsequent well data. All gauging methodologies and protocols should be consistent throughout the monitoring period.

For example, if the proponent begins gauging the wells with an electronic water lever indicator, then a less accurate method (hand measurement with a fiberglass tape and chalk) should not be employed in the middle of the monitoring period. Alternating between gauging protocols may skew the data to the point that the data is not usable or valid.

Presentation of the Monitoring Well Data

Data obtained from each monitoring well should be presented consistently throughout the monitoring report. For instance, units of measure should remain constant; alternating between different units of measure for different wells within the same report causes undo confusion. If the well data are presented graphically, a baseline (typically the ground elevation adjacent to the well) should be clearly indicated. The data should clearly indicate whether the height of the well riser above the ground surface has been subtracted from the total gauging measurement. If not, the data presentation must be adjusted to reflect depth to groundwater below the ground surface.

Example 1: Calculation of Monitoring Wells Numbers:

A hypothetical mitigation site is 13.6 acres in size, having a proposed forested area and a proposed emergent area. To determine the minimum number of monitoring wells:

1. Round the acreage to next whole acre: 14 acres
2. 1 well / 1.0 acre for the first 10 acres: 10 wells
3. 1 well / 2.0 acres for the remaining 4 acres: 2 wells

Total wells in the mitigation site: 12 wells

At least one (1) of the 12 monitoring well should be placed in each vegetation zone. If all wells are placed in the forested area, then success of the emergent area cannot be determined and vice versa.

An emergent wetland area needs longer saturation within 12" of the surface to support emergent vegetation then does a forested area. If the monitoring report suggests that the emergent vegetation is dying, the monitoring well data will yield clues on whether the hydrology of emergent area is being met. If the emergent plants are dying yet the hydrology data meets the success criterion, other causes (e.g. poor plant material, problem wildlife, alga bloom, etc.) may be at fault.

Example 2: Calculation of Monitoring Wells Numbers:

A hypothetical mitigation site is 153.2 acres in size, and is proposed to be forested only. However, part of the forested area will be semi-permanently inundated (swamp-like), while other forested areas will be seasonally or temporarily saturated (headwaters). To determine the minimum number of monitoring wells:

1. Round the acreage to next whole acre: 154 acres
2. 1 well / 1.0 acre for the first 10 acres: 10 wells
3. 1 well / 5.0 acres for the remaining 144 acres): 29 wells

Total wells in the mitigation site: 39 wells

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At least one (1) of the monitoring wells should be placed in each vegetation zone. If all wells are placed in the forested area, then success of the emergent area cannot be determined and vice versa.

A semi-permanently inundated forested wetland area needs longer saturation within 12" of the surface to support the appropriate types of vegetation then does a seasonally or temporarily saturated forested area. If the monitoring report suggests that the semi-permanently inundated forested vegetation is dying, the monitoring well data will yield clues on whether the hydrology of this area is being met, and, conversely, whether the seasonally or temporarily saturated forested area is meeting hydrologic success.

Example 3: Calculation of Monitoring Wells Numbers:

A hypothetical mitigation bank is 403.7 acres in size, and has 3 vegetation types (forested, emergent, and submerged/floating) and 4 hydrologic regimes (temporarily saturated, seasonally saturated, semi-permanently saturated, and shallow open water). To determine the minimum number of monitoring wells:

1. Round the acreage to next whole acre:	404 acres
2. 1 well / 1.0 acre for the first 10 acres:	10 wells
3. 1 well / 5.0 acres for the remaining 344 acres:	69 wells
Total wells in the mitigation site:	79 wells

It takes roughly 10 minutes to install each well (not considering mobilization of supplies to each well location), yielding a minimum of 13 hours just to install 79 wells. Additionally, it takes approximately 5 minutes to gauge each well (not considering travel time between each well location), yielding a minimum of 6.5 hours just to gauge the wells. It should be the permit writer's discretion whether or not 79 monitoring wells are actually needed. Some sites of similar size may only need 40-50 wells, while others need more. The amount of useful data relative to the design objectives should be weighed against the relative costs (money and time) to install and gauge large numbers of monitoring wells.

At least one (1) of the monitoring wells should be placed in each vegetation zone and within each hydrologic regime. The rationale for this placement is the same as previously discussed in other examples.

To: Regional VWP Permit Writers

From: Ellen Gilinsky, VWP Program Manager

Date: 03/18/2002

Subject: Clarification of the terms "Noxious Species", "Invasive Species", and "Undesirable Species" in the VWPP Regulations

The purpose of this memorandum is to provide clarification on the intended uses and meanings of the above-listed phrases. During the regulatory development process, we used the terms "noxious species", "invasive species", and "undesirable species" interchangeably. Our intent was to identify a species that might cause or contribute to failure of a compensatory mitigation site or mitigation bank. In this context, "noxious species" and "invasive species" are intended to mean any species — particularly, a plant species — that invades, naturally colonizes, or otherwise dominates a mitigation site and may lead to vegetative success criteria failure. Therefore, we believe such species should be considered "undesirable" and referred to as such. However, we believe that there has been some confusion on the interchangeable usage of these terms.

For purposes of reviewing mitigation plans or mitigation monitoring reports, "undesirable species" include, but are not limited to:

- Phragmites (*Phragmites* spp.)
- Purple loosestrife (*Lythrum salicaria*)
- Reed canary grass (*Phalaris arundinacea*)
- Barnyard Grass (*Echinochloa crus-galli*)
- Perennial fescues (*Festuca* spp. – perennial species only)
- Cattails (*Typha* spp.)
- Tree-of-Heaven (*Ailanthus altissima*)
- Those species on the Department of Conservation & Recreation's list of Invasive Alien Plant Species in Virginia. The most recent revision of this list, containing 115 species, can be found at http://www.dcr.state.va.us/dnh/invlist.pdf.

Other state agencies and programs use "noxious weeds", "noxious plants", "noxious species", and "invasive species" in different contexts from our usage of these phrases, and you should be

aware of those usages which are different than ours. For example, the Virginia Department of Agriculture & Consumer Services (VDACS), under authority of the Virginia Seed Law (§ 3.1-262 Code of Virginia) and Virginia Seed Regulations (2 VAC 5-390-10), state that any phrases using “noxious” means "prohibited noxious-weed seeds" and "restricted noxious weed seeds", as such terms are defined below:

> (a) "prohibited noxious-weed seeds" are the seeds of weeds which, when established, are highly destructive, and are not controlled in the Commonwealth by cultural practices commonly used.
> (b) "restricted noxious-weed seeds" are the seeds of weeds which are very objectionable in fields, lawns and gardens in the Commonwealth and are difficult to control by cultural practices commonly used.

By Virginia Seed Law, the following species are considered noxious and shall be prohibited in all seed mixtures in Virginia:

- Balloonvine (*Cardiospermum halicacabum*)
- Canada thistle (*Cirsium arvens*)
- Field Bindweed (*Convolvulus arvensis*)
- Johnsongrass, Sorgrass and *Sorghum almum*, and hybrids derived therefrom (*Sorghum* spp. – perennial species only)
- Plumeless thistles, which includes Musk thistle, and Curled thistle (*Carduus* spp.)
- Quackgrass (*Agropyron repens*)
- Serrated tussock (*Nassella trichotoma*)
- Sicklepod (*Cassia tora*)

The following Universal Resource Locator (URL) addresses may be used to obtain reference material and/or forms cited in the VWP Permit Manual text.

A copy of the **Virginia Water Protection General Permit Registration Statement** can be found at the following URL:
http://www.deq.state.va.us/pdf/forms/water/gpregis.pdf
or
http://www.deq.state.va.us/wetlands

A map showing the **U.S. Army Corps of Engineers Field Offices** and which counties each covers can be found at http://www.nao.usace.army.mil/Regulatory/GIFs/FOMap.GIF

A copy of the U.S. Army Corps of Engineers **Joint Permit Application** can be found at the following URL:
http://www.nao.usace.army.mil/Regulatory/PN/JPA.html
or
http://www.deq.state.va.us/wetlands

The Virginia Department of Game and Inland Fisheries **Fish and Wildlife Data Information System** can be accessed at the following URL. This site is one resource to research the potential for threatened and endangered species or preferred habitat located within the project area. Once logged into this site, the **User's Manual** and **User's Manual Appendix** can be downloaded (may take some time to do this). Also, each Regional Office was provided a paper copy during VWP permit staff training held in October 2001.
http://vafwis.org/perl/vafwis.pl/vafwis

A map of **Regional Offices** and the counties included in each is located on the DEQ intranet at http://deqnet/docs/main/water/water_permit/vwp_library/contacts_&_resources/deq_regions_map_2001.doc

A summary of the **USACE Nationwide Permits** can be found at:
http://www.usace.army.mil/inet/functions/cw/cecwo/reg/nwpcond.htm

A summary of **VWP permit application fees** can be found at:
http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-20-110 and
http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-20-120 and
http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-20-130

The **State Water Control Law** can be found at:
http://www.deq.state.va.us/regulations/water2000st.html

A self-guided training module on **wetland functions and values** can be found at:
http://www.epa.gov/watertrain/wetlands/text.html

A map showing the **VMRC regional staff territories** can be found at:
http://www.mrc.state.va.us/page1e1.htm

US Army Corps of Engineers guidance on **installing monitoring wells and piezometers** can be found at: http://www.wes.army.mil/el/wrap/pdf/tnwrap00-2.pdf

APPENDIX C - CEDS

Comprehensive Environmental Database System (CEDS)

VWP Permit Program Data Entry

1. VWP Individual Permits

The following is a step-by-step guide for CEDS entry for VWP individual permit issuance, re-issuance, modification, termination, no permit required, and permit denial.

1. Always download newest version of CEDS
2. Start / programs / CEDS V2
3. Login: jjdoe; "password"; cedsprod
4. Application / permit / water / VWPP

Hints and Notes: Facility information must be entered by the Core user before other information can be entered. It is always good to double check if permit file already exists – click on the query button, type in number, then click on the query (red check). If a record already exists (ex. 00-1111) and you start typing info in a new sheet under 00-1111, CEDS will save both (not automatically replaced). Save your work frequently! Use List of Values (LOV) when available (downward arrow) to choose from options. Use "%" to search LOVs for a specific name.

5. Enter permit number, facility, permit writer
6. General Information – choose the appropriate: action, issuing region, permit term, fee category, and newspaper as appropriate.
7. Project Description – give brief description of project (ex. Bridge replacement).
8. Documentation - enter USACE and/or VMRC action on the permit, and any other pertinent information that does not fit into CEDS fields.
9. Location Information – Enter impact location Number (001, or any appropriate three-digit number), HUC, watershed, topo, latitude, longitude, receiving stream, special standards, stream class, basin section, Chesapeake Bay, and river mile (if available)
10. Limits – enter information as appropriate.
11. Special Conditions – this screen is not functional yet, when we get the boiler plate conditions entered in, you will be able to choose conditions from a list as appropriate.
12. Impacts – enter information on wetland, stream and dredging impacts as appropriate.
13. GIS Information – enter available data
14. Events – Enter dates each event occurred. All applicable dates should be entered by the permit writer. Date Effective (DTEFF) must be entered **AFTER** all other dates and information have been entered and **SAVED**.
15. Once all required events have been entered, a window should pop up saying the permit is going from application to active. (If not, then CEDS will indicate what required information is missing.)
16. SAVE

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17. Clear All to start new record

Refer to the Word document, Oct 2001 CEDS Update saved in the VWP Library on DEQNet. This contains a table indicating which fields are Mandatory, Required and Optional for each Permit Action.

For IWOMEV NPR situations, the permit writer should contact Priscilla Royal in DEQ Central Office to obtain an IWOMEV NPR permit number for CEDS data entry. This special set of permit numbers will start with the year and then a four-digit sequential number, beginning with 7000 (for example, 02-7000).

CEDS Entry for Modification, Re-Issuance, Termination, Extension, and Revocation and Re-Issuance

For an **extension**, the permit writer should change the expiration date in the CEDS permit file, as appropriate. A **revocation and re-issuance** should be addressed as a re-issuance process.

For these actions, the permit number should already have a CEDS record. Therefore, hit query button, type in permit number, then enter query (red check). The record should come up with information already filled in. Check to see if the record is in Application or Active (use up and down arrows to see if there are several records for the one permit number and work off the correct record). Use the documentation section to explain why the extension or revocation and re-issuance is warranted, along with any other pertinent information.

For Modifications: Working from the correct Active record – press the Initiate Modification button. This will create a copy of the record into Application (all the general and location information will be filled in). Hit query button, type in permit number, then enter query (red check). The record will come up again. Use the up and down arrows to locate the correct record in Application to work on. Use the documentation section to explain why the modification is warranted, along with any other pertinent information.

For Terminations: A permit can be terminated by the permittee or DEQ for various reasons. A permit can also be "terminated" in CEDS so as to stop the CEDS cycle of creating an application for the permit when it is about to expire. If CEDS has created an application for the permit (if it is going to expire) work from this application or working from the correct Active record – press the Initiate Modification button. This will create a copy of the record into Application (all the general and location information will be filled in). Hit query button, type in permit number, then enter query (red check). The record will come up again. Use the up and down arrows to locate the correct record in Application to work on. Choose Termination from the Action LOV. Use the documentation section to explain why the termination is warranted, along with any other pertinent information. Another way to stop the CEDS cycle of creating an application for

the permit when it is going to expire is to work from the correct active record and hit the "Move to History" button.

For Reissuances: CEDS system will create a copy of the permit record into Application 180 days before the permit is going to expire. Work off this record in Application. Add or change information as necessary. Save information. Enter the new effective date (DTEFF). This should cause the Application to move to Active.

For Minor Modifications: Minor Modifications that increase the wetland impact acreage or stream impact footage should be tracked in CEDS by initiating "Modification" and completing the new record. Minor Modifications that do not increase impact totals are not currently tracked in CEDS. However, the permit writer should include all Minor Modification information in the Documentation screen.

CEDS may be used to **track required submittals** for permit compliance. The Events screen has a field called Miscellaneous (MISC), which can be changed to any event the permit writer needs, such as "Submittal of First Month Construction Monitoring Report". The anticipated date and completed date can be filled in as appropriate. The comment field can be used to document compliance or any problems with each submittal. Once the Special Conditions Screen is operating – it will serve as the best method for tracking required submittals.

2. VWP General Permits

The following is a step-by-step guide for CEDS entry for VWP general permits issuance, modification, termination, and reporting-only general permits.

1. Always download newest version of CEDS
2. Start / programs / CEDS V2
3. Login: jjdoe; "password"; cedsprod
4. Application / permit / water / General Permits / VWP General Permit

Hints and Notes: Facility information must be entered by the Core user before other information can be entered. It is always good to double check if permit authorization file already exists – click on the query button, type in number, then click on the query (red check). If a record already exists (ex. WP1-01-1000) and you start typing info in a new sheet under WP1-01-1000, CEDS will save both (not automatically replaced). Save your work frequently! Use List of Values (LOV) when available (downward arrow) to choose from options. Use "%" to search LOVs for a specific name.

5. Enter authorization number, facility, permit writer.
6. General Information – choose the appropriate: permit type, action, issuing region, as appropriate.
7. Project Description – give brief description of project (ex. Bridge replacement).
8. Documentation – enter USACE and/or VMRC action on the permit, and any other pertinent information that does not fit into CEDS fields.

9. Location Information – Enter impact location Number (001, or any appropriate three-digit number), HUC, watershed, topo, latitude, longitude, receiving stream, special standards, stream class, basin section, Chesapeake Bay, and river mile (if available)
10. Limits – enter information as appropriate.
11. Special Conditions – this screen is not functional yet, when we get the special conditions specific to each General Permit entered in, CEDS should populate this section as appropriate.
12. Impacts – enter information on wetland, stream and dredging impacts as appropriate.
13. GIS Information – enter available data
14. Events – Enter dates each event occurred. All applicable dates should be entered by the permit writer. Date Effective (DTEFF) must be entered **AFTER** all other dates and information have been entered and **SAVED**.
15. A window should pop up saying the permit is going from application to active. (If not, then CEDS will indicate what required information is missing.)
16. SAVE
17. Clear All to start new record.

For **Modifications** to General Permits, working from the correct Active record – choose the Modification Action from the Issuance or previous Modification record. This will create a copy of the record into Application (all the general and location information will be filled in). Hit query button, type in permit number, then enter query (red check). The record will come up again. Use the up and down arrows to locate the correct record in Application to work on. Use the documentation section to explain why the modification is warranted, along with any other pertinent information..

For **Terminations**, whether the permittee has requested the permit be terminated, DEQ is terminating the permit, or the permit writer is "terminating" the permit in CEDS because the permit has expired, the work is complete, and all the conditions have been met. Choose the Termination Action from the Issuance or Modification record that is in Active. Once Termination is chosen and the Date Effective (DTEFF) is entered into events, the permit will move to History. This stops the CEDS cycle of creating an application for the permit when it is about to expire. Use the documentation section to explain why the permit is being terminated.

For **Reporting Only General Permits** enter the data as an issuance. Enter as much information as you can, these applications will not have as much information on the project as the full application for General Permits. **PLEASE NOTE:** Until the VWP program receives the State Programmatic General Permit, projects covered under USACE Nationwide permits that have been certified by DEQ, and are Reporting Only, will be entered into CEDS as Reporting Only General Permits (see above).

When a permit authorization is **extended**: simply change the Events field for Date the Permit Expires (FLED) to the new date, and use the Documentation screen to document why the extension was needed and the original expiration date.

If a project does **not qualify for a General Permit due to a threatened and endangered species issue** and CEDS entry has begun under a General Permit issuance, then the permit writer must delete the CEDS record in the General Permit section and begin a new record in the Individual Permit section, using the Documentation screen to record what happened during the initial General Permit processing.

CEDS may be used to **track required submittals** for permit authorization compliance. The Events screen has a field called Miscellaneous (MISC), which can be changed to any event the permit writer needs, such as "Submittal of First Month Construction Monitoring Report". The anticipated date and completed date can be filled in as appropriate. The comment field can be used to document compliance or any problems with each submittal. Once the Special Conditions Screen is operating – it will serve as the best method for tracking required submittals.

REFERENCES

Virginia Hydrologic Unit Atlas. 1995. USDA, Natural Resources Conservation Service & Virginia Department of Conservation & Recreation Division of Soil & Water Conservation.

9 VAC 25-210-10 et seq. Virginia Water Protection Permit Program Regulation.

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

Effective Date: August 1, 2001.

Summary:

In response to 2000 legislation, the regulations restore the regulatory jurisdiction of the Department of Environmental Quality (DEQ) in issuing water protection permits over specific areas known as isolated wetlands and over a specific type of excavation activity known as Tulloch ditching, which is a method used to actively drain wetlands without adding fill to the wetland. In addition, the regulations shorten the time allowed for DEQ to issue a permit, expand the maximum time allowed for a permit by 10 years, and allow an applicant to make more changes that qualify as a minor modification to an existing permit.

Changes made to the regulation since its publication as proposed have included clarification of definitions, clarification of exemptions and exclusions, and clarification of the evaluation of compensatory mitigation options. A provision has been added to allow for certifications of Corps of Engineers nationwide or regional permits as meeting the requirements of this regulation after an approval period involving public comment.

CHAPTER 210.
VIRGINIA WATER PROTECTION PERMIT PROGRAM REGULATION.

PART I.
GENERAL.

9 VAC 25-210-10. Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter, shall have the following meanings:

"Act" or "Clean Water Act" means 33 USC § 1251 et seq. as amended 1987.

“Adjacent” means bordering, contiguous or neighboring; wetlands separated from other surface water by man-made dikes or barriers, natural river berms, sand dunes and the like are adjacent wetlands.

"Applicant" means a person applying for a VWP individual or general permit.

“Aquatic resources” or “aquatic environment" mean surface waters and the habitat they provide, including both plant and animal communities.

“Avoidance” means not taking or modifying a proposed action or parts of an action so that there is no adverse impact to the aquatic environment.

“Beneficial use” means both instream and offstream uses. Instream beneficial uses include, but are not limited to: the protection of fish and wildlife habitat; maintenance of waste assimilation; recreation; navigation; and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to: domestic (including public water supply); agricultural; electric power generation; and commercial and industrial uses.

"Best management practices (BMPs)" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices that prevent or reduce the pollution of surface waters.

"Board" means the State Water Control Board.

"Code" means the Code of Virginia.

“Compensation” or “compensatory mitigation” means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.

"Consumptive use" means the withdrawal of surface waters, without recycle of said waters to their source or basin of origin.

“Creation” means the establishment of a wetland or other aquatic resource where one did not formerly exist.

“Director” means the Director of the Department of Environmental Quality (DEQ) or an authorized representative.

"Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of any pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

"Draft VWP permit" means a document indicating the board's tentative decision relative to a VWP permit action.

“Draining” means human-induced activities such as ditching, excavation, installation of tile drains, hydrologic modification by surface water runoff diversion, pumping water from wells, or similar activities such that the activities have the effect of artificially dewatering the wetland or altering its hydroperiod.

"Dredged material" means material that is excavated or dredged from surface waters.

"Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.

“Ecologically preferable” means capable of providing a higher likelihood of replacing existing wetland functions and values, water quality and fish and wildlife resources than alternative proposals.

“Enhancement” means activities conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions or values.

“Excavate” or “excavation” means ditching, dredging, or mechanized removal of earth, soil or rock.

“Fill” means replacing portions of surface water with upland, or changing the bottom elevation of a surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris.

"Fill material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose.

"General permit" means a permit authorizing a specified category of activities.

“Geographic area of a delineated wetland” means the area contained within and up to a wetland boundary determined by delineation methods consistent with this chapter.

“Impairment” means the damage, loss or degradation of the functions and values of state waters.

“In-lieu fee fund” means a monetary fund operated by a nonprofit organization or governmental agency which receives financial contributions from persons impacting wetlands or streams pursuant to an authorized permitted activity and which expends the moneys received to provide consolidated compensatory mitigation for permitted wetland or stream impacts.

“Isolated wetlands of minimal ecological value” means those wetlands that: (i) do not have a surface water connection to other state waters; (ii) are less than one-tenth of an acre in size; (iii) are not located in a Federal Emergency Management Agency designated 100-year floodplain; (iv) are not identified by the Virginia Natural Heritage Program as a rare or state significant natural community; (v) are not forested; and (vi) do not contain listed federal or state threatened or endangered species.

“Joint Permit Application (JPA)” means an application form that is used to apply for permits from the Norfolk District Army Corps of Engineers, the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and local wetland boards for work in waters of the United States and in surface waters of Virginia.

"Law" means the State Water Control Law of Virginia.

“Minimization” means lessening impacts by reducing the degree or magnitude of the proposed action and its implementation.

“Mitigation” means sequentially avoiding and minimizing impacts to the maximum extent practicable, and then compensating for remaining unavoidable impacts of a proposed action.

"Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is developed and approved in accordance with all applicable federal and state laws or regulations for the establishment, use and operation of mitigation banks, and is operating under a signed banking agreement.

“Mitigation banking” means compensating for unavoidable wetland or stream losses in advance of development actions through the sale, purchase or use of credits from a mitigation bank.

“Multi-project mitigation site” means an area of wetland restoration, creation, enhancement and, in appropriate circumstances, preservation of wetlands or streams or upland buffers adjacent to wetlands or other state waters, that is or has been utilized to meet compensation requirements for more than one project but that is not a mitigation bank.

"Nationwide permit" means a general permit issued by the USACE under 40 CFR Part 241 and applicable nationwide.

"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.1-22.29 of the Code of Virginia and any activity that is conducted as part of or in furtherance of such agricultural operation, but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 USC § 1344 or any regulations promulgated pursuant thereto.

“Normal residential gardening, lawn and landscape maintenance" means ongoing noncommercial residential activities conducted by or on behalf of an individual occupant, including mowing, planting, fertilizing, mulching, tilling, vegetation removal by hand or by hand tools, placement of decorative stone, fencing and play equipment. Other appurtenant noncommercial activities, provided that they do not result in the conversion of a wetland to upland or to a different wetland type, may also be included.

"Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 of the Code of Virginia, and any activity that is conducted as part of or in furtherance of such silvicultural activity, but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 USC § 1344 or any regulations promulgated pursuant thereto.

“Permanent flooding or impounding” means an increase in the duration or depth of standing water on a land surface, other than that resulting from extended-detention basins and enhanced extended-detention basins designed, constructed, and maintained to function in accordance with Virginia Department of Conservation and Recreation (DCR) standards for such facilities (Virginia Stormwater Management Handbook, First Edition, 1999, Volume 1, Chapter 3) or local standards that, at a minimum, meet the DCR standards.

"Permittee" means the person who holds a VWP individual or general permit.

"Person" means any firm, corporation, association, or partnership, one or more individuals, or any governmental unit or agency of it.

"Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution.

“Pollution” means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution" for the terms and purposes of this chapter.

“Practicable” means available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall project purposes.

“Preservation” means the protection of resources in perpetuity through the implementation of appropriate legal and physical mechanisms.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views and comments to the board pursuant to the board's Procedural Rule No. 1 (9 VAC 25-230-10 et seq.).

"Regional permit" means a general permit issued by the USACE under 40 CFR Part 241 and applicable within a specified geographic area.

"Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

"Schedule of compliance" means a schedule of remedial measures including a sequence of enforceable actions or operations leading to compliance with the Act, the law, and the board regulations, standards and policies.

“Significant alteration or degradation of existing wetland acreage or function” means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

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

"Toxic pollutant" means any agent or material including, but not limited to, those listed under § 307(a) of the Act (33 USC § 1317(a)), which after discharge will, on the basis of available information, cause toxicity. Toxicity means the

inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health or other adverse environmental effects.

"USACE" means the United States Army Corps of Engineers.

"VMRC" means the Virginia Marine Resources Commission.

“VWP general permit” means a regulation that constitutes a VWP permit for a category of activities.

“VWP permit” means an individual or general permit issued by the board under § 62.1-44.15:5 of the Code of Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia’s § 401 certification.

"Water quality standards" means water quality standards adopted by the board and approved by the administrator of the EPA under § 303 of the Act as defined at 9 VAC 25-260-5 et seq.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

9 VAC 25-210-20. (Repealed.)

9 VAC 25-210-30. (Repealed.)

9 VAC 25-210-40. (Repealed.)

9 VAC 25-210-45. Wetland delineation.

Each delineation shall be conducted in accordance with the USACE "Wetland Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" (Federal Manual). The Federal Manual shall be interpreted in a manner consistent with USACE guidance and the requirements of this regulation, and any delineation guidance adopted by the board as necessary to ensure consistency with the USACE implementation of delineation practices.

9 VAC 25-210-50. Prohibitions and requirements for VWP permits.

A. Except in compliance with a VWP permit, no person shall 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

B. No VWP permit shall be issued for the following:

1. Where the proposed activity or the terms or conditions of the VWP permit do not comply with state law or regulations including but not limited to § 10.1-1408.5 of the Code of Virginia;

2. For the discharge of any radiological, chemical or biological warfare agent or high level radioactive material into surface waters.

9 VAC 25-210-60. Exclusions.

The following do not require a VWP permit but may require other permits under state and federal law:

1. Discharges of dredged or fill material into state waters, excepting wetlands, which are addressed under a USACE Regional, General or Nationwide Permit, and for which no § 401 Water Quality Certificate is required.

2. Any discharge, other than an activity in a surface water governed by § 62.1-44.15:5 of the Code of Virginia, permitted by a Virginia Pollutant Discharge Elimination System (VPDES) permit in accordance with 9 VAC 25-31-10 et seq.

3. Any activity, other than an activity in a surface water governed by § 62.1-44.15:5 of the Code of Virginia, permitted by a Virginia Pollution Abatement (VPA) permit in accordance with 9 VAC 25-32-10 et seq.

4. Septic tanks, when authorized by a state Department of Health permit.

5. Any activity permitted under Wetlands, Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 (Fisheries and Habitat of the Tidal Waters) of the Code of Virginia, unless state certification is required by § 401 of the Clean Water Act.

6. Normal residential gardening, lawn and landscape maintenance.

7. Normal agriculture and silviculture activities such as plowing, seeding, cultivating, minor drainage and harvesting for the production of food, fiber and forest products, or upland soil and water conservation practices.

a. To fall under this exclusion, the activities specified in subdivision 7 of this section must be part of an established (i.e., ongoing) agriculture or silviculture, operation, and must be in accordance with applicable best management practices set forth in either Forestry Best Management Practices for Water Quality in Virginia Technical Guide (Third Edition, 1997) or Virginia Agricultural BMP Manual (2000), which facilitate compliance with the § 404(b)(1) Guidelines (40 CFR Part 230). Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation.

b. Activities which bring a new area into agricultural or silvicultural use are not part of an established operation. An operation ceases to be established when the area in which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation. If the activity takes place outside surface waters, it does not need a VWP permit, whether or not it is part of an established agriculture or silviculture operation.

c. For the purposes of subdivision 7 of this section, cultivating, harvesting, minor drainage, plowing, and seeding are defined as follows:

(1) "Cultivating" means physical methods of soil treatment employed within established agriculture and silviculture lands on farm or forest crops to aid and improve their growth, quality, or yield.

(2) "Harvesting" means physical measures employed directly upon farm, forest, or crops within established agricultural and silviculture lands to bring about their removal from farm or forest land, but does not include the construction of farm or forest roads.

(3) "Minor drainage" means:

(a) The discharge of dredged or fill material incidental to connecting upland drainage facilities to surface waters, adequate to effect the removal of excess soil moisture from upland croplands. Construction and maintenance of upland (dryland) facilities, such as ditching and tiling incidental to the planting, cultivating, protecting, or harvesting of crops;

(b) The discharge of dredged or fill material for the purpose of installing ditching or other water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, or other wetland crop species, where these activities and the discharge occur in surface waters which are in established use for such agricultural and silviculture wetland crop production;

(c) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of the Act, and which are in established use for the production of rice, or other wetland crop species;

(d) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year after such blockages are discovered in order to be eligible for exclusion; and

(e) Minor drainage in surface waters is limited to drainage within areas that are part of an established agriculture or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a nonwetland (e.g., wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to agriculture). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting surface water. Any discharge of dredged or fill material into surface water incidental to the construction of any such structure or waterway requires a VWP permit.

(4) "Plowing" means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means used on farm or forest land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of surface water to dry land. For example, the

redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities does not constitute plowing. Plowing as described above will never involve a discharge of dredged or fill material.

(5) "Seeding" means the sowing of seed and placement of seedlings to produce farm or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

8. Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, groins, levees, dams, riprap breakwaters, causeways, bridge abutments or approaches, and transportation and utility structures. Maintenance does not include modifications that change the character, scope, or size of the original design. In order to qualify for this exemption, emergency reconstruction must occur within a reasonable period of time after damage occurs.

9. Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches. Discharge associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exclusion. The maintenance dredging of existing ditches is included in this exclusion provided that the final dimensions of the maintained ditch do not exceed the average dimensions of the original ditch. This exclusion does not apply to the construction of new ditches or to the channelization of streams.

10. Construction of temporary sedimentation basins on a construction site which does not include the placement of fill materials into surface waters or excavation in wetlands. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term "construction site" also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in run-off of sediment is controlled through the use of temporary sedimentation basins.

11. Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with applicable best management practices (BMPs) set forth in either Forestry Best Management Practices for Water Quality in Virginia, Technical Guide, Third Edition, 1997, or Virginia Agricultural BMP Manual, 2000, to ensure that flow and circulation patterns and chemical and biological characteristics of surface waters are not impaired, that the reach of such waters is not reduced, and that any adverse effect on the aquatic environment will otherwise be minimized. The BMPs which must be applied to satisfy this provision include the following baseline provisions:

a. Permanent roads (for agriculture or forestry activities), temporary access roads (for mining, forestry, or farm purposes), and skid trails (for logging) in surface waters shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific agriculture, silviculture or mining operations, and local topographic and climatic conditions;

b. All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into surface waters;

c. The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;

d. The fill shall be properly stabilized and maintained to prevent erosion during and following construction;

e. Discharges of dredged or fill material into surface waters to construct road fill shall be made in a manner which minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within state waters (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

f. In designing, constructing, and maintaining roads, vegetative disturbance in surface waters shall be kept to a minimum;

g. The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

h. Borrow material shall be taken from upland sources whenever feasible;

i. The discharge shall not take, or jeopardize the continued existence of a state- or federally- listed threatened or endangered species as defined under the Endangered Species Act (16 USC § 1531 et seq.), in § 29.1-566 of the Code of Virginia and in 4 VAC 15-20-130 B and C, except as provided in § 29.1-568 of the Code of Virginia, or adversely modify or destroy the critical habitat of such species;

j. Discharges into the nesting and breeding areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

k. The discharge shall not be located in proximity of a public water supply or intake;

l. The discharge shall not occur in areas of concentrated shellfish production;

m. The discharge shall not occur in a component to the National Wild and Scenic River System;

n. The discharge material shall consist of suitable material free from toxic pollutants in toxic amounts; and

o. All temporary fills shall be removed in their entirety and the area restored to its original elevation.

9 VAC 25-210-70. Effect of a VWP permit.

A. As to the permitted activity, compliance with a VWP permit constitutes compliance with the VWP permit requirements of the Law and regulations.

B. The issuance of a VWP 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.

PART II.
VWP PERMIT APPLICATION AND DEVELOPMENT.

9 VAC 25-210-80. Application for a VWP permit.

A. How to apply. Any person who is required to obtain a VWP permit shall submit a complete VWP permit application to DEQ through VMRC, consisting of the JPA with the DEQ VWP Addendum, or shall submit a complete registration statement for coverage under a VWP general permit, as applicable. The Virginia Department of Transportation (VDOT) may use its monthly Interagency Coordination Meeting (IACM) process for submitting JPAs or registration statements.

1. The amount of time allowed by § 62.1-44.15:5 D of the Code of Virginia for DEQ to process a complete VWP permit application for any project, excluding water withdrawal projects, is 15 days for completeness review; 120 days for processing the complete application by issuing a VWP permit, issuing a VWP permit with conditions, denying the VWP permit, or deciding to conduct a public meeting or hearing; 60 days to hold a public meeting or hearing; and 90 days after the public meeting or hearing, if held, to make a final VWP permit decision. The required 15-day timeframe for completeness review for all projects, with the exception of minimum instream flow and water withdrawal projects, will commence upon receipt of the application by the DEQ office having authority over the project (i.e., the regional office in the region in which the project is located, or central office for VDOT projects).

2. There shall be no commencement of any activity for which a VWP permit is required prior to the issuance of a VWP permit.

B. Informational requirements.

1. A complete VWP permit application, at a minimum, consists of a JPA completed in its entirety with all appropriate maps, appendices, attachments and addenda included. The JPA must include the following information:

a. Name and address of applicant (and property owner, if different).

b. Name and address of authorized agent (if applicable).

c. Name of the waterbody or receiving waters, as applicable, at the project site.

d. Name of the city or county where the project occurs.

e. Project purpose, need and description. The purpose and need for the project shall be specified. A complete narrative description of the project shall include: the type of activity to be conducted; any physical alteration to surface waters; and all impacts, permanent and temporary, associated with the project. Wetland impacts should be quantified according to their Cowardin classification or similar terminology. Conversion of one type of wetland to another type of wetland is considered to be a permanent impact.

f. Amount of surface water impacts (wetlands, streams or open water) by type in square feet or acres, or linear feet for streams (if applicable).

g. Materials assessment. If dredged or fill material is involved, the applicant must provide evidence or certification that the material is free from toxic contaminants, or that the material, if not free of contaminants, will be placed in an approved disposal area. If applicable, the applicant may be required to conduct grain size and composition analyses, tests for specific parameters or chemical constituents, or elutriate tests on the dredge material.

h. Proposed construction schedule. An estimate of the construction timeframe for the project will be used to determine the VWP permit term.

i. Signed and dated signature page. The application signature page, either on the copy submitted to VMRC or to the DEQ, must have an original signature.

j. Appendices (from the JPA) that apply to the project.

k. The DEQ Addendum, including latitude and longitude (to the nearest second) at the center of the project, United States Geological Survey Hydrologic Unit Code for the project and compensatory mitigation site, DEQ stream classification, stream drainage area, functions and values assessment for wetlands impacts (if applicable), wetlands delineation information, state- and federally-listed threatened and endangered species information, mitigation plan (demonstrating avoidance and minimization to the maximum extent practicable, and compensation for unavoidable impacts).

(1) For wetland impacts greater than one acre and for all water withdrawals, the assessment of functional values of the affected surface waters must include information on existing beneficial uses of the surface waters and information on fish and wildlife resources and habitat at the proposed project location:

(a) Functional values may include: water quality, floodflow desynchronization, nutrient import or export, stormwater retention or detention, groundwater recharge or discharge, fish and wildlife habitat, recreation, education, and aesthetics. These values shall be assessed using an acceptable method appropriate for the type of impacted resource. This information will be used to determine the type of compensatory mitigation required to ensure no net loss of wetland functions.

(b) Beneficial uses means both instream and offstream uses. Instream beneficial uses include, but are not limited to: the protection of fish and wildlife habitat; maintenance of waste assimilation; recreation; navigation; and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to: domestic (including public water supply); agricultural; electric power generation; and commercial and industrial uses.

(2) The assessment of potential impacts to federally-listed and state-listed threatened or endangered species shall include correspondence or documentation from federal or state resource agencies addressing potential impacts to listed species.

(3) A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9 VAC 25-210-45, including the wetlands data sheets, and the latitude and longitude (to the nearest second) of the center of the wetland impact area. Wetland types shall be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, shall also be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review. The delineation map should also include the location of all impacted and non-impacted streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) shall be shown on the map as additional state or local requirements may apply if the project is located within an RPA.

(4) The plan of mitigation for unavoidable impacts to surface waters must include, in accordance with current federal regulations: measures taken to avoid impacts to the maximum extent practicable, the measures proposed to reduce the impacts to surface waters to the maximum extent practicable, and where impacts could not be avoided, the means by which compensation will be accomplished to achieve no net loss of wetland acreage and function.

(a) A narrative description must be provided detailing the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable (see 9 VAC 25-210-115 A).

(b) The compensatory mitigation plan, unless dependent solely on wetland banking or monetary contribution to an in-lieu fee fund, shall include the goals and objectives of the plan, in terms of replacement of functions and values and expressed in acres of each wetland or stream type. The plan shall also address any inclusion of buffers, any structures and features necessary for the success of the site, and the schedule for compensatory mitigation site construction.

(c) In order for an application to be deemed complete, at a minimum, a conceptual compensatory mitigation plan must be submitted, and shall include: the goals and objectives in terms of replacement of wetland or stream acreage and function; a location map, including latitude and longitude (to the nearest second) at the center of the site; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical year, a dry year and a wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; wetland delineation confirmation and data sheets and maps for existing wetland areas on the proposed site(s); a conceptual grading plan; a conceptual planting scheme, including suggested plant species, zonation and

acreage of each vegetation type proposed; a proposed soil preparation and amendment plan addressing both topsoil and subsoil conditions; and a draft design of any water control structures.

(d) The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in subdivision 1 k (4) (c) of this subsection, as well as a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photostations, monitoring wells, vegetation sampling points, and reference wetlands or streams (if available); an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and proposed deed restriction language for protecting the compensation site or sites in perpetuity. The final compensatory mitigation plan must include protection of all surface waters and upland areas that are to be preserved in perpetuity within the compensation site boundary.

(e) Any compensation plan proposing to include contributions to an in-lieu fee fund shall include proof of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated.

(f) Any compensation plan proposing the purchase of mitigation banking credits shall include:

(i) The name of the proposed mitigation bank;

(ii) The number of credits proposed to be purchased; and

(iii) Certification from the bank owner of the availability of credits.

(g) Applicants proposing off-site compensatory mitigation, including purchase or use of mitigation bank credits, or contribution to an in-lieu fee fund shall first discuss the feasibility of on-site compensatory mitigation. If on-site compensatory mitigation is practicable, applicants must provide documentation as to why the proposed off-site compensatory mitigation is ecologically preferable. The evaluation should include, at a minimum, a comparison of the following criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, surface water functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructability, and cost.

(h) Any compensation plan involving stream restoration shall submit a plan that includes: goals and objectives in terms of water quality benefits; location map, including the latitude and longitude (to the nearest second) at the center of the site; the proposed stream segment restoration locations, including plan view and cross-section sketches; the stream deficiencies that need to be addressed; the restoration measures to be employed, including proposed design flows and types of instream structures; and a proposed construction schedule.

(i) Compensation for open water impacts may be required, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.

l. Detailed project location map. The detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the impact area must include the latitude and longitude for the project, hydrologic unit code, and stream classification (if applicable) clearly identified on the map. The map should be of sufficient detail such that the site may be easily located for site inspection.

m. Project plan view and cross-sectional sketches. All plan view sketches and cross-sectional sketches must include, at a minimum, north arrow, scale, existing structures, existing and proposed (if available) contours, limit of surface water areas, ebb and flood or direction of flow, impact limits, and location and dimension of all structures in impact areas,

n. Application processing fee. The applicant will be notified by the board as to the appropriate fee for the project in accordance with 9 VAC 25-20-10 et seq. The board will continue to process the application, but the fee must be received prior to release of a draft VWP permit.

2. In addition to requirements of subdivision 1 of this subsection, applications involving a surface water withdrawal or a Federal Energy Regulatory Commission (FERC) license or re-license shall include:

a. The drainage area, the average annual flow and the median monthly flows at the withdrawal point, and historical low flows if available;

b. The average daily withdrawal, the maximum daily and instantaneous withdrawals and information on the variability of the demand by season;

c. Information on how the proposed withdrawal will impact flows in terms of flow reduction;

d. The consumptive use and the average daily return flow of the proposed project and the location of the return flow;

e. Information on the proposed use of and need for the surface water and information on how the demand for surface water was determined (e.g., per capita use, population growth rates, new uses, changes to service areas, and if applicable, acreage irrigated and evapotranspiration effects);

f. Information on flow dependent beneficial uses at the proposed project location; and

g. Information on the aquatic life at the proposed project location, including species and habitat requirements.

C. Additional information. The board shall require additional information if needed to evaluate compliance with this chapter.

D. Incomplete application. Where an application is not accepted as complete by the board within 15 days of receipt, the board shall request additional specific information from the applicant, and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the board considers the application complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a VWP permit application, or submitted incorrect information in a VWP permit application or in any report to the board, he shall immediately submit such facts or the correct information.

9 VAC 25-210-90. Conditions applicable to all VWP permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP permit. Nothing in this chapter 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 this chapter.

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 of this section, 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.

9 VAC 25-210-100. Signatory requirements.

A. Application. Any application for a VWP permit under this chapter must bear the applicant's signature or the signature of a person acting in the applicant’s behalf, with the authority to bind the applicant.

B. Reports. All reports required by VWP permits and other information requested by the board shall be signed by:

1. One of the persons described in subsection A of this section; or

2. A duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in subsection A of this section; 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.

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 must be submitted to the board prior to or together with any separate information, or applications to be signed by an authorized representative.

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

9 VAC 25-210-110. Establishing applicable standards, limitations or other VWP permit conditions.

In addition to the conditions established in 9 VAC 25-210-90 and 9 VAC 25-210-100, each VWP permit shall include conditions meeting the following requirements where applicable:

1. Instream flow conditions. Subject to the provisions of Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia, and subject to the authority of the State Corporation Commission over hydroelectric facilities contained in

Chapter 7 (§ 62.1-80 et seq.) of Title 62.1 of the Code of Virginia, instream flow conditions may include but are not limited to conditions that limit the volume and rate at which water may be withdrawn at certain times and conditions that require water conservation and reductions in water use.

2. Water quality standards and state requirements. The VWP permit shall include requirements to comply with all appropriate provisions of state laws and regulations.

3. Toxic pollutants.

a. Where the board finds that appropriate limitations may not ensure compliance with the law or state water quality standards the board shall require the permittee to follow a program of biological or chemical toxics monitoring. The requirement may include a VWP permit reopener to allow the imposition of toxicity reduction or elimination measures determined to be necessary as a result of the board's evaluation of the results of the toxic monitoring and other available information. Based upon this determination, appropriate limitations will be included in the VWP permit to ensure the reduction or elimination of toxic pollutants and allow the board to ensure that the proposed project will comply with water quality standards and other appropriate requirements of the law.

b. Limitations will be included in the VWP permit to control all toxic pollutants which the board determines (based on information reported in a VWP permit application or a notification or on other information) are or may be discharged at a level which would adversely affect the beneficial use of the receiving waters.

4. Duration of VWP permits. VWP permits issued under this chapter shall have an effective date and expiration date which will determine the life of the permit. VWP permits shall be effective for a fixed term based upon the projected duration of the project, the length of any required monitoring, or other project operations or VWP permit conditions; however, the term shall not exceed 15 years and will be specified in the conditions of the VWP permit. The term of these VWP permits shall not be extended by modification beyond the maximum duration. Extension of VWP permits for the same activity beyond the maximum duration specified in the original VWP permit will require reapplication and reissuance of a new VWP permit unless the permittee complies with the provisions of 9 VAC 25-210-185.

5. Monitoring requirements as conditions of VWP permits may include but are not limited to:

a. Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate) when required as a condition of the VWP permit;

b. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring and composite samples;

c. Applicable reporting requirements based upon the impact of the regulated activity on water quality; and

d. Requirements to report monitoring results with a frequency dependent on the nature and effect of the regulated activity.

6. Best Management Practices (BMPs). The VWP permit may require the use of BMPs to control or abate the discharge of pollutants.

7. Reissued VWP permits. When a VWP permit is renewed or reissued, limitations, standards or conditions must be in conformance with current limitations, standards, or conditions.

8. Reopening VWP permits. Each VWP permit shall have a condition allowing the reopening of the VWP permit for the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits includes, but is not limited towhen the circumstances on which the previous VWP permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the VWP permit was issued and thereby constitute cause for VWP permit modification or revocation and reissuance.

9 VAC 25-210-115. Evaluation of mitigation alternatives.

A. Avoidance and minimization opportunities shall be evaluated as follows: The applicant must demonstrate to the satisfaction of the board that practicable alternatives, including design alternatives, have been evaluated and that the proposed activity, in terms of impacts to water quality and fish and wildlife resources, is the least environmentally damaging practicable alternative. The applicant must also demonstrate to the satisfaction of the board that all steps have been taken in accordance with the Guideline for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230 (Federal Register, December 24, 1980) to first avoid and then minimize adverse impacts to surface waters to the maximum extent practicable. Measures, such as reducing the size, scope, configuration, or density of the proposed project, that would avoid or result in less adverse impact to surface waters shall be considered to the maximum extent practicable.

B. Compensatory mitigation proposals shall be evaluated as follows:

1. On-site, in-kind compensatory mitigation, when available, shall be deemed the most ecologically preferable form of compensation for project impacts, in most cases. However, off-site or out-of-kind compensation opportunities that prove to be more ecologically preferable or practicable may be considered. When the applicant can demonstrate satisfactorily that an off-site or out-of-kind compensatory mitigation proposal is practicable and ecologically preferable, then such proposal may be deemed appropriate for compensation of project impacts.

2. Compensatory mitigation for unavoidable project impacts may be met through wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Compensation may incorporate preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits as appropriate to ensure protection or enhancement of state waters or fish and wildlife resources and their habitat.

3. Generally, preference shall be given in the following sequence: restoration, creation, mitigation banking, in-lieu fee fund. However, the appropriate compensatory mitigation option for project impacts shall be evaluated on a case-by-case basis, in terms of replacement of wetland or stream acreage and function.

C. No net loss. Compensatory mitigation for project impacts shall be sufficient to achieve no net loss of existing wetland acreage and functions. Compensatory mitigation ratios appropriate for the type of aquatic resource impacted and the type of compensation provided shall be applied to permitted impacts to help meet this requirement. Credit may be given for preservation of upland buffers already protected under other ordinances to the extent that additional protection and water quality and fish and wildlife resource benefits are provided.

D. Alternatives analysis.

1. An alternatives analysis shall be required to justify that the following alternatives are ecologically preferable and practicable compensatory mitigation options to on-site, in-kind compensation: off-site including purchase or use of mitigation bank credits, or contribution to an in-lieu fee fund; or out-of-kind.

2. An alternatives analysis shall include, but is not limited to, the following criteria, which shall be compared between the impacted and replacement sites: water quality benefits; acreage of impacts; distance from impacts; hydrologic source; hydrologic regime; watershed; functions and values; vegetation type; soils; constructability; timing; property acquisition; and cost. The alternatives analysis shall compare the ability of each compensatory mitigation option to replace lost acreage and function.

E. In-lieu fee fund approval.

1. In order for contribution to an in-lieu fee fund to be an acceptable form of compensatory mitigation, the fund must be approved for use by the board and must be dedicated to the achievement of no net loss of wetland or stream acreage and function through the preservation, restoration and creation of wetlands or streams.

2. The board may approve the use of a fund by:

a. Approving use of a fund for a specific project when approving a VWP permit; or

b. Granting approval of a fund at a board meeting.

3. In order for the board to approve the use of a fund, the fund must meet the following criteria:

a. Demonstration of a no net loss policy in terms of wetland or stream acreage and function by adoption of operational goals or objectives for preservation, creation or restoration of wetland or stream acreage and function;

b. Consultation with DEQ on selection of sites for preservation, restoration, or creation;

c. A commitment to provide annual reports to the board detailing contributions received and acreage and type of wetlands or streams preserved, created or restored in each watershed with those contributions, as well as the mitigation credits contributed for each watershed of project impact;

d. A mechanism to establish fee amounts that will ensure each contribution will be adequate to compensate for the wetland or stream acreage and function lost in the impacted watershed; and

e. Such terms and conditions as the board deems necessary to ensure a no net loss of wetland or stream acreage and functions from permitted projects providing compensatory mitigation through contributions to the fund.

4. Such approval may be granted for up to five years and may be renewed by the board upon a demonstration that the fund has enhanced wetland or stream acreage or function through the preservation, creation or restoration of wetlands or streams. Such demonstration may be made with the reports submitted pursuant to subdivision 3 c of this subsection.

5. The board may approve the use of an in-lieu fund only after publishing a notice of its intent in the Virginia Register of Regulations at least 45 days prior to taking such action and after accepting and considering public comments on its approval of the fund for at least a 30-day period. Where approval is contemplated in accordance with subdivision 2 a of this subsection, compliance with the public notice and comment requirements for approval of the VWP permit shall meet this requirement.

F. Use of mitigation banks and multi-project mitigation sites. The use of mitigation banks or multi-project mitigation sites for compensating project impacts shall be deemed appropriate if the following criteria are met:

1. The bank or multi-project mitigation site meets the criteria and conditions found in § 62.1-44.15:5 E of the Code of Virginia:

2. The bank or multi-project mitigation site is ecologically preferable to practicable on-site and off-site individual compensatory mitigation options;

3. For mitigation banks only, the banking instrument, if approved after July 1, 1996, has been approved by a process that involved public review and comment in accordance with federal guidelines;

4. The applicant provides verification to DEQ of purchase of the required amount of credits; and

5. For multi-project mitigation sites, the VWP permit shall include conditions sufficient to ensure long term monitoring and maintenance of surface water functions and values.

9 VAC 25-210-120. Draft VWP permit formulation.

A. After evaluation of a complete application, the board shall make a decision to tentatively issue or deny the VWP permit pursuant to this section.

B. If the tentative decision is to issue the VWP permit then a draft VWP permit shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft VWP permit:

1. Conditions, discharge limitations, standards and other requirements applicable to the VWP permit;

2. Monitoring requirements; and

3. Requirements for mitigation of adverse environmental impacts.

C. If the tentative decision is to deny the application, the board shall do so in accordance with 9 VAC 25-210-230.

D. Should a decision be made to waive the requirement for a VWP permit, the board shall do so in accordance with 9 VAC 25-210-220.

9 VAC 25-210-130. VWP general permits.

A. The board may issue VWP general permits by regulation for certain specified categories of activities as it deems appropriate.

B. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require individual applications and VWP individual permits rather than approving coverage under a VWP general permit. Cases where an individual VWP permit may be required include the following:

1. Where the activity may be a significant contributor to pollution;

2. Where the applicant or permittee is not in compliance with the conditions of the VWP general permit;

3. When an applicant or permittee no longer qualifies for coverage under the VWP general permit; and

4. When a permittee operating under a VWP general permit requests to be excluded from the coverage of the VWP general permit by applying for a VWP individual permit.

C. When a VWP individual permit is issued to a permittee, the applicability of the VWP general permit to the individual permittee is automatically terminated on the effective date of the VWP individual permit.

D. When a VWP general permit is issued which applies to a permittee already covered by a VWP individual permit, such person may request exclusion from the provisions of the VWP general permit and subsequent coverage under a VWP individual permit.

E. A VWP general permit may be revoked from an individual permittee for any of the reasons set forth in 9 VAC 25-210-180 subject to appropriate opportunity for a hearing.

F. When all permitted activities requiring notification have been completed, the permittee shall be required to submit a notice of termination.

G. Activities authorized under a VWP general permit regulation shall be authorized for a fixed term based upon project length and duration. When a general permit regulation is amended or replaced, it shall contain provisions such that coverage authorized under the general permit existing as of the effective date of the amended or replacement VWP general permit regulation may continue under the amended or replacement VWP general permit and that all terms and conditions of the authorization may continue in full force and effect. Notwithstanding any other provision, a request for reissuance of authorization of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered a new application for coverage and no application fee will be charged.

H. The board may certify, or certify with conditions, a nationwide or regional permit proposed by the USACE in accordance with § 401 of the federal Clean Water Act as meeting the requirements of this regulation and the requirements for a VWP general permit if the nationwide or regional permit, including any conditions contained in the certification:

1. Requires that wetland or stream impacts be avoided and minimized to the maximum extent practicable;

2. Does not allow impacts that cause or contribute to a significant impairment of state waters or fish and wildlife resources;

3. Requires compensatory mitigation sufficient to achieve no net loss of existing wetland acreage and function; and

4. Requires that compensatory mitigation be provided through wetland or stream creation or restoration, purchase or use of mitigation bank credits in accordance with § 62.1-44.15:5 E of the Code of Virginia, contribution to an in-lieu fee fund approved by the board in accordance with these regulations, or preservation or restoration of upland buffers adjacent to wetlands or other state waters or preservation of wetlands or streams when done in conjunction with creation, restoration or mitigation bank credits.

Such certifications may be provided only after the board has advertised and accepted public comment on its intent to provide certification for at least 30 days.

I. Coverage under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with this section shall be deemed coverage under a VWP general permit upon submission of proof of coverage under the nationwide or regional permit and any other information required by the board through the certification process. Notwithstanding the provisions of 9 VAC 25-20-10, no fee shall be required from applicants seeking coverage under this subsection.

PART III.
PUBLIC INVOLVEMENT.

9 VAC 25-210-140. Public notice of VWP permit action and public comment period.

A. Every draft VWP permit shall be given public notice paid for by the applicant, by publication once in a newspaper of general circulation in the area affected by the proposed activity. The public notice must be published within 14 days of issuance of a draft VWP permit, or the 120-day VWP permit processing timeframe will be suspended until such publication.

B. The board shall provide a comment period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative decision and to request a public hearing on the VWP permit. All written comments submitted during the comment period shall be retained by the board and considered during its final decision on the VWP permit.

C. The contents of the public notice of an application for a VWP permit or proposed VWP permit action shall include:

1. Name and address of the applicant. If the location of the activity differs from the address of the applicant the notice shall also state the location in sufficient detail such that the specific location may be easily identified;

2. Brief description of the business or activity to be conducted at the site of the proposed activity;

3. The name of the receiving waterway;

4. A statement of the tentative determination to issue or deny a VWP permit;

5. A brief description of the final determination procedure;

6. The address, e-mail address and phone number of a specific person at the state office from whom further information may be obtained; and

7. A brief description on how to submit comments and request a public hearing.

D. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

E. When a VWP permit is denied, the board will do so in accordance with 9 VAC 25-210-230.

9 VAC 25-210-150. Public access to information.

All information pertaining to VWP permit processing or in reference to any activity requiring a VWP permit under this chapter shall be available to the public, unless the applicant has made a showing that the information is protected by the applicant as a trade secret covered by § 62.1-44.21 of the Code of Virginia. All information claimed confidential must be identified as such at the time of submission to the board and VMRC.

9 VAC 25-210-160. Public comments and hearing.

A. The board shall consider all written comments and requests for a public hearing received during the comment period, and shall make a determination on the necessity of a public hearing in accordance with Procedural Rule No. 1 (9 VAC 25-230-10 et seq.). All proceedings, public hearings and decisions from it will be in accordance with Procedural Rule No. 1 (9 VAC 25-230-10 et seq.).

B. Should the board, in accordance with Procedural Rule No. 1 (9 VAC 25-230-10 et seq.), determine to dispense with the public hearing, it may grant the VWP permit, or, at its discretion, transmit the application or request, together with all written comments from it and relevant staff documents and staff recommendations, if any, to the board for its decision.

C. Any applicant or permittee aggrieved by an action of the board taken without a public hearing, or inaction of the board, may request in writing a hearing pursuant to Procedural Rule No. 1 (9 VAC 25-230-10 et seq.).

9 VAC 25-210-170. Public notice of hearing.

A. Public notice of any public hearing held pursuant to 9 VAC 25-210-160 shall be circulated as follows:

1. Notice shall be published once in a newspaper of general circulation in the county or city where the activity is to occur; and

2. Notice of the public hearing shall be sent to all persons and government agencies that received a copy of the notice of VWP permit application and to those persons requesting a public hearing or having commented in response to the public notice.

B. Notice shall be effected pursuant to subdivisions A 1 and 2 of this section at least 30 days in advance of the public hearing.

C. The content of the public notice of any public hearing held pursuant to 9 VAC 25-210-160 shall include at least the following:

1. Name and address of each person whose application will be considered at the public hearing and a brief description of the person's activities or operations;

2. The precise location of such activity and the surface waters that will, or may, be affected. The location should be described, where possible, with reference to route numbers, road intersections, map coordinates or similar information;

3. A brief reference to the public notice issued for the VWP permit application, including identification number and date of issuance unless the public notice includes the public hearing notice;

4. Information regarding the time and location for the public hearing;

5. The purpose of the public hearing;

6. A concise statement of the relevant water quality, or fish and wildlife resource issues raised by the persons requesting the public hearing;

7. Contact person and the address, e-mail address and phone number of the DEQ office at which the interested persons may obtain further information or request a copy of the draft VWP permit prepared pursuant to 9 VAC 25-210-120; and

8. A brief reference to the rules and procedures to be followed at the public hearing.

D. Public notice of any public hearing held pursuant to 9 VAC 25-210-160 C shall be in accordance with Procedural Rule No. 1 (9 VAC 25-230-10 et seq.).

PART IV.
VWP PERMIT MODIFICATION, REVOCATION AND REISSUANCE, TERMINATION AND DENIAL.

9 VAC 25-210-180. Rules for modification, revocation and reissuance and termination of VWP permits.

A. VWP permits shall be modified, revoked and reissued, or terminated only as authorized by this section.

B. A VWP permit may be modified in whole or in part, revoked and reissued or terminated.

C. VWP permit modifications shall not be used to extend the term of a VWP permit beyond 15 years from the date of original issuance.

D. Modification, revocation and reissuance, or termination may be initiated by the board, on the request of the permittee, or other person at the board's discretion under applicable laws or the provisions of this chapter.

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

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

2. The permittee's failure in the application or during the VWP permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP permit modification or termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; and

6. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

9 VAC 25-210-185. 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 should 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.

9 VAC 25-210-190. Causes for modification.

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

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP permit or are absent from it;

2. When new information becomes available about the operation or activity covered by the VWP permit which was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;

3. When a change is made in the promulgated standards or regulations on which the VWP permit was based;

4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;

5. When changes occur which are subject to "reopener clauses" in the VWP permit; or

6. When the board determines that minimum instream flow levels resulting from the permittee's withdrawal of water are detrimental to the instream beneficial use and the withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.

9 VAC 25-210-200. Transferability of VWP permits.

A. Transfer by modification. Except as provided for under automatic transfer in subsection B of this section, a VWP permit shall be transferred only if the VWP permit has been modified to reflect the transfer or has been revoked and reissued to the new permittee.

B. Automatic transfer. Any VWP 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 VWP permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and

3. The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit.

9 VAC 25-210-210. Minor modification.

A. Upon request of the permittee, or upon board initiative with the consent of the permittee, minor modifications may be made in the VWP permit without following the public involvement procedures.

B. For VWP permits, a minor modification may only:

1. Correct typographical errors;

2. Require monitoring and reporting by the permittee at a different frequency than required in the VWP permit, based on new information justifying the change in conditions;

3. Change an interim compliance date in a schedule of compliance to no more than 180 days from the original compliance date and provided it will not interfere with the final compliance date;

4. Allow for a change in ownership or operational control when the board determines that no other change in the VWP permit is necessary, provided that a written agreement containing a specific date for transfer of VWP permit responsibility, coverage and liability from the current to the new permittee has been submitted to the board;

5. Change plans and specifications that do not result in an increase to permitted project impacts;

6. Occur when facility expansion, production increases and modification will not cause significant change in the discharge of pollutants;

7. Delete VWP permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated; and

8. Occur when subsequent to issuance of a VWP individual or general permit, the permittee determines that additional wetland or stream impacts are necessary, provided that the unavoidable cumulative increase in the acreage of wetland impacts is not greater than 1/4 acre and the unavoidable cumulative increase in stream impacts is less than 50 linear feet, and also provided that the additional impacts are fully mitigated at ratios not less than compensatory mitigation ratios for the original impacts.

9 VAC 25-210-220. Waiver of VWP permit.

A. The board may waive permitting requirements when the board determines that a proposed project impacts an isolated wetland that is of minimal ecological value as defined in 9 VAC 25-210-10. Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.

B. The board may waive the requirement for a VWP individual permit when the proposed activity qualifies for a permit issued by the USACE and receives a permit from the VMRC, pursuant to Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, and the activity does not impact instream flows.

9 VAC 25-210-230. Denial of the VWP permit.

A. The board shall make a decision to tentatively deny the VWP permit if the requirements of this chapter are not met. Basis for denial include, but are not limited to, the following:

1. The project will result in violations of water quality standards or will impair the beneficial uses of state waters.

2. As a result of project implementation, shellfish waters would be condemned in accordance with 9 VAC 25-260-5 et seq.

3. The project that the applicant proposed fails to adequately avoid and minimize impacts to state waters to the maximum extent practicable.

4. The proposed compensatory mitigation plan is insufficient or unsatisfactory for the proposed impacts and fails to achieve no net loss of existing acreage and function.

5. The Department of Game and Inland Fisheries indicates that natural or stockable trout waters would be permanently and negatively impacted by the proposed activity.

6. The proposed activity is prohibited by 9 VAC 25-210-50.

7. The effect of project impacts, 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.

8. Failure to submit the required permit fee in accordance with 9 VAC 25-40-80 B 1 n.

B. The applicant shall be notified by letter of the board's preliminary decision to tentatively deny the VWP permit requested.

C. Should the applicant withdraw his application, no VWP permit will be issued.

D. Should the applicant elect to proceed as originally proposed, the board may deny the application and advise the applicant pursuant to Procedural Rule No. 1 (9 VAC 25-230-10 et seq.) of the applicant's right to a public hearing to consider the denial.

PART V.
ENFORCEMENT.

9 VAC 25-210-240. Enforcement.

The board may enforce the provisions of this chapter utilizing all applicable procedures under the law and § 10.1-1186 of the Code of Virginia.

PART VI.
MISCELLANEOUS.

9 VAC 25-210-250. Delegation of authority.

The director, or a designee acting for him, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

9 VAC 25-210-260. Transition.

A. All applications received from VDOT on or after August 1, 2001, or all other applications received on or after October 1, 2001, will be processed in accordance with these new procedures.

B. Section 401 Water Quality Certificates issued prior to December 31, 1989, have the same effect as a VWP permit. Water Quality Certificates issued after this date will remain in effect until reissued as Virginia Water Protection Permits.

DOCUMENTS INCORPORATED BY REFERENCE

Virginia Stormwater Management Handbook, First Edition, 1999, Volume I, Chapter 3, Department of Conservation and Recreation.

Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report.

Forestry Best Management Practices for Water Quality in Virginia Technical Guide, Third Edition, 1997, Department of Forestry.

Virginia Agricultural Best Management Practices (BMP) Manual, Revised June 2000, Department of Conservation and Recreation.

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

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

FORMS

Department of Environmental Quality Water Division Permit Application Fee.

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia.

9 VAC 25-660-10 et seq. Virginia Water Protection General Permit for Impacts Less than One-Half of an Acre.

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

Effective Date: October 1, 2001.

Summary:

The regulation addresses a new requirement in § 62.1-44.15:5 of the Code of Virginia to develop a general permit for activities causing wetland impacts of less than one-half acre. Numerous changes have been made throughout the final regulation. Most of these involve clarification of definitions, the distinction between the general permit regulation and an authorization approved under the general permit, and that the permits do not apply to tidal waters. The procedures for data searches pertaining to threatened and endangered species have been modified. Certain exclusions, special conditions, and a limit on impacts to intermittent stream channels have been added to conform to the other general permits. The evaluation of compensatory mitigation options, including compensation ratios, have been clarified. A notice of planned change section has been added, and the section on general permit modification has been deleted, to establish the correct procedure for modifying general permit authorizations.

CHAPTER 660.
VIRGINIA WATER PROTECTION GENERAL PERMIT FOR IMPACTS LESS THAN ONE-HALF OF AN ACRE.

9 VAC 25-660-10. 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 (VWP) Permit Regulation (9 VAC 25-210-10 et seq.) unless the context clearly indicates otherwise or unless otherwise indicated below.

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

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

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

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

"FEMA" means the Federal Emergency Management Agency.

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

"Impacts" means results caused by human-induced activities conducted in surface waters as specified in § 62.1-44.15:5 D of the Code of Virginia.

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

"Less than one-half of an acre" means 0.00 to 0.49 acre, rounded to the second decimal place.

"Perennial stream" means a stream that has flowing water year round in a typical year. For the purpose of this chapter, a surface water body (or stream segment) having a drainage area of at least 320 acres (1/2 square mile) is a perennial stream, unless field conditions clearly indicate otherwise.

"Single and complete project" means the total project proposed or accomplished by one person and which has independent utility. For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate surface water (i.e., a single waterbody) and to multiple crossings of the same waterbody at

separate and distinct locations. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland, lake, etc. are not separate waterbodies.

"State programmatic general permit" means a general permit issued by the Department of the Army in accordance with 33 CFR Part 32S that is founded on a state program and is designed to avoid duplication between the federal and state programs.

"Up to one-tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place.

"Utility line" means any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term "utility line" does not include activities 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.

9 VAC 25-660-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this chapter is to establish VWP General Permit Number WP1 under the VWP permit program regulation to govern impacts to less than one-half of an acre of nontidal surface waters including up to 125 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board.

B. The director, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This VWP general permit regulation will become effective on October 1, 2001, and will expire on October 1, 2006.

D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-660-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for a maximum of three years.

9 VAC 25-660-30. Authorization to impact surface waters.

A. Any person governed by this VWP general permit is authorized to impact less than one-half of an acre of surface waters including up to 125 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel, provided that the person submits notification as required in 9 VAC 25-660-50 and 9 VAC 25-660-60, remits the required application processing fee (9 VAC 25-20-10 et seq.), complies with the limits and other requirements of 9 VAC 25-660-100, receives approval from the board, and provided that:

1. The applicant shall not have been required to obtain a VWP individual permit under the VWP permit regulation (9 VAC 25-210-10 et seq.) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another applicable VWP general permit, in lieu of coverage under this VWP general permit.

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

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

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

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

4. Compensatory mitigation for unavoidable impacts is provided in the form of the purchase or use of mitigation bank credits or a contribution to an approved in-lieu fee fund.

B. Only activities in nontidal waters may qualify for coverage under this VWP general permit.

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value as defined in 9 VAC 25-210-10. Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.

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

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

F. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued § 401 certification existing as of October 1, 2001, shall constitute coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact. Notwithstanding any other provision, activities authorized under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with 9 VAC 25-210-130 do not need to obtain coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.

9 VAC 25-660-40. Exceptions to coverage.

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

1. Wetlands composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (Chamaecyparis thyoides), bald cypress (Taxodium distichum), water tupelo (Nyssa aquatica), or overcup oak (Quercus lyrata). Percentages shall be based on either basal area or percent areal cover.

2. Wetlands underlain by histosols.

3. Nontidal wetlands adjacent to tidal waters.

4. 100-year floodplains as identified by FEMA's flood insurance rate maps or FEMA-approved local floodplain maps.

5. Surface waters with federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. Authorization for coverage under this VWP general permit cannot be used in combination with authorizations for coverage under other VWP general permits to impact greater than one-half of an acre of nontidal surface waters, up to 125 linear feet of perennial stream channel or up to 1,500 linear feet of nonperennial stream channel. More than one authorization for coverage under this VWP general permit for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the limits specified in this subsection.

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 (9 VAC 25-260-5 et seq.).

D. The board shall deny coverage under this VWP general permit to any applicant for activities that cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to adversely affect aquatic life, or for activities that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

E. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, increase flooding, or cause more than minimal degradation of the water quality of any stream.

F. This VWP general permit may not be used for:

1. Any stormwater management facility that is located in perennial streams or in waters designated as oxygen or temperature impaired;

2. The construction of an irrigation impoundment on a perennial stream;

3. Any water withdrawal activities;

4. The location of animal feeding operations or waste storage facilities in state waters;

5. The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the area is contained within a cofferdam or the work is performed in the dry;

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. The taking of threatened or endangered species in accordance with the following:

a. Pursuant to § 29.1-564 of the Code of Virginia: "The taking, transportation, processing, sale or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568."

b. Pursuant to § 29.1-566 of the Code of Virginia and 4 VAC 15-20-130 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.

9 VAC 25-660-50. Notification.

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

1. An application for proposed impacts greater than one-tenth of an acre of surface waters shall be submitted via a registration statement that includes all information pursuant to 9 VAC 25-660-60.

2. Proposed impacts up to one-tenth of an acre shall be reported via a registration statement that includes only the following information: subdivisions 1 through 8, 13, 15 and 20 of 9 VAC 25-660-60 B.

B. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) may serve as the registration statement provided that all information required pursuant to 9 VAC 25-660-60 is included and that the first page of the form is clearly marked indicating the intent to have the form serve as the registration statement for this VWP general permit.

C. The board will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Game and Inland Fisheries regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this general permit.

9 VAC 25-660-60. Registration statement.

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

1. The applicant shall file a complete registration statement as described in 9 VAC 25-660-50 for a VWP General Permit WP1 for impacts to surface waters of less than one-half of an acre, including up to 125 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel, which will serve as a notice of intent for coverage under this VWP general permit.

2. Any applicant proposing an activity under this VWP general permit is advised to file the required registration statement at least 45 days prior to the date planned for the commencement of the activity to be regulated by the VWP general permit. VDOT may use its monthly IACM process for submitting registration statements.

B. The required registration statement shall contain the following information:

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

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

3. The existing VWP permit number (if applicable);

4. The name of the project, purpose of project, and a description of the activity;

5. The name of the water body or water bodies or receiving stream, as applicable;

6. The hydrologic unit code (HUC) for the project area;

7. The name of the city or county where the project is located;

8. Latitude and longitude (to the nearest second) from a central location within the project limits;

9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the project area. The map should be of sufficient detail such that the site may be easily located for site inspection;

10. The appropriate appendices from the JPA;

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

12. (Reserved.)

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, and the impact area (in square feet, linear feet or acres). Wetland impacts should be quantified according to their Cowardin classification or similar terminology;

14. (Reserved.)

15. A description of the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable as required by 9 VAC 25-210-115 A;

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

a. Any compensation plan proposing to include contributions to an in-lieu fee fund shall include proof of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated; and

b. Any compensation plan proposing the purchase of mitigation banking credits shall include:

(1) The name of the proposed mitigation bank;

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

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

17. A delineation map of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9 VAC 25-210-45, including the wetlands data sheets, and the latitude and longitude (to the nearest second) of the center of the wetland impact area. Wetland types should be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, shall also be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review. The delineation map should also include the location of all impacted and non-impacted streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) should be shown on the map, as other state or local requirements may apply if the project is located within an RPA.

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

19. The appropriate application processing fee for a VWP general permit (9 VAC 25-20-10 et seq.); and

20. The following certification:

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

C. The registration statement shall be signed in accordance with 9 VAC 25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of a complete registration statement, coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days. If the board fails to act within 45 days, coverage under this VWP general permit shall be deemed approved.

1. In evaluating the registration statement, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve authorization under this VWP general permit. However, these conditions must be consistent with the VWP permit program regulation and may not override or conflict with the existing conditions of this VWP general permit related to impacts and compensatory mitigation.

E. Incomplete registration statement. Where a registration statement is incomplete, the board may require the submission of additional information and may suspend processing until such time as the applicant has supplied the missing or deficient information and the registration statement is complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a registration statement, or submitted incorrect information in a registration statement or in any report to the board, he shall immediately submit such facts or the correct information.

9 VAC 25-660-70. Mitigation.

A. For the purposes of this VWP general permit, the board shall assume that the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund is ecologically preferable to practicable on-site or off-site individual compensatory mitigation options, and no further demonstration is necessary.

B. Compensatory mitigation for unavoidable wetland impacts is provided at a 2:1 replacement to loss ratio.

C. Compensatory mitigation for unavoidable stream impacts is provided at a 1:1 replacement to loss ratio.

D. Compensation for open water impacts may be required, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.

E. In order for contribution to an in-lieu fee fund to be an acceptable form of compensatory mitigation, the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.

F. The use of mitigation banks for compensating project impacts shall be deemed appropriate if the bank is operating in accordance with the provisions of § 62.1-44.15:5 E of the Code of Virginia and 9 VAC 25-210-115 and the applicant provides verification to the board of purchase or debiting of the required amount of credits.

9 VAC 25-660-80. Notice of planned changes.

A. Authorization under this VWP general permit may be modified

subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated.

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

9 VAC 25-660-90. Notice of termination.

When all permitted activities requiring notification under 9 VAC 25-660-50 A 1 have been completed, the permittee shall submit a notice of termination within 30 days of final completion. The notice shall contain the following information:

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

2. Name and location of the activity;

3. The VWP permit authorization number; and

4. The following certification:

"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit."

9 VAC 25-660-100. VWP general permit.

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

VWP General Permit No. WP1

Authorization effective date:

Authorization expiration date:

VWP GENERAL PERMIT FOR IMPACTS LESS THAN ONE-HALF OF AN ACRE UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to impact less than one-half of an acre of nontidal surface waters including up to 125 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel.

Permittee:

Address:

Activity Location:

Activity Description:

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

_____ _____

Director, Department of Environmental Quality Date

Part I. Special Conditions.

A. Authorized activities.

1. This permit authorizes impacts to less than one-half of an acre of nontidal surface waters, including up to 125 linear feet of perennial stream channel, and up to 1,500 linear feet of nonperennial stream channel, according to the information provided in the applicant's approved registration statement.

2. Any additional impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-660-80, or another VWP permit application.

3. The activities authorized by this VWP general permit must commence and be completed within three years of the date of this authorization.

B. Reapplication. Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP general permit requirement has not been completed within three years of the date of authorization. Application consists of an updated or new registration statement.

C. Overall project conditions.

1. The construction or work authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10(b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. No activity may cause more than minimal adverse effect on navigation. Furthermore, the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry 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 stabilizes.

6. Any exposed slopes and streambanks must be stabilized immediately upon completion of the project at each water body. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

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

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures to minimize soil disturbance to the maximum extent practicable.

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

11. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to pre-construction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote revegetation of temporarily disturbed wetland areas with

wetland vegetation by the second year post-disturbance. All temporary fills shall be removed in their entirety and the affected area returned to pre-existing contours.

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

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

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

15. The permittee shall conduct his activities in accordance with any time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission.

16. Immediately downstream of the construction area, water quality standards shall not be violated as a result of the construction activities.

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

D. Road crossings.

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

2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the re-establishment of a natural stream bottom and a low flow channel. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

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

4. All state waters temporarily affected by the construction of a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

E. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

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).

F. Bank stabilization.

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

4. All bank erosion 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. All material removed from the stream substrate shall be disposed of in an approved upland area.

G. Stormwater management facilities.

1. Stormwater management facilities shall be designed in accordance with best management practices and watershed protection techniques (i.e., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

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

3. Maintenance excavation shall not exceed the original contours of the facility, as approved and constructed.

4. Maintenance within stormwater management facilities will not require mitigation provided that the maintenance is accomplished in designated maintenance areas as indicated in the maintenance plan.

Part II. Mitigation, Monitoring and Reporting.

A. Compensatory mitigation. The permittee shall provide appropriate and practicable compensatory mitigation for all impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include:

1. Purchases of credits from approved mitigation banks meeting the requirements of 9 VAC 25-210-115 F in accordance with 9 VAC 25-660-70 and provided that all impacts are compensated at a 2:1 ratio; or

2. Contributions to an in lieu fee fund approved in accordance with 9 VAC 25-210-115 E and dedicated to the achievement of no net loss of wetland acreage and function, provided that all impacts are compensated at a 2:1 ratio.

B. The permittee shall submit documentation within 60 days of VWP general permit issuance that the USACE has debited the required mitigation credits from the mitigation bank ledger or that the fund contribution has been received.

C. Construction monitoring.

1. Photo stations shall be established to document the construction aspects of project activities within impact areas as authorized by this permit. Photographs should document the pre-construction conditions, activities during construction, and post-construction conditions within one week after completion of construction. Photographs shall be taken during construction at the end of the first, second and twelfth months of construction and then annually for the remainder of the construction project. Photographs are not necessary during periods of no activity within impact areas.

2. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

3. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.

4. Monitoring of water quality parameters shall be conducted during rerouting of the live streams through the new channels in the following manner:

a. A sampling station shall be located upstream and immediately downstream of the relocated channel;

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels; and

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

D. Reporting.

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

2. The board shall be notified in writing by certified letter at least 10 days prior to the start of construction activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

3. After construction begins, construction monitoring reports shall be submitted to the board within 30 days of each monitoring event. The reports shall include, at a minimum, the following:

a. A written statement regarding when work started in the identified impact area, where work was performed, what work was performed, and what work was completed.

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, a brief description, and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.).

4. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-660-90.

5. The permittee shall notify the board 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 any structure are prohibited until approved by the board.

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

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

8. All submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization termination, revocation, or denial of a renewal application.

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

C. Reopener. This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit authorization was issued and thereby constitute cause for VWP general permit authorization revocation and reissuance.

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 any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

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

G. Right of entry. The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;

2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;

3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit authorization. This VWP general permit authorization may be transferred to another person by a permittee if:

1. The current permittee notifies the board within 30 days of the transfer of the title to the facility or property;

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

3. The board does not notify the existing and new permittee of its intent to modify or revoke and reissue the VWP general permit authorization within the 30-day time period.

On the date of the VWP general permit authorization transfer, the transferred VWP general permit authorization shall be as fully effective as if it had been issued directly to the new permittee.

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation.

J. VWP general permit authorization termination. This VWP general permit authorization is subject to termination. Causes for termination are as follows:

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

2. The permittee's failure in the application or during the VWP general permit authorization issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order; and

4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit authorization modification or termination.

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

L. 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.

M. 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.

N. Duty to provide information.

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing and terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the 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.

O. 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.

P. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly 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.

DOCUMENTS INCORPORATED BY REFERENCE

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

FORMS

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

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 8/01).

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

* * * * * * * *

9 VAC 25-670-10 et seq. Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities.

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

Effective Date: October 1, 2001.

Summary:

The regulations address a new requirement in § 62.1-44.15:5 of the Code of Virginia to develop a general permit for wetland impacts resulting from the activities of utility projects.

CHAPTER 670.
VIRGINIA WATER PROTECTION GENERAL PERMIT FOR FACILITIES AND ACTIVITIES OF UTILITY AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE ACTIVITIES.

9 VAC 25-670-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9 VAC 25-210-10 et seq.) unless the context clearly indicates otherwise or unless otherwise indicated below.

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

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

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

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

"FEMA" means Federal Emergency Management Agency.

"Forested wetland" means a class of wetlands characterized by woody vegetation that is six meters (20 feet) tall or taller. These areas normally possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

"Impacts" means results caused by human-induced activities conducted in surface waters, as specified in § 62.1-44.15:5 D of the Code of Virginia.

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

"Perennial stream" means a stream that has flowing water year round in a typical year. For the purpose of this chapter, a surface water body (or stream segment) having a drainage area of at least 320 acres (1/2 square mile) is a perennial stream, unless field conditions clearly indicate otherwise.

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

"Single and complete project" means the total project proposed or accomplished by one person and which has independent utility. For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate surface water (i.e., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland, lake, etc. are not separate waterbodies.

"State programmatic general permit" means a general permit issued by the Department of the Army in accordance with 33 CFR Part 32S that is founded on a state program and is designed to avoid duplication between the federal and state programs.

"Temporary impact" means an impact caused by activities in surface waters, including wetlands, in which the ground is restored to its preconstruction contours and elevations, without significantly affecting wetland functions and values.

"Up to one-tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place.

"Up to one acre" means 0.00 to 1.0 acre, rounded to the second decimal place.

"Utility line" means any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities which drain a surface water to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

9 VAC 25-670-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this chapter is to establish VWP General Permit Number WP2 under the VWP permit regulation to govern impacts related to the construction and maintenance of utility lines. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board.

B. The director, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This VWP general permit regulation will become effective on October 1, 2001, and will expire on October 1, 2006.

D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-670-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for a maximum of three years.

9 VAC 25-670-30. Authorization to impact surface waters.

A. Any person governed by this VWP general permit is authorized to impact up to one acre of nontidal surface waters, including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel, for facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and other utility line activities provided that the person submits notification as required in 9 VAC 25-670-50 and 9 VAC 25-670-60, remits the required application processing fee (9 VAC 25-20-10 et seq.), complies with the limitations and other requirements of 9 VAC 25-670-100, receives approval from the board, and provided that:

1. The applicant shall not have been required to obtain a VWP individual permit under the VWP permit regulation (9 VAC 25-210-10 et seq.) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit or coverage under another applicable VWP general permit in lieu of this VWP general permit.

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

a. Where a utility line has multiple crossings of surface waters (several single and complete projects) with more than minimal impacts, the board may at its discretion require a VWP individual permit for the project.

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

3. Compensatory mitigation for unavoidable impacts is provided in the form of any one or combination of the following: creation, restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Compensation may incorporate preservation of wetlands or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits.

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

5. When functions and values of surface waters are permanently adversely affected, such as for conversion of forested to emergent wetlands in permanently maintained utility right-of-ways, mitigation will be required to reduce and minimize the adverse effects of the project to surface waters. Permanently maintained access corridors no wider than 20 feet will be allowed without compensatory mitigation.

B. Activities that may be authorized under this VWP general permit include the following:

1. The construction, maintenance or repair of utility lines, including outfall structures and the excavation, backfill or bedding for utility lines provided there is no change in preconstruction contours;

2. The construction, maintenance or expansion of a substation facility or pumping station associated with a power line or utility line;

3. The construction or maintenance of foundations for overhead utility line towers, poles or anchors, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a single pad) are used where feasible; and

4. The construction of access roads for the construction or maintenance of utility lines including overhead power lines and utility line substations, provided the activity in combination with any substation does not exceed the threshold limit of this VWP general permit.

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9 VAC 25-210-10. Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.

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

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

F. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued § 401 certification existing as of October 1, 2001, shall constitute coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact. Notwithstanding any other provision, activities authorized under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with 9 VAC 25-210-130 do not need to obtain coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.

9 VAC 25-670-40. Exceptions to coverage.

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

1. Wetlands composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (Chamaecyparis thyoides), bald cypress (Taxodium distichum), water tupelo (Nyssa aquatica), or overcup oak (Quercus lyrata). Percentages shall be based upon either basal area, or percent areal cover.

2. Surface waters with federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. Authorization for coverage under this VWP general permit cannot be used in combination with authorizations for coverage under other VWP permits to impact greater than one acre of nontidal surface waters, or more than 500 linear feet of perennial stream channel or more than 1,500 linear feet of nonperennial stream channel. More than one authorization for coverage under this VWP general permit for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the above mentioned limits.

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 (9 VAC 25-260-5 et seq.).

D. The board shall deny coverage under this VWP general permit to any applicant for activities that cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to adversely affect aquatic life, or for activities that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

E. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, increase flooding, or cause more than minimal degradation of the water quality of any stream.

F. This VWP general permit may not be used for:

1. Any stormwater management facility;

2. Any water withdrawal activity;

3. The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the area is contained within a cofferdam or the work is performed in the dry;

4. Dredging or maintenance dredging;

5. The taking of threatened or endangered species in accordance with the following:

a. Pursuant to § 29.1-564 of the Code of Virginia: "The taking, transportation, processing, sale or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568."

b. Pursuant to § 29.1-566 of the Code of Virginia and 4 VAC 15-20-130 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.

9 VAC 25-670-50. Notification.

A. Notification to the board is not required for utility line activities that have only temporary impacts provided they do not involve mechanized land clearing of forested wetlands.

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

1. An application for proposed permanent impacts greater than one-tenth of an acre of surface waters shall be submitted via a registration statement that includes all information pursuant to 9 VAC 25-670-60.

2. Proposed permanent impacts up to one-tenth of an acre, shall be reported via a registration statement that includes only the following information: subdivisions 1 through 8, 13, 15 and 20 of 9 VAC 25-670-60 B.

C. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) may serve as the registration statement provided that all information required pursuant to 9 VAC 25-670-60 is included and that the first page of the form is clearly marked indicating the intent to have the form serve as the registration statement for this VWP general permit.

D. The board will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Game and Inland Fisheries regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this general permit.

9 VAC 25-670-60. Registration statement.

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

1. The applicant shall file a complete registration statement as described in 9 VAC 25-670-50 for a VWP General Permit WP2 for impacts to surface waters resulting from activities of utilities, which will serve as a notice of intent for coverage under this VWP general permit.

2. Any applicant proposing an activity under this VWP general permit is advised to file the required registration statement at least 45 days prior to the date planned for the commencement of the activity to be regulated by the VWP general permit. The VDOT may use its monthly IACM process for submitting registration statements.

B. The required registration statement shall contain the following information:

1. The applicant's name, mailing address, telephone number and fax number (if applicable);

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

3. The existing VWP permit number (if applicable);

4. The name of the project, purpose of project, and a description of the activity;

5. The name of the water body or water bodies as applicable;

6. The hydrologic unit code (HUC) for the project area;

7. The name of the city or county where the project is located;

8. Latitude and longitude, to the nearest second, from a central location within the project limits;

9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the project area. The map should be of sufficient detail such that the site may be easily located for site inspection;

10. The appropriate appendices from the JPA;

11. Project plan view. All plan view sketches should include, at a minimum, north arrow, scale, existing structures, existing and proposed contours (if available), limit of surface water areas, direction of flow, ordinary high water,

impact limits, and location and dimension of all proposed structures in impact areas. Cross-sectional sketches, with the above information, may be required for certain projects to demonstrate minimization of impacts;

12. (Reserved.)

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, and the impact area (in square feet, linear feet or acres). Wetland impacts should be quantified according to their Cowardin classification or similar terminology;

14. Functional values assessment for impacts to wetlands greater than one acre. The functional assessment shall consist of a narrative description of the existing wetland functions and values and the impact that the project will have on these functions and values;

15. A description of the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable, as required by 9 VAC 25-210-115 A;

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

a. A conceptual compensatory mitigation plan, at a minimum, must be submitted, and shall include: the goals and objectives in terms of replacement of wetland or stream acreage and function; a location map, including latitude and longitude (to the nearest second) at the center of the site; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical year, a dry year and a wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; wetland delineation sheets, maps for existing wetland areas on the proposed site or sites; a conceptual grading plan; a conceptual planting scheme, including suggested plant species, zonation and acreage of each vegetation type proposed; a proposed soil preparation and amendment plan addressing both topsoil and subsoil conditions; and a draft design of any water control structures.

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

c. Any applicant proposing compensation involving stream restoration shall submit a plan that includes goals and objectives in terms of water quality benefits; location map, including the latitude and longitude at the center of the site; the proposed stream segment restoration locations, including plan view and cross-section sketches; the stream deficiencies that need to be addressed; the restoration measures to be employed, including proposed design flows and types of instream structures; and a proposed construction schedule.

d. Any compensation plan proposing to include contributions to an in-lieu fee fund shall include proof of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated.

e. Any compensation plan proposing the purchase of mitigation banking credits shall include:

(1) The name of the proposed mitigation bank;

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

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

f. The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in subdivision 16 a of this subsection, as well as a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photostations, monitoring wells, vegetation sampling points, and reference wetlands (if available); an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and proposed deed restriction language for protecting the compensation site or sites in perpetuity. The final compensatory mitigation plan must include protection of all surface waters and upland areas that are to be preserved in perpetuity within the compensation site boundary.

17. A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9 VAC 25-210-45, including the wetlands data sheets, and the latitude and longitude (to the nearest second) of the center of the wetland impact area. Wetland types should be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, shall also be provided at the time of application, or if not

available at that time, as soon as it becomes available during the VWP permit review. The delineation map should also include the location of all impacted and non-impacted streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) should be shown on the map, as other state or local requirements may apply if the project is located within an RPA;

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

19. The appropriate application processing fee for a VWP general permit (9 VAC 25-20-10 et seq.).

20. The following certification:

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

C. The registration statement shall be signed in accordance with 9 VAC 25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of a complete registration statement, coverage under the VWP general permit shall be approved, approved with conditions, or denied within 45 days. If the board fails to act within 45 days, coverage under the VWP general permit shall be deemed approved.

1. In evaluating the registration statement, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under the VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of surface waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve authorization under this VWP general permit. However, these conditions must be consistent with the VWP permit regulation and may not conflict with the existing conditions of this VWP general permit related to impacts and compensatory mitigation.

E. Incomplete registration statement. Where a registration statement is incomplete, the board shall require the submission of additional information and may suspend processing until such time as the applicant has supplied the missing or deficient information and the registration statement is complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a registration statement, or submitted incorrect information in a registration statement or in any report to the board, he shall immediately submit such facts or the correct information.

9 VAC 25-670-70. Mitigation.

A. For the purposes of this VWP general permit, the board may accept any one or combination of the following as compensation for unavoidable impacts: wetland or stream creation or restoration, the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund. Compensation may incorporate preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits.

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

1. Impacts to forested wetlands shall be mitigated at 2:1.

2. Impacts to scrub-shrub wetlands shall be mitigated at 1.5:1.

3. Impacts to emergent wetlands shall be mitigated at 1:1.

C. Compensatory mitigation for unavoidable impacts to streams shall be provided at a 1:1 replacement to loss ratio via stream relocation, restoration, riparian buffer establishment, or purchase of mitigation bank credits or contribution to an in-lieu fee fund that includes stream restoration, when feasible.

D. Compensation for open water impacts may be required, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.

E. In order for contribution to an in-lieu fee fund to be an acceptable form of compensatory mitigation, the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.

F. The use of mitigation banks for compensating project impacts shall be deemed appropriate if the bank is operating in accordance with the provisions of § 62.1-44.15:5 E of the Code of Virginia and 9 VAC 25-210-115, and the applicant provides verification to the board of purchase or debiting of the required amount of credits.

9 VAC 25-670-80. Notice of planned changes.

A. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not great than 50 linear feet, and provided that the additional impacts are fully mitigated.

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

9 VAC 25-670-90. Notice of termination.

When all permitted activities requiring notification under 9 VAC 25-670-50 B 1 have been completed, the applicant shall submit a notice of termination within 30 days of final completion. The notice shall contain the following information:

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

2. Name and location of the activity;

3. The VWP permit authorization number; and

4. The following certification:

"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit."

9 VAC 25-670-100. VWP general permit.

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

VWP General Permit No. WP2

Authorization effective date:

Authorization expiration date:

VWP GENERAL PERMIT FOR FACILITIES AND ACTIVITIES OF UTILITIES AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of surface waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to impact up to one acre of nontidal surface waters, including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel.

Permittee:

Address:

Activity Location:

Activity Description:

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

Director, Department of Environmental Quality Date

Part I. Special Conditions.

A. Authorized activities.

1. This permit authorizes impacts of up to one acre of nontidal surface waters, including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel according to the information provided in the applicant's approved registration statement.

2. Any additional impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-670-80 or another VWP permit application.

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

B. Reapplication. Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP permit requirement (including compensatory mitigation) has not been completed within three years of the date of authorization. Application consists of an updated or new registration statement. Notwithstanding any other provision, a request for a reissuance of certification of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered an application for coverage and no application fee will be charged.

C. Overall project conditions.

1. The construction or work authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry 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 stabilizes.

6. Any exposed slopes and streambanks must be stabilized immediately upon completion of the utility line crossing of each water body. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in such 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.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures, to minimize soil disturbance to the maximum extent practicable.

10. All nonimpacted surface waters within the project limits that are within 50 feet of any clearing, grading, or filling activities shall be clearly flagged or marked for the life of the construction activity within that area. The permittee shall notify all contractors that these marked areas are surface waters where no activities are to occur.

11. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub-shrub or forested). The permittee shall take all appropriate measures to promote revegetation of temporarily disturbed wetland areas with wetland vegetation by the second year post-disturbance. All temporary fills must be removed in their entirety and the affected area returned to preexisting contours.

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

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

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

15. The permittee shall conduct his activities in accordance with any time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission.

16. Immediately downstream of the construction area, water quality standards shall not be violated as a result of the construction activities.

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

D. Road crossings.

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

2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the reestablishment of a natural stream bottom and a low flow channel. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

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

4. All surface waters temporarily affected by the construction of a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

E. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands, not to exceed 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.).

F. Bank stabilization.

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

4. All bank erosion 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. All material removed from the stream substrate shall be disposed of in an approved upland area.

Part II. Mitigation, Monitoring and Reporting.

A. Compensatory mitigation. The permittee shall provide appropriate and practicable compensatory mitigation for all impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Compensation may incorporate preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits.

1. The site or sites depicted in the conceptual compensatory mitigation plan submitted with the registration statement, shall constitute the compensatory mitigation plan for the approved project.

2. For compensation involving the purchase or use of mitigation bank credits, the permittee shall submit documentation within 60 days of VWP general permit authorization that the USACE has debited the required mitigation credits from the mitigation bank ledger. For projects proposing a contribution to an in-lieu fee fund, the permittee shall submit documentation within 60 days of VWP general permit authorization that the fund contribution has been received.

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

a. The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget for a typical year, a dry year and a wet year, plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of photographic stations and ground water monitoring wells. Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas within approximately 200 miles from the project site.

b. The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or preservations, or similar instrument shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.

4. Post-grading elevations for the compensatory mitigation site or sites shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensatory mitigation plan.

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

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

7. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final mitigation plan.

8. Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.

9. The success of the compensatory mitigation shall be based on establishing and maintaining a viable wetland with suitable wetland hydrology, hydric soils or soils under hydric conditions, and hydrophytic plant communities.

10. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the growing season, as defined in the United States Department of Agriculture soil survey for the locality of the compensation site in all monitoring years under normal rainfall conditions, as defined in the water budget of the final mitigation plan.

11. The wetland plant community shall be considered established according to the performance criteria specified in the final mitigation plan and approved by the board. Species composition shall reflect the desired plant community types stated in the final mitigation plan by the end of the first growing season and shall be maintained through the last year of the VWP permit. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover.

12. Noxious weeds shall be identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the board of any invasive species occurrences, methods of removal, and successful control.

13. If the compensatory mitigation area fails to be established as viable wetlands, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to the board for approval prior to or with the next required monitoring report. All problems shall be corrected by the permittee. Should significant changes be necessary to establish wetlands, the monitoring plan shall begin again, with year one being the year changes are complete.

14. The wetland boundary for the compensatory mitigation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle.

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

16. This VWP general permit authorization may need to be renewed (or extended) to assure that the compensatory mitigation work has been successful. The request for renewal or extension must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if renewal of the VWP general permit authorization is necessary.

B. Compensatory mitigation site monitoring.

1. A post-grading survey, including spot elevations, of the site or sites for wetland compensatory mitigation may be required depending upon the type and size of the compensation site, and shall be conducted by a licensed land surveyor or a professional engineer.

2. Photographs shall be taken at the compensatory mitigation site or sites from the permanent markers identified in the final mitigation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and in August or September every monitoring year.

3. Compensatory mitigation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (year one) following compensatory mitigation site construction. Monitoring shall be required for years 1, 2, and 3. If all success criteria have not been met in the third year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season. with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. All hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site, or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, weekly monitoring may be discontinued for the remainder of that monitoring year.

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

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

7. The presence of noxious species shall be documented.

C. Stream mitigation, restoration and monitoring.

1. Stream mitigation shall be performed in accordance with the final mitigation plan and subsequent submittals, as approved by the board.

2. Stream bank slopes shall be stabilized to reduce stream bank erosion, where practicable.

3. Stream mitigation monitoring shall be conducted in accordance with the final mitigation plan approved by the board. All monitoring reports shall be submitted by November 30 of the monitoring year. Monitoring reports shall include:

a. Photographs sufficient to document installation of specific structures and vegetative plantings or where the stream channel banks are reshaped. Permanent markers shall be established to ensure that the same locations and view directions at the site are photographed in each monitoring period.

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

c. Any alterations, maintenance, and corrective actions conducted at the stream mitigation site.

D. Construction monitoring.

1. Photo stations shall be established to document the construction aspects of project activities within impact areas as authorized by this permit. Photographs should document the pre-construction conditions, activities during construction, and post-construction conditions within one week after completion of construction. Photographs shall be taken during construction at the end of the first, second and twelfth months of construction, and then annually for the remainder of the construction project. Photographs are not necessary during periods of no activity within impact areas.

2. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

3. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.

4. Monitoring of water quality parameters shall be conducted during rerouting of the live streams through the new channels in the following manner:

a. A sampling station shall be located upstream and immediately downstream of the relocated channel;

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels;

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

E. Reporting.

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

2. The board shall be notified in writing by certified letter at least 10 days prior to the start of construction activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

3. After construction begins, construction monitoring reports shall be submitted to the board within 30 days of each monitoring event. The reports shall include, at a minimum, the following:

a. A written statement regarding when work started in the identified impact area, where work was performed, what work was performed, and what work was completed.

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, a brief description, and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.).

4. All compensatory mitigation monitoring reports shall be submitted annually by November 30, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit. Any alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to the board.

5. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-670-90.

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

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

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

9. All submittals required by this VWP general permit shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the 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 Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization termination, revocation,, or denial of a renewal application.

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

C. Reopener. This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit authorization was issued and, thereby, constitute cause for VWP general permit authorization revocation and reissuance.

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

E. Property rights. The issuance of this VWP general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

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

G. Right of entry. The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;

2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;

3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit authorization. This VWP general permit authorization may be transferred to another person by a permittee if:

1. The current permittee notifies the board within 30 days of the transfer of the title to the facility or property;

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

3. The board does not notify the existing and new permittee of its intent to modify or revoke and reissue the VWP general permit authorization within the 30-day time period.

On the date of the VWP general permit authorization transfer, the transferred VWP general permit authorization shall be as fully effective as if it had been issued directly to the new permittee.

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation.

J. VWP general permit authorization termination. This VWP general permit authorization is subject to termination. Causes for termination are as follows:

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

2. The permittee's failure in the application or during the VWP general permit authorization issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order; and

4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit authorization modification or termination.

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

L. 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.

M. 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.

N. Duty to provide information.

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing and terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the 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.

O. 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.

P. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage 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.

DOCUMENTS INCORPORATED BY REFERENCE

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

FORMS

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

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 8/01).

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

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9 VAC 25-680-10 et seq. Virginia Water Protection General Permit for Linear Transportation Projects.

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

Effective Date: August 1, 2001.

Summary:

The regulations address a new requirement in § 62.1-44.15:5 of the Code of Virginia to develop a general permit for wetland impacts resulting from the activities of transportation projects.

Numerous changes have been made throughout the final regulation. Most of these involved clarification of definitions, the distinction between the general permit regulation and an authorization approved under the general permit, and that the permits do not apply to tidal waters. The procedures for data searches pertaining to threatened and endangered species were modified. Certain exclusions and special conditions were added or modified to conform to the other general permits. The evaluation of compensatory mitigation options, including compensation rations, was clarified. A notice of planned change section was added, and the section on general permit modification deleted, to establish the correct procedure for modifying general permit authorizations.

CHAPTER 680.
VIRGINIA WATER PROTECTION GENERAL PERMIT FOR LINEAR TRANSPORTATION PROJECTS.

9 VAC 25-680-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9 VAC 25-210-10 et seq.) unless the context clearly indicates otherwise or unless otherwise indicated below.

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

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

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

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

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

"FEMA" means Federal Emergency Management Agency.

“Forebay” means a deeper area at the upstream end of a stormwater management facility that would be maintained through excavation.

"Forested wetland" means a class of wetlands characterized by woody vegetation that is six meters (20 feet) tall or taller. These areas normally possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

"Impacts" means results caused by human-induced activities conducted in surface waters, as specified in § 62.1-44.15:5 D of the Code of Virginia.

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

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

"Perennial stream" means a stream that has flowing water year round in a typical year. For the purpose of this regulation, a surface water body (or stream segment) having a drainage area of at least 320 acres (1/2 square mile) is a perennial stream, unless field conditions clearly indicate otherwise.

"Riprap" means a layer of material such as stone or chunks of concrete on an embankment slope for the purpose of preventing erosion.

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

"Single and complete project" means the total project proposed or accomplished by one person and which has independent utility. For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate surface water (i.e., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland, lake, etc. are not separate waterbodies.

"State programmatic general permit" means a general permit issued by the Department of the Army in accordance with 33 CFR Part 32S that is founded on a state program and is designed to avoid duplication between the federal and state programs.

“Temporary impact” means an impact caused by activities in surface waters, including wetlands, in which the ground is restored to its preconstruction contours and elevations, without significantly affecting wetland functions and values.

"Up to one tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place.

"Up to two acres" means 0.00 to 2.00 acres, rounded to the second decimal place.

"Utility line" means any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities which drain a surface water to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

9 VAC 25-680-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this regulation is to establish VWP General Permit Number WP3 under the VWP permit regulation to govern impacts related to the construction and maintenance of Virginia Department of Transportation (VDOT) or other linear transportation projects. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board.

B. The director or his designee may perform any act of the board provided under this chapter except as limited by § 62.1-44.14 of the Code of Virginia.

C. This VWP general permit regulation will become effective on October 1, 2001, and will expire on October 1, 2006, for general linear transportation projects and will become effective August 1, 2001, and will expire August 1, 2006, for linear transportation projects of the Virginia Department of Transportation.

D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-680-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for a maximum of five years.

9 VAC 25-680-30. Authorization to impact surface waters.

A. Any person governed by this VWP general permit is authorized to impact up to two acres of nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel, for linear transportation projects provided that the applicant submits notification as required in 9 VAC 25-680-50 and 9 VAC 25-680-60, remits the required application processing fee (9 VAC 25-20-10 et seq.), complies with the limitations and other requirements of 9 VAC 25-680-100, receives approval from the board, and provided that:

1. The applicant shall not have been required to obtain a VWP individual permit under the VWP permit regulation (9 VAC 25-210-10 et seq.) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another applicable VWP general permit, in lieu of coverage under this VWP general permit.

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

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

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

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

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

5. Compensatory mitigation for unavoidable impacts is provided in the form of any one or combination of the following: creation, restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Compensation may incorporate preservation of wetlands or preservation or restoration of upland buffers adjacent to surface waters when utilized in conjunction with creation, restoration or mitigation bank credits.

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

C. The board waives the requirement for coverage under a VWP permit for activities that occur in an isolated wetland of minimal ecological value as defined in 9 VAC 25-210-10. Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.

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

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

F. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers USACE), and for which the board has issued § 401 certification existing as of the effective date of this regulation, shall constitute coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact. Notwithstanding any other provision, activities authorized under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with 9 VAC 25-210-130 do not need to obtain coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.

9 VAC 25-680-40. Exceptions to coverage.

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

1. Wetlands composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (Chamaecyparis thyoides), bald cypress (Taxodium distichum), water tupelo (Nyssa aquatica), or overcup oak (Quercus lyrata). Percentages shall be based upon either basal area or percent areal cover.

2. Surface waters with federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. Authorization for coverage under this VWP general permit cannot be used in combination with authorizations for coverage under other VWP permits to impact greater than two acres of nontidal surface waters including more than 500 linear feet of perennial stream channel or more than 1,500 linear feet of nonperennial stream channel. More than one authorization for coverage under this VWP general permit for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the above-mentioned limits.

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

D. The activity to impact surface waters shall not have been prohibited by state law or regulations, nor shall it contravene applicable Water Quality Standards (9 VAC 25-260-5 et seq.).

E. The board shall deny 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 adversely affect aquatic life, or for activities that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

F. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, increase flooding, or cause more than minimal degradation of the water quality of any stream.

G. This VWP general permit may not be used for:

1. Any stormwater management facility that is located in perennial streams or in oxygen- or temperature-impaired waters;

2. The construction of an irrigation impoundment on a perennial stream;

3. Any water withdrawal activities;

4. The location of animal feeding operations or waste storage facilities in state waters;

5. The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the area is contained within a cofferdam or the work is performed in the dry;

6. Return flow discharges from dredge disposal sites;

7. Overboard disposal of dredge materials;

8. Dredging in marinas;

9. Dredging of shellfish areas, submerged aquatic vegetation beds and other highly productive areas;

10. Federal navigation projects;

11. The taking of threatened or endangered species in accordance with the following:

a. Pursuant to § 29.1-564 of the Code of Virginia: "The taking, transportation, processing, sale or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568."

b. Pursuant to § 29.1-566 of the Code of Virginia and 4 VAC 15-20-130 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.

9 VAC 25-680-50. Notification.

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

1. An application for proposed impacts greater than one-tenth of an acre of surface waters shall be submitted via a registration statement that includes all information pursuant to 9 VAC 25-680-60.

2. Proposed impacts up to one-tenth of an acre shall be reported via a registration statement that includes only the following information: subdivisions 1 through 8, 13, 15 and 20 of 9 VAC 25-680-60 B.

B. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) may serve as the registration statement provided that all information required pursuant to 9 VAC 25-680-60 is included and that the first page of the form is clearly marked indicating the intent to have the form serve as the registration statement for this VWP general permit.

C. The board will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation andRecreation, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Game and Inland Fisheries regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this general permit.

9 VAC 25-680-60. Registration statement.

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

1. The applicant shall file a complete registration statement, as described in 9 VAC 25-680-50, for a VWP General Permit Number WP3 for impacts to surface waters from linear transportation projects which will serve as a notice of intent for coverage under this VWP general permit.

2. Any applicant proposing an activity under this VWP general permit is advised to file the required registration statement at least 45 days prior to the date planned for the commencement of the activity to be regulated by the VWP general permit. The VDOT may use its monthly IACM process for submitting registration statements.

B. The required registration statement shall contain the following information:

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

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

3. The existing VWP permit number (if applicable);

4. The name of the project, purpose of project, and a description of the activity;

5. The name of the water body or water bodies or receiving stream, as applicable;

6. The hydrologic unit code (HUC) for the project area;

7. The name of the city or county where the project is located;

8. Latitude and longitude (to the nearest second) from a central location within the project limits;

9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the project area. The map should be of sufficient detail such that the site may be easily located for site inspection;

10. The appropriate appendices from the JPA;

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

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

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, and the impact area (in square feet, linear feet, or acres). Wetland impacts should be quantified according to their Cowardin classification or similar terminology;

14. Functional values assessment for impacts to wetlands greater than one acre. The functional assessment shall consist of a narrative description of the existing wetland functions and values and the impact that the project will have on these functions and values;

15. A description of the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable as required by 9 VAC 25-210-115 A;

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

a. A conceptual compensatory mitigation plan, at a minimum, must be submitted, and shall include the goals and objectives in terms of replacement of wetland or stream acreage and function; a location map, including latitude and longitude (to the nearest second) at the center of the site; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical year, a dry year, and a wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; wetland delineation confirmation, data sheets, and maps for existing wetland areas on the proposed site or sites; a conceptual grading plan; a conceptual planting scheme, including suggested plant species, zonation and acreage of each vegetation type proposed; a proposed soil preparation and amendment plan addressing both topsoil and subsoil conditions; and a draft design of any water control structures.

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

c. Any applicant proposing compensation involving stream restoration shall submit a plan that includes goals and objectives in terms of water quality benefits; location map, including the latitude and longitude at the center of the site; the proposed stream segment restoration locations, including plan view and cross-section sketches; the stream deficiencies that need to be addressed; the restoration measures to be employed, including proposed design flows and types of instream structures; and a proposed construction schedule.

d. Any wetland compensation plan proposing to include contributions to an in-lieu fee fund shall include proof of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated.

e. Any compensation plan proposing the purchase of mitigation banking credits shall include:

(1) The name of the proposed mitigation bank;

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

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

f. The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in subdivision 16 a of this subsection, as well as a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photostations, monitoring wells, vegetation sampling points, and reference wetlands (if available); an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and proposed deed restriction language for protecting the compensation site or sites in perpetuity. The final compensatory mitigation plan must include protection of all surface waters and upland areas that are to be preserved in perpetuity within the compensation site boundary;

17. A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9 VAC 25-210-45, including the wetlands data sheets, and the latitude and longitude (to the nearest second) of the center of the wetland impact area. Wetland types should be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, shall also be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review. The delineation map should also include the location of all impacted and nonimpacted streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) should be shown on the map, as other state or local requirements may apply if the project is located within an RPA;

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

19. The appropriate application processing fee for a VWP permit (9 VAC 25-20-10 et seq.); and

20. The following certification:

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

C. The registration statement shall be signed in accordance with 9 VAC 25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of a complete registration statement, coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days. If the board fails to act within 45 days, coverage under this VWP general permit shall be deemed approved.

1. In evaluating the registration statement, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve authorization under this VWP general permit. However, these conditions must be consistent with the VWP permit regulation and may not override or contradict the existing conditions of this VWP general permit related to impacts and mitigation.

E. Incomplete registration statement. Where a registration statement is incomplete, the board shall require the submission of additional information and may suspend processing until such time as the applicant has supplied the missing or deficient information and the registration statement is complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a registration statement, or submitted incorrect information in a registration statement or in any report to the board, he shall immediately submit such facts or the correct information.

9 VAC 25-680-70. Mitigation.

A. For the purposes of this VWP general permit, the board may accept any one or combination of the following as compensation for unavoidable impacts: wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Compensation may incorporate preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits.

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

1. Impacts to forested wetlands shall be mitigated at 2:1.

2. Impacts to scrub shrub wetlands shall be mitigated at 1.5:1.

3. Impacts to emergent wetlands shall be mitigated at 1:1.

C. Compensatory mitigation for unavoidable impacts to streams shall be provided at a 1:1 replacement to loss ratio via stream relocation, restoration, riparian buffer establishment, or purchase of mitigation bank credits or contribution to an in-lieu fee fund that includes stream restoration, when feasible.

D. Compensation for open water impacts may be required, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.

E. In order for contribution to an in-lieu fee fund to be an acceptable form of compensatory mitigation, the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.

F. The use of mitigation banks for compensating project impacts shall be deemed appropriate if the bank is operating in accordance with the provisions of § 62.1- 44.15:5 E of the Code of Virginia and 9 VAC 25-210-115 F, and the applicant provides verification to the board of purchase or debiting of the required amount of credits.

9 VAC 25-680-80. Notice of planned changes.

A. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated.

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

9 VAC 25-680-90. Notice of termination.

When all permitted activities requiring notification under 9 VAC 25-680-50 A 1 have been completed, the permittee shall submit a notice of termination within 30 days of final completion. The notice shall contain the following information:

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

2. Name and location of the activity;

3. The VWP permit authorization number; and

4. The following certification:

"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit."

9 VAC 25-680-100. VWP general permit.

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

VWP General Permit No. WP3

Authorization Effective date:

Authorization Expiration date:

VWP GENERAL PERMIT FOR LINEAR TRANSPORTATION PROJECTS UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, 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 of state waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to impact up to two acres of nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel.

Permittee:

Address:

Activity Location:

Activity Description:

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

_____

Director, Department of Environmental Quality Date

Part I. Special Conditions.

A. Authorized activities.

1. This permit authorizes impacts of up to two acres of nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel according to the information provided in the applicant's approved registration statement.

2. Any additional impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-680-80 or another VWP permit application.

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

B. Reapplication. Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP permit requirement (including compensatory mitigation) has not been completed within five years of the date of authorization. Application consists of an updated or new registration statement. Notwithstanding any other provision, a request for a reissuance of certification of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered an application for coverage and no application fee will be charged.

C. Overall project conditions.

1. The construction or work authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry 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 stabilizes.

6. Any exposed slopes and streambanks must be stabilized immediately upon completion of the project at each water body. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

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

9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures, to minimize soil disturbance to the maximum extent practicable.

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

11. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to pre-construction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote revegetation of temporarily disturbed wetland areas with wetland vegetation by the second year post-disturbance. All temporary fills must be removed in their entirety and the affected areas returned to the pre-existing contours.

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

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

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

15. The permittee shall conduct his activities in accordance with any time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission.

16. Immediately downstream of the construction area, water quality standards shall not be violated as a result of the construction activities.

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

D. Road crossings.

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

2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the reestablishment of a natural stream bottom and a low flow channel. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

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

4. All surface waters temporarily affected by the construction of a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible,

to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

E. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

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).

F. Bank stabilization.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

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

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

4. All bank erosion 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. All material removed from the stream substrate shall be disposed of in an approved upland area.

G. Dredging.

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

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

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease and the Department of Environmental Quality (DEQ) shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent any overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted.

6. For navigation channels the following shall apply:

a. A minimum of 15 feet shall be maintained between the top of the dredge cut and the toe of the bank. This landward limit of encroachment shall be flagged and inspected prior to construction.

b. A buffer of four times the depth of the dredge cut shall be maintained between the top of the dredge cut and the channelward limit of wetlands or mean low water.

c. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, and shall be properly stabilized prior to placing the dredged material within the containment area.

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

H. Stormwater management facilities.

1. Stormwater management facilities shall be designed in accordance with best management practices and watershed protection techniques (i.e., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

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

3. Maintenance excavation shall not exceed the original contours of the facility, as approved and constructed.

4. Maintenance within stormwater management facilities will not require mitigation provided that the maintenance is accomplished in designated maintenance areas as indicated in the facility maintenance plan.

Part II. Mitigation, Monitoring and Reporting.

A. Compensatory mitigation: The permittee shall provide appropriate and practicable compensatory mitigation for all impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Compensation may incorporate preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits.

1. The site or sites depicted in the conceptual compensatory mitigation plan submitted with the registration statement, shall constitute the compensatory mitigation plan for the approved project.

2. For compensation involving the purchase or use of mitigation bank credits, the permittee shall submit documentation within 60 days of VWP general permit authorization that the USACE has debited the required mitigation credits from the Mitigation Bank ledger. For projects proposing a contribution to an in-lieu fee fund, the permittee shall submit documentation within 60 days of VWP general permit authorization that the fund contribution has been received.

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

a. The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget for a typical year, a dry year, and a wet year, plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of photographic stations and ground water monitoring wells. Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas within approximately 200 miles from the project site.

b. The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This

requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.

4. Post-grading elevations for the compensatory mitigation site or sites shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensatory mitigation plan.

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

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

7. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final mitigation plan.

8. Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.

9. The success of the compensatory mitigation shall be based on establishing and maintaining a viable wetland with suitable wetland hydrology, hydric soils or soils under hydric conditions, and hydrophytic plant communities.

10. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the growing season, as defined in the United States Department of Agriculture soil survey for the locality of the compensation site in all monitoring years under normal rainfall conditions, as defined in the water budget of the final mitigation plan.

11. The wetland plant community shall be considered established according to the performance criteria specified in the final mitigation plan and approved by the board. Species composition shall reflect the desired plant community types stated in the final mitigation plan by the end of the first growing season and shall be maintained through the last year of the VWP permit. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover.

12. Noxious weeds shall be identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the board of any invasive species occurrences, methods of removal, and successful control.

13. If the compensatory mitigation area fails to be established as viable wetlands, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to the board for approval prior to or with the next required monitoring report. All problems shall be corrected by the permittee. Should significant changes be necessary to establish wetlands, the monitoring plan shall begin again, with year one being the year changes are complete.

14. The wetland boundary for the compensatory mitigation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle.

15. Herbicides or algicides shall not be used in or immediately adjacent to the compensatory mitigation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means only, unless authorized by the board in advance.

16. This VWP general permit authorization may need to be renewed (or extended) to assure that the compensatory mitigation work has been successful. The request for renewal or extension must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if renewal of the VWP general permit authorization is necessary.

B. Compensatory mitigation site monitoring.

1. A post-grading survey, including spot elevations, of the site or sites for wetland compensatory mitigation may be required depending upon the type and size of the compensation site, and shall be conducted by a licensed land surveyor or a professional engineer.

2. Photographs shall be taken at the compensatory mitigation site or sites from the permanent markers identified in the final mitigation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and in August or September every monitoring year.

3. Compensatory mitigation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (year 1) following compensatory mitigation site construction. Monitoring shall be required

for years 1, 2, 3, and 5. If all success criteria have not been met in the fifth year, monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured weekly during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. All hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year.

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

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

7. The presence of noxious species shall be documented.

C. Stream mitigation, restoration and monitoring (if applicable).

1. Stream mitigation shall be performed in accordance with the final mitigation plan and subsequent submittals, as approved by the board.

2. Stream bank slopes shall be stabilized to reduce stream bank erosion, where practicable.

3. Stream mitigation monitoring shall be conducted in the manner prescribed in the final mitigation plan approved by the board. All monitoring reports shall be submitted by November 30th of the monitoring year. Monitoring reports shall include:

a. Photographs sufficient to document installation of specific structures and vegetative plantings or where the stream channel banks are reshaped. Permanent markers shall be established to ensure that the same locations and view directions at the site are photographed in each monitoring period.

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

c. Any alterations, maintenance, and corrective actions conducted at the stream mitigation site.

D. Construction monitoring.

1. Photo stations shall be established to document the construction aspects of project activities within impact areas as authorized by this permit. Photographs should document the preconstruction conditions, activities during construction, and post-construction conditions within one week after completion of construction. Photographs shall be taken during construction at the end of the first, second and twelfth months of construction, and then annually for the remainder of the construction project. Photographs are not necessary during periods of no activity within impact areas.

2. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

3. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.

4. Monitoring of water quality parameters shall be conducted during rerouting of the live streams through the new channels in the following manner:

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH and dissolved oxygen (D.O) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels.

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

E. Reporting.

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

2. The board shall be notified in writing by certified letter at least 10 days prior to the start of construction activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

3. After construction begins, construction monitoring reports shall be submitted to the board within 30 days of each monitoring event. The reports shall include, at a minimum, the following:

a. A written statement regarding when work started in the identified impact area, where work was performed, what work was performed, and what work was completed.

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, a brief description, and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.).

4. All compensatory mitigation monitoring reports shall be submitted annually by November 30, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit. Any alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to the board.

5. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-680-90.

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

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

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

9. All submittals required by this VWP general permit shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the 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 Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization, termination, revocation,, or denial of a renewal application.

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

C. Reopener. This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit authorization was issued and thereby constitute cause for VWP general permit authorization revocation and reissuance.

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

E. Property rights. The issuance of this VWP general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

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

G. Right of entry. The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;

2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;

3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit authorization. This VWP general permit authorization may be transferred to another person by a permittee if:

1. The current permittee notifies the board within 30 days of the transfer of the title to the facility or property;

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

3. The board does not notify the existing and new permittee of its intent to modify or revoke and reissue the VWP general permit authorization within the 30-day time period.

On the date of the VWP general permit authorization transfer, the transferred VWP general permit shall be as fully effective as if it had been issued directly to the new permittee.

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation.

J. VWP general permit authorization termination. This VWP general permit authorization is subject to termination. Causes for termination are as follows:

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

2. The permittee's failure in the application or during the VWP general permit authorization issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order; and

4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit authorization modification or termination.

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

L. 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.

M. 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.

N. Duty to provide information.

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing and terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the 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.

O. 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.

P. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

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

a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

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

DOCUMENTS INCORPORATED BY REFERENCE

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

FORMS

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

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 8/01).

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

9 VAC 25-690-10 et seq. Virginia Water Protection General Permit for Impacts from Development Activities.

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

Effective Date: October 1, 2001.

Summary:

The regulations address a new requirement in § 62.1-44.15:5 of the Code of Virginia to develop a general permit for wetland impacts resulting from the activities of development projects. Numerous changes have been made throughout the final regulation. Most of the changes involve clarification of definitions, the distinction between the general permit regulation and an authorization approved under the general permit, and that the permits do not apply to tidal waters. The procedures for data searches pertaining to threatened and endangered species are modified. Certain exclusions and special conditions are added or modified to conform to the other general permits. The evaluation of compensatory mitigation options, including compensation ratios, is clarified. A notice of planned change section is added, and the section on general permit modification deleted, to establish the correct procedure for modifying general permit authorizations.

CHAPTER 690.
VIRGINIA WATER PROTECTION GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT ACTIVITIES.

9 VAC 25-690-10. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9 VAC 25-210-10 et seq.) unless the context clearly indicates otherwise or unless otherwise indicated below.

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

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

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

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

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

"FEMA" means Federal Emergency Management Agency.

"Forebay" means a deeper area at the upstream end of a stormwater management facility that would be maintained through excavation.

"Forested wetland" means a class of wetlands characterized by woody vegetation that is six meters (20 feet) tall or taller. These areas typically possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

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

"Impacts" means results caused by human-induced activities conducted in surface waters, as specified in § 62.1-44.15:5 D of the Code of Virginia.

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

that would be constructed even if the other phases are not built can be considered as separate single complete projects with independent utility.

"Perennial stream" means a stream that has flowing water year round in a typical year. For the purpose of this chapter, a surface water body (or stream segment) having a drainage area of at least 320 acres (1/2 square mile) is a perennial stream, unless field conditions clearly indicate otherwise.

"Real estate subdivision" means a tract of land subdivided after October 5, 1984, into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. The tract of land includes the entire area of a residential, commercial, or other real estate subdivision, including all parcels and parts thereof.

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

"Riprap" means a layer of material such as stone or chunks of concrete on an embankment slope for the purpose of preventing erosion.

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

"Single and complete project" means the total project proposed or accomplished by one person and which has independent utility. For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate surface water (i.e., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland, lake, etc., are not separate waterbodies.

"State programmatic general permit" means a general permit issued by the Department of the Army in accordance with 33 CFR Part 32S that is founded on a state program and is designed to avoid duplication between the federal and state programs.

"Temporary impact" means an impact caused by activities in surface waters, including wetlands, in which the ground is restored to its preconstruction contours and elevations, without significantly affecting wetland functions and values.

"Up to one-tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place.

"Up to two acres" means 0.00 to 2.00 acres, rounded to the second decimal place.

"Utility line" means any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities which drain a surface water to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

9 VAC 25-690-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this regulation is to establish VWP General Permit Number WP4 under the VWP permit regulation to govern impacts related to the construction and maintenance of development activities. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board.

B. The director or his designee may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This VWP general permit regulation will become effective on October 1, 2001, and will expire on October 1, 2006.

D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-690-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for a maximum of five years.

9 VAC 25-690-30. Authorization to impact surface waters.

A. Any person governed by this VWP general permit is authorized to impact up to two acres of nontidal surface waters, including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel for general development activities, provided that the applicant submits notification as required in 9 VAC 25-690-50 and 9 VAC 25-690-60, remits the required application processing fee (9 VAC 25-20-10 et seq.), complies with the limitations and other requirements of 9 VAC 25-690-100, receives approval from the board, and provided that:

1. The applicant shall not have been required to obtain a VWP individual permit under the VWP permit program regulation (9 VAC 25-210-10 et seq.) for the proposed project impacts. The applicant, at his discretion, may seek a

VWP individual permit, or coverage under another applicable VWP general permit, in lieu of coverage under this VWP general permit.

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

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

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

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

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

5. Compensatory mitigation for unavoidable impacts is provided in the form of any one or combination of the following: creation, restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Compensation may incorporate preservation of wetlands or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits.

B. Activities that may be authorized under this VWP general permit include the following:

1. Residential, commercial, institutional. The construction or expansion of building foundations, building pads and attendant features for residential, commercial and institutional development activities.

a. Residential developments include both single and multiple units.

b. Commercial developments include, but are not limited to, retail stores, industrial facilities, restaurants, business parks, office buildings and shopping centers.

c. Institutional developments include, but are not limited to, schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.

d. Attendant features include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities (such as playgrounds, playing fields and golf courses). Attendant features must be necessary for the use and maintenance of the structures.

2. Recreational facilities. The construction or expansion of recreational facilities and small support facilities.

a. Recreational facilities include, but are not limited to, hiking trails, bike paths, horse paths, nature centers, and campgrounds (but not trailer parks). Boat ramps (concrete or open-pile timber), boathouses, covered boat lifts, mooring piles and dolphins, fender piles, camels (wooden floats serving as fenders alongside piers), and open-pile piers (including floating piers, travel-lift piers, etc.) associated with recreational facilities are also included.

b. Recreational facilities do not include as a primary function the use of motor vehicles, buildings or impervious surfaces.

c. Golf courses and ski area expansions may qualify as recreational facilities provided the construction of the proposed facility does not result in a substantial deviation from the natural contours and the facility is designed to minimize adverse effects on state waters and riparian areas. Measures that may be used to minimize adverse effects on waters and riparian areas include the implementation of integrated pest management plans, adequate stormwater management, vegetated buffers, and fertilizer management plans.

d. Small support facilities are authorized provided they are directly related to the recreational activity. Small support facilities include, but are not limited to, maintenance storage buildings and stables.

e. The following do not qualify as recreational facilities: hotels, restaurants, playing fields (e.g., baseball, soccer or football fields), basketball and tennis courts, racetracks, stadiums, arenas or new ski areas.

f. The recreational facility must have an adequate water quality management plan, such as a stormwater management plan, to ensure that the recreational facility results in no substantial adverse effects to water quality.

3. Stormwater management facilities. The construction, maintenance, and excavation of stormwater management facilities; the installation and maintenance of water control structures, outfall structures, and emergency spillways; and the maintenance dredging of existing stormwater management facilities.

a. Stormwater management facilities include stormwater ponds and facilities, detention basins, retention basins, and other facilities designed to reduce pollutants in stormwater runoff.

b. The stormwater management facility must:

(1) To the maximum extent practicable, be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity and flow rates);

(2) Not permanently restrict or impede the passage of normal or expected high flows, unless the primary purpose of the facility is to impound waters;

(3) Withstand expected high flows;

(4) To the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and not increase water flows from the project site, relocate water, or redirect flow beyond preconstruction conditions;

(5) To the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the facility is part of a larger system designed to manage water flows; and

(6) Be designed using best management practices (BMPs) and watershed protection techniques. Examples include forebays, vegetated buffers, bioengineering methods, and siting considerations to minimize adverse effects to aquatic resources.

c. Maintenance excavation shall be in accordance with the facility maintenance plan and shall not exceed the original contours of the facility as approved and constructed.

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9 VAC 25-210-10. Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.

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

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

F. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued § 401 certification existing as of October 1, 2001, shall constitute coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact. Notwithstanding any other provision, activities authorized under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with 9 VAC 25-210-130 do not need to obtain coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.

9 VAC 25-690-40. Exceptions to coverage.

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

1. Wetlands composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (Chamaecyparis thyoides), bald cypress (Taxodium distichum), water tupelo (Nyssa aquatica), or overcup oak (Quercus lyrata). Percentages shall be based upon either basal area or percent areal cover.

2. Wetlands underlain by histosols.

3. Surface waters with federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. Authorization for coverage under this VWP general permit cannot be used in combination with authorization for coverage under other VWP permits to impact greater than two acres of nontidal surface waters, more than 500 linear feet of perennial stream channel, or more than 1,500 linear feet of nonperennial stream channel. More than one authorization for coverage under this VWP general permit for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the above-mentioned limits.

C. This VWP general permit cannot be used for any activity in any real estate subdivision which would cause the aggregate total loss of nontidal surface waters in the subdivision to exceed two acres, or more than 500 linear feet of perennial stream channel, or more than 1,500 linear feet of nonperennial stream channel.

D. The activity to impact surface waters shall not have been prohibited by state law or regulations, nor shall it contravene applicable Water Quality Standards (9 VAC 25-260-5 et seq.).

E. The board shall deny coverage under this VWP general permit to any applicant for activities that cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to adversely affect aquatic life, or for activities that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

F. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, increase flooding, or cause more than minimal degradation of the water quality of any stream.

G. This VWP general permit may not be used for:

1. Any stormwater management facility that is located in perennial streams or in waters designated as oxygen- or temperature-impaired;

2. The construction of an irrigation impoundment on a perennial stream;

3. Any water withdrawal activities;

4. The location of animal feeding operations or waste storage facilities in state waters;

5. The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the area is contained within a cofferdam and the work is performed in the dry;

6. Return flow discharges from dredge disposal sites;

7. Overboard disposal of dredge materials;

8. Dredging in marinas;

9. Dredging of shellfish areas, submerged aquatic vegetation beds or other highly productive areas;

10. Federal navigation projects;

11. The construction of new ski areas or oil and gas wells; and

12. The taking of threatened or endangered species in accordance with the following:

a. Pursuant to § 29.1-564 of the Code of Virginia the taking, transportation, processing, sale or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568 of the Code of Virginia.

b. Pursuant to § 29.1-566 of the Code of Virginia and 4 VAC 15-20-130 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.

9 VAC 25-690-50. Notification.

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

1. An application for proposed impacts greater than one-tenth of an acre of surface waters shall be submitted via a registration statement that includes all information pursuant to 9 VAC 25-690-60.

2. Proposed impacts up to one-tenth of an acre shall be reported via a registration statement that includes only the following information: subdivisions 1 through 8, 13, 15 and 20 of 9 VAC 25-690-60 B.

B. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) may serve as the registration statement provided that all information required pursuant to 9 VAC 25-690-60 is included and that the first page of the form is clearly marked indicating the intent to have the form serve as the registration statement for this VWP general permit.

C. The board will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Game and Inland Fisheries regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this general permit.

9 VAC 25-690-60. Registration statement.

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

1. The applicant shall file a complete registration statement, as described in 9 VAC 25-690-50 for a VWP general permit number WP4 for impacts to surface waters from development activities, which will serve as a notice of intent for coverage under this VWP general permit.

2. Any applicant proposing an activity under this VWP general permit is advised to file the required registration statement at least 45 days prior to the date planned for the commencement of the activity to be regulated by the VWP general permit. The VDOT may use its monthly IACM process for submitting registration statements.

B. The required registration statement shall contain the following information:

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

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

3. The existing VWP permit number (if applicable);

4. The name of the project, purpose of project, and a description of the activity;

5. The name of the water body or water bodies or receiving stream, as applicable;

6. The hydrologic unit code (HUC) for the project area;

7. The name of the city or county where the project is located;

8. Latitude and longitude (to the nearest second) from a central location within the project limits;

9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the project area. The map should be of sufficient detail such that the site may be easily located for site inspection;

10. The appropriate appendices from the JPA;

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

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

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, and the impact area (in square feet, linear feet or acres). Wetland impacts should be quantified according to their Cowardin classification or similar terminology;

14. Functional values assessment for impacts to wetlands greater than one acre. The functional assessment shall consist of a narrative description of the existing wetland functions and values and the impact that the project will have on these functions and values;

15. A description of the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable, as required by 9 VAC 25-210-115 A;

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

a. A conceptual compensatory mitigation plan, at a minimum, must be submitted, and shall include: the goals and objectives in terms of replacement of wetland or stream acreage and function; a location map, including latitude and longitude (to the nearest second) at the center of the site; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical year, a dry year, and a wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; wetland delineation confirmation and data sheets, and maps for existing wetland areas on the proposed site or sites; a conceptual grading plan; a conceptual planting scheme, including suggested plant species, zonation and acreage of each vegetation type proposed; a proposed soil preparation and amendment plan addressing both topsoil and subsoil conditions; and a draft design of any water control structures.

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

c. Any applicant proposing compensation involving stream restoration shall submit a plan that includes: goals and objectives in terms of water quality benefits; location map, including the latitude and longitude at the center of the site; the proposed stream segment restoration locations, including plan view and cross-section sketches; the stream deficiencies that need to be addressed; the restoration measures to be employed, including proposed design flows and types of instream structures; and a proposed construction schedule.

d. Any compensation plan proposing to include contributions to in-lieu fee programs shall include proof of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated.

e. Any compensation plan proposing the purchase of mitigation banking credits shall include:

(1) The name of the proposed mitigation bank;

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

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

f. The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in subdivision 16 a of this subsection, as well as a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photostations, monitoring wells, vegetation sampling points, and reference wetlands (if available); an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and proposed deed restriction language for protecting the compensation site or sites in perpetuity. The final compensatory mitigation plan must include protection of all surface waters and upland areas that are to be preserved in perpetuity within the compensation site boundary;

17. A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9 VAC 25-210-45, including the wetlands data sheets, and the latitude and longitude (to the nearest second) of the center of the wetland impact area. Wetland types should be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, shall also be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review. The delineation map should also include the location of all impacted and nonimpacted streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) should be shown on the map, as other state or local requirements may apply if the project is located within an RPA;

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

19. The appropriate application processing fee for a VWP general permit (9 VAC 25-20-10 et seq.); and

20. The following certification:

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

C. The registration statement shall be signed in accordance with 9 VAC 25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of a complete registration statement, coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days. If the board fails to act within 45 days, coverage under this VWP permit general permit shall be deemed approved.

1. In evaluating the registration statement, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve authorization under this VWP general permit. However, these conditions must be consistent with the VWP permit regulation and may not override or contradict the existing conditions of this VWP general permit related to impacts and mitigation.

E. Incomplete registration statement. Where a registration statement is incomplete, the board shall require the submission of additional information and may suspend processing until such time as the applicant has supplied the missing or deficient information and the registration statement is complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a registration statement, or submitted incorrect information in a registration statement or in any report to the board, he shall immediately submit such facts or the correct information.

9 VAC 25-690-70. Mitigation.

A. For the purposes of this VWP general permit, the board may accept any one or combination of the following as compensation for unavoidable impacts: wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Compensation may incorporate preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits.

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

1. Impacts to forested wetlands shall be mitigated at 2:1.

2. Impacts to scrub shrub wetlands shall be mitigated at 1.5:1.

3. Impacts to emergent wetlands shall be mitigated at 1:1.

C. Compensatory mitigation for unavoidable impacts to streams shall be provided at a 1:1 replacement to loss ratio via stream relocation, restoration, riparian buffer establishment, or purchase of mitigation bank credits or contribution to an in-lieu fee fund that includes stream restoration, when feasible.

D. Compensation for open water impacts may be required, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.

E. In order for contribution to an in-lieu fee fund to be an acceptable form of compensatory mitigation, the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.

F. The use of mitigation banks for compensating project impacts shall be deemed appropriate if the bank is operating in accordance with the provisions of § 62.1- 44.15:5 E of the Code of Virginia and 9 VAC 25-210-115, and the applicant provides verification to the board of purchase or debiting of the required amount of credits.

9 VAC 25-690-80. Notice of planned changes.

A. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated.

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

9 VAC 25-690-90. Notice of termination.

When all permitted activities requiring notification under 9 VAC 25-690-50 A 1 have been completed, the permittee shall submit a notice of termination within 30 days of final completion. The notice shall contain the following information:

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

2. Name and location of the activity;

3. The VWP permit authorization number; and

4. The following certification:

"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit."

9 VAC 25-690-100. VWP general permit.

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

VWP General Permit No. WP4

Authorization effective date:

Authorization expiration date:

VWP GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to impact up to two acres of nontidal surface waters, including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel.

Permittee:

Address:

Activity Location:

Activity Description:

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

_____

Director, Department of Environmental Quality Date

Part I. Special Conditions.

A. Authorized activities.

1. This permit authorizes impacts of up to two acres of nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel according to the information provided in the applicant's approved registration statement.

2. Any additional impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-690-80 or another VWP permit application.

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

B. Reapplication. Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP general permit requirement (including compensatory mitigation) has not been completed within five years of the date of authorization. Application consists of an updated or new registration statement. Notwithstanding any other provision, a request for a reissuance of certification of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered an application for coverage and no application fee will be charged.

C. Overall project conditions.

1. The construction or work authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters.

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 stabilizes.

6. Any exposed slopes and streambanks must be stabilized immediately upon completion of the project at each water body. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

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

9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures, to minimize soil disturbance to the maximum extent practicable.

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

11. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote revegetation of temporarily disturbed wetland areas with wetland vegetation by the second year post-disturbance. All temporary fills shall be removed in their entirety and the affected area returned to the preexisting contours.

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

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

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

15. The permittee shall conduct his activities in accordance with any time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission.

16. Immediately downstream of the construction area, water quality standards shall not be violated as a result of the construction activities.

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

D. Road crossings.

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

2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the reestablishment of a natural stream bottom and a low flow channel. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

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

4. All surface waters temporarily affected by the construction of a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of

the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

E. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

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.).

F. Bank stabilization.

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

4. All bank erosion structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. All material removed from the stream substrate shall be disposed of in an approved upland area.

G. Dredging.

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

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

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

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent any overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted.

6. For navigation channels the following shall apply:

a. A minimum of 15 feet shall be maintained between the top of the dredge cut and the toe of the bank. This landward limit of encroachment shall be flagged and inspected prior to construction.

b. A buffer of four times the depth of the dredge cut shall be maintained between the top of the dredge cut and the channelward limit of wetlands or mean low water.

c. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, and shall be properly stabilized prior to placing the dredged material within the containment area.

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

H. Stormwater management facilities.

1. Stormwater management facilities shall be designed in accordance with best management practices and watershed protection techniques (i.e., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

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

3. Maintenance excavation shall not exceed the original contours of the facility, as approved and constructed.

4. Maintenance within stormwater management facilities will not require mitigation provided that the maintenance is accomplished in designated maintenance areas as indicated in the facility maintenance plan.

Part II. Mitigation, Monitoring and Reporting.

A. Compensatory mitigation. The permittee shall provide appropriate and practicable compensatory mitigation for all impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Compensation may incorporate preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits.

1. The site or sites depicted in the conceptual compensatory mitigation plan submitted with the registration statement, shall constitute the compensatory mitigation plan for the approved project.

2. For compensation involving the purchase or use of mitigation bank credits, the permittee shall submit documentation within 60 days of VWP general permit authorization that the USACE has debited the required mitigation credits from the Mitigation Bank ledger. For projects proposing a contribution to an in-lieu fee fund, the permittee shall submit documentation within 60 days of VWP general permit authorization that the fund contribution has been received.

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

a. The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget for a typical year, a wet year and a dry year plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of photographic stations and ground water monitoring wells. Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas within approximately 200 miles from the project site.

b. The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or

nonimpact state water, with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.

4. Post-grading elevations for the compensatory mitigation site or sites shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensatory mitigation plan.

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

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

7. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final mitigation plan.

8. Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.

9. The success of the compensatory mitigation shall be based on establishing and maintaining a viable wetland with suitable wetland hydrology, hydric soils or soils under hydric conditions, and hydrophytic plant communities.

10. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the growing season, as defined in the United States Department of Agriculture soil survey for the locality of the compensation site in all monitoring years under normal rainfall conditions, as defined in the water budget of the final mitigation plan.

11. The wetland plant community shall be considered established according to the performance criteria specified in the final mitigation plan and approved by the board. Species composition shall reflect the desired plant community types stated in the final mitigation plan by the end of the first growing season and shall be maintained through the last year of the VWP permit. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover.

12. Noxious weeds shall be identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the board of any invasive species occurrences, methods of removal, and successful control.

13. If the compensatory mitigation area fails to be established as viable wetlands, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to the board for approval prior to or with the next required monitoring report. All problems shall be corrected by the permittee. Should significant changes be necessary to establish wetlands, the monitoring plan shall begin again, with year one being the year changes are complete.

14. The wetland boundary for the compensatory mitigation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle.

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

16. This VWP general permit authorization may need to be renewed (or extended) to assure that the compensatory mitigation work has been successful. The request for renewal or extension must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if renewal of the VWP general permit authorization is necessary.

B. Compensatory mitigation site monitoring.

1. A post-grading survey, including spot elevations, of the site or sites for wetland compensatory mitigation may be required depending upon the type and size of the compensation site, and shall be conducted by a licensed land surveyor or a professional engineer.

2. Photographs shall be taken at the compensatory mitigation site or sites from the permanent markers identified in the final mitigation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and in August or September every monitoring year.

3. Compensatory mitigation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (year 1) following compensatory mitigation site construction. Monitoring shall be required for years 1, 2, 3, and 5. If all success criteria have not been met in the fifth year, monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. All hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year.

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

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

7. The presence of noxious species shall be documented.

C. Stream mitigation, restoration and monitoring.

1. Stream mitigation shall be performed in accordance with the final mitigation plan and subsequent submittals, as approved by the board.

2. Stream bank slopes shall be stabilized to reduce stream bank erosion, where practicable.

3. Stream mitigation monitoring shall be conducted in the manner proscribed in the final mitigation plan approved by the board. All monitoring reports shall be submitted by November 30 of the monitoring year. Monitoring reports shall include:

a. Photographs sufficient to document installation of specific structures and vegetative plantings or where the stream channel banks are reshaped. Permanent markers shall be established to ensure that the same locations and view directions at the site are photographed in each monitoring period.

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

c. Any alterations, maintenance, and corrective actions conducted at the stream mitigation site.

D. Construction monitoring.

1. Photo stations shall be established to document the construction aspects of project activities within impact areas. as authorized by this permit. Photographs should document the pre-construction conditions, activities during construction, and post-construction conditions within one week after completion of construction. Photographs shall be taken during construction at the end of the first, second and twelfth months of construction, and then annually for the remainder of the construction project. Photographs are not necessary during periods of no activity within impact areas.

2. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

3. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.

4. Monitoring of water quality parameters shall be conducted during rerouting of the live streams through the new channels in the following manner:

a. A sampling station shall be located upstream and immediately downstream of the relocated channel;

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels;

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

E. Reporting.

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

2. The board shall be notified in writing by certified letter at least 10 days prior to the start of construction activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

3. After construction begins, construction monitoring reports shall be submitted to the board within 30 days of each monitoring event. The reports shall include, at a minimum, the following:

a. A written statement regarding when work started in the identified impact area, where work was performed, what work was performed, and what work was completed.

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, a brief description and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.).

4. All compensatory mitigation monitoring reports shall be submitted annually by November 30, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit. Any alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to the board.

5. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-690-90.

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

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

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

9. All submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization termination, revocation,, or denial of a renewal application.

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

C. Reopener. This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit authorization was issued and thereby constitute cause for VWP general permit authorization revocation and reissuance.

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

E. Property rights. The issuance of this VWP general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

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

G. Right of entry. The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;

2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;

3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit authorization. This VWP general permit authorization may be transferred to another person by a permittee if:

1. The current permittee notifies the board within 30 days of the transfer of the title to the facility or property;

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

3. The board does not notify the existing and new permittee of its intent to modify or revoke and reissue the VWP general permit authorization within the 30-day time period.

On the date of the VWP general permit authorization transfer, the transferred VWP general permit authorization shall be as fully effective as if it had been issued directly to the new permittee.

I. Notice of planned change. Authorization under the VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation.

J. VWP general permit termination. This VWP general permit, after public notice and opportunity for a hearing, is subject to termination. Causes for termination are as follows:

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

2. The permittee's failure in the application or during the VWP general permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order; and

4. A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit authorization modification or termination.

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

L. 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.

M. 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 VSP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

N. Duty to provide information.

1. the permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing and terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the 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.

O. 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.

P. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage 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.

DOCUMENTS INCORPORATED BY REFERENCE

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

FORMS

Department of Environmental Quality Water Division Permit Application Fee (eff. 10/01).

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 10/01).

Virginia Water Protection General Permit Registration Statement (eff. 10/01).

◆ ——————————————————— ◆

VWP General Permit No. WP1
VWP General Permit Authorization No. WP1-**[##-####]**
Authorization Effective date: **[____]**
Authorization Expiration date: **[____]**

VWP GENERAL PERMIT FOR IMPACTS LESS THAN ONE-HALF OF AN ACRE UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to impact less than one-half of an acre of nontidal surface waters including up to 125 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel.

Permittee:

Address:

Activity Location:

Activity Description:

[Authorization Note(s):]

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

Director, Department of Environmental Quality Date

PART I - SPECIAL CONDITIONS

A. Authorized Activities

1. This permit authorizes impacts to less than one-half of an acre of nontidal surface waters, including up to 125 linear feet of perennial stream channel, and up to 1,500 linear feet of nonperennial stream channel according to the information provided in the applicant's approved registration statement.

2. Any additional impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-660-80, or another VWP permit application.

3. The activities authorized by this VWP general permit must commence and be completed within three years of the date of this authorization.

B. Reapplication

Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP general permit requirement has not been completed within three years of the date of authorization. Application consists of an updated or new registration statement.

C. Overall Project Conditions

1. The construction or work authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry 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 stabilizes.

6. Any exposed slopes and streambanks must be stabilized immediately upon completion of the project at each water body. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

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

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures to minimize soil disturbance to the maximum extent practicable.

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

11. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to pre-construction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote revegetation of temporarily disturbed wetland areas with wetland vegetation by the second year post-disturbance. All temporary fills must be removed in their entirety and the affected areas returned to the pre-existing contours.

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does

not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

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

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

15. The permittee shall conduct his activities in accordance with any time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission.

16. Immediately downstream of the construction area, water quality standards shall not be violated as a result of the construction activities.

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

D. Road Crossings

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

2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the re-establishment of a natural stream bottom and a low flow channel. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

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

4. All state waters temporarily affected by the construction of a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

E. Utility Lines

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

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).

F. Bank Stabilization

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

4. All bank erosion 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. All material removed from the stream substrate shall be disposed of in an approved upland area.

G. Stormwater management facilities

1. Stormwater management facilities shall be designed in accordance with best management practices and watershed protection techniques (i.e., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

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

3. Maintenance excavation shall not exceed the original contours of the facility, as approved and constructed.

4. Maintenance within stormwater management facilities will not require mitigation provided that the maintenance is accomplished in designated maintenance areas as indicated in the facility maintenance plan.

PART II – MITIGATION, MONITORING AND REPORTING

A. Compensatory mitigation

The permittee shall provide appropriate and practicable compensatory mitigation for all impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include:

1. Purchases of credits from approved mitigation banks meeting the requirements of 9 VAC 25-210-115 F in accordance with 9 VAC 25-660-70 and provided that all impacts are compensated at a 2:1 ratio; or

2. Contributions to an in lieu fee fund approved in accordance with 9 VAC 25-210-115 E and dedicated to the achievement of no net loss of wetland acreage and function, provided that all impacts are compensated at a 2:1 ratio.

B. The permittee shall submit documentation within 60 days of VWP general permit issuance that the USACE has debited the required mitigation credits from the mitigation bank ledger or that the fund contribution has been received.

C. Construction monitoring

1. Photo stations shall be established to document the construction aspects of project activities within impact areas as authorized by this permit. Photographs should document the pre-construction conditions, activities during construction, and post-construction conditions within one week after completion of construction. Photographs shall be taken during construction at the end of the first, second and twelfth months of construction and then annually for the remainder of the construction project. Photographs are not necessary during periods of no activity within impact areas.

2. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

3. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.

4. Monitoring of water quality parameters shall be conducted during rerouting of the live streams through the new channels in the following manner:

a. A sampling station shall be located upstream and immediately downstream of the relocated channel;

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels; and

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

D. Reporting

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

2. The board shall be notified in writing by certified letter at least 10 days prior to the start of construction activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

3. After construction begins, construction monitoring reports shall be submitted to the board within 30 days of each monitoring event. The reports shall include, at a minimum, the following:

a. A written statement regarding when work started in the identified impact area, where work was performed, what work was performed, and what work was completed.

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, a brief description, and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.).

4. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-660-90.

5. The permittee shall notify the board 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 any structure are prohibited until approved by the board.

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

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

8. All submittals required by this VWP general permit shall contain the following signed certification statement:

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

PART III - CONDITIONS APPLICABLE TO ALL VWP GENERAL PERMITS

A. Duty to comply

The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization termination, revocation, or denial of a renewal application.

B. Duty to mitigate

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

C. Reopener

This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit authorization was issued and thereby constitute cause for VWP general permit authorization revocation and reissuance.

D. Compliance with state and federal law

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

E. Property rights

Coverage under this VWP general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

F. Severability

The provisions of this VWP general permit authorization are severable.

G. Right of entry

The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;

2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;

3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit authorization.

This VWP general permit authorization may be transferred to another person by a permittee if:

1. The current permittee notifies the board within 30 days of the transfer of the title to the facility or property;

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

3. The board does not notify the existing and new permittee of its intent to modify or revoke and reissue the VWP general permit authorization within the 30-day time period.

On the date of the VWP general permit authorization transfer, the transferred VWP general permit shall be as fully effective as if it had been issued directly to the new permittee.

I. Notice of planned change

Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet,

and provided that the additional impacts are fully mitigated. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation.

J. VWP general permit authorization termination

This VWP general permit authorization is subject to termination. Causes for termination are as follows:

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

2. The permittee's failure in the application or during the VWP general permit authorization issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order; and

4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit authorization modification or termination.

K. Civil and criminal liability

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

L. 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.

M. 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.

N. Duty to provide information

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing and terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the 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.

O. 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

P. Unauthorized discharge of pollutants

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

   a. New activities to cause draining that significantly 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.

VWP General Permit No. WP2
VWP General Permit Authorization No. WP2-**[**##-####**]**
Authorization Effective date: **[____]**
Authorization Expiration date: **[____]**

VWP GENERAL PERMIT FOR FACILITIES AND ACTIVITIES OF UTILITIES AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to impact up to one acre of nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel.

Permittee:

Address:

Activity Location:

Activity Description:

[Authorization Note(s):]

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

_____ _____

Director, Department of Environmental Quality Date

PART I - SPECIAL CONDITIONS

A. Authorized Activities

1. This permit authorizes impacts of up to one acre of nontidal surface waters, including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel according to the information provided in the applicant's approved registration statement.

2. Any additional impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-670-80 or another VWP permit application.

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

B. Reapplication

Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP permit requirement (including compensatory mitigation) has not been completed within three years of the date of authorization. Application consists of an updated or new registration statement. Notwithstanding any other provision, a request for a reissuance of certification of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered an application for coverage and no application fee will be charged.

C. Overall Project Conditions

1. The construction or work authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry 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 stabilizes.

6. Any exposed slopes and streambanks must be stabilized immediately upon completion of the utility line crossing of each water body. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in such 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.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures, to minimize soil disturbance to the maximum extent practicable.

10. All nonimpacted surface waters within the project limits that are within 50 feet of any clearing, grading, or filling activities shall be clearly flagged or marked for the life of the construction activity within that area. The permittee shall notify all contractors that these marked areas are surface waters where no activities are to occur.

11. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub-shrub or forested). The permittee shall take all appropriate measures to promote revegetation of temporarily disturbed wetland areas with wetland vegetation by the second year post-disturbance. All temporary fills must be removed in their entirety and the affected area returned to preexisting contours.

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

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

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

15. The permittee shall conduct his activities in accordance with any time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission.

16. Immediately downstream of the construction area, water quality standards shall not be violated as a result of the construction activities.

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

D. Road Crossings

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

2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the reestablishment of a natural stream bottom and a low flow channel. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

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

4. All surface waters temporarily affected by the construction of a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

E. Utility Lines

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands, not to exceed 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.).

F. Bank Stabilization

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

4. All bank erosion 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. All material removed from the stream substrate shall be disposed of in an approved upland area.

PART II – MITIGATION, MONITORING AND REPORTING

A. Compensatory mitigation

The permittee shall provide appropriate and practicable compensatory mitigation for all impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Compensation may incorporate preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits.

1. The site or sites depicted in the conceptual compensatory mitigation plan submitted with the registration statement, shall constitute the compensatory mitigation plan for the approved project.

2. For compensation involving the purchase or use of mitigation bank credits, the permittee shall submit documentation within 60 days of VWP general permit authorization that the USACE has debited the required mitigation credits from the mitigation bank ledger. For projects proposing a contribution to an in-lieu fee fund, the permittee shall submit documentation within 60 days of VWP general permit authorization that the fund contribution has been received.

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

    a. The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget for a typical year, a dry year, and a wet year, plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of photographic stations and ground water monitoring wells. Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for

growth in local wetland conditions, and should be from areas within approximately 200 miles from the project site.

b. The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.

4. Post-grading elevations for the compensatory mitigation site or sites shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensatory mitigation plan.

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

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

7. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final mitigation plan.

8. Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.

9. The success of the compensatory mitigation shall be based on establishing and maintaining a viable wetland with suitable wetland hydrology, hydric soils or soils under hydric conditions, and hydrophytic plant communities.

10. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the growing season, as defined in the United States Department of Agriculture soil survey for the locality of the compensation site in all monitoring years under normal rainfall conditions, as defined in the water budget of the final mitigation plan.

11. The wetland plant community shall be considered established according to the performance criteria specified in the final mitigation plan and approved by the board. Species composition shall reflect the desired plant community types stated in the final mitigation plan by the end of the first growing season and shall be maintained through the last year of the VWP permit. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover.

12. Noxious weeds shall be identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the board of any invasive species occurrences, methods of removal, and successful control.

13. If the compensatory mitigation area fails to be established as viable wetlands, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to the board for approval prior to or with the next required monitoring report. All problems shall be corrected by the permittee. Should significant changes be necessary to establish wetlands, the monitoring plan shall begin again, with year one being the year changes are complete.

14. The wetland boundary for the compensatory mitigation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle.

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

16. This VWP general permit authorization may need to be renewed (or extended) to assure that the compensatory mitigation work has been successful. The request for renewal or

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

B. Compensatory mitigation site monitoring

1. A post-grading survey, including spot elevations, of the site or sites for wetland compensatory mitigation may be required depending upon the type and size of the compensation site, and shall be conducted by a licensed land surveyor or a professional engineer.

2. Photographs shall be taken at the compensatory mitigation site or sites from the permanent markers identified in the final mitigation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and in August or September every monitoring year.

3. Compensatory mitigation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (year one) following compensatory mitigation site construction. Monitoring shall be required for years 1, 2, and 3. If all success criteria have not been met in the third year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. All hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site, or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, weekly monitoring may be discontinued for the remainder of that monitoring year.

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

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

7. The presence of noxious species shall be documented.

C. Stream mitigation, restoration and monitoring

1. Stream mitigation shall be performed in accordance with the final mitigation plan and subsequent submittals, as approved by the board.

2. Stream bank slopes shall be stabilized to reduce stream bank erosion, where practicable.

3. Stream mitigation monitoring shall be conducted in accordance with the final mitigation plan approved by the board. All monitoring reports shall be submitted by November 30 of the monitoring year. Monitoring reports shall include:

   a. Photographs sufficient to document installation of specific structures and vegetative plantings or where the stream channel banks are reshaped. Permanent markers shall be established to ensure that the same locations and view directions at the site are photographed in each monitoring period.

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

   c. Any alterations, maintenance, and corrective actions conducted at the stream mitigation site.

D. Construction monitoring

1. Photo stations shall be established to document the construction aspects of project activities within impact areas as authorized by this permit. Photographs should document the pre-construction conditions, activities during construction, and post-construction conditions within one week after completion of construction. Photographs shall be taken during construction at the end of the first, second and twelfth months of construction, and then annually for the remainder of the construction project. Photographs are not necessary during periods of no activity within impact areas.

2. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

3. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.

4. Monitoring of water quality parameters shall be conducted during rerouting of the live streams through the new channels in the following manner:

a. A sampling station shall be located upstream and immediately downstream of the relocated channel;

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels;

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

E. Reporting

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

2. The board shall be notified in writing by certified letter at least 10 days prior to the start of construction activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

3. After construction begins, construction monitoring reports shall be submitted to the board within 30 days of each monitoring event. The reports shall include, at a minimum, the following:

a. A written statement regarding when work started in the identified impact area, where work was performed, what work was performed, and what work was completed.

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, a brief description, and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.).

4. All compensatory mitigation monitoring reports shall be submitted annually by November 30, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the

general permit. Any alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to the board.

5. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-670-90.

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

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

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

9. All submittals required by this VWP general permit shall contain the following signed certification statement:

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

PART III - CONDITIONS APPLICABLE TO ALL VWP GENERAL PERMITS

A. Duty to comply

The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization, termination, revocation,, or denial of a renewal application.

B. Duty to mitigate

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

C. Reopener

This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit authorization was issued and, thereby, constitute cause for VWP general permit authorization revocation and reissuance.

D. Compliance with state and federal law

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

E. Property rights

The issuance of this VWP general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

F. Severability

The provisions of this VWP general permit authorization are severable.

G. Right of entry

The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;

2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;

3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit authorization

This VWP general permit authorization may be transferred to another person by a permittee if:

1. The current permittee notifies the board within 30 days of the transfer of the title to the facility or property;

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

3. The board does not notify the existing and new permittee of its intent to modify or revoke and reissue the VWP general permit authorization within the 30-day time period.

On the date of the VWP general permit authorization transfer, the transferred VWP general permit authorization shall be as fully effective as if it had been issued directly to the new permittee.

I. Notice of planned change

Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation.

J. VWP general permit authorization termination

This VWP general permit authorization is subject to termination. Causes for termination are as follows:

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

2. The permittee's failure in the application or during the VWP general permit authorization issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order; and

4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit authorization modification or termination.

K. Civil and criminal liability

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

L. 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.

M. 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.

N. Duty to provide information

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing and terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the 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.

O. 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.

P. Unauthorized discharge of pollutants

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

   a. New activities to cause draining that significantly alters or degrades existing wetland acreage 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.

VWP General Permit No. WP3
VWP General Permit Authorization No. WP3-**[**##-####**]**
Authorization Effective date: **[____]**
Authorization Expiration date: **[____]**

VWP GENERAL PERMIT FOR LINEAR TRANSPORTATION PROJECTS UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, 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 of state waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to impact up to two acres of nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel.

Permittee:

Address:

Activity Location:

Activity Description:

[Authorization Note(s):]

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

_____ _____

Director, Department of Environmental Quality Date

PART I - SPECIAL CONDITIONS

A. Authorized Activities

1. This permit authorizes impacts of up to two acres of nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel according to the information provided in the applicant's approved registration statement.

2. Any additional impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-680-80 or another VWP permit application.

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

B. Reapplication

Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP permit requirement (including compensatory mitigation) has not been completed within five years of the date of authorization. Application consists of an updated or new registration statement. Notwithstanding any other provision, a request for a re-issuance of certification of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered an application for coverage and no application fee will be charged.

C. Overall Project Conditions

1. The construction or work authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry 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 stabilizes.

6. Any exposed slopes and streambanks must be stabilized immediately upon completion of the project at each water body. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

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

9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures, to minimize soil disturbance to the maximum extent practicable.

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

11. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to pre-construction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote revegetation of temporarily disturbed wetland areas with wetland vegetation by the second year post-disturbance. All temporary fills must be removed in their entirety and the affected areas returned to the pre-existing contours.

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

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

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

15. The permittee shall conduct his activities in accordance with any time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission.

16. Immediately downstream of the construction area, water quality standards shall not be violated as a result of the construction activities.

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

D. Road Crossings

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

2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the re-establishment of a natural stream bottom and a low flow channel. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

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

4. All surface waters temporarily affected by the construction of a road crossing shall be

restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

E. Utility Lines

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

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).

F. Bank Stabilization

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

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

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

4. All bank erosion 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. All material removed from the stream substrate shall be disposed of in an approved upland area.

G. Dredging

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.
2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.
3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease and the Department of Environmental Quality (DEQ) shall be notified immediately.
4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent any overflow of dredged materials.
5. Double handling of dredged material in state waters shall not be permitted.
6. For navigation channels the following shall apply:
    a. A minimum of 15 feet shall be maintained between the top of the dredge cut and the toe of the bank. This landward limit of encroachment shall be flagged and inspected prior to construction.
    b. A buffer of four times the depth of the dredge cut shall be maintained between the top of the dredge cut and the channelward limit of wetlands or mean low water.
    c. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.
7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.
8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, and shall be properly stabilized prior to placing the dredged material within the containment area.

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

H. Stormwater management facilities

1. Stormwater management facilities shall be designed in accordance with best management practices and watershed protection techniques (i.e., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

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

3. Maintenance excavation shall not exceed the original contours of the facility, as approved and constructed.

4. Maintenance within stormwater management facilities will not require mitigation provided that the maintenance is accomplished in designated maintenance areas as indicated in the facility maintenance plan.

PART II – MITIGATION, MONITORING AND REPORTING

A. Compensatory mitigation

The permittee shall provide appropriate and practicable compensatory mitigation for all impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Compensation may incorporate preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits.

1. The site or sites depicted in the conceptual compensatory mitigation plan submitted with the registration statement, shall constitute the compensatory mitigation plan for the approved project.

2. For compensation involving the purchase or use of mitigation bank credits, the permittee shall submit documentation within 60 days of VWP general permit authorization that the USACE has debited the required mitigation credits from the Mitigation Bank ledger. For projects proposing a contribution to an in-lieu fee fund, the permittee shall submit documentation within 60 days of VWP general permit authorization that the fund contribution has been received.

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

    a. The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget for a typical year, a dry year, and a wet year, plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of photographic stations and ground water monitoring wells. Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas within approximately 200 miles from the project site.

b. The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.

4. Post-grading elevations for the compensatory mitigation site or sites shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensatory mitigation plan.

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

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

7. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final mitigation plan.

8. Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.

9. The success of the compensatory mitigation shall be based on establishing and maintaining a viable wetland with suitable wetland hydrology, hydric soils or soils under hydric conditions, and hydrophytic plant communities.

10. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the growing season, as defined in the United States Department of Agriculture soil survey for

the locality of the compensation site in all monitoring years under normal rainfall conditions, as defined in the water budget of the final mitigation plan.

11. The wetland plant community shall be considered established according to the performance criteria specified in the final mitigation plan and approved by the board. Species composition shall reflect the desired plant community types stated in the final mitigation plan by the end of the first growing season and shall be maintained through the last year of the VWP permit. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover.

12. Noxious weeds shall be identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the board of any invasive species occurrences, methods of removal, and successful control.

13. If the compensatory mitigation area fails to be established as viable wetlands, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to the board for approval prior to or with the next required monitoring report. All problems shall be corrected by the permittee. Should significant changes be necessary to establish wetlands, the monitoring plan shall begin again, with year one being the year changes are complete.

14. The wetland boundary for the compensatory mitigation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle.

15. Herbicides or algicides shall not be used in or immediately adjacent to the compensatory mitigation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means only, unless authorized by the board in advance.

16. This VWP general permit authorization may need to be renewed (or extended) to assure that the compensatory mitigation work has been successful. The request for renewal or extension must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if renewal of the VWP general permit authorization is necessary.

B. Compensatory mitigation site monitoring

1. A post-grading survey, including spot elevations, of the site or sites for wetland compensatory mitigation may be required depending upon the type and size of the compensation site, and shall be conducted by a licensed land surveyor or a professional engineer.

2. Photographs shall be taken at the compensatory mitigation site or sites from the permanent markers identified in the final mitigation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and in August or September every monitoring year.

3. Compensatory mitigation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (year 1) following compensatory mitigation site construction. Monitoring shall be required for years 1, 2, 3, and 5. If all success criteria have not been met in the fifth year, monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured weekly during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. All hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year.

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

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

7. The presence of noxious species shall be documented.

C. Stream mitigation, restoration and monitoring (if applicable)

1. Stream mitigation shall be performed in accordance with the final mitigation plan and subsequent submittals, as approved by the board.

2. Stream bank slopes shall be stabilized to reduce stream bank erosion, where practicable.

3. Stream mitigation monitoring shall be conducted in the manner prescribed in the final mitigation plan approved by the board. All monitoring reports shall be submitted by November 30th of the monitoring year. Monitoring reports shall include:

   a. Photographs sufficient to document installation of specific structures and vegetative plantings or where the stream channel banks are reshaped. Permanent markers shall be established to ensure that the same locations and view directions at the site are photographed in each monitoring period.

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

c. Any alterations, maintenance, and corrective actions conducted at the stream mitigation site.

D. Construction monitoring

1. Photo stations shall be established to document the construction aspects of project activities within impact areas as authorized by this permit. Photographs should document the preconstruction conditions, activities during construction, and post-construction conditions within one week after completion of construction. Photographs shall be taken during construction at the end of the first, second and twelfth months of construction, and then annually for the remainder of the construction project. Photographs are not necessary during periods of no activity within impact areas.

2. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

3. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.

4. Monitoring of water quality parameters shall be conducted during rerouting of the live streams through the new channels in the following manner:

   a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

   b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels.

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

E. Reporting

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

2. The board shall be notified in writing by certified letter at least 10 days prior to the start of construction activities authorized by this VWP general permit. The notification shall

include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

3. After construction begins, construction monitoring reports shall be submitted to the board within 30 days of each monitoring event. The reports shall include, at a minimum, the following:

   a. A written statement regarding when work started in the identified impact area, where work was performed, what work was performed, and what work was completed.

   b. Properly labeled photographs (to include date and time, name of the person taking the photograph, a brief description, and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.).

4. All compensatory mitigation monitoring reports shall be submitted annually by November 30, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit. Any alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to the board.

5. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-680-90.

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

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

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

9. All submittals required by this VWP general permit shall contain the following signed certification statement:
   "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly

responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

PART III - CONDITIONS APPLICABLE TO ALL VWP GENERAL PERMITS

A. Duty to comply

The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization, termination, revocation,, or denial of a renewal application.

B. Duty to mitigate

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

C. Reopener

This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit authorization was issued and thereby constitute cause for VWP general permit authorization revocation and re-issuance.

D. Compliance with state and federal law

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

E. Property rights

The issuance of this VWP general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

F. Severability

The provisions of this VWP general permit authorization are severable.

G. Right of entry

The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;

2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;

3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit authorization.

This VWP general permit authorization may be transferred to another person by a permittee if:

1. The current permittee notifies the board within 30 days of the transfer of the title to the facility or property;

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

3. The board does not notify the existing and new permittee of its intent to modify or revoke and reissue the VWP general permit authorization within the 30-day time period.

On the date of the VWP general permit authorization transfer, the transferred VWP general permit shall be as fully effective as if it had been issued directly to the new permittee.

I. Notice of planned change

Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation.

J. VWP general permit authorization termination

This VWP general permit authorization is subject to termination. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit;
2. The permittee's failure in the application or during the VWP general permit authorization issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order; and
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit authorization modification or termination.

K. Civil and criminal liability

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

L. 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.

M. 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.

N. Duty to provide information

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing and terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the 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.

O. 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

P. Unauthorized discharge of pollutants

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

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

a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

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

VWP General Permit No. WP4
VWP General Permit Authorization No. WP4-**[**##-####**]**
Authorization Effective date: **[____]**
Authorization Expiration date: **[____]**

VWP GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to impact up to two acres of nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel.

Permittee:

Address:

Activity Location:

Activity Description:

[Authorization Note(s):]

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

_____ _____

Director, Department of Environmental Quality Date

PART I - SPECIAL CONDITIONS

A. Authorized Activities

1. This permit authorizes impacts of up to two acres of nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel according to the information provided in the applicant's approved registration statement.

2. Any additional impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-690-80 or another VWP permit application.

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

B. Reapplication

Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP general permit requirement (including compensatory mitigation) has not been completed within five years of the date of authorization. Application consists of an updated or new registration statement. Notwithstanding any other provision, a request for a reissuance of certification of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered an application for coverage and no application fee will be charged.

C. Overall Project Conditions

1. The construction or work authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry 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 stabilizes.

6. Any exposed slopes and streambanks must be stabilized immediately upon completion of the project at each water body. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

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

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures, to minimize soil disturbance to the maximum extent practicable.

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

11. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote revegetation of temporarily disturbed wetland areas with wetland vegetation by the second year post-disturbance. All temporary fills shall be removed in their entirety and the affected area returned to the preexisting contours.

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

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

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

15. The permittee shall conduct his activities in accordance with any time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission.

16. Immediately downstream of the construction area, water quality standards shall not be violated as a result of the construction activities.

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

D. Road Crossings

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

2. At crossing(s) of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the reestablishment of a natural stream bottom and a low flow channel. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

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

4. All surface waters temporarily affected by the construction of a road crossing shall be

restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

E. Utility Lines

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

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.).

F. Bank Stabilization

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

4. All bank erosion structures shall be located to eliminate or minimize impacts to vegetated

wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. All material removed from the stream substrate shall be disposed of in an approved upland area.

G. Dredging

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.
2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.
3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease and the DEQ shall be notified immediately.
4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent any overflow of dredged materials.
5. Double handling of dredged material in state waters shall not be permitted.
6. For navigation channels the following shall apply:
   a. A minimum of 15 feet shall be maintained between the top of the dredge cut and the toe of the bank. This landward limit of encroachment shall be flagged and inspected prior to construction.
   b. A buffer of four times the depth of the dredge cut shall be maintained between the top of the dredge cut and the channelward limit of wetlands or mean low water.
   c. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.
6. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.
7. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

8. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

9. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, and shall be properly stabilized prior to placing the dredged material within the containment area.

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

H. Stormwater management facilities

1. Stormwater management facilities shall be designed in accordance with best management practices and watershed protection techniques (i.e., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

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

3. Maintenance excavation shall not exceed the original contours of the facility, as approved and constructed.

4. Maintenance within stormwater management facilities will not require mitigation provided that the maintenance is accomplished in designated maintenance areas as indicated in the facility maintenance plan.

PART II – MITIGATION, MONITORING AND REPORTING

A. Compensatory mitigation

The permittee shall provide appropriate and practicable compensatory mitigation for all impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Compensation may incorporate preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits.

1. The site or sites depicted in the conceptual compensatory mitigation plan submitted with the registration statement, shall constitute the compensatory mitigation plan for the approved project.

2. For compensation involving the purchase or use of mitigation bank credits, the permittee shall submit documentation within 60 days of VWP general permit authorization that the USACE has debited the required mitigation credits from the Mitigation Bank ledger. For projects proposing a contribution to an in-lieu fee fund, the permittee shall submit documentation within 60 days of VWP general permit authorization that the fund contribution has been received.

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

    a. The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget for a typical year, a wet year and a dry year, plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of photographic stations and ground water monitoring wells. Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas within approximately 200 miles from the project site.

b. The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.

4. Post-grading elevations for the compensatory mitigation site or sites shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensatory mitigation plan.

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

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

7. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final mitigation plan.

8. Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.

9. The success of the compensatory mitigation shall be based on establishing and maintaining a viable wetland with suitable wetland hydrology, hydric soils or soils under hydric conditions, and hydrophytic plant communities.

10. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the growing season, as defined in the United States Department of Agriculture soil survey for

the locality of the compensation site in all monitoring years under normal rainfall conditions, as defined in the water budget of the final mitigation plan.

11. The wetland plant community shall be considered established according to the performance criteria specified in the final mitigation plan and approved by the board. Species composition shall reflect the desired plant community types stated in the final mitigation plan by the end of the first growing season and shall be maintained through the last year of the VWP permit. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover.

12. Noxious weeds shall be identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the board of any invasive species occurrences, methods of removal, and successful control.

13. If the compensatory mitigation area fails to be established as viable wetlands, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to the board for approval prior to or with the next required monitoring report. All problems shall be corrected by the permittee. Should significant changes be necessary to establish wetlands, the monitoring plan shall begin again, with year one being the year changes are complete.

14. The wetland boundary for the compensatory mitigation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle.

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

16. This VWP general permit authorization may need to be renewed (or extended) to assure that the compensatory mitigation work has been successful. The request for renewal or extension must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if renewal of the VWP general permit authorization is necessary.

B. Compensatory mitigation site monitoring

1. A post-grading survey, including spot elevations, of the site or sites for wetland compensatory mitigation may be required depending upon the type and size of the compensation site, and shall be conducted by a licensed land surveyor or a professional engineer.

2. Photographs shall be taken at the compensatory mitigation site or sites from the permanent markers identified in the final mitigation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and in August or September every monitoring year.

3. Compensatory mitigation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (year 1) following compensatory mitigation site construction. Monitoring shall be required for years 1, 2, 3, and 5. If all success criteria have not been met in the fifth year, monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. All hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year.

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

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

7. The presence of noxious species shall be documented.

C. Stream mitigation, restoration and monitoring

1. Stream mitigation shall be performed in accordance with the final mitigation plan and subsequent submittals, as approved by the board.

2. Stream bank slopes shall be stabilized to reduce stream bank erosion, where practicable.

3. Stream mitigation monitoring shall be conducted in the manner prescribed in the final mitigation plan approved by the board. All monitoring reports shall be submitted by November 30 of the monitoring year. Monitoring reports shall include:

   a. Photographs sufficient to document installation of specific structures and vegetative plantings or where the stream channel banks are reshaped. Permanent markers shall be established to ensure that the same locations and view directions at the site are photographed in each monitoring period.

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

c. Any alterations, maintenance, and corrective actions conducted at the stream mitigation site.

D. Construction monitoring

1. Photo stations shall be established to document the construction aspects of project activities within impact areas as authorized by this permit. Photographs should document the pre-construction conditions, activities during construction, and post-construction conditions within one week after completion of construction. Photographs shall be taken during construction at the end of the first, second and twelfth months of construction, and then annually for the remainder of the construction project. Photographs are not necessary during periods of no activity within impact areas.

2. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

3. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.

4. Monitoring of water quality parameters shall be conducted during rerouting of the live streams through the new channels in the following manner:

   a. A sampling station shall be located upstream and immediately downstream of the relocated channel;

   b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels;

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

E. Reporting

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

2. The board shall be notified in writing by certified letter at least 10 days prior to the start of construction activities authorized by this VWP general permit. The notification shall

include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

3. After construction begins, construction monitoring reports shall be submitted to the board within 30 days of each monitoring event. The reports shall include, at a minimum, the following:

   a. A written statement regarding when work started in the identified impact area, where work was performed, what work was performed, and what work was completed.

   b. Properly labeled photographs (to include date and time, name of the person taking the photograph, a brief description and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.).

4. All compensatory mitigation monitoring reports shall be submitted annually by November 30, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit. Any alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to the board.

5. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-690-90.

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

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

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

9. All submittals required by this VWP general permit shall contain the following signed certification statement:
   "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly

responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

PART III - CONDITIONS APPLICABLE TO ALL VWP GENERAL PERMITS

A. Duty to comply

The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization termination, revocation, or denial of a renewal application.

B. Duty to mitigate

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

C. Reopener

This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit authorization was issued and thereby constitute cause for VWP general permit authorization revocation and reissuance.

D. Compliance with state and federal law

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

E. Property rights

The issuance of this VWP general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

F. Severability

The provisions of this VWP general permit authorization are severable.

G. Right of entry

The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;

2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;

3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit authorization.

This VWP general permit authorization may be transferred to another person by a permittee if:

1. The current permittee notifies the board within 30 days of the transfer of the title to the facility or property;

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

3. The board does not notify the existing and new permittee of its intent to modify or revoke and reissue the VWP general permit authorization within the 30-day time period.

On the date of the VWP general permit authorization transfer, the transferred VWP general permit authorization shall be as fully effective as if it had been issued directly to the new permittee.

I. Notice of planned change

Authorization under the VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation.

J. VWP general permit authorization termination

This VWP general permit, after public notice and opportunity for a hearing, is subject to termination. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit;
2. The permittee's failure in the application or during the VWP general permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order; and
4. A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit authorization modification or termination.

K. Civil and criminal liability

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

L. 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.

M. 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.

N. Duty to provide information

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing and terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the 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.

O. 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

P. Unauthorized discharge of pollutants

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage 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.

VDGIF's Fish & Wildlife Information Service
List of User Names and Passwords

VMRC Region	DEQ Region	User Name	Password
1	Southwest	DEQ4	REG1
2	West Central	DEQ5	REG2
3	South Central	DEQ6	REG3
4	Valley	DEQ7	REG4
5	Northern	DEQ8	REG5
6	Piedmont	DEQ9	REG6
7	Tidewater	DEQ10	REG7
--	CO	DEQ11	CENTRAL

Created 9/28/2001
Revised 11/30/2001; 01/31/2002

APPENDIX G – REVISED SPECIAL CONDITIONS FOR INDIVIDUAL PERMITS

Note to Permit Staff: Parts A, B, C and D below will be a part of every permit, regardless of the type of permitted activity, but can be tailored for a specific project. Parts E through R are activity specific and should be added and edited as appropriate.

A. Authorized Activities

1. This permit authorizes the **[dredge, permanent fill, continued operation of…, etc.]** of no more than **[Insert # acres]** of **[Insert wetland type]**, **[and the channelization/relocation of no more than [Insert #] linear feet of stream channel]** as indicated in the Joint Permit Application (and additional DEQ approved submittals) dated **[Insert date]**, received on **[Insert date]**, and deemed complete on **[Insert date]**. **[Insert any additional info here: add'l supporting documentation, prior permit #, design plans, etc.]**

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 **[Insert appropriate Regional Office]** of any additional impacts to surface waters, including wetlands or any change to the type of wetland impacts, associated with this project. 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 **[Insert # years]** from the date of issuance. Reissuance of the permit may be necessary if any portion of the authorized activities or any permit requirement (including compensation provisions) has not been completed. The original permit term and extension cannot exceed the maximum of 15 years.

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. Culverts placed in streams shall be installed to maintain low flow conditions. 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. The permittee shall conduct activities in accordance with the time-of-year (TOY) restrictions of **[insert date(s)]**, as recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission. The permittee shall maintain a copy of such TOY restriction or notification that no restriction is necessary, for the duration of the construction phase of the project.

4. All excavation, dredging, and/or filling in surface waters shall be accomplished in a manner that minimizes stream bottom disturbances and turbidity increases.

5. Virginia Water Quality Standards shall not be violated in any surface water as a result of the project activities.

6. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be stabilized within 30 days of completing work, restored to pre-construction conditions, and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote revegetation of temporarily disturbed wetland areas with wetland vegetation by the second year post-disturbance. All temporary fills shall be removed in their entirety and the affected area returned to pre-existing contours.

7. Heavy equipment in temporarily impacted surface waters shall be placed on mats, geotextile fabric, or other suitable measures to minimize soil disturbance to the maximum extent practical. Mats shall be removed as soon as the work is complete.

8. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into surface waters, managed such that leachate does not enter surface waters, and entirely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

9. All non-impacted surface waters within the project or right-of-way limits that are within fifty feet of any project activities shall be clearly flagged or demarcated for the life of the

construction activity within that area. The permittee shall notify all contractors and subcontractors that these marked areas are surface waters where no activities are to occur.

10. 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 surface waters. These controls shall remain in place until the area stabilizes.

11. Any exposed slopes or streambanks shall be stabilized immediately upon completion of work in each impact area in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

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

13. The permittee shall employ measures to prevent spills of fuels, lubricants, or other pollutants into surface waters.

14. All construction, construction access (for example, cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this permit.

15. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters. In accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, appropriate best management practices (BMP) shall be deemed suitable treatment prior to discharge into surface waters.

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

17. Wet or uncured concrete shall be prohibited from entry into surface waters.

18. No machinery may enter surface waters, unless authorized by this permit.

19. In issuing this permit, DEQ has not taken into consideration the structural stability of any proposed structure.

APPENDIX G – REVISED SPECIAL CONDITIONS FOR INDIVIDUAL PERMITS

C. Construction Monitoring

1. A photo station shall be established at each impact site authorized by this permit. The photograph orientation at each station shall remain constant during all monitoring events. The photographs shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; flagged non-impact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. Photographs shall be taken prior to site activities, at the end of **[each month (for shorter projects), each quarter (for longer projects), or the best timeframe to suit the proposed construction schedule]**, and within one week of construction completion. **[Monthly/Quarterly]** photographs at an individual impact site shall not be required until construction activities are initiated at that site. **[Monthly/Quarterly]** photographs at an individual impact site shall not be required following completion of construction at that impact site and the site is stabilized. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

2. Monitoring of water quality parameters shall be conducted during rerouting of flowing streams through the new channels in the following manner:

   a. A sampling station shall be located upstream and immediately downstream of the relocated channel;

   b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels;

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

   Data shall be submitted within one week of completing the activity.

D. Required Notifications and Submittals **[Permit writer should modify this section to include only those conditions applicable to the specific project]**

1. All written communications required by this permit shall be submitted to the DEQ **[insert appropriate regional office address]**. The permit number shall be included on all correspondence.

APPENDIX G – REVISED SPECIAL CONDITIONS FOR INDIVIDUAL PERMITS

2. 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.

3. 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.

4. Any fish kills or spills of fuels or oils shall be reported immediately upon discovery. If spills or fish kills occur between the hours of 8:15 AM to 5:00 PM Monday through Friday, DEQ shall be notified at **[Insert appropriate Regional Office phone no.]**; otherwise, the Department of Emergency Services shall be notified at 1-800-468-8892.

5. Violations of Virginia Water Quality Standards shall be reported within 24 hours to DEQ at **[Insert appropriate Regional Office telephone number]**.

6. DEQ shall be notified in writing when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances.

Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.

7. Final Plans and Specifications for activities authorized by this permit shall be submitted prior to the beginning of each construction component. Construction shall be performed in accordance with the submitted Plans and Specifications. Any changes to the final construction plans in permitted areas shall be submitted to DEQ prior to construction activities.

Construction

8. DEQ shall be notified in writing at least ten days prior to the initiation of construction activities authorized under this permit so that inspections of the project can be planned, if deemed necessary. The notification shall include identification of the impact areas at which work will occur and a projected schedule for completing work at each permitted impact area.

9. Construction monitoring reports shall be submitted to DEQ within 30 days of each monitoring event. The reports shall include, as appropriate, the following:

   a. A written narrative stating whether work was performed, a description of the work performed at each impact area, when the work was initiated, and expected date of completion; a summary of activities conducted to comply with the permit conditions; a summary of permit non-compliance events or problems encountered, subsequent notifications, and corrective actions; a summary of anticipated work to be completed during the next reporting period; and an estimated date of project completion.

   b. A labeled site map depicting all impact areas and photo stations.

   c. Properly labeled photographs as described in Part I Section C.

10. Written notification and photographs shall be submitted within 30 days of restoration demonstrating that all temporarily disturbed wetland areas have been restored in compliance with the permit conditions.

11. Water quality parameter monitoring data collected during the rerouting of flowing streams through new channels shall be submitted within one week of completing the activity.

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

Compensation

13. The permittee shall submit a final wetland compensation plan, which includes (at a minimum): the goals and objectives of the plan, in terms of replacement of functions and values and expressed in acres of each wetland type; discussion of buffers; discussion of structures and features necessary for the success of the site; the schedule for compensation site construction; a location map, including latitude and longitude (to the nearest second) at the center of the site; a hydrologic analysis, including a water budget (non-tidal sites only) based on expected monthly inputs and outputs which will project water level elevations for a typical year, a dry year and a wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; wetland delineation confirmation and data sheets and maps for existing wetland areas on the proposed site(s); a grading plan; a planting scheme and schedule, including suggested plant species, zonation and acreage of each vegetation type proposed; a soil preparation and amendment plan addressing both topsoil and subsoil conditions; design of water control structures; site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo stations, monitoring wells, soil sampling points (as appropriate), and vegetation sampling points, and reference wetlands (if available); an abatement and control plan for undesirable plant species, including, at a minimum, the species listed on DCR's Invasive Alien Plant Species of Virginia list, and including procedures to notify DEQ of any undesirable plant species occurrences, methods of removal, and successful control; and an erosion and sedimentation control plan.

14. The permittee shall submit a final stream compensation plan, which includes (at a minimum): the goals and objectives of the plan, in terms of replacement of functions and values and expressed in linear feet; a detailed description of the stream bed and streambank stabilization activities (e.g, type of vane, root wad, or other instream structure, location); riparian buffer plantings (e.g., scheme, species, width); structures and features necessary for the success of the site; the schedule for compensation site construction; a location map, including latitude and longitude (to the nearest second) at the center of the site; site access plan; a monitoring plan, including proposed success criteria for streambed and streambank stabilization and riparian buffer success, monitoring goals which shall include, at a minimum, physical stream measurements and surveys to determine stability of the stream, benthic macroinvertebrate sampling and indices allowing comparison from year to year, riparian habitat assessment following

scientifically based protocol, and the location of photo stations, vegetation sampling points, survey points, and reference streams (if available); an abatement and control plan for undesirable plant species, including, at a minimum, the species listed on DCR's Invasive Alien Plant Species of Virginia list, and including procedures to notify DEQ of any undesirable plant species occurrences, methods of removal, and successful control; an erosion and sedimentation control plan; and livestock access limiting measures.

15. The final **[wetland and stream compensation plan(s)]** shall include protection of surface waters (including compensation areas and non-impacted surface waters within the project boundary) in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or preservations, or similar instrument shall state that no activity will be performed on the property in any area designated as a compensation area or non-impacted surface water, with the exception of maintenance or corrective action measures authorized by DEQ. Unless specifically authorized by DEQ through the issuance of a VWP individual permit, modification of this permit, or waiver thereof, this restriction applies to ditching, land clearing or the filling, dumping, excavating, draining, flooding, or impounding. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensation areas and to ensure that additional impacts to surface waters do not occur.

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

17. All wetland compensation monitoring reports shall be submitted by November 30th of the monitoring year. The reports shall include, at a minimum, the following:

    a. A general description of the site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.
    b. Summary of activities completed during the monitoring year.
    c. Description of monitoring methods.
    d. An analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas set forth in the final compensation plan;

e. Evaluation of hydric soils or soils under hydric conditions;
f. An analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, set forth in the final compensation plan;
g. Properly labeled photographs as described in Part I Section C.
h. Discussion of wildlife or signs of wildlife observed at the compensation site;
i. Comparison of site conditions from the previous monitoring year and/or reference site.
j. Discussion of corrective measures or maintenance activities to control undesirable species, to repair any damaged water control device, or to replace any damaged planted vegetation.

18. Documentation of the total wetland acreage by wetland type based on the surveyed boundary shall be submitted within 30 days of the final monitoring event.

19. All stream compensation monitoring reports shall be submitted by November 30th of the monitoring year. The reports shall include, at a minimum, the following:

a. A general description of the site including a site location map identifying photo stations and monitoring stations.
b. Summary of activities completed during the monitoring year.
c. Description of monitoring methods.
d. Discussion of the physical stream measurements to determine streambank stability.
e. Discussion of the macroinvertebrate sampling data.
f. Discussion of the riparian habitat observation data.
g. Discussion of the establishment of vegetation.
h. Discussion of stream bank and/or channel stabilization.
i. Properly labeled photographs as described in Part I Section C.
j. Discussion of wildlife or signs of wildlife observed at the compensation site;
k. Comparison of site conditions from the previous monitoring year and/or reference site.
l. Discussion of alterations, maintenance, and corrective actions conducted at the stream compensation site.

20. Stream compensation monitoring reports shall be submitted within 30 days following major storm events that result in significant changes in the stream profile. These monitoring reports shall include, at a minimum, the following:

a. A general description of the site including a site location map identifying photo stations and monitoring stations.
b. Description of the storm event.
c. Discussion of the physical stream measurements to determine streambank stability.
d. Discussion of the riparian habitat observation data.
e. Properly labeled photographs as described in Part I Section C.
f. Comparison of site conditions from the previous monitoring year and/or reference site.
g. Discussion of alterations, maintenance, and corrective actions conducted at the stream compensation site.

21. Documentation that the USACE has debited the required mitigation credits from the mitigation bank ledger shall be submitted to DEQ-**[regional office]** within 60 days of permit issuance. All work shall cease if this documentation has not been submitted by the permittee.

22. Documentation that the USACE has received the in-lieu fund contribution shall be submitted to DEQ-**[regional office]** within 60 days of permit issuance. All work shall cease if this documentation has not been submitted by the permittee.

[PROJECT SPECIFIC CATEGORIES OF SPECIAL CONDITIONS – EDIT AS APPLICABLE]

E. <u>Road Crossings</u>

1. Access roads shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable and to follow as near as possible pre-construction contours and elevations. Access roads constructed above pre-construction contours and elevations in surface waters shall be properly bridged or culverted to maintain surface flows.

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

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

4. All surface waters temporarily affected by a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow shall be fully established before construction activities in the old streambed can begin.

6. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure and recorded prior to construction and within one week after the completion of construction to ensure that the design elevations were met.

F. Utilities

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance in each area, and each area shall be returned to its original contours and stabilized within 30 days of completing work in said area, unless otherwise authorized by this permit.

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 (for example, backfilling with extensive gravel layers creating a French drain effect).

G. Stream Modification and Streambank Protection

1. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during

excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow shall be fully established before construction activities in the old streambed can begin.

2. Redistribution of existing stream substrate for erosion control purposes is prohibited.

3. All material removed from the stream substrate shall not be disposed of in surface waters.

4. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

5. Riprap apron for all outfalls shall be designed in accordance with Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

6. For streambank protection activities, structures and backfill shall be placed as close to the streambank as practical. No material shall be placed in excess of the minimum necessary for erosion protection.

7. All streambank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practical.

8. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

H. Dredging

1. The maximum depth of the access channel shall not be deeper than the controlling water depths immediately outside the area to be dredged.

2. Dredging shall be accomplished to minimize disturbance of the bottom and minimize turbidity levels in the water column.

3. Dredging and excavation shall be limited to the minimum necessary to conduct the permitted activities. The dredged channel width shall not exceed **[#]** feet a the top of the

dredge cut and **[#]** feet at the bottom of the channel. The maximum channel length shall be no longer than **[#]** linear feet.

4. A dredged material management plan for the designated upland disposal site shall be submitted 30 days prior to the dredging activity.

5. The double handling of dredged material in surface waters shall not be permitted.

6. All dredged materials pumped by hydraulic method via pipeline to the disposal area will be done in such a manner as to prevent leakage or discharge into surface waters. In the event of a ruptured pipeline, dredging/disposal operations shall immediately cease until repairs are accomplished.

7. Side slope cuts of the dredging area shall not exceed a two horizontal to one vertical (2:1) slope to prevent slumping of material into the dredged area.

8. All dredge material shall be transported via barges for disposal at an approved upland site, provided that all required permits for the facility are valid. No hazardous materials shall be disposed of at this site.

9. During transport, dredge material shall be handled in accordance with the transport operation's spill prevention plan. In the event of a spill, the response portions of the plan shall be implemented immediately.

10. Barges used for the transportation of dredged material shall be filled in such a manner as to prevent any overflow of dredged material.

11. During off-loading, dredge material shall not be handled directly over open water. The off-loading operation shall be conducted in a manner that prevents any discharge of liquids or solids to surface waters.

12. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into surface waters.

13. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, and shall be properly stabilized prior to placing the dredged material within the containment area.

14. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to surface waters.

15. Adequate ground cover or seeding shall be applied to the outside bank of the earthen berm immediately after constructing the berm to minimize soil runoff.

16. Overtopping of the dredge spoil containment berms with dredge spoil disposal materials post completion shall be prohibited.

17. For navigation channels the following shall apply:

    a. A minimum of 15 feet shall be maintained between the top of the dredge cut and the toe of the bank. This landward limit of encroachment shall be flagged prior to construction.

    b. A buffer of four times the depth of the dredge cut shall be maintained between the top of the dredge cut and the channelward limit of wetlands or mean low water.

18. A post-dredging bathymetric survey shall be submitted to DEQ within 30 days following completion of the dredging activity.

19. Each dredging cycle may remove no more than **[#]** cubic yards of material, with no greater than **[#]** cubic yards removed over the term of the permit.

20. Dredging is permitted to a maximum allowable depth of **[#]** feet below mean low water, including advance maintenance and overdepth allowance.

I. Golf Courses

1. A buffer zone of at least **[20 to 50 feet, as appropriate]** shall be established from the boundaries of surface waters, including preserved and compensation wetlands, naturally occurring and man-made ponds, and perennial and intermittent streams. The application of fertilizers, herbicides, insecticides, fungicides, and other pesticides shall be prohibited within this buffer.

2. All clearing in preserved wetlands to accommodate golf course flight paths shall be performed by hand or hand-held machine. Land disturbing activities in these areas shall

be prohibited. Stumps may be ground by rubber-tired grinders placed on mats, geotextile fabric, or other suitable measures to minimize soil disturbance to the maximum extent practical.

3. A Nutrient and Integrated Pest Management Plan approved by DCR shall be implemented prior to turf establishment.

4. If total groundwater and surface water withdrawals exceed 10,000 gallons per day on average in any month, the permittee shall report the withdrawals to DEQ by January 31st of the following year (in accordance with 9 VAC 25-200-10 et seq.). Reporting shall follow the notification provisions of Part I Section D.

J. Pond Construction

1. The outfall and overflow structure shall be constructed and maintained to prevent downstream sediment deposition, erosion, or scour that may be associated with normal flow and any expected storm flows. Construction shall include the use of an appropriately sized riprap outlet protection apron at the outfall site.

K. Marina Construction & Operation

1. All pilings and steel bulkheads shall be driven. Jetting shall be prohibited unless authorized by this permit.

2. Timber bulkheading shall be backed by filter cloth.

3. The pouring of concrete shall occur within cofferdams or other isolating structures to prevent contact with surface waters. These structures shall remain in place until the concrete is fully cured.

4. All gasoline and other petroleum product pumping facilities shall be located at or above mean high water. All gasoline/oil storage facilities shall comply with the Federal Oil Spill Pollution Prevention Plan, Federal Register, dated December 11, 1973, Volume 38, No. 237.

5. Boat maintenance and repair facilities shall be designed and maintained so that residues from bottom scrapings, painting and other discharges or spills do not enter surface waters.

6. No machinery or vehicles may enter surface waters in connection with this project, and all work done along the shoreline shall be accomplished to prevent alterations of the existing grade that may cause erosion and/or failure of any existing bulkhead.

7. Prior to commencement of marina operations, a fuel spill control plan, a boat cleaning and maintenance plan, and a stormwater management plan shall be submitted for review by DEQ.

8. Adequate pumpout facilities for boat holding tanks shall be provided. Signs shall be conspicuously posted giving the location of these facilities.

9. Signs shall be conspicuously posted at the marina stating that the State Water Control Law prohibits the discharge of sewage, oil, or other waste materials into surface waters.

10. There shall be no overnight mooring of boats with direct-flush toilets that are not equipped with a Y-valve to allow pump out. No overboard discharge of untreated sewage or other wastes shall be allowed from vessels using the marina facility.

11. Within six months of commencement of the new marina fueling operations, a copy of the facility Spill Prevention Control and Countermeasures (SPCC) Plan (required in accordance with 40 CFR 112) shall be submitted to DEQ in accordance with the notification provisions of Section D of these permit conditions.

12. "No Wake" signs shall be conspicuously posted to reduce the wave energy produced by boat traffic. "No Wake" signs shall be especially prominent in the vicinity of the fuel pumps and sewage pump-out station.

13. Boat maintenance at individual slips shall be restricted to those activities that can be performed without hazardous, toxic or solid materials entering surface waters.

L. Stormwater Management Facilities

1. Stormwater management facilities shall be designed in accordance with best management practices and watershed protection techniques (as per the Dept. of Conservation and Recreation's Stormwater Management Handbook, First Edition, 1991), such as 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. The outfall and overflow structure shall be constructed and maintained to prevent downstream sediment deposition, erosion, or scour that may be associated with normal flow and any expected storm flows. Construction shall include the use of an appropriately sized riprap outlet protection apron at the outfall site.

3. Maintenance excavation shall follow the approved maintenance plan authorized by this permit, and shall not exceed the original contours of the facility. **[***If a maintenance plan was not submitted with the permittee's application, add:* **A complete stormwater facility management plan shall be submitted to the DEQ-[regional office] for each stormwater management facility authorized by the permit. Maintenance excavation shall follow the approved maintenance plan, and shall not exceed the original contours of the facility as constructed.]**

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

5. Maintenance within stormwater management facilities will not require compensation provided that the maintenance is accomplished in designated maintenance areas as indicated in the **[facility]** maintenance plan.

6. Draining of a pond shall be performed by a method that prevents downstream sediment deposition, erosion, or scour.

M. <u>Compensation at an Approved Mitigation Bank</u>

1. The permittee shall compensate for the **[briefly summarize compensation – example, permanent 0.53 acres of palustrine, emergent wetlands, permanent 1.30 acres of palustrine, scrub/shrub wetlands, and permanent 0.65 acres of palustrine, forested wetland impacts by debiting available credits at the Cedar Run Wetlands Bank, L.C. in Prince William County, Virginia. Impacts will be compensated at ratios of 1:1 for permanent emergent wetland impacts (0.53 credits debited), 1.5:1 for permanent scrub/shrub wetland impacts (1.95 credits debited), and 2:1for permanent forested wetland impacts (1.30 credits debited).]**

APPENDIX G – REVISED SPECIAL CONDITIONS FOR INDIVIDUAL PERMITS

N. Compensation Using an Approved In-Lieu Fund

1. The permittee shall compensate for the **[briefly summarize compensation – example, permanent 0.05 acres of palustrine, emergent wetlands and permanent 0.02 acres of palustrine, scrub/shrub wetland impacts by contribution to The Nature Conservancy Trust Fund. Impacts will be compensated at ratios of 1:1 for permanent emergent wetland impacts (0.53 acres) and 1.5:1 for permanent scrub/shrub wetland impacts (1.95 acres).]**.

O. Compensation On Site and Off Site

General Compensation Requirements

1. The final compensation plan shall be approved by DEQ prior to any construction activity in permitted impact areas. The final compensation plan as approved by DEQ shall be an enforceable requirement of this permit. Any deviation from the approved plan must be submitted to and approved in advance of implementation by DEQ.
2. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of any construction activity in permitted impact areas, unless otherwise authorized by DEQ.
3. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final compensation plan.
4. Rooted seedlings or cuttings shall originate from a local nursery or be adapted to local conditions. Vegetation shall be native species common to the area, shall be suitable for growth in local wetland conditions, and shall be from areas within approximately 200 miles from the project site.
5. Undesirable plant species shall be identified and controlled as described in the abatement and control plan for undesirable plant species, such that they are not dominant species or do not change the desired community structure. The abatement and control plan shall include procedures to notify DEQ of any undesirable plant species occurrences, methods of removal, and successful control.
6. Herbicides or algacides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by DEQ. All vegetation removal shall be done by manual means, unless authorized by DEQ in advance.

7. For compensation sites involving land disturbance, a site stabilization plan shall be submitted to the DEQ-**[regional office]** at least 60 days prior to compensatory mitigation construction activities.

8. Point sources of stormwater runoff shall be prohibited from entering any compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.

9. If the compensation area fails to be established as per the specified performance criteria, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to DEQ for approval prior to or with the next required monitoring report. All problems shall be corrected by the permittee. Shall significant changes be necessary to ensure success, the monitoring plan shall begin again, with monitoring year one being the year changes are complete.

Wetland Compensation

10. The permittee shall compensate for the **[briefly summarize compensation – permanent 0.05 acre of palustrine, emergent wetlands and permanent 1.00 acres of palustrine, forested wetlands associated with Tuckahoe Creek impacted by this project through on-site wetland creation. Impacts shall be compensated at a ratio of 1:1 for emergent wetland impacts (0.10 acres created) and 2:1 for forested wetland impacts (2.00 acres created).]** The compensation site shall be preserved in perpetuity.

11. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the growing season **[# consecutive days**: *fill in the # according to the appropriate soil survey*], as defined in the United States Department of Agriculture soil survey for the locality of the compensation site in all monitoring years under normal rainfall conditions, as defined in the water budget (non-tidal sites only) of the final compensation plan.

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

13. The wetland plant community shall be considered established according to the performance criteria specified in the final compensation plan and approved by DEQ. Species composition shall reflect the desired plant community types stated in the final

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

14. A post-grading survey, including spot elevations, of the site shall be required and shall be conducted by a licensed land surveyor or a professional engineer. Post-grading elevations for the compensation site shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensation plan.

15. Compensation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (monitoring year one) following compensation site construction. Monitoring shall be required for monitoring years **[at minimum: if project includes scrub/shrub or forested 1, 2, 3, 5, and 7; if only emergent 1,2, and 3]**. If all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied (i.e., that corrective actions were successful).

16. Photographs shall be taken at the compensation site from the permanent photo stations identified in the final compensation plan. At each station, four photographs shall be taken in the direction of the major compass points. These photographs shall be taken after the initial planting and in August or September every monitoring year. Photographs shall be appropriately labeled as described in Part I Section C.

17. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, in accordance with the final compensation plan. All hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site, or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following DEQ approval.

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

19. During each monitoring event, the permittee shall document all wildlife or signs of wildlife observed at the site.

20. The wetland boundary for the compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data. Calculation of total wetland acreage by wetland type shall be based on that boundary at the end of the monitoring cycle and shall be shown on the site plan. Data shall be submitted within 30 days of the final monitoring event.

Stream Compensation

21. The permittee shall compensate for **[briefly summarize compensation – approximatley 1,000 linear feet of stream loss along Broad Run through streambed and streambank stabilization activities and / or riparian buffer creation along 1,000 linear feet of Little Reed Island Creek.]** The compensation site shall be preserved in perpetuity.

22. The success of the stream restoration shall be based on **[maintaining stream channel / streambank stabilization and riparian vegetation]** in accordance with the success criteria included in the approved final compensation plan.

23. Monitoring shall be required for five consecutive years once stream compensation construction activities have been completed. If the stream is found to be unstable or the riparian vegetation planting is not successful in the fifth monitoring year, then additional annual monitoring shall be required until two sequential, annual reports indicate that all criteria have been successfully satisfied in accordance with the approved final compensation plan.

24. Monitoring shall be required following major storm events that result in significant changes in the stream profile. The report shall be submitted within 60 days from the date of the storm event.

25. Photographs shall be taken at the compensation site from the permanent photo stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events, and at least one upstream and one downstream view shall be taken. Photographs shall be taken prior to site construction activities, during instream and riparian construction activities, within one week of completion of activities, following each major storm event, and in August or September of each

monitoring year. Photographs shall be appropriately labeled as described in Part I Section C.

26. During each monitoring event, the permittee shall survey and classify the stream channel as detailed in the final compensation plan. Structure installation and stream bank and channel modifications shall be performed following review of the survey data. Bank pins and scour chains shall be installed to monitor bank and channel stability.

27. The establishment of vegetation shall be indicated by percent cover monitored in August or September during each monitoring year as detailed in the final compensation plan.

28. Macroinvertebrate monitoring shall be conducted each monitoring year using a scientifically based protocol as detailed in the final compensation plan.

29. Riparian habitat assessment shall be conducted each monitoring year using a scientifically based protocol as detailed in the final compensation plan.

30. The permittee shall document all wildlife or signs of wildlife observed at the site during each monitoring event.

31. The permittee shall have the authority to use heavy equipment within the stream channel during restoration activities when site conditions prohibit access from the streambank. The equipment shall be stationed on cobble bars and the activities conducted in the dry or during low flow conditions, whenever possible. All heavy equipment shall be placed on mats, geotextile fabric, or other suitable measures to minimize soil disturbance to the maximum extent practicable. Mats shall be removed as soon as the work is complete.

32. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation construction shall be completed in the dry whenever practicable.

33. Bank slopes shall be flattened to reduce stream bank erosion, where practical.

34. Riparian buffer restoration shall include the planting of a variety of native species currently growing in the site area, a minimum **[35]** feet from the edge of the stream on either side, where practical. Appropriate wetland seed mixture shall be utilized in restored areas.

APPENDIX G – REVISED SPECIAL CONDITIONS FOR INDIVIDUAL PERMITS

35. If the stream restoration fails, the reasons for this failure shall be determined, and a corrective action plan, schedule, and monitoring plan shall be submitted to DEQ for approval prior to or with the next required monitoring report. All problems shall be corrected by the permittee. If significant changes are necessary to stabilize the stream, the monitoring plan shall begin again, with year one being the monitoring year changes are complete.

P. Water Withdrawals

1. If total ground water and surface water withdrawals exceed **[10,000]** gallons per day on average in any month, the permittee shall report the withdrawals to DEQ by January 31 of the next year as required under State Water Control Board (SWCB) Water Withdrawal Reporting Regulation (9 VAC 25-200-10).

Part II – General Conditions

A. Duty to Comply

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

B. Duty to Cease or Confine Activity

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

C. Duty to Mitigate

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

D. VWP Permit Action

1. A VWP permit may be modified, revoked and reissued, or terminated as set forth in 9 VAC 25-210 et seq.

2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9 VAC 25-210-185 (VWP Permit Extension).

3. VWP permits may be modified, revoked and reissued or terminated upon the request of the permittee or other person at the board's discretion, or upon board initiative to reflect the requirements of any changes in the statutes or regulations, or as a result of VWP permit noncompliance as indicated in the Duty to Comply subsection above, or for other reasons listed in 9 VAC 25-210-180 (Rules for Modification, Revocation and Reissuance, and Termination of VWP permits).

E. Inspection and Entry

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

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;

2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit, and

3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

F. Duty to Provide Information

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing or terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

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

G. Monitoring and Records Requirements

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

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include:

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

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

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

H. Transferability

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

1. The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;

2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and

3. The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit.

I. Property rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

J. Reopener

Each VWP permit shall have a condition allowing the reopening of the VWP permit for the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits includes, but is not limited to when the circumstances on which the previous VWP permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the VWP permit was issued and thereby constitute cause for VWP permit modification or revocation and reissuance.

K. Compliance with State and Federal Law

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

L. Severability

The provisions of this VWP permit are severable.

M. Permit Modification

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

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

withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.

N. Permit Termination

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

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

2. The permittee's failure in the application or during the VWP permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP permit modification or termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; and

6. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

O. Civil and Criminal Liability

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

P. Oil and Hazardous Substance Liability

Nothing in this VWP permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Unauthorized Discharge of Pollutants

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses.

4. On or after October 1, 2001 conduct the following activities in a wetland:
   a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions
   b. Filling or dumping
   c. Permanent flooding or impounding
   d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

R. Permit Extension

1. 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 request if 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 if denied, the VWP permit will still expire on its original date and, therefore, care should 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.