



**Open Water Exclusion Checklist**

In accordance with 9VAC25-210-60.6, impacts to open waters that do not have a detrimental effect on public health, animal life, or aquatic life or to the uses of such waters for domestic or industrial consumption, recreation, or other uses do not require a VWP permit. *Note: This checklist does not apply to other VWP permit exclusions, such as but not limited to farm ponds, certain mining activities, certain activities in BMPs and/or stormwater management facilities, or certain surface water withdrawals.*

This summary sheet is intended to assist staff in determining whether open water impacts require permitting under the VWP Permit Program. ***Please be advised that a U.S. Army Corps permit may still be required to authorize work in open water resources.***

**What activities does the applicant propose to conduct in the open water feature?**

**What is the area (in square feet) of open water that will be affected by the activity?**

**Answering yes to any of the questions below warrants specific consideration, and may require permit regardless of the results of the evaluations in Tables I, II, and/or III.**

Parameter	Yes	No	NA
Is the waterbody used to support a surface water withdrawal purpose, such as altering an existing public water supply, irrigation, more-than-passive recreation, power generation, or aquaculture? (If yes, to be forwarded to OWS).			
Will there be detrimental effect on public health?			
Is the waterbody hydrologically-connected to a downstream resource subject to a TMDL?			
Is the open water feature owned by multiple property owners?			
Are there any threatened or endangered species or anadromous fish concerns with this waterbody?			
Will the impact result in a detrimental effect on other designated uses, such as recreational or industrial use?			

**I. Open Water Fill**

**Answering Yes to any of the below yields a permitted activity**

Parameter	Yes	No	NA
Does the open water have fringe wetlands, including seasonally emergent wetlands within mean high water (tidal) or ordinary high water (non-tidal) that will be impacted by the filling? ( <i>Note: filling of the open water feature itself may be excluded from permitting on a case by case basis.</i> )			
Does the open water have direct hydrologic connectivity to both upstream and downstream surface water resources, including wetlands, and will the fill cause adverse impacts to the hydrology of those resources?			



**II. Dredging Activities**

**Answering Yes to any of the below generally yields a permitted activity**

Parameter	Yes	No	NA
Does the project involve dredging of more than 5,000 cubic yards in a nontidal water body in 12-month period?			
Is the project proposing insufficient measures to reduce turbidity during dredging operations?			
Is there a risk that dredging or return flow could negatively affect water quality, or otherwise cause a violation of an acute Water Quality Standard?			
Will the dredging activity deepen the open water to a depth exceeding 8 feet* (and thus have potential water quality effects) without incorporating design features to mitigate potential water quality concerns?			

**III. Converting existing open water to a BMP**

**Answering Yes to the below generally yields a permitted activity**

Parameter	Yes	No	NA
Will the conversion to a BMP negatively affect downstream flow (for headwater systems or in-line systems with inflow from intermittent/ephemeral stream channels)?			
Will the dredging activity deepen the open water to a depth exceeding 8 feet* (and thus have potential water quality effects) without incorporating design features to mitigate potential water quality concerns?			

\*This is intended to capture concerns regarding thermal stratification of open water features at depths exceeding 8 feet. The deepening of an open water feature that will result in thermal stratification may have downstream water quality implications, especially in consideration of spring and fall turnover with regards to nutrient loadings and hypoxic/anoxic waters.

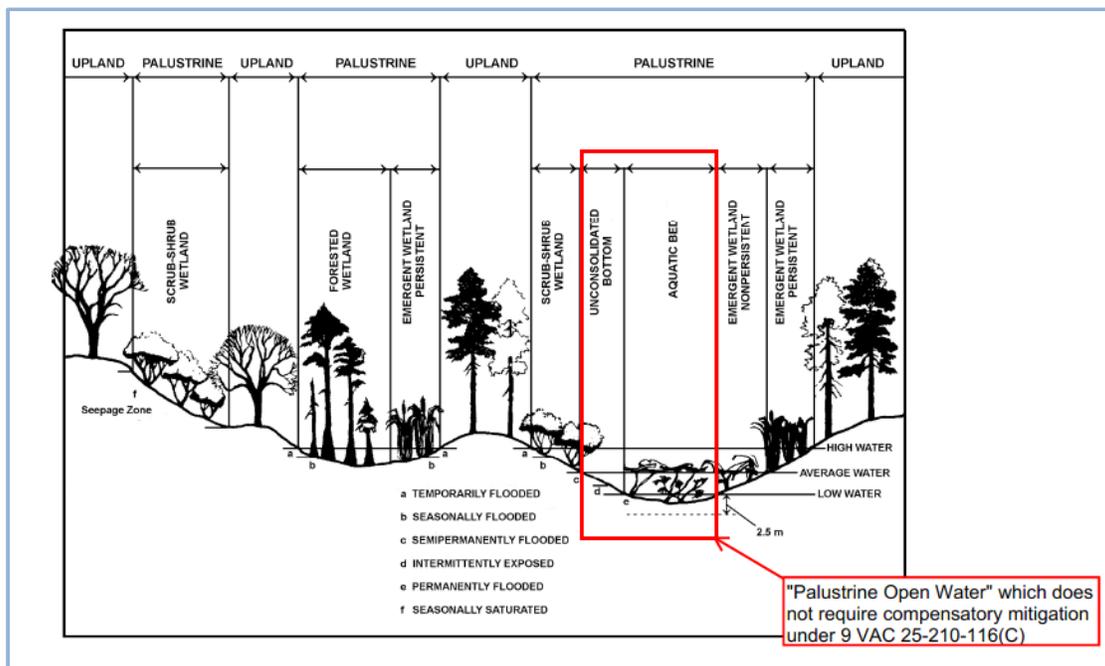
### Palustrine Open Water No Compensation Checklist

In accordance with 9VAC25-210-116, compensation shall not be required for permanent or temporary impacts to open waters that are identified as palustrine by the Cowardin classification method, but compensation may be required when such open waters are located in areas of karst topography in Virginia and are formed by the natural solution of limestone.

In order to assist applicants in determining whether palustrine open water impacts require compensation under the VWP Permit Program, utilize the below checklist. Answering Yes to any of the below parameters may mean that compensation is required.

Parameter	Yes	No
Is the open water located in karst topography?		
Does the open water have a consolidated bottom or non-aquatic bed?		
Is any affected wetland vegetated?		
Is the affected area greater than 8 ha (20 acres)?		
Does the open water have active wave-formed or bedrock shoreline features?		
Is the water depth in the deepest part of basin equal to or greater than 2.5 m (8.2 ft) at low water?		
Is the salinity due to ocean-derived salts equal to or greater than 0.5 ppt?		

The graphic below will assist in making determination as to whether an open water resource is palustrine and in helping to answer the questions above.



DEQ Regional Letter Head

[Date]

[Applicant Name]  
[Applicant's Company, if applicable]  
[Applicant's Address]  
[City, State Zip]

**SENT VIA E-MAIL:** [email address]

RE: Notification of No Virginia Water Protection (VWP) Permit Required  
Joint Permit Application No. [XX-XXXX]  
[Project Name], [County], Virginia

Dear [Applicant's Name]:

The Department of Environmental Quality (DEQ) received your [Pre-Construction Notification] [Joint Permit Application] on [DATE] to [*description of type of impact, name of water body, and description of project*].

[Use one of the following]

1. Provided that the project is authorized by the U.S. Army Corps of Engineers under a Regional and/or Nationwide permit and meets any required §401 Certification Conditions, a VWP permit will not be required for this project.
2. Based on the information provided in the [Pre-Construction Notification or Joint Permit Application], the project qualifies for an exclusion from the requirements for a VWP Permit under 9VAC25-210-60 [#] for [*describe exclusion*].
3. Based on the information provided in the [Pre-Construction Notification] [Joint Permit Application], the wetlands you propose to impact have been determined to be isolated wetlands of minimal ecological value as defined by 9VAC25-210-10; therefore, a VWP Permit will not be required for the above-referenced project pursuant to § 62.1-44.15:21 D. [This letter constitutes §401 Certification.]
4. Provided you receive a permit from both the Virginia Marine Resources Commission pursuant to Chapter 12 or 13 (Section 28.2-1200 *et seq.*) and the U.S. Army Corps of Engineers, a Virginia Water Protection Permit will not be required for your project pursuant to 9VAC25-210-220 B. [This letter constitutes §401 Certification.] Should the size or scope of the project change, a VWP permit may be required.

If unauthorized impacts have occurred, you **must** email or fax a copy of this report to DEQ within 24 hours of discovery. Email: [Regional Office@deq.virginia.gov] or Phone: [REGION PREP PHONE].

[Applicant's Name]

Joint Permit No. [XX-XXXX]

Page 2 of 2

Any fish kills or spills of fuels or oils shall be reported to DEQ immediately upon discovery at [REGION PREP PHONE]. If DEQ cannot be reached, the spill or fish kill shall be reported to the Virginia Department of Emergency Management (VDEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802. Any spill of oil as defined in § 62.1-44.34:14 of the Code of Virginia that is less than 25 gallons and that reaches, or that is expected to reach, land only is not reportable, if recorded per § 62.1-44.34:19.2 of the Code of Virginia and if properly cleaned up.

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

Alternatively, an owner may request a formal hearing for the formal taking of evidence upon relevant fact issues under Section 2.2-4020 of the Administrative Process Act. A petition for a formal hearing must meet the requirements set forth in 9 VAC 25-230 of the Virginia Administrative Code. In cases involving actions of the board, such petition must meet the requirements set forth in the board's Procedural Rule Number 1 (9VAC25-230-130 B). 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.

Should you have any questions regarding this letter, please contact [permit writer] by phone at XXX-XXX-XXXX, email at [XXX@deq.virginia.gov](mailto:XXX@deq.virginia.gov), or at the above address.

Respectfully,

[Name]

Regional VWPP Program Manager

Cc (by e-mail):

[Agent Name], [Company]

[Contact Name], U.S. Army Corps of Engineers

[Contact Name], Virginia Marine Resources Commission [if applicable]