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VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation,

unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **29:5 VA.R. 1075-1192 November 5, 2012**, refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **James M. LeMunyon**, Vice Chair; **Gregory D. Habeeb**; **Ryan T. McDougle**; **Pamela S. Baskerville**; **Robert L. Calhoun**; **Carlos L. Hopkins**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Timothy Oksman**; **Charles S. Sharp**; **Mark J. Vucci**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **Karen Perrine**, Assistant Registrar; **Anne Bloomsburg**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.dls.virginia.gov>).

June 2016 through July 2017

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
32:21	May 25, 2016	June 13, 2016
32:22	June 8, 2016	June 27, 2016
32:23	June 22, 2016	July 11, 2016
32:24	July 6, 2016	July 25, 2016
32:25	July 20, 2016	August 8, 2016
32:26	August 3, 2016	August 22, 2016
33:1	August 17, 2016	September 5, 2016
33:2	August 31, 2016	September 19, 2016
33:3	September 14, 2016	October 3, 2016
33:4	September 28, 2016	October 17, 2016
33:5	October 12, 2016	October 31, 2016
33:6	October 26, 2016	November 14, 2016
33:7	November 9, 2016	November 28, 2016
33:8	November 22, 2016 (Tuesday)	December 12, 2016
33:9	December 7, 2016	December 26, 2016
33:10	December 19, 2016 (Monday)	January 9, 2017
33:11	January 4, 2017	January 23, 2017
33:12	January 18, 2017	February 6, 2017
33:13	February 1, 2017	February 20, 2017
33:14	February 15, 2017	March 6, 2017
33:15	March 1, 2017	March 20, 2017
33:16	March 15, 2017	April 3, 2017
33:17	March 29, 2017	April 17, 2017
33:18	April 12, 2017	May 1, 2017
33:19	April 26, 2017	May 15, 2017
33:20	May 10, 2017	May 29, 2017
33:21	May 24, 2017	June 12, 2017
33:22	June 7, 2017	June 26, 2017
33:23	June 21, 2017	July 10, 2017

*Filing deadlines are Wednesdays unless otherwise specified.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending **6VAC20-70, Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections**. The purpose of the proposed action is to update the regulation and clearly outline, increase, and enhance the training requirements for noncustodial employees.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

This Notice of Intended Regulatory Action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Comment Deadline: July 13, 2016.

Agency Contact: Barbara Peterson-Wilson, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street 12th Floor, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 786-0410, or email barbara.peterson-wilson@dcjs.virginia.gov.

VA.R. Doc. No. R16-4542; Filed May 24, 2016, 3:51 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending **6VAC20-130, Regulations Governing the Privacy and Security of Criminal History Record Information Checks for Firearm Purchases**. The purpose of the proposed action is to update and clarify existing regulatory language and remove language that conflicts with the Code of Virginia. The action will address the current VCheck technology used by the Virginia Department of State Police.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

This Notice of Intended Regulatory Action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Comment Deadline: July 13, 2016.

Agency Contact: Barbara Peterson-Wilson, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 786-0410, or email barbara.peterson-wilson@dcjs.virginia.gov.

VA.R. Doc. No. R16-4648; Filed May 24, 2016, 3:37 p.m.

TITLE 16. LABOR AND EMPLOYMENT

VIRGINIA WORKERS' COMPENSATION COMMISSION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Workers' Compensation Commission intends to consider promulgating **16VAC30-16, Workers' Compensation Electronic Medical Billing**. The purpose of the proposed regulation is to establish standards and methods pursuant to which employers, employers' workers' compensation insurance carriers, and providers of workers' compensation medical services adopt and implement infrastructure under which (i) providers of workers' compensation medical services shall submit their billing, claims, case management, health records, and all supporting documentation electronically to employers or employers' workers' compensation insurance carriers and (ii) payers shall return actual payment, claim status, and remittance information electronically to providers that submit their billing and required supporting documentation electronically. The proposed regulation will be consistent with the electronic medical billing and payment guidelines of the International Association of Industrial Accident Boards and Commissions. This regulatory action is intended to satisfy the mandate of Chapter 621 of the 2015 Acts of Assembly.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 65.2-605.1 of the Code of Virginia.

Public Comment Deadline: July 13, 2016.

Agency Contact: James J. Szablewicz, Chief Deputy Commissioner, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23220, telephone (804) 367-8664, FAX (877) 432-5423, or email james.szablewicz@workcomp.virginia.gov.

VA.R. Doc. No. R16-4654; Filed May 18, 2016, 10:08 a.m.

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Final Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-40. Voter Registration (amending 1VAC20-40-70).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: June 1, 2016.

Agency Contact: Paul Stenbjorn, Director of Election Administration and Election Technology Certification and Security, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8952, or email paul.stenbjorn@elections.virginia.gov.

Summary:

The amendments (i) revise the list of omissions not considered material for purposes of determining completeness of the voter registration application, (ii) address the use of the voter registration application to change the name or address of the voter, (iii) require general registrars to accept or deny applications within 30 days of receipt, and (iv) make a technical change to reflect the establishment of the Department of Elections.

1VAC20-40-70. Applications for voter registration; affirmation of United States citizenship.

A. [~~Form and signature.~~ 1.] Applications for voter registration shall be on a form approved by the State Board of Elections or appropriate federal agency.

[~~2.~~] Applications for voter registration must be signed by the applicant. If the applicant is unable to sign due to a physical disability, the name and address of the person assisting the voter shall be entered on the application according to the form instructions. [~~A signature is required by each applicant for voter registration unless the applicant is an individual with physical disabilities. An applicant with physical disabilities who does not sign the form must indicate physical disability in Box 7 or the application will be denied.~~]

B. ~~Material omissions on applications for voter registration in general.~~ The following omissions are not material if any of the following, or combination thereof, exists and a voter

registration application [~~may shall~~] not be denied for failure to include one or more of the following:

[~~1. Daytime telephone number;~~]

~~2. Description of a rural address;~~

~~3. [2. Mailing address different from residence address;]~~

~~4. [3. Date of the application;]~~

~~5. Whether the applicant is interested in working as an election official [4. Response indicating interest in serving as an election officer;]~~

~~6. Whether the applicant requests to have his residence address excluded from published lists [5. Protected voter code;]~~

~~7. Whether the applicant has a disability that requires accommodation in order to vote [6. Response indicating the applicant has a physical disability;] or~~

~~8. [7. Gender]; [8.~~

~~8. Social security number if the applicant writes "none" in Box 1;~~

~~9. Response indicating military service or status as a qualified spouse or dependent;~~

~~10. Response indicating United States citizenship in Box 1 if the applicant has signed the affirmation;~~

~~11. Response affirmatively indicating that the applicant is not a felon in Box 5 if the applicant has signed the affirmation;~~

~~12. Response affirmatively indicating that the applicant has not been previously adjudicated to be mentally incapacitated in Box 5 if the applicant has signed the affirmation;~~

~~13. Signature of applicant if applicant indicates that he is an individual with physical disabilities in Box 7;~~

~~14. Address at which the voter is previously registered if the previous voter registration address is available in the Virginia Election and Registration Information System;~~

~~15. Witness signature in Box 7;~~

~~16. Middle name if the voter indicates "none"; or~~

~~17. Generational suffix.~~

1. Social security number if the applicant checks the box indicating no SSN was ever issued;

2. Gender;

3. Generational suffix;

4. Middle name if the voter checks the box indicating none;

- 5. Email address;
- 6. Daytime telephone number;
- 7. Response indicating protected voter status, military status, overseas status, or any other information requested in Box 4;
- 8. Mailing address;
- 9. State in which the applicant is currently registered if the applicant is currently registered in Virginia;
- 10. Response indicating interest in serving as an officer of election;
- 11. Signature of applicant if applicant indicates that he is an individual with physical disabilities;
- 12. Response indicating the applicant has a physical disability if the application is signed by the applicant; or
- 13. Date of the application.]

C. Middle name may be material to determining eligibility to vote. If the applicant does not include a middle name and does not [~~indicate~~ check the box indicating] none, the registrar shall:

- 1. As far as practical, attempt to contact the applicant and obtain his middle name or lack thereof to determine if the application is complete.
 - a. If the applicant indicates that he has no middle name, the registrar shall process the application.
 - b. If the applicant indicates that he has a middle name, the registrar shall inform the applicant that the middle name is required, deny the application, and send the applicant a new application.
- 2. If the registrar is unable to contact the applicant and therefore unable to determine if the application is incomplete, he shall give the benefit of doubt to the applicant and process the application.

D. A general registrar shall not change information provided by an applicant on an application for voter registration without written authorization signed by the applicant.

E. Persons identified as noncitizens in reports from the Department of Motor Vehicles or other state or federal government sources shall have the opportunity to affirm United States citizenship status using any approved voter registration application or other form containing the required affirmation. The State Board of Elections shall automate the process for requesting affirmation of United States citizenship prior to cancellation.

F. If the individual submitting the application is currently a registered voter in Virginia, then the registrar must process the application as a request to update or change the registered voter's information if the application contains new information and is signed by the voter. [If a registered voter with a physical disability only includes a mark in Box 7, then the request must also be signed by a witness in Box 7.]

~~F. G.~~ For cases not covered by this section, the general registrar in consultation with the [~~electoral board and~~] State Board Department of Elections [~~staff~~] shall determine materiality on a case-by-case basis [~~. When this occurs, the Department of Elections shall make recommendations to the State Board of Elections~~] that may result in further amendment of this regulation.

[~~H. General registrars must provide the voter notice of having accepted or denied a voter registration applicant within 30 days of receiving a voter registration application. Days during which registration records are closed before elections pursuant to § 24.2-416 of the Code of Virginia shall not be applicable to the calculation of the 30-day processing time.~~

~~I. General registrars may not ask for additional information regarding the applicant's restoration of rights from any applicant who indicates that his voting rights have been restored if the applicant's restoration information appears in the Secretary of the Commonwealth's database accessible to general registrars.~~

~~J. Prior versions of any voter registration application shall be accepted for registration. Prior versions of any voter registration application may not be denied for failure to provide information that is deemed not material in this section.~~

~~K. If a general registrar receives an application by mail after the voter registration records have been closed pursuant to § 24.2-416 of the Code of Virginia from an applicant who indicates (i) active duty uniformed services member, (ii) spouse or dependent of an active duty uniformed services member, or (iii) overseas citizen status, then the general registrar must contact the applicant to determine whether the applicant qualifies for an extended voter registration deadline. The general registrar may accept information from the applicant indicating that the applicant is qualified either orally or in writing.]~~

NOTICE: Forms used in administering the following regulation have been filed by the State Board of Elections. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (1VAC20-40)

~~Virginia Voter Registration Application Form, SBE 416.2 (rev. 7/13)~~

[~~Virginia Voter Registration Application Form, VA-NVRA-1 (rev. 7/15)~~

[Virginia Voter Registration Application Form, VA-NVRA-1 \(rev. 4/2016\)](#)]

Regulations

[National Voter Registration Application Form, Register to Vote in Your State by Using this Postcard Form and Guide \(rev. 3/2006\)](#)

[Voter Photo Identification Card Application \(undated\)](#)

VA.R. Doc. No. R15-4128; Filed May 25, 2016, 10:22 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-60. Election Administration (adding 1VAC20-60-35).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 4, 2016.

Agency Contact: Brooks C. Braun, Policy Analyst, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8924, or email brooks.braun@elections.virginia.gov.

Summary:

In accordance with § 24.2-310 of the Code of Virginia, the regulation provides instructions to local electoral boards and general registrars to assist localities in complying with the requirements of the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia), the Voting Accessibility for the Elderly and Handicapped Act (52 USC § 20101 et seq.), and the Americans with Disabilities Act relating to public services (42 USC § 12131 et seq.).

1VAC20-60-35. Polling place accessibility assessments.

A. This section applies to (i) the staff or other individuals designated by Virginia's protection and advocacy program designated by the Governor pursuant to § 51.5-39.13 of the Code of Virginia and the Help America Vote Act, (ii) the members of the State Board of Elections, (iii) the Commissioner of Elections, and (iv) individuals designated by the Commissioner to assess the compliance of a polling place with § 24.2-310 C of the Code of Virginia.

B. Individuals identified in subsection A of this section are authorized to access any polling place on or before any election day to conduct activities related to assessing compliance with § 24.2-310 C.

C. When practical, any person observing under this section for the purpose of assessing polling place accessibility shall notify the general registrar at least 24 hours in advance of his intent to assess polling place accessibility.

D. Designated accessibility observers shall be allowed to take accessibility measurements to ensure compliance with polling place accessibility requirements unless it is disruptive or interferes with the administration of the election.

E. Designated accessibility observers shall be allowed to take photos and video to document compliance with the accessibility requirements unless it is disruptive or interferes with the administration of the election.

F. Designated accessibility observers shall be allowed to wear shirts or name tags identifying themselves as official designated accessibility observers.

G. Election officials, including poll workers, shall facilitate the work of designated accessibility observers in making accessibility assessments.

VA.R. Doc. No. R16-4743; Filed May 25, 2016, 10:54 a.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Proposed Regulation

REGISTRAR'S NOTICE: Chapter 564 of the 2016 Acts of Assembly provides that initial regulations adopted by the Board of Agriculture and Consumer Services to implement § 3.2-4411.1 (effective July 1, 2016) of the Code of Virginia are exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act provided the board publishes proposed regulations in the Virginia Register of Regulations and allows at least 30 days for public comment, to include an online public comment forum on the Virginia Regulatory Town Hall, after publication.

Title of Regulation: **2VAC5-319. Best Management Practices for the Operation of Apiaries in Order to Limit Operator Liability (adding 2VAC5-319-10, 2VAC5-319-20, 2VAC5-319-30).**

Statutory Authority: § 3.2-4411.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 13, 2016.

Agency Contact: Debra Martin, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, or email debra.martin@vdacs.virginia.gov.

Summary:

Chapter 564 of the 2016 Acts of Assembly provides that a beekeeper shall not be liable for any personal injury or property damage that occurs in connection with his keeping and maintaining of bees, bee equipment, queen breeding equipment, apiaries, or appliances if he follows best management practices established in regulations adopted by the Board of Agriculture and Consumer Services. This regulation implements Chapter 564 of the 2016 Acts of Assembly by establishing best management

practices for persons operating apiaries in order to limit operator liability.

CHAPTER 319
BEST MANAGEMENT PRACTICES FOR THE
OPERATION OF APIARIES IN ORDER TO LIMIT
OPERATOR LIABILITY

2VAC5-319-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Apiary" means any place where one or more colonies of bees are kept.

"Apiary operator" means a person who operates an apiary and seeks to limit his liability for any personal injury or property damage that occurs in connection with his keeping and maintaining of bees, bee equipment, queen breeding equipment, apiaries, or appliances as provided for in § 3.2-4411.1 of the Code of Virginia.

"Bee" means the honey bee, *Apis mellifera* and genetic variations thereof, at any living stage and may include other hymenopterous insects that depend on pollen and nectar for food.

"Bee equipment" means hives and hive parts including frames, supers, covers, bottom boards, and beekeeping apparel.

"Colony" means a queenright assemblage of social bees capable of reproducing.

"Comb" means a mass of six-sided cells used by honey bees in which brood is reared and honey and pollen are stored.

"Disease" means departure from a sound state of health of bees characterized by visible symptoms including American foulbrood and any other diseases, insects, mites, or bee pests.

"Division" means to separate a bee colony into two or more hives.

"EHB" mean European honey bees.

"Foundation" means a template, base, or midrib used for the production of straight, movable comb in a frame.

"Frame" means a wooden or plastic form, usually consisting of four sides, designed to hold comb spaced between 1/4 inch and 3/8 inch apart and to allow for removal of the frame without damage to the comb.

"Hive" means a box, skep, barrel, log gum, or other container used as a domicile for bees.

"Split" means a division of a bee colony for the purposes of increasing the number of hives.

"Swarm" or "swarming" means a form of propagation of bees in which all or a portion of a colony, usually containing at least one queen, departs from its original hive to establish a new colony.

2VAC5-319-20. Limitation of liability.

A. An apiary operator operating in conformance with § 3.2-4411.1 of the Code of Virginia and this chapter shall not be liable for any personal injury or property damage that occurs in connection with his keeping and maintaining of bees, bee equipment, queen breeding equipment, apiaries, or appliances. This limitation of liability does not apply to intentional tortious conduct or acts or omissions constituting gross negligence or negligence.

B. A person is not required to comply with the provisions of this chapter unless he seeks to limit his liability as provided for in § 3.2-4411.1 of the Code of Virginia.

2VAC5-319-30. Best management practices.

A. An apiary operator shall comply with local, state, and federal ordinances, regulations, and laws pertaining to beekeeping.

B. An apiary operator shall maintain a healthy populous colony of bees by:

1. Removing or securely sealing any empty bee equipment in an apiary. For the purpose of this subdivision, "empty" means without bees but containing comb or other materials attractive to bees;

2. Removing all colonies in a state of decline or combining such colonies with other colonies;

3. Repairing or replacing old, worn, or defective hive boxes, frames, and other bee equipment;

4. Replacing frames containing old comb with new or cleaned frames containing foundation such that all comb in a hive is replaced every five to seven years;

5. Maintaining a minimum of 20 pounds of honey in a hive with the equivalent of one frame of pollen stores for brood production during the growing season;

6. Preventing disturbance or injury to bee colony or hive by vertebrate pests; and

7. Monitoring disease and pest levels to ensure that treatment thresholds are not exceeded. An apiary operator shall manage the colony to address any disease or pest infestation or remove all disease or pest-infested hives that may be detrimental to the health of other colonies in the vicinity of the apiary. An apiary operator shall inspect hives for disease at least once every three months.

C. For the purposes of this subsection, (i) "full hive" means a hive consisting of a minimum of two eight-frame deep hive boxes for a Langstroth-style hive, or a hive of equivalent capacity, that has movable frames with combs, and (ii) "nucleus hive" means a hive with less capacity than a full hive. A full hive should enter the winter with a minimum of 60 pounds of honey and the equivalent of four frames of pollen stores. A nucleus hive should enter the winter with a minimum of 30 pounds of honey and the equivalent of two frames of pollen stores.

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D. An apiary operator shall practice proper management and control techniques to reduce the likelihood of swarming.

E. An apiary operator shall maintain all colonies at least 10 feet away from property lines to prevent an individual from impeding normal bee flight activity from a hive. An apiary operator shall place all colonies that are less than 40 feet from a property line behind a barrier that is no less than six feet in height and is located between the colony and the property line. Barriers should be of sufficient density, length, and height to establish bee flyways six feet or higher above ground level.

F. An apiary operator shall maintain a water source within 50 feet of a colony or less than one-half the distance to the nearest unnatural water source, whichever is closest. An unnatural water source includes a swimming pool, bird bath, and pet or livestock watering receptacle.

G. An apiary operator shall not maintain an apiary within 50 feet of any animal that is tethered, kenneled, or otherwise prevented from escaping a possible stinging incident.

H. An apiary operator shall avoid opening or disturbing a colony when another person is participating in outside non-beekeeping activities or using machinery within 150 feet of the apiary.

I. An apiary operator shall only maintain a colony with EHB or EHB hybrid stock and shall:

1. Obtain queens, packaged bees, nucleus colonies, or established hives from suppliers providing EHB stock, or obtain a queen and bees from a local supplier;
2. Not obtain queens or bees from suppliers within 100 miles from known Africanized honey bee populations;
3. Introduce queens from healthy stock when making divisions or splits of established colonies;
4. Replace queens in all captured or trapped swarms within 30 days of capturing or trapping swarms;
5. Replace queens in all colonies every two years to minimize swarming behavior; and
6. Mark the thorax or clip a wing of the queens prior to their introduction to splits, swarms, and colonies.

VA.R. Doc. No. R16-4712; Filed May 26, 2016, 1:43 p.m.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Fast-Track Regulation

Title of Regulation: 3VAC5-40. Requirements for Product Approval (amending 3VAC5-40-10).

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 13, 2016.

Effective Date: July 28, 2016.

Agency Contact: Shawn Walker, Director of Law Enforcement, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4569, FAX (804) 213-4411, or email shawn.walker@abc.virginia.gov.

Basis: Subdivision 13 of § 4.1-103 and subsection A of § 4.1-111 of the Code of Virginia give the Alcoholic Beverage Control Board the authority to adopt reasonable regulations and do all acts necessary and reasonable and advisable to carry out the provisions of Title 4.1 of the Code of Virginia.

Purpose: The amendment follows the practice currently followed by the board. The intended action is essential to the agency and the public health, safety, and welfare by allowing the agency to require federal label certification documentation to ensure that federal safety requirements are adhered to by the manufacturer.

Rationale for Using Fast-Track Rulemaking Process: The regulation is expected to be noncontroversial because it makes the process for approval of a product for sale in Department of Alcoholic Beverage Control (ABC) stores less burdensome on businesses and follows the current practice.

Substance: The amendment removes the requirement that any person wishing to have products sold in ABC stores to provide a federal certificate of label approval. The amendment permits the board to require a copy of the certificate of label approval before approving it for sale in those cases in which there are questions about the label or the product.

Issues: The advantage to the agency is the proposed amendment is consistent with current practice and removes a requirement from the approval process. The advantage to the public is to allow the agency to verify authenticity and safety of products for human consumption regulated by the agency. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (Board) proposes to no longer require sellers of spirits to submit a copy of the federal certificate of label approval before a spirit can be sold in Department of Alcoholic Beverage Control (ABC) stores. The Board proposes to instead insert permissive language for the Board to request a copy of the certificate.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Under the current regulation sellers of spirits must submit a copy of the federal certificate

of label approval before a spirit can be sold in ABC stores. The Board proposes to remove this requirement, and instead provide permissive language for the Board to request a copy of the certificate. The purpose of this requirement is to make certain that federal labeling requirements have been met and the product is approved by the appropriate federal agency. According to ABC, when this requirement was initially implemented there was no electronic database to verify such information; but this information is currently available electronically. Consequently, the Board does not now require a copy of the federal certificate. Thus, the proposed change will conform to the current practice. As a result no significant economic effect is expected other than improving the clarity of the regulation.

Businesses and Entities Affected. The proposed regulation applies to sellers of spirits sold in ABC stores. While ABC does not have information on the number of individual sellers, it estimates that there are approximately 10,000 products that are subject to the certificate requirement.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. No impact on employment is expected upon promulgation of this regulation.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected upon promulgation of this regulation.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. Approximately, 40 percent of the affected entities are estimated to be small businesses. The cost and other effects on small businesses are the same as discussed above.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses. The proposed regulation does not have an adverse impact on non-small businesses.

Localities. The proposed regulation will not adversely affect localities.

Other Entities. The proposed regulation will not adversely affect other entities.

Agency's Response to Economic Impact Analysis: The Department of Alcoholic Beverage Control concurs.

Summary:

The amendment eliminates the requirement that a federal certificate of label approval be provided to the board before sale of the product in a Department of Alcoholic Beverage Control (ABC) store, but allows the board the option of asking for a certificate of label approval before approving a product for sale in a store.

3VAC5-40-10. Spirits; labels, definitions and standards of identity.

Spirits sold in the Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions, standards of identity, and standards of fill. In addition, the prior approval of the board must be obtained as to the spirits, containers and labels. ~~Applicants shall furnish the board a certified copy of the approval of the label by such federal agency. The board may request a copy of the federal certificate of label approval before a product is approved for sale.~~

Subsequent sales under an approved label shall conform to the analysis of the spirits originally approved by the board, and be packaged in approved types and sizes of containers.

VA.R. Doc. No. R16-4625; Filed May 23, 2016, 12:12 p.m.

Fast-Track Regulation

Title of Regulation: 3VAC5-70. **Other Provisions (amending 3VAC5-70-100).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 13, 2016.

Effective Date: July 28, 2016.

Agency Contact: Shawn Walker, Director of Law Enforcement, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4569, FAX (804) 213-4411, or email shawn.walker@abc.virginia.gov.

Basis: Subdivision B 16 of § 4.1-111 of the Code of Virginia requires that the Alcoholic Beverage Control Board promulgate a regulation that prescribes the terms and conditions under which retail on-premises licensees may provide a gift of an alcoholic beverage to a patron or a bottle of wine to two or more patrons and the frequency of such gifts.

Purpose: This amendment is intended to meet specific statutory requirements that a retail on-premises licensee may provide a gift of one alcoholic beverage to a patron or a bottle of wine to two or more patrons. The regulation safeguards the public safety by limiting the amount and frequency of such gifts.

Rationale for Using Fast-Track Rulemaking Process: The rulemaking process is expected to be noncontroversial

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because the proposal closely follows the statutory mandate. The agency has minimal discretion.

Substance: The amendment allows a retail on-premises licensee the authority to give one alcoholic beverage to a patron or a bottle of wine to a group of two or more patrons. Currently the regulation prohibits any such gift.

Issues: The primary advantage of this proposal to the public and the agency is that it meets the legislative mandate to promulgate a regulation that permits a retail on-premises licensee to give alcoholic beverages to a patron or patrons on a limited basis. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 404 of the 2015 Acts of Assembly, the Board of Alcoholic Beverage Control proposes to allow certain alcoholic beverage licensees to give alcoholic beverages as gifts subject to limitations for on-premises consumption.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Chapter 404 of the 2015 Acts of Assembly amended Virginia Code section 4.1-111(B)(16) to permit retail on-premises licensees to provide a gift of one alcoholic beverage to a patron, or one bottle of wine to a group of two or more patrons, to whom such alcoholic beverages may be sold. No subsequent gift shall be provided to the same patrons within 24 hours. Thus, the proposed regulation will allow in general more flexibility to the licensees in the promotion of their businesses. The proposed regulation is identical in substance to the statute, and therefore no significant effect is expected upon promulgation of these changes as the affected licensees are already allowed to give such gifts to their customers under the statute. Thus, while more flexibility in promoting their businesses could be reasonably expected to benefit the affected licensees, no significant economic impact is likely for them or on public consumption upon promulgation of this regulation, other than improving clarity through consistency between the regulation and the Code of Virginia.

Businesses and Entities Affected. The proposed regulation applies to approximately 5,000 retail licensees authorized to sell for on-premises consumption.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed amendments could be expected to slightly increase consumption of alcoholic beverages and slightly increase the demand for labor employed to meet the increase in consumption. However, the statute has been in effect and any such impact is probably already realized. Thus, no significant impact on

employment is expected upon promulgation of this regulation.

Effects on the Use and Value of Private Property. Allowing the licensees to give alcoholic beverages as gifts to their customers is unlikely to have an impact on the use and value of private property. To the extent such gifts promote sales and increase revenues, a small positive impact on their asset values may be expected.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. The majority of the 5,000 affected retail licensees are estimated to be small businesses. The proposed regulation does not impose costs on them. The proposed regulation simply conforms to the statute which may have had a positive impact on sales.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses. The proposed regulation does not have an adverse impact on non-small businesses.

Localities. The proposed regulation will not adversely affect localities.

Other Entities. The proposed regulation simply conforms to the statute allowing retailers to give their consumers alcoholic beverages as gifts for on-premises consumption.

Agency's Response to Economic Impact Analysis: The Department of Alcoholic Beverage Control concurs.

Summary:

Pursuant to Chapter 404 of the 2015 Acts of Assembly, the amendment permits a retail on-premises licensee to give one alcoholic beverage to a patron, or a bottle of wine to two or more patrons, with limitations on the frequency of such gifts.

3VAC5-70-100. Gifts of alcoholic beverages generally; exceptions; wine and beer tastings; taxes and records.

A. Gifts of alcoholic beverages by a licensee to any other person are prohibited except as otherwise provided in this section or as provided in §§ 4.1-119 G, 4.1-201, 4.1-201.1, 4.1-205, 4.1-209, 4.1-325, and 4.1-325.2 of the Code of Virginia.

B. Gifts of alcoholic beverages may be made by licensees as follows:

1. Personal friends. Gifts may be made to personal friends as a matter of normal social intercourse when in no wise a shift or device to evade the provisions of this section.

2. Samples. A wholesaler may give a retail licensee a sample serving or a container not then sold by such licensee of wine or beer, which such wholesaler otherwise may sell to such retail licensee, provided that in the case of containers, the container does not exceed 52 fluid ounces in size (1.5 liters if in a metric-sized container) and the label bears the word "Sample" in lettering of reasonable size. Such samples may not be sold. For good cause shown the board may authorize a larger sample container.

3. Gifts by retail licensees. An on-premises retail licensee may give a gift of one alcoholic beverage to a patron or one bottle of wine to a group of two or more patrons provided that such gifts are made to patrons to whom such alcoholic beverages may be sold. No subsequent gift shall be provided to the same patrons within 24 hours.

4. Hospitality rooms; conventions. The following activities are permitted:

- a. A brewer or vintner may give samples of his products to visitors to his winery or brewery for consumption on premises only in a hospitality room approved by the board, provided the donees are persons to whom such products may be lawfully sold; and
- b. A manufacturer, importer, bottler, broker, or wholesaler may host an event at conventions of national, regional or interstate associations or foundations organized and operated exclusively for religious, charitable, scientific, literary, civil affairs, educational or national purposes upon the premises occupied by such licensee, or upon property of the licensee contiguous to such premises, or in a development contiguous to such premises, owned and operated by the licensee or a wholly owned subsidiary.

4. 5. Conventions; educational programs, including alcoholic beverage tastings; research; licensee associations. Manufacturers, importers, bottlers, brokers, and wholesalers may donate alcoholic beverages to:

- a. A convention, trade association or similar gathering, composed of licensees and their guests, when the alcoholic beverages donated are intended for consumption during the convention;
- b. Retail licensees attending a bona fide educational program relating to the alcoholic beverages being given away;
- c. Research departments of educational institutions, or alcoholic research centers, for the purpose of scientific research on alcoholism; and
- d. Official associations of alcoholic beverage industry members when conducting a bona fide educational program concerning alcoholic beverages, with no promotion of a particular brand, for members and guests of particular groups, associations, or organizations.

~~5. 6.~~ Conditions. Exceptions authorized by subdivisions ~~3~~ 4 b and 4 ~~5~~ of this subsection are conditioned upon the following:

- a. That prior written notice of the activity be submitted to the board describing it and giving the date, time and place of such activity; and
- b. That the activity be conducted in a room or rooms set aside for that purpose and be adequately supervised.

C. Wine and beer wholesalers may participate in a wine or beer tasting sponsored by a gourmet shop licensee for its customers and may provide educational material, oral or written, pertaining thereto, as well as participate in the pouring of such wine or beer.

D. Any gift authorized by this section shall be subject to the taxes imposed on sales by Title 4.1 of the Code of Virginia, and complete and accurate records shall be maintained.

VA.R. Doc. No. R16-4587; Filed May 23, 2016, 12:13 p.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-510. Pertaining to Amberjack and Cobia (amending 4VAC20-510-10, 4VAC20-510-20, 4VAC20-510-30, 4VAC20-510-33, 4VAC20-510-37; adding 4VAC20-510-25).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: June 1, 2016.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments (i) amend the purpose statement; (ii) separate the recreational fishery possession limits in 4VAC20-510-20 from the commercial fishery possession limits and move the commercial limits into 4VAC20-510-25; (iii) establish a season closure for recreational cobia of August 30, 2016; (iv) prohibit gaffing of cobia recreationally; (v) establish a vessel allowance of one fish per person up to two maximum per vessel, and in addition, only one of the two fish may be over 50 inches in total

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length; and (vi) establish the minimum size limit for recreational cobia fishing at 40 inches.

4VAC20-510-10. Purpose.

The purpose of this chapter is to control the harvest, protect the spawning stocks, minimize the possibility of recruitment failure and increase yield in the amberjack and cobia fisheries. The provisions pertaining to aquaculture serve to prevent cobia raised in an aquaculture facility from being placed into Virginia waters and to minimize the impact of cultured fish in the market place on the enforcement of other provisions of this chapter. ~~This chapter is designed to ensure that Virginia is consistent with federal and interstate management measures pertaining to these species.~~

4VAC20-510-20. Possession Recreational fishery possession limits; season closure; vessel allowance; prohibition on gaffing.

A. It shall be unlawful for any person fishing recreationally to possess more than two amberjack or more than one cobia at any time. Any amberjack or cobia caught after the possession limit has been reached shall be returned to the water immediately. When fishing from any boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by ~~one for cobia or~~ two for amberjack or one for cobia, except there is a maximum vessel limit of two cobia per vessel per day. That vessel limit may only include one cobia greater than 50 inches in total length. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

~~B. It shall be unlawful for any person fishing commercially to possess more than two amberjack or more than two cobia at any time, except as described in 4VAC20-510-33. Any amberjack or cobia caught after the possession limit has been reached shall be returned to the water immediately. When fishing from any boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by two. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.~~

~~B. In 2016, it shall be unlawful for any person, fishing recreationally, to harvest or possess any cobia after August 30.~~

C. It shall be unlawful for any person fishing recreationally to gaff or attempt to gaff any cobia.

4VAC20-510-25. Commercial fishery possession limits.

It shall be unlawful for any person fishing commercially to possess more than two amberjack or more than two cobia at any time, except as described in 4VAC20-510-33. Any amberjack or cobia caught after the possession limit has been reached shall be returned to the water immediately. When fishing from any boat or vessel where the entire catch is held

in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by two. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

4VAC20-510-30. Minimum size limits.

A. It shall be unlawful for any person to take, catch, or have in possession any amberjack less than 32 inches in total length.

B. It shall be unlawful for any person fishing commercially to take, ~~catch or have in possession~~ harvest, or possess any cobia less than 37 inches in total length.

C. It shall be unlawful for any person to take, catch, or have in possession any recreationally harvested cobia less than 40 inches in total length.

~~C. Length~~ D. Total length is measured in a straight line from tip of nose to tip of tail.

4VAC20-510-33. Exceptions to possession limits and minimum size limits.

A. Nothing in ~~4VAC20-510-20~~ 4VAC20-510-25 shall limit the possession of amberjack or cobia by licensed seafood buyers or wholesale and retail seafood establishments when operating in their capacity as buyer, wholesaler, or retailer.

B. Nothing in ~~4VAC20-510-20~~ 4VAC20-510-25 and 4VAC20-510-30 shall limit the possession of cobia by an aquaculture facility that is permitted in accordance with the provisions of ~~4VAC20-510-40~~ 4VAC20-510-35.

C. Any person employed by a permitted cobia aquaculture facility for the purpose of harvesting cobia as broodstock for the aquaculture facility shall be exempt from the provisions of 4VAC20-510-20 and 4VAC20-510-30 provided that person possesses a scientific collection permit issued by the commissioner.

D. The daily possession limit for cobia for any vessel operated by at least one legal commercial hook-and-line licensee shall be no more than six cobia, regardless of the number of crew on that vessel.

4VAC20-510-37. Sale, records, importation, release.

A. All cobia produced by an aquaculture facility permitted under this section shall be packaged prior to sale with a printed label indicating the product is of aquaculture origin. When packaged and labeled according to these requirements, such fish may be transported and sold at retail or wholesale or for commercial distribution through normal channels of trade until reaching the consumer.

B. Cobia that measure less than the lawful minimum size described in 4VAC20-510-30 B but are the product of a permitted aquaculture facility in another state may be imported into Virginia for the consumer market. Such fish shall be packaged and labeled in accordance with the provisions contained in subsection A of this section.

C. Release of live fish. Under no circumstance shall any cobia produced by an aquaculture facility located within or outside the Commonwealth of Virginia be placed into the waters of the Commonwealth without first having notified the commissioner and having received written permission from the commissioner.

VA.R. Doc. No. R16-4742; Filed May 31, 2016, 2:04 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-10, 4VAC20-620-30 through 4VAC20-620-70).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: June 1, 2016.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments (i) change the end date of the summer flounder season beginning in March from May 7 to June 6 for any person harvesting outside of Virginia waters; (ii) remove the 30-day limit to the time periods within that season; (iii) change the second period of the season from 30 days to 60 days, beginning on April 8 instead of April 7, within which a total of 5,000 pounds of summer flounder may be harvested by any person harvesting outside of Virginia waters; and (iv) lowercase all instances of "summer flounder."

4VAC20-620-10. Purpose.

The purpose of this chapter is to reduce commercial and recreational fishing mortality in order to rebuild the severely depleted stocks of ~~Summer Flounder~~ summer flounder.

4VAC20-620-30. Commercial harvest quota and allowable landings.

A. During each calendar year, allowable commercial landings of ~~Summer Flounder~~ summer flounder shall be limited to a quota in total pounds calculated pursuant to the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Summer Flounder Fishery Management Plan, as approved by the National Marine Fisheries Service on August 6, 1992 (50 CFR Part 625); and shall be distributed as described in subsections B through G of this section.

B. The commercial harvest of ~~Summer Flounder~~ summer flounder from Virginia tidal waters for each calendar year shall be limited to 300,000 pounds of the annual quota described in subsection A of this section. Of this amount,

142,114 pounds shall be set aside for Chesapeake Bay-wide harvest.

C. From the first Monday in January through October 31 the allowable landings of ~~Summer Flounder~~ summer flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 70.7% of the quota described in subsection A of this section after deducting the amount specified in subsection B of this section.

D. From November 1 through December 31, allowable landings of ~~Summer Flounder~~ summer flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 29.3% of the quota, as described in subsection A of this section, after deducting the amount specified in subsection B of this section, and as may be further modified by subsection E of this section.

E. Should landings from the first Monday in January through October 31 exceed or fall short of 70.7% of the quota described in subsection A of this section, any such excess shall be deducted from allowable landings described in subsection D of this section, and any such shortage shall be added to the allowable landings as described in subsection D of this section. Should the commercial harvest specified in subsection B of this section be projected as less than 300,000 pounds, any such shortage shall be added to the allowable landings described in subsection D of this section.

F. The Marine Resources Commission will give timely notice to the industry of the calculated poundages and any adjustments to any allowable landings described in subsections C and D of this section. It shall be unlawful for any person to harvest or to land ~~Summer Flounder~~ summer flounder for commercial purposes after the commercial harvest or any allowable landings as described in this section have been attained and announced as such. If any person lands ~~Summer Flounder~~ summer flounder after the commercial harvest or any allowable landing have been attained and announced as such, the entire amount of ~~Summer Flounder~~ summer flounder in that person's possession shall be confiscated.

G. It shall be unlawful for any buyer of seafood to receive any ~~Summer Flounder~~ summer flounder after any commercial harvest or landing quota as described in this section has been attained and announced as such.

4VAC20-620-40. Commercial vessel possession and landing limitations.

A. It shall be unlawful for any person harvesting ~~Summer Flounder~~ summer flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, D, and E of this section:

1. Possess aboard any vessel in Virginia waters any amount of ~~Summer Flounder~~ summer flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops and Atlantic mackerel.

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2. Possess aboard any vessel in Virginia waters any amount of ~~Summer Flounder~~ summer flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.

3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. Nothing in this chapter shall preclude a vessel from possessing any North Carolina vessel possession limit of summer flounder in Virginia; however, no vessel that possesses the North Carolina vessel possession limit of summer flounder shall offload any amount of that possession limit, except as described in subsection J of this section.

C. From the second Wednesday in March through ~~May 7~~ June 6, it shall be unlawful for any person harvesting ~~Summer Flounder~~ summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of ~~Summer Flounder~~ summer flounder in excess of the combined total of the Virginia landing limit described in subdivisions 3 and 4 of this subsection and the amount of the legal North Carolina landing limit or trip limit.

2. Land ~~Summer Flounder~~ summer flounder in Virginia for commercial purposes more than twice during each consecutive ~~30-day~~ period, with the ~~first 30-day~~ initial period beginning on the second Wednesday in March.

3. Land in Virginia more than a total of 7,500 pounds of ~~Summer Flounder~~ summer flounder during the ~~first~~ initial 30-day period, ~~with the first 30-day period~~ beginning on the second Wednesday in March.

4. Land in Virginia more than a total of 5,000 pounds of summer flounder during the ~~second 30-day period with the second 30-day~~ 60-day period beginning on April 7 8.

5. Land in Virginia any amount of ~~Summer Flounder~~ summer flounder more than once in any consecutive five-day period.

D. From November 1 through December 31 of each year, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting ~~Summer Flounder~~ summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of ~~Summer Flounder~~ summer flounder in excess of the combined total of the Virginia landing limit described in subdivisions 3 and 4 of this subsection and the amount of the legal North Carolina landing limit or trip limit.

2. Land ~~Summer Flounder~~ summer flounder in Virginia for commercial purposes more than twice during each consecutive 30-day period, with the first 30-day period beginning on November 1.

3. Land in Virginia more than a total of 10,000 pounds of ~~Summer Flounder~~ summer flounder during the first 30-day period, with the first 30-day period beginning on November 1.

4. Land in Virginia more than a total of 5,000 pounds of ~~Summer Flounder~~ summer flounder during the second 30-day period with the second 30-day period beginning on December 1.

5. Land in Virginia any amount of ~~Summer Flounder~~ summer flounder more than once in any consecutive five-day period.

E. From January 1 through December 31 of each year, any boat or vessel issued a valid federal ~~Summer Flounder~~ summer flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of ~~Summer Flounder~~ summer flounder, except as described in 4VAC20-620-30 F.

F. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all ~~Summer Flounder~~ summer flounder aboard any vessel landing ~~Summer Flounder~~ summer flounder in Virginia.

G. Any possession limit described in this section shall be determined by the weight in pounds of ~~Summer Flounder~~ summer flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The weight of any ~~Summer Flounder~~ summer flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of ~~Summer Flounder~~ summer flounder aboard any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of ~~Summer Flounder~~ summer flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection J of this section. A buyer or processor may accept or buy ~~Summer Flounder~~ summer flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection J of this section.

H. If a person violates the possession limits described in this section, the entire amount of ~~Summer Flounder~~ summer flounder in that person's possession shall be confiscated. Any confiscated ~~Summer Flounder~~ summer flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated ~~Summer Flounder~~ summer flounder and, at a minimum, secure two bids for purchase of the confiscated ~~Summer Flounder~~ summer flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

I. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading ~~Summer Flounder~~ summer flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel, its captain, an estimate of the amount in pounds of ~~Summer Flounder~~ summer flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed ~~Summer Flounder~~ summer flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of ~~Summer Flounder~~ summer flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any ~~Summer Flounder~~ summer flounder during the period of 9 p.m. to 7 a.m.

J. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload ~~Summer Flounder~~ summer flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

K. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing ~~Summer Flounder~~ summer flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

L. It shall be unlawful for any person harvesting ~~Summer Flounder~~ summer flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of ~~Summer Flounder~~ summer flounder, once it has been projected and announced that 100% of the quota described in 4VAC20-620-30 A has been taken.

4VAC20-620-50. Minimum size limits.

A. The minimum size for ~~Summer Flounder~~ summer flounder harvested by commercial fishing gear shall be 14 inches, total length.

B. The minimum size of ~~Summer Flounder~~ summer flounder harvested by recreational fishing gear, including but not limited to hook and line, rod and reel, spear and gig, shall be 16 inches, total length, except that the minimum size of ~~Summer Flounder~~ summer flounder harvested in the Potomac River tributaries shall be the same as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

C. Length shall be measured in a straight line from tip of nose to tip of tail.

D. It shall be unlawful for any person to possess any ~~Summer Flounder~~ summer flounder smaller than the designated minimum size limit.

E. Nothing in this chapter shall prohibit the landing of ~~Summer Flounder~~ summer flounder in Virginia that were legally harvested in the Potomac River.

4VAC20-620-60. Recreational possession limit.

A. It shall be unlawful for any person fishing in any tidal waters of Virginia, except the Potomac River tributaries, with recreational hook and line, rod and reel, spear, gig or other recreational gear to possess more than four ~~Summer Flounder~~ summer flounder. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by four. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any ~~Summer Flounder~~ summer flounder taken after the possession limit has been reached shall be returned to the water immediately.

B. It shall be unlawful for any person fishing in the Potomac River tributaries with recreational hook and line, rod and reel, spear, gig or other recreational gear to possess more ~~Summer Flounder~~ summer flounder than the possession limit established by the Potomac River Fisheries Commission for the mainstem Potomac River. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by the possession limit established by the Potomac River Fisheries Commission for the mainstem Potomac River. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any ~~Summer Flounder~~ summer flounder taken after the possession limit has been reached shall be returned to the water immediately.

C. Possession of any quantity of ~~Summer Flounder~~ summer flounder that exceeds the possession limit described in subsections A and B of this section shall be presumed to be for commercial purposes.

4VAC20-620-70. Recreational fishing season.

A. The recreational fishing season for any tidal waters of Virginia, except the Potomac River tributaries, shall be open year-round.

B. The recreational fishing season for the Potomac River tributaries shall be the same as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

C. It shall be unlawful for any person fishing recreationally to take, catch, or possess any ~~Summer Flounder~~ summer flounder during any closed recreational fishing season.

D. Nothing in this chapter shall prohibit the landing of ~~Summer Flounder~~ summer flounder in Virginia that were legally harvested in the Potomac River.

VA.R. Doc. No. R16-4688; Filed May 25, 2016; 4:29 p.m.

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Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-1310. Pertaining to Jonah Crab (adding 4VAC20-1310-10 through 4VAC20-1310-60).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: June 1, 2016.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

This regulation establishes a minimum size limit, limited entry commercial permits, and gear restrictions and possession limits for both the recreational harvest and the commercial harvest of Jonah crab.

**CHAPTER 1310
PERTAINING TO JONAH CRAB**

4VAC20-1310-10. Purpose.

The purpose of this chapter is to conserve and protect Jonah crabs from overfishing and to provide consistency among federal and interstate laws and regulations.

4VAC20-1310-20. Definition.

The following word or term when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Jonah crab," as described in this chapter, means solely the crustacean *Cancer borealis*.

4VAC20-1310-30. Possession prohibitions and commercial fishery minimum size limit.

A. It shall be unlawful for any person to possess any egg-bearing female Jonah crab, except for scientific purposes and with the express written consent of the Commissioner of Marine Resources. Any harvested egg-bearing female Jonah crab shall be returned to the water immediately.

B. It shall be unlawful for any person to land any Jonah crab unless the whole crab is in that person's possession, except as provided in 4VAC20-1310-40 D.

C. It shall be unlawful for any person to possess or land any Jonah crab for commercial purposes that measures less than 4.75 inches across the widest point of the carapace.

4VAC20-1310-40. Commercial harvest, possession limits, and reporting.

A. In accordance with the provisions of § 28.2 201 of the Code of Virginia, the Marine Resources Commission establishes a no-cost Jonah crab incidental commercial permit

for any harvester using any gear or methods other than lobster traps in Virginia waters.

B. It shall be unlawful for any person using gear or harvesting methods other than lobster traps (nontrap fishermen) to land or possess more than 200 Jonah crabs in a 24-hour period or more than 500 Jonah crabs when a fishing trip exceeds 24 hours.

C. It shall be unlawful for any person to take, catch, possess, or land any Jonah crab in excess of the amounts listed in subsection B of this section, unless that person has obtained a Limited Entry Jonah Crab Fishery Permit from the Marine Resources Commission. Permits shall only be issued to a Virginia registered commercial fisherman or a Virginia seafood landing licensee who is a legal federal lobster permittee and has at least one pound of documented landings of Jonah crab prior to June 2, 2015, in the Marine Resources Commission's mandatory harvest reporting system. Federal dealer reports to the Standard Atlantic Fisheries Information System can satisfy the one pound harvest requirement. There is no landing limit for any person that possesses a Jonah Crab Limited Entry Fishery Permit.

D. It shall be unlawful for any person to take, catch, possess, or land any Jonah crab claws without first having obtained a Limited Entry Jonah Crab Claw Fishery Permit from the Marine Resources Commission. Permits shall only be issued to a Virginia registered commercial fisherman who is a legal federal lobster permittee and who has at least one pound of documented claw landings, prior to June 2, 2015, in the Marine Resources Commission's mandatory harvest reporting system. Federal dealer reports to the Standard Atlantic Fisheries Information System can satisfy the one-pound harvest requirement.

E. Any Virginia licensed seafood buyer who purchases any whole Jonah crab or its claws shall provide reports to the commission of daily purchases and harvest information, organized by month. Such information shall include: the date of the purchase, the harvester's commercial fisherman registration license number or Virginia seafood landing license number, the gear type, water area fished, city or county of landing, total amount of pounds landed, and the price per pound. These reports shall be completed in full and submitted to the commission no later than the 15th day of January for the prior year's purchases. Federal dealer reports to the Standard Atlantic Fisheries Information System can satisfy the reporting requirements.

4VAC20-1310-50. Daily recreational harvest and possession limits.

It shall be unlawful for any person fishing recreationally to possess more than 50 Jonah crabs per person per day.

4VAC20-1310-60. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent

violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

V.A.R. Doc. No. R16-4741; Filed May 25, 2016, 4:28 p.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the Virginia Waste Management Board. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC20-150. Waste Tire End User Reimbursement Regulation.**

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4238, email melissa.porterfield@deq.virginia.gov.

FORMS (9VAC20-150)

[Waste Tire Pile Certification, DEQ-CERT, No. 154 \(rev. 3/2010\)](#)

~~[End User Reimbursement Application, DEQ-EURR \(rev. 12/2015\)](#)~~

[End User Reimbursement Application, DEQ-EURR \(rev. 5/2016\)](#)

V.A.R. Doc. No. R16-4724; Filed May 19, 2016, 8:29 a.m.

STATE WATER CONTROL BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the State Water Control Board. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC25-115. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Seafood Processing Facilities.**

Agency Contact: Eleanore Daub, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4111, email elleanore.daub@deq.virginia.gov.

FORMS (9VAC25-115)

[Change of Ownership Agreement Form \(rev. 3/2014\)](#)

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

~~[Registration Statement for the General Virginia Pollutant Discharge Elimination System \(VPDES\) Permit for Seafood Processing Facilities \(July 2016 Reissuance\)](#)~~

[Registration Statement for the General Virginia Pollutant Discharge Elimination System \(VPDES\) Permit for Seafood Processing Facilities, July 2016 reissuance \(rev. 4/2016\)](#)

V.A.R. Doc. No. R16-4725; Filed May 19, 2016, 8:34 a.m.

Final Regulation

Title of Regulation: **9VAC25-210. Virginia Water Protection Permit Program Regulation (amending 9VAC25-210-10 through 9VAC25-210-70, 9VAC25-210-80 through 9VAC25-210-110, 9VAC25-210-116, 9VAC25-210-130 through 9VAC25-210-170, 9VAC25-210-180 through 9VAC25-210-230; adding 9VAC25-210-55, 9VAC25-210-65, 9VAC25-210-300 through 9VAC25-210-390, 9VAC25-210-500, 9VAC25-210-600, 9VAC25-210-610; repealing 9VAC25-210-75, 9VAC25-210-115, 9VAC25-210-175, 9VAC25-210-240, 9VAC25-210-250, 9VAC25-210-260).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Effective Date: August 2, 2016.

Agency Contact: Brenda Winn, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 233218, telephone (804) 698-4516, FAX (804) 698-4032, or email brenda.winn@deq.virginia.gov.

Summary:

The regulatory action (i) reorganizes the regulation, including by consolidating the surface water withdrawal provisions in a new Part V; (ii) updates definitions, including by revising the term "public surface water supply withdrawal" to "public water supply," without changing the definition; (iii) revises the surface water withdrawal exclusions pertaining to tidal resources; (iv) removes a distinction between a minor surface water withdrawal and a major surface water withdrawal; (v) establishes the criteria for when minor and major modifications of the permit may occur that are specific to surface water withdrawal activities; (vi) aligns the regulation as closely as possible to the 2008 Mitigation Rule of the U.S. Army Corps of Engineers; (vii) makes compensation for certain open water impacts discretionary and establishes a limit for any required compensation; (viii) requires only an assessment of functions for certain situations; (ix) revises permit application requirements and permit modification procedures; (x) allows an administrative continuance of a permit application; (xi) revises permitting exclusions; (xii)

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clarifies the requirements for a complete application regarding compensatory wetland and stream mitigation plans; and (xiii) makes other clarifying, technical, and grammatical changes.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Part I

VWP Permit Program Definitions, Exclusions, Prohibitions and Requirements

9VAC25-210-10. Definitions.

A. Definitions specific to surface water withdrawals are in 9VAC25-210-300.

B. 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.

"Administratively withdrawn" means a decision by the board that permanently discontinues the review or processing of a VWP permit application or request to modify a VWP permit.

~~"Affected stream reach" means the portion of a surface water body beginning at the location of a withdrawal and ending at a point where effects of the withdrawal are not reasonably expected to adversely affect beneficial uses.~~

~~"Agricultural surface water withdrawal" means a withdrawal of surface water in Virginia or from the Potomac River for the purpose of agricultural, silvicultural, horticultural, or aquacultural operations. Agricultural surface water withdrawals include withdrawals for turf farm operations, but do not include withdrawals for landscaping activities, or turf installment and maintenance associated with landscaping activities.~~

"Applicant" means a person applying for a VWP individual permit or for coverage under a VWP general permit authorization.

"Aquatic environment" means 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 resources and habitat; maintenance of waste assimilation; recreation; navigation; and cultural and aesthetic values. 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, and cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic uses (including public water supply); agricultural uses; electric power generation; ~~and~~ commercial uses; and industrial uses.

"Best management practices ~~(BMPs)~~" or "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.

~~"Channelization of streams" means the alteration of a stream channel by widening, deepening, straightening, cleaning, or paving certain areas.~~

"Compensation" or "compensatory mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource (i) the restoration (reestablishment or rehabilitation), establishment (creation), enhancement, or in certain circumstances preservation of aquatic resources or (ii) in certain circumstances an out-of-kind measure having a water quality, habitat, or other desirable benefit for the purposes of offsetting unavoidable adverse impacts to aquatic resources that remain after all appropriate and practicable avoidance and minimization has been achieved.

"Construction site" means any site where land-disturbing activity is conducted or physically located for the purpose of erecting buildings, roads, or other discrete structures, including on-site or off-site areas used for dependent, support facilities, such as quarries, mines, or temporary stormwater management or erosion control structures.

~~"Consumptive water use" means the withdrawal of surface waters, without recycle of said waters to their source of origin.~~

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

"Conversion" means those impacts to surface waters that permanently change an existing wetland or aquatic resource type to a different wetland or aquatic resource type.

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

"Cowardin classification" or "Cowardin classification method," unless otherwise specified in this chapter, means the waters classification system in Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, Lewis M. II, et al., U.S. Fish and Wildlife Service, December 1979, Reprinted 1992).

"Creation" means the establishment of a wetland or other aquatic resource where one did not formerly exist.

"Cross-sectional ~~sketch~~ drawing" means a scaled graph or plot that represents the plane made by cutting across an object at right angles to its length. [~~For purposes of this regulation, objects~~ Objects] may include, but are not limited to, a surface water body or a portion of it, a man-made channel, an above-ground structure, a below-ground structure, a geographical feature, or the ground surface itself.

"Department" or "DEQ" means the Department of Environmental Quality.

"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.

~~"Drought" means that a Severe Intensity Drought (D2) has been declared by the weekly "U.S. Drought Monitor" for the location in which the withdrawal is located.~~

"Ecologically preferable" means capable of providing a higher likelihood than alternative proposals of replacing existing wetland ~~or acreage~~ [~~or and~~] functions, stream functions ~~and values~~, water quality, and fish and wildlife resources ~~than alternative proposals.~~

~~"Emergency Virginia Water Protection Permit" means a Virginia Water Protection Permit issued pursuant to § 62.1-44.15:22 C of the Code of Virginia authorizing a new or increased surface water withdrawal to address insufficient public drinking water supplies that are caused by a drought and may result in a substantial threat to human health or public safety.~~

"Emergent wetland" means a class of wetlands dominated by erect, rooted, herbaceous plants growing in water or on a substrate, excluding mosses and lichens. This vegetation is present for most of the growing season in most years and is usually dominated by perennial plants.

"Enhancement" means activities conducted in existing wetlands or other portions of the aquatic environment 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~~ raising 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 that~~ replaces portions of surface water with dry land or ~~which changes that~~ raises the bottom elevation of a surface water for any purpose.

"Forested wetland" means a class of wetlands dominated by woody vegetation that is approximately 20 feet (six meters) tall or taller and three inches (7.6 centimeters) or larger in diameter at breast height (DBH). These areas typically possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

~~"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.~~

"Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

"Impacts" means results caused by ~~human-induced~~ those activities ~~conducted in surface waters~~, as specified in § 62.1-44.15:20 A of the Code of Virginia.

"Impairment" means the damage, loss, or degradation of the acreage or functions of wetlands or the functions ~~and values~~ of state waters.

"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a phased development project that depend upon other phases of the project do not have independent utility. Portions of a phased development project that would be constructed even if the other phases are not built can be considered as separate single complete projects with independent public and economic utility.

"In-lieu fee ~~fund~~ program" means a ~~monetary fund~~ program operated by a nonprofit organization or governmental agency ~~which that~~ receives ~~financial contributions~~ moneys from persons impacting wetlands or streams pursuant to an authorized, permitted activity and ~~which that~~ expends the

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moneys received to provide consolidated compensatory mitigation for permitted wetland or stream impacts.

~~"Intake structure" means any portion of a withdrawal system used to withdraw surface water that is located within the surface water, such as, but not limited to, a pipe, culvert, hose, tube, or screen.~~

"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 (0.10 acre or 4,356 square feet) 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)" or "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.

"Legal name" means the full legal name of an individual, business, or other organization. For an individual, legal name means the first name, middle initial, last name, and suffix. For an entity authorized to do business in Virginia, the legal name means the exact name set forth in the entity's articles of incorporation, organization or trust, or formation agreement, as applicable.

~~"Major surface water withdrawal" means a surface water withdrawal of 90 million gallons per month (mgm) or greater.~~

"Minimization" means lessening impacts by reducing the degree or magnitude of the proposed action and its implementation.

~~"Minor surface water withdrawal" means a surface water withdrawal of less than 90 million gallons per month (mgm).~~

"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, or 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 U.S. Army Corps of Engineers (USACE) under 40 CFR Part 241 33 CFR Part 330 and, except where suspended by individual USACE Corps Districts, applicable nationwide.

"Nontidal wetland" means those wetlands other than tidal wetlands that are inundated or saturated by surface water 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, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act in 40 CFR 230.3(t). Wetlands generally include swamps, marshes, bogs, and similar areas.

"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.2-300 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, and 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; and 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.

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

"Open water" means an area that, during a year with normal patterns of precipitation, has standing water for sufficient duration to establish an ordinary high water mark. The term "open water" includes lakes and ponds but does not include ephemeral waters, stream beds, or wetlands.

"Ordinary high water" or "ordinary high water mark" means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear,

natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris [~~is~~] or other appropriate means that consider the characteristics of the surrounding areas.

"Out-of-kind compensatory mitigation" or "out-of-kind mitigation" means ~~compensatory mitigation~~ a measure that does not replace the same type of wetland or surface water as was impacted, but does replace lost wetland or surface water functions, ~~values, or beneficial uses~~ provide a water quality, habitat, or other desirable benefit.

"Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the stream bed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permanent flooding or impounding" means a permanent increase in the duration or depth of standing water on a land surface, such as from a dam. Permanent increases in duration or depth of standing water that result from extended-detention basins and enhanced extended-detention basins, when 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 when designed in accordance with local standards that, at a minimum, meet the DCR standards, are not considered to be permanent flooding and impounding.

"Permanent impacts" ~~are~~ means those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters or of the acreage or functions and values of a wetland.

"Permittee" means the person who holds a VWP individual or general permit.

"Permittee-responsible compensatory mitigation" or "permittee-responsible mitigation" means compensation or compensatory mitigation, as defined in this section, that is undertaken by the permittee, or an authorized agent or contractor, for which the permittee retains full responsibility.

"Person" means ~~one or more individuals, a~~ individual, corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

"Phased development" means more than one project proposed for a single piece of property or an assemblage of contiguous properties under consideration for development by the same person, or by related persons, that will begin and be completed at different times. Depending on the relationship between the projects, a phased development may be considered a single and complete project or each project may

be considered a single and complete project if each project has independent utility, as defined in this section.

"Plan view ~~sketch~~ drawing" means a scaled graph or plot that represents the view of an object as projected onto orthogonal planes. [~~For purposes of this~~] ~~regulation~~ [~~chapter, objects~~ Objects] may include, but are not limited to, structures, contours, or boundaries.

"Pollutant" means any substance, radioactive material, or heat ~~which that~~ 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.

~~"Potomac River Low Flow Allocation Agreement" means the agreement among the United States of America, the State of Maryland, the Commonwealth of Virginia, the District of Columbia, the Washington Suburban Sanitation Commission, and the Fairfax County Water Authority dated January 11, 1978, consented to by Congress in § 181 of the Water Resources Development Act of 1976, Public Law 94-587, as modified on April 22, 1986.~~

"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.

"Profile ~~sketch~~ drawing" means a scaled graph or plot that represents the side view of an object. [~~For purposes of this~~] ~~regulation~~ [~~chapter, objects~~ Objects] may include, but are not limited to, a surface water body or a portion of it, a man-made channel, an above-ground structure, a below-ground structure, a geographical feature, or the ground surface itself.

"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—Public and Formal Hearing

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~~Procedures (9VAC25-230) § 62.1-44.15:02 of the Code of Virginia.~~

~~"Public surface water supply withdrawal" means a withdrawal of surface water in Virginia or from the Potomac River for the production of drinking water, distributed to the general public for the purpose of, but not limited to, domestic use.~~

~~"Public water supply emergency" means a substantial threat to public health or safety due to insufficient public drinking water supplies caused by drought.~~

~~"Regional permit" means a general permit issued by the USACE U.S. Army Corps of Engineers under 40 CFR Part 241 33 CFR Part 330 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.~~

~~"Riprap" means a layer of nonerodible material such as stone or chunks of concrete.~~

~~"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.~~

~~"Section 401" means § 401 of the Clean Water Act, or 33 USC § 1341, as amended in 1987.~~

~~"Section for Cooperative Water Supply Operations on the Potomac (CO-OP)" means a section of the Interstate Commission on the Potomac River Basin designated by the Water Supply Coordination Agreement as responsible for coordination of water resources during times of low flow in the Potomac River.~~

~~"Scrub-shrub wetland" means a class of wetlands dominated by woody vegetation, excluding woody vines, approximately three to 20 feet (one to six meters) tall. The species include true shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions.~~

~~"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.~~

~~"Single and complete project" means the total project proposed or accomplished by a person, which also has independent utility as defined in this section. For linear projects, the single and complete project (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single water body) and to multiple~~

~~crossings of the same water body at separate and distinct locations. Phases of a project that have independent utility may each be considered single and complete.~~

~~"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.~~

~~"Stream bed" or "stream channel" means the substrate of a stream, as measured between the ordinary high water mark along each side of a stream. The substrate may consist of organic matter, bedrock, or inorganic particles that range in size from clay to boulders, or a combination of both. Areas contiguous to the stream bed, but outside of the ordinary high water mark along each side of a stream, are not considered part of the stream bed.~~

~~"Surface water" means all state waters that are not ground water groundwater as groundwater is defined in § 62.1-255 of the Code of Virginia.~~

~~"Surface water supply project" means a project that withdraws or diverts water from a surface water body for consumptive or nonconsumptive purposes thereby altering the hydrologic regime of the surface water body. Projects that do not alter the hydrologic regime or that alter the hydrologic regime but whose sole purpose is flood control or storm water management are not included in this definition.~~

~~"Surface water withdrawal" means a removal or diversion of surface water from its natural water course in Virginia or from the Potomac River.~~

~~"Suspend" or "suspension" means a decision by the board that stops the review or processing of a permit application or request to modify a permit or permit coverage until such time that information requested by the board is provided, reviewed, and deemed adequate.~~

~~"Temporary impacts" means those impacts to wetlands or other surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface water waters or of the functions and values of a wetland the permanent alteration or degradation of existing wetland acreage or functions. Temporary impacts include activities in which the ground impact area is restored to its preconstruction elevations and contours and elevations [] with topsoil from the impact area where practicable, such that previous wetland acreage and functions and values or surface water functions are restored.~~

~~"Tidal wetland" means vegetated and nonvegetated wetlands as defined in § 28.2-1300 of the Code of Virginia.~~

~~"Toxic pollutant" means any agent or material including, but not limited to, those listed under § 307(a) of the Water Pollution Prevention and Control 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.

"Undesirable plant species" means any species that invades, naturally colonizes, or otherwise dominates a compensatory mitigation site or mitigation bank ~~and may cause, such that it causes or contribute~~ contributes to the failure of the vegetative success criteria for a particular compensatory mitigation site ~~or, mitigation bank, or in-lieu fee program project, or it otherwise prohibits the restoration of the same vegetation cover type that was originally present.~~

~~"USACE" means the United States Army Corps of Engineers.~~

~~"VMRC" means the Virginia Marine Resources Commission.~~

"VWP general permit" means the general permit text, terms, requirements, and conditions set forth in a regulation that constitutes a VWP permit ~~for a~~ authorizing a specified category of activities.

"VWP permit" means an individual or general permit issued by the board under § 62.1-44.15:20 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~~ U.S. Environmental Protection Agency under § 303 of the Clean Water Act as defined at ~~9VAC25-260~~ in 9VAC25-260-10.

~~"Water Supply Coordination Agreement" means the agreement among the United States of America, the Fairfax County Water Authority, the Washington Suburban Sanitary Commission, the District of Columbia, and the Interstate Commission on the Potomac River Basin, dated July 22, 1982, which establishes agreement among the suppliers to operate their respective water supply systems in a coordinated manner and which outlines operating rules and procedures for reducing impacts of severe droughts in the Potomac River Basin.~~

"Watershed approach" means an analytical process for making compensatory mitigation decisions that support the sustainability or improvement of aquatic resources in a watershed and that ensures authorized impacts and mitigation have been considered on a watershed scale.

"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.

~~"Withdrawal system" means any device or combination of devices used to withdraw surface water, such as, but not~~

~~limited to, a machine, pump, pipe, culvert, hose, tube, screen, or fabricated concrete or metal structure.~~

9VAC25-210-45. ~~Wetland delineation~~ Surface waters delineations.

A. Wetlands. Each wetland delineation, including those for isolated wetlands, shall be conducted in accordance with the ~~USACE~~ U.S. Army Corps of Engineers (USACE) "Wetland Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" (Federal Manual) and any regional wetland supplements approved for use by USACE. ~~The~~ These Federal ~~Manual~~ Manuals shall be interpreted in a manner consistent with USACE guidance and the requirements of this ~~regulation~~ chapter, and any delineation guidance adopted by the board as necessary to ensure consistency with the USACE implementation of delineation practices. USACE regulatory guidance letters or Department of Environmental Quality policy or guidance may be used to supplement preparation of wetlands delineations.

B. Other surface waters. Delineations for surface waters other than wetlands may be conducted in accordance with USACE or DEQ policy or USACE or DEQ guidance and shall take into consideration the location of an ordinary high water mark, if [applicable present].

9VAC25-210-50. Prohibitions and requirements for VWP permits.

A. Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of ~~surface~~ state waters regulated under this chapter 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; 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.

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9VAC25-210-55. Statewide information requirements.

The board may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's discharge on the quality of state waters or (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a VWP permit or general permit coverage shall provide the information requested by the board.

9VAC25-210-60. Exclusions.

~~A. The [following] activities in this [subsection section] do not require a VWP permit but may require other permits under state and federal law. Upon request by the board, any person claiming one of these exclusions shall demonstrate to the satisfaction of the board that he qualifies for the exclusion. Exclusions pertaining to surface water withdrawals are established in 9VAC25-210-310.~~

~~1. Discharges of dredged or fill material into state waters, ~~excepting~~ except wetlands, which are addressed under a USACE Regional, General or Nationwide Permit, and for which no § 401 Water Quality Certificate is required.~~

~~2. Discharges of dredged or fill material into wetlands when addressed under a USACE Regional, General, or Nationwide Permit and that meet the provisions of subdivision 10 a of this subsection.~~

~~3. 2. Any discharge, other than an activity in a surface water governed by § 62.1-44.15:20 of the Code of Virginia, permitted of stormwater from municipal separate storm sewer systems or land disturbing activities authorized by 9VAC25-870, or the discharge of sewage, industrial wastes, or other wastes or any noxious or deleterious substances into surface waters that is authorized by a Virginia Pollutant Discharge Elimination System (VPDES) permit in accordance with 9VAC25-31 or a Virginia Pollution Abatement (VPA) permit in accordance with 9VAC25-32.~~

~~4. Any activity, other than an activity in a surface water governed by § 62.1-44.15:20 of the Code of Virginia, permitted by a Virginia Pollution Abatement (VPA) permit in accordance with 9VAC25-32.~~

~~5. Septic tanks, when authorized by a state Department of Health permit.~~

~~6. 3. Any activity permitted governed under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, unless state certification is required by § 401 of the Clean Water Act. State certification is waived if the activity meets the provisions of subdivision 10 a of this [subsection section]. The activity does not require a VWP permit pursuant to § 62.1-44.15:21 ~~H~~ G of the Code of Virginia.~~

~~7. 4. Normal residential gardening, and lawn and landscape maintenance in a wetland, or other similar activity, that is incidental to an occupant's ongoing residential use of~~

property and is of minimal ecological impact. The criteria governing this exclusion are set forth in the definition of "normal residential gardening and lawn and landscape maintenance" in 9VAC25-210-10.

~~5. Maintenance [, including emergency reconstruction of recently damaged parts] of currently serviceable structures, such as purpose-built stormwater and utility structures, transportation structures, dikes, groins, levees, dams, riprap breakwaters, causeways, or bridge abutments or approaches. Maintenance [includes the emergency reconstruction of recently damaged parts but] does not include modifications that change the character, scope, or size of the original design. If the original design is not available, the permittee shall submit the best available information on the design for consideration and approval by the board. In order to qualify for this exclusion, emergency reconstruction shall occur as soon as practicable after damage occurs.~~

~~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.~~

~~7. Flooding or back-flooding impacts to surface waters resulting from the construction of temporary sedimentation basins on a construction site when such structures are necessary for erosion and sediment control or stormwater management purposes.~~

~~8. Normal agriculture and silviculture activities in a wetland 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 this subdivision 8 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 (Fourth Edition, July 2002) 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 this subdivision 8 ~~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 that~~ have been constructed in accordance with applicable requirements of the Clean Water Act, and ~~which that~~ 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 (for example, 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, unless otherwise excluded or exempted by this [regulation chapter].

(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.

~~9. 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 exclusion, emergency reconstruction must occur within a reasonable period of time after damage occurs. Discharges of dredged or fill material into wetlands when addressed under a U.S. Army Corps of Engineers Regional, General, or Nationwide Permit and that meet the provisions of subdivision 10 a of this section.~~

10. Construction or maintenance of farm ponds or impoundments, stock ponds or impoundments, or irrigation ditches, or the maintenance (but not construction) of drainage ditches.

a. The exclusion for the construction and maintenance of farm or stock ponds and farm or stock impoundments applies to those structures that are operated for normal agricultural or silvicultural purposes, and are less than 25

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feet in height or create a maximum impoundment capacity smaller than 100 acre-feet.

b. The exclusion for the construction and maintenance of farm or stock ponds and farm or stock impoundments does not include the impacts associated with the withdrawal of surface water from, within, or behind such structures. A VWP permit may be required for the surface water withdrawal.

c. 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.

d. 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.

~~11. 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.~~

~~12.~~ 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, Fourth Edition, July 2002, 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, piped, 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 4VAC15-20-130 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 on-site or off-site 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.

~~B. The following surface water withdrawals are excluded from VWP permit requirements. Activities, other than the surface water withdrawal, which are contained in 9VAC25-210 50 and are associated with the construction and operation of the surface water withdrawal, are subject to VWP permit requirements unless excluded by subsection A of this section. Other permits under state and federal law may be required.~~

1. Any surface 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. To qualify for this exclusion, the surface water withdrawal shall be deemed to be in existence on July 1, 1989, if there was an actual withdrawal on or before that date that has not been abandoned.

a. Abandonment of a surface water withdrawal. A surface water withdrawal shall be deemed to be abandoned if the owner of the withdrawal system (i) notifies the DEQ in writing that the withdrawal has been abandoned or (ii) removes or disables the withdrawal system with the intent to permanently cease such withdrawal. Transfer of ownership or operational control of the withdrawal system, a change in use of the water, or temporary cessation of the withdrawal shall not be deemed evidence of abandonment. The notification shall be signed by the owner of record or shall include evidence satisfactory to the DEQ that the signatory is authorized to submit the notice on behalf of the owner of record. Evidence may include, but shall not be limited to, a resolution of the governing body of the owner or corporate minutes.

b. Information to be furnished to the DEQ. Each owner or operator of a permanent withdrawal system engaging in a withdrawal that is subject to this exclusion shall provide the DEQ the estimated maximum capacity of the intake structure, the location of the existing intake structure and any other information that may be required by the board. Each owner or operator of a temporary withdrawal system engaging in a withdrawal that is subject to this exclusion, where the purpose of the withdrawal is for agriculture, shall provide to the DEQ the maximum annual surface water withdrawal over the last 10 years. The information shall be provided within one year of the date that notice of such request is received from the DEQ and shall be updated when the maximum capacity of the existing intake structure changes. The information provided to the DEQ shall not constitute a limit on the exempted withdrawal. Such information shall be utilized by the DEQ and board to protect existing beneficial uses and shall be considered when evaluating applications for new withdrawal permits.

2. Any surface water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal 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.

3. Any existing lawful unpermitted surface water withdrawal initiated between July 1, 1989, and July 25, 2007, which is not subject to other exclusions contained in this section. These withdrawals shall be excluded from

permit requirements only if they comply with the conditions in this subdivision. Regardless of complying with the conditions of this subdivision, these withdrawals shall require a permit for any increased withdrawal amount.

a. Information to be furnished to the DEQ. Each owner or operator of a withdrawal system engaging in a withdrawal that is subject to this exclusion shall provide the DEQ with copies of water withdrawal reports required by Water Withdrawal Reporting Regulations (9VAC25-200) documenting the largest 12 consecutive month withdrawal that occurred in the 10 years prior to July 25, 2007. In the case of unreported agricultural surface water withdrawals, estimates of withdrawals will be accepted that are based on one of the following:

(1) The area irrigated, depth of irrigation, and annual number of irrigations; pumping capacity and annual pumping time; annual energy consumption for pumps; number and type of livestock watered annually; number and type of livestock where water is used for cooling purposes; or

(2) Other methods approved by the board for the largest 12 consecutive month withdrawal that occurred in the 10 years prior to July 25, 2007. The board shall evaluate all estimates of surface water withdrawals based on projected water demands for crops and livestock as published by the Virginia Cooperative Extension Service, the United States Natural Resources Conservation Service, or other similar references and make a determination whether they are reasonable. In all cases only reasonable estimates will be used to document the excluded withdrawal amount.

b. The information noted in subdivision 3 a of this subsection shall be provided within 12 months of July 25, 2007. The information provided to the DEQ shall constitute a limit on the withdrawal that is excluded from permit requirements; any increase in that withdrawal above the limited amount shall require an application for a permit for the withdrawal system. Information regarding excluded withdrawal amounts shall be utilized by the DEQ and board to protect existing beneficial uses and shall be considered when evaluating applications for new withdrawal permits.

e. All owners and operators of surface water withdrawals excluded from permit requirements by this section shall annually report withdrawals as required by Water Withdrawal Reporting Regulations (9VAC25-200). Failure to file annual reports either reporting actual withdrawals or the fact that withdrawals did not occur may result in the owner or operator being required to file an application and receive a permit prior to resuming any withdrawal.

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~~4. Agricultural surface water withdrawals from nontidal waters that total less than one million gallons in a single month.~~

~~5. Surface water withdrawals from nontidal waters for all other purposes that total less than 10,000 gallons per day.~~

~~6. Surface water withdrawals from tidal waters for nonconsumptive uses.~~

~~7. Agricultural surface water withdrawals from tidal waters that total less than 60 million gallons in a single month.~~

~~8. Surface water withdrawals from tidal waters for all other consumptive purposes that total less than two million gallons per day.~~

~~9. Surface water withdrawals for firefighting or for the training activities related to firefighting, such as dry hydrants and emergency surface water withdrawals.~~

~~10. Surface water withdrawals placed into portable containers by persons owning property on, or holding easements to, riparian lands.~~

~~11. Surface water withdrawals for the purposes of hydrostatic pressure testing of water tight containers, pipelines, and vessels.~~

~~12. Surface water withdrawals for normal single family home residential gardening, lawn, and landscape maintenance.~~

~~13. Surface water withdrawals that are located on a property, such that the withdrawal returns to the stream of origin; not more than half of the instantaneous flow is diverted; not more than 1,000 feet of stream channel separate the withdrawal point from the return point; and both banks of the affected stream segment are located within that property boundary.~~

~~14. Surface water withdrawals from quarry pits, such that the withdrawal does not alter the physical, biological, or chemical properties of surface waters connected to the quarry pit.~~

~~15. Surface water withdrawals from a privately owned agriculture pond, emergency water storage facility, or other water retention facility, provided that such pond or facility is not placed in the bed of a perennial or intermittent stream or wetland. Surface water withdrawals from such facilities constructed in beds of ephemeral streams are excluded from permit requirements.~~

~~C. DEQ may require any owner or operator of a withdrawal system excluded from permit requirements by subdivisions B 3 through 15 of this section to cease withdrawals and file an application and receive a permit prior to resuming any withdrawal when the board's assessment indicates that a withdrawal, whether individually or in combination with other existing or proposed projects:~~

~~1. Causes or contributes to, or may reasonably be expected to cause or contribute to, a significant impairment of the state waters or fish and wildlife resources;~~

~~2. Adversely impacts other existing beneficial uses; or~~

~~3. Will cause or contribute to a violation of water quality standards.~~

9VAC25-210-65. Administrative continuance.

A. Administrative continuance provisions shall apply to all VWP permits.

B. When the permittee has submitted a timely and complete application for reissuance of an existing VWP individual permit, but through no fault of the permittee, the board does not reissue or reissue with conditions a VWP individual permit [] or the board does not provide notice of its tentative decision to deny the application before an existing VWP individual permit [expires], the conditions of the expiring VWP individual permit [may shall] be administratively continued in full force and effect until the effective date of a reissued permit [or the date on which the board denies the application]. Complete application requirements for a VWP individual permit are located in 9VAC25-210-80 and 9VAC25-210-340. Timely application shall be a minimum of 180 days for an individual permit or a minimum of 270 days for an individual permit for a surface water withdrawal, unless otherwise specified in the existing permit.

C. Administrative continuance of a specific VWP general permit shall be in accordance with the corresponding VWP general permit regulation.

9VAC25-210-70. 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 laws or regulations.

Part II

VWP Permit Application and Development

9VAC25-210-75. Preapplication procedures for a new or expanded VWP permit for major surface water withdrawals. (Repealed.)

~~A. Preapplication review panel. At the request of an applicant for a surface water supply project, a preapplication review panel shall be convened prior to submission of a VWP application upon request by a potential applicant to the Department of Environmental Quality. The preapplication review panel shall assist potential applicants that are proposing surface water supply projects with the early identification of issues related to the protection of beneficial instream and offstream uses of state waters and the identification of the affected stream reach. The DEQ shall notify the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Virginia Department~~

of Game and Inland Fisheries, the Virginia Department of Conservation and Recreation, the Virginia Department of Health, the Corps of Engineers, the U.S. Fish and Wildlife Service, the Environmental Protection Agency and any other appropriate local, state, and federal agencies of the preapplication review panel request. These agencies shall participate to the extent practicable in the preapplication review panel by providing information and guidance on the potential natural resource impacts and regulatory implications of the options being considered by the applicant and shall provide comments within 60 days of the initial meeting of the preapplication panel.

~~B. Preapplication public notice. For new or expanded surface water supply projects requiring an individual VWP permit, a potential applicant shall provide information on the project, shall provide an opportunity for public comment on the proposed project, and shall assist in identifying public concerns or issues prior to filing a VWP individual permit application.~~

~~1. Except as provided in this subsection, the potential applicant shall provide for publication of notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the surface water supply project is proposed to be located.~~

~~2. If requested by any person, the potential applicant shall hold at least one public information meeting. Notice of any public information meeting held pursuant to this subsection shall be provided at least 14 days prior to the public information meeting date and shall be published in the same manner as required in subdivision 1 of this subsection. A potential applicant shall submit the notice to the DEQ for posting on the DEQ website. At a minimum, any notice required by this subsection shall include:~~

- ~~a. A statement of the potential applicant's intent to apply for a VWP permit for a surface water supply project;~~
- ~~b. The proposed location of the surface water supply project;~~
- ~~c. Information on how the public may request a public information meeting or in the alternative, the date, time and location of the public information meeting;~~
- ~~d. The name, address and telephone number of the potential applicant, or an authorized representative who can answer questions or receive comments on the proposed surface water supply project; and~~
- ~~e. A statement of how any oral or written public comments will be used.~~

~~3. In accordance with the provisions of 9VAC25-780-50 C 11 and 9VAC25-780-150, a potential applicant shall not be required to publish public notice or provide an opportunity for a public information meeting if a public meeting has been held within two years prior to the submittal of an application for a VWP permit on a local or regional water supply plan, which includes the proposed project.~~

4. The potential applicant shall maintain a list of persons and their addresses making comment and shall make a good faith effort to notify commenters, at the address provided by the commenter, when the public notice for the draft VWP individual permit is available.

9VAC25-210-80. Application for a VWP permit.

A. Application for a VWP Permit. Any person who is required to obtain a VWP permit, except those persons applying for a VWP permit for a minor surface water withdrawal or an emergency VWP permit for a public water supply emergency, shall submit a complete VWP permit application to ~~DEQ~~ the Department of Environmental Quality through the most current Joint Permit Application procedures, as established within each type of Joint Permit Application (JPA). The Virginia Department of Transportation (VDOT) may use its monthly Interagency Coordination Meeting (IACM) process for submitting JPAs. There shall be no commencement of any activity subject to [~~the VWP permit program regulation~~ this chapter] prior to the issuance of a VWP permit or granting VWP general permit authorization coverage.

B. Informational requirements for a ~~VWP Permit Application, except applications for minor surface water withdrawals or all VWP individual permit applications are identified in this subsection with the exception of applications for emergency VWP permits to address a public water supply emergency, for which the information required in 9VAC25-210-340 C shall be submitted. In addition to the information in this subsection, applications involving a surface water withdrawal or a Federal Energy Regulatory Commission (FERC) license or relicense associated with a surface water withdrawal shall also submit the information required in 9VAC25-210-340 B.~~

1. A complete application for a VWP individual permit application, at a minimum, consists of the following information [~~, if applicable to the project~~]:

- a. Name [~~Legal~~ The applicant's legal] name, mailing address, telephone number, and if applicable, electronic mail address and fax number [~~of applicant~~].
- b. If different from applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number of property owner.
- c. If applicable, name of the authorized agent agent's name, mailing address, telephone number, and if applicable, fax number and electronic mail address.
- d. Name of the impacted waterbody or waterbodies, or receiving waters, as applicable, at the project site.
- e. Name of the city or county where the project occurs.
- f. 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 name of the project; the type of activity to be conducted; any physical alteration to surface waters; and all impacts,

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permanent and temporary, associated with the project. Wetland impacts should be quantified and identified 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. Stream impacts should be quantified and identified based on geomorphological types.

g. Amount of wetland impacts (by type in acres or square feet), stream impacts (in linear feet), and in square feet for purposes of calculating the permit application fee, when applicable, and open water impacts (by type in square feet or acres, as applicable).

h. Materials assessment. If dredged material from on site areas or fill material from off site areas is involved, the applicant must provide evidence or certification that the material is free from toxic contaminants prior to disposal, 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.

i. Proposed construction schedule. An estimate of the construction timeframe for the project will be used to determine the VWP permit term.

j. 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. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

k. The 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), beneficial uses evaluation for instream flow and surface water withdrawal projects (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 (1.0 acre or 43,560 square feet), the assessment of functional values of the affected surface waters must include information on: surrounding land uses and cover types; nutrient, sediment, and pollutant trapping; flood control and flood storage capacity; erosion control and shoreline stabilization; groundwater recharge and discharge; aquatic and wildlife habitat; and unique or critical habitats. Functional values may also include: water quality, floodflow desynchronization, nutrient import or export, stormwater retention or detention, recreation,

education, aesthetics, or other beneficial uses. 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.

(2) Evaluation of beneficial uses for instream flow and surface water withdrawal projects includes 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.

(3) 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.

(4) A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9VAC25-210-45, 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.

(5) The plan of mitigation for 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 functions or stream functions and water quality benefits.

(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 9VAC25-210-115).

(b) In order for an application to be deemed complete, a conceptual wetland compensatory mitigation plan must be submitted for unavoidable permanent impacts to wetlands, unless dependent solely on mitigation banking or monetary contribution to an in lieu fee fund, and shall include at a minimum: the goals and objectives in terms of replacement of wetland acreage and functions; a detailed location map (for example, a United States Geologic Survey topographic quadrangle map), including latitude and longitude (to the nearest second) and the hydrologic unit code (HUC) at the center of the site; a description of the surrounding land use; 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 surface water areas on the proposed site(s); a conceptual grading plan; a conceptual planting scheme, including suggested plant species and zonation of each vegetation type proposed; a description of existing soils, including general information on both topsoil and subsoil conditions, permeability, and the need for soil amendments; a draft design of any water control structures; inclusion of buffer areas; a description of any structures and features necessary for the success of the site; the schedule for compensatory mitigation site construction; and proposed deed restriction language for protecting the compensation site or sites, including all surface waters and buffer areas within its boundaries, in perpetuity.

(c) In order for an application to be deemed complete, a conceptual stream compensatory mitigation plan must be submitted for unavoidable permanent impacts to streams, unless dependent solely on mitigation banking or monetary contribution to an in lieu fee fund, and shall include at a minimum: the goals and objectives in terms of water quality benefits and replacement of stream functions; a detailed location map (for example, a United States Geologic Survey topographic quadrangle map), including the latitude and longitude (to the nearest second) and the hydrologic unit code (HUC) at the center of the site; a description of the surrounding land use; the proposed stream segment restoration locations, including plan view and cross section sketches; the stream deficiencies that need to be addressed; the proposed restoration measures to be employed, including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; reference stream data, if available; inclusion of buffer areas; schedule for restoration activities; and proposed deed restriction language for protecting the compensation site or sites, including all surface waters and buffer areas within its boundaries, in perpetuity.

(d) Compensation for open water impacts may be required, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.

(e) Any compensation plan shall include measures for the control of undesirable species.

(f) 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.

(g) Any compensation plan proposing the purchase or use of mitigation banking credits shall include: (i) the name of the proposed mitigation bank and the HUC in which it is located; (ii) the number of credits proposed to be purchased or used; and (iii) certification from the bank owner of the availability of credits.

(h) 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 (see 9VAC25-210-116 B).

1. Detailed project location map. The detailed location map (for example, a United States Geologic Survey topographic quadrangle map) including the project boundary. 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, ordinary high water elevation, impact limits, and location and dimension of all structures in impact areas. Profile sketches with the above information shall be required as appropriate to demonstrate minimization of impacts.

n. Application processing fee. The applicant will be notified by the board as to the appropriate fee for the project in accordance with 9VAC25-20. 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 instream flow requirements, major surface water withdrawals 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;

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b. The average daily withdrawal, the maximum daily and instantaneous withdrawals and information on the variability of the demand by season;

c. The consumptive use and the average daily return flow of the proposed project and the location of the return flow;

d. Information on flow dependent beneficial uses along the affected stream reach;

e. Information on the aquatic life along the affected stream reach, including species and habitat requirements;

f. Information on how the proposed withdrawal will alter flows along the affected stream reach;

g. Information on the proposed use of and need for the surface water and information on how demand for surface water was determined (for example, per capita use, population growth rates, new uses, changes to service areas, and if applicable; acreage irrigated and evapotranspiration effects). If during the water supply planning process, the need for the withdrawal was established, the applicant may submit said planning process information, provided that the submittal address all requirements of 9VAC25-210-115 B. The board shall deem such a submittal as meeting the requirements of this subsection. For public surface water supply withdrawal projects see also 9VAC25-780-100 and 9VAC25-780-130;

h. For new or expanded surface water supply projects, a summary of the steps taken to seek public input as required by 9VAC25-210-75 and an identification of the issues raised during the course of the public information meeting process; and

i. For surface water withdrawals, other than public water supplies, information to demonstrate that alternate sources of water supply are available to support the operation of the facility during times of reduced instream flow.

C. Applications for new or expanded minor surface water withdrawals, using the DEQ Application for New or Expanded Minor Surface Water Withdrawals Initiated On or After July 25, 2007, shall include:

1. Name, mailing address, telephone number, and if applicable, fax number and electronic mail address of applicant;

2. If different from applicant, name, mailing address, telephone number, and if applicable, fax number and electronic mail address of property owner;

3. If applicable, name of authorized agent, mailing address, telephone number, and if applicable, fax number and electronic mail address;

4. Name of waterbody or waterbodies, or receiving waters, as applicable;

5. Documentation of all withdrawals associated with the application, including, but not limited to, the amount of the requested surface water withdrawal, a description of the proposed intake structure, and a schedule of the proposed withdrawal that describes any seasonal variations in withdrawal patterns;

6. Locations of all withdrawals associated with the application shown on a detailed location map (for example, a United States Geological Survey 7.5 minute topographic map or similar maps of reasonable detail to show land and water features);

7. Name of the city or county where the project occurs;

8. Signed and dated signature page (electronic submittals containing the original signature page, such as that contained in a scanned document file are acceptable);

9. Application processing fee in accordance with 9VAC25; and

10. Any application for a minor surface water withdrawal for a public surface water supply withdrawal project shall provide an evaluation of project alternatives as required in 9VAC25-210-115.

D. Applications for an Emergency Virginia Water Protection Permit to address a public water supply emergency:

1. Applications for an Emergency Virginia Water Protection Permit shall include the information noted below in subdivisions a through o. The JPA may be used for emergency applications purposes, provided that all of the information below is included:

a. Name, mailing address, telephone number, and if applicable, fax number and electronic mail address of applicant;

b. If different from applicant, name, mailing address, telephone number, and if applicable, fax number and electronic mail address of property owner;

c. If applicable, name of authorized agent, mailing address, telephone number, and if applicable, fax number and electronic mail address;

d. Name of waterbody or waterbodies, or receiving waters, as applicable;

e. Name of the city or county where the project occurs;

f. Signed and dated signature page (electronic submittals containing the original signature page, such as that contained in a scanned document file are acceptable);

g. Application processing fee in accordance with 9VAC25-20;

h. The drainage area, the average annual flow and the median monthly flows at the withdrawal point, and historical low flows if available;

i. Information on the aquatic life along the affected stream reach, including species and habitat requirements;

j. ~~Recent and current water use including monthly water use in the previous calendar year and weekly water use in the previous six months prior to the application. The application shall identify the sources of such water and also identify any water purchased from other water suppliers;~~

k. ~~A description of the severity of the public water supply emergency, including for reservoirs, an estimate of days of remaining supply at current rates of use and replenishment; for wells, current production; for intakes, current streamflow;~~

l. ~~A description of mandatory water conservation measures taken or imposed by the applicant and the dates when the measures were implemented; for the purposes of obtaining an Emergency Virginia Water Protection Permit, mandatory water conservation measures shall include, but not be limited to, the prohibition of lawn and landscape watering, vehicle washing, the watering of recreation fields, refilling of swimming pools, the washing of paved surfaces;~~

m. ~~An estimate of water savings realized by implementing mandatory water conservation measures;~~

n. ~~Documentation that the applicant has exhausted all management actions that would minimize the threat to public welfare, safety and health and will avoid the need to obtain an emergency permit, and that are consistent with existing permit limitations; and~~

o. ~~Any other information that demonstrates that the condition is a substantial threat to public health or safety.~~

2. ~~Within 14 days after the issuance of an Emergency Virginia Water Protection Permit, the permit holder shall apply for a VWP permit under the other provisions of this regulation.~~

E. ~~Additional information. The board shall require additional information if needed to evaluate compliance with this chapter.~~

d. ~~Project name and proposed project schedule. This schedule will be used to determine the VWP permit term.~~

e. ~~The following information for the project site location, and any related permittee-responsible compensatory mitigation site [,if applicable]:~~

(1) ~~The physical street address, nearest street, or nearest route number; city or county; zip code; and if applicable, parcel number of the site or sites.~~

(2) ~~Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.~~

(3) ~~The latitude and longitude to the nearest second at the center of the site or sites.~~

(4) ~~The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site or sites.~~

(5) A detailed map depicting the location of the site or sites, including the project boundary [and existing preservation areas on the site or sites]. The map (e.g., a [United States U.S.] Geologic Survey topographic quadrangle map) should be of sufficient detail to easily locate the site or sites for inspection.

~~[(6) GIS compatible shapefile or shapefiles of the project boundary and existing preservation areas on the site or sites, unless otherwise approved by of coordinated with DEQ. The requirement for a GIS compatible shapefile or shapefiles may be waived by DEQ on a case-by case basis.]~~

f. A narrative description of the project, including project purpose and need.

g. An alternatives analysis for the proposed project detailing the specific on-site and off-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific on-site and off-site measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. The analysis shall demonstrate to the satisfaction of the board that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.

h. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters and any physical alteration to surface waters. Surface water impacts shall be identified as follows:

(1) Wetland impacts identified according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) [;] and for each classification [,] the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

(2) Individual stream impacts [(i)] quantified [by length] in linear feet to the nearest whole number and [then cumulatively summed, by average width in feet to the nearest whole number; (ii)] quantified in square feet to the nearest whole number;] and [(iii)] when

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compensatory mitigation is required, the impacts identified according to the assessed type using the [~~United~~ Unified] Stream Methodology.

(3) Open water impacts identified according to type; and for each type, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

(4) A copy of the approved jurisdictional determination [~~, if when~~] available, or [when unavailable, (i)] the preliminary jurisdictional determination from the U.S. Army Corps of Engineers (USACE), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ [~~;~~] or [(ii)] other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable.

(5) A delineation map [~~and GIS compatible shapefile or shapefiles of the delineation map~~] that [(i)] depicts the geographic area or areas of all surface water boundaries delineated in accordance with 9VAC25-210-45 and confirmed in accordance with the jurisdictional determination process; [(ii)] identifies such areas in accordance with subdivisions 1 h (1) [~~through, 1 h (2), and] 1 h (3) of this subsection; and [(iii)] quantifies and identifies any other surface waters according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) or similar terminology [~~, if applicable~~]. [~~The requirement for a delineation map or GIS compatible shapefile or shapefiles may be waived by DEQ on a case-by-case basis.~~]~~

i. Plan view drawing or drawings of the project site sufficient to assess the project, including at a minimum the following:

(1) North arrow, graphic scale, and existing and proposed topographic or bathymetric contours.

(2) Limits of proposed impacts to surface waters.

(3) Location of all existing and proposed structures.

(4) All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface waters and waterway name, if designated; ebb and flood or direction of flow; ordinary high water mark in nontidal areas; tidal wetlands boundary; and mean low water and mean high water lines in tidal areas.

(5) The limits of Chesapeake Bay [~~Resources Resource~~] Protection Areas (RPAs) as field-verified by the applicant [~~,] and [~~;~~] if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).~~

(6) The limits of any areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas).

j. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings of each proposed impact area includes at a minimum a graphic scale, existing structures, existing and proposed elevations, limits of surface water areas, ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal areas, tidal wetland boundary, mean low water and mean high water lines in tidal areas, impact limits, and location of all existing and proposed structures. Profile drawing or drawings with this information may be required on a case-by-case basis to demonstrate minimization of impacts. Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond the limits of the proposed impact.

k. Materials assessment. Upon request by the board, the applicant shall provide evidence or certification that the material is free from toxic contaminants prior to disposal or that the dredging activity will not cause or contribute to a violation of water quality standards during dredging. 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.

l. An assessment of potential impacts to federal [~~or~~ and] state listed threatened or endangered species, including any correspondence or documentation from federal or state resource agencies addressing potential impacts to listed species.

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

(1) If permittee-responsible compensation is proposed for wetland impacts, a conceptual wetland compensatory mitigation plan shall be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of replacement of wetland acreage [~~or~~ and] functions; (ii) a detailed location map including latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) a hydrologic analysis including a draft water budget for nontidal areas based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year; (v) groundwater

elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; (vi) wetland delineation confirmation, data sheets, and maps for existing surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii) a conceptual planting scheme including suggested plant species and zonation of each vegetation type proposed; (ix) a description of existing soils including general information on both topsoil and subsoil conditions, permeability, and the need for soil amendments; (x) a draft design of water control structures; (xi) inclusion of buffer areas; (xii) a description of any structures and features necessary for the success of the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv) measures for the control of undesirable species.

(2) If permittee-responsible compensation is proposed for stream impacts, a conceptual stream compensatory mitigation plan shall be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of water quality benefits and replacement of stream functions; (ii) a detailed location map including the latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) the proposed stream segment restoration locations including plan view and cross-section drawings; (v) the stream deficiencies that need to be addressed; (vi) data obtained from a DEQ-approved, stream impact assessment methodology such as the Unified Stream Methodology; (vii) the proposed restoration measures to be employed including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; (viii) reference stream data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities; and (xi) measures for the control of undesirable species.

(3) For any permittee-responsible compensatory mitigation, the conceptual compensatory mitigation plan shall also include a draft of the intended protective mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but not limited to, a conservation easement held by a third party in accordance with the Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or the Virginia Open-Space Land Act (§ [~~10.1-7100~~ 10.1-1700] et seq. of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other protective instrument. The draft intended protective mechanism shall contain the information in subdivisions (a), (b), and (c) of this subdivision B 1 m (3) or in lieu thereof shall describe the intended protective mechanism or mechanisms that contain or contains the information required as follows:

(a) A provision for access to the site;

(b) The following minimum restrictions: no ditching, land clearing, or discharge of dredge or fill material, and no activity in the area designated as compensatory mitigation area with the exception of maintenance; corrective action measures; or DEQ-approved activities described in the approved final compensatory mitigation plan or long-term management plan; and

(c) A long-term management plan that identifies a long-term steward and adequate financial assurances for long-term management in accordance with the current standard for mitigation banks and in-lieu fee program sites, except that financial assurances will not be necessary for permittee-responsible compensation provided by government agencies on government property. If approved by DEQ, permittee-responsible compensation on government property and long-term protection may be provided through federal facility management plans, integrated natural resources management plans, or other alternate management plans submitted by a government agency or public authority.

(4) Any compensatory mitigation plan proposing the purchase of mitigation bank or in-lieu fee program credits shall include the number and type of credits proposed to be purchased and documentation from the approved bank or in-lieu fee program sponsor of the availability of credits at the time of application.

n. A written description and a graphical depiction identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensatory mitigation areas located within the proposed project boundary or permittee-responsible compensatory mitigation areas, that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas). Such description and a graphical depiction shall include the nature of the prohibited activities within the protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), as additional state or local requirements may apply if the project is located within an RPA.

[~~e. Information for (i) all riparian landowners located within one half mile downstream from each proposed impact area in nontidal areas and one quarter mile upstream and downstream in tidal areas and (ii) all landowners located adjacent to proposed impact areas. The information must include, at a minimum, the following: property owner's name, mailing address (street name, city, state and zip code), property parcel number or numbers used by the locality, and a map depicting those~~

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~~property parcels. The requirements for riparian landowner information may be waived by DEQ on a case-by-case basis.~~

~~p. o.] Signature page that has been signed, dated, and certified by the applicant in accordance with 9VAC25-210-100. If the applicant is a business or other organization, the signature must be made by an individual with the authority to bind the business or organization, and the title of the signatory must be provided. The application signature page, either on the copy submitted to the Virginia Marine Resources Commission or to DEQ, must have an original signature. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.~~

[~~2. Reserved.~~]

~~[q. p.] Permit application fee. The applicant will be notified by the board as to the appropriate fee for the project [in accordance with 9VAC25-20]. The board will continue to process the application, but the fee must be received prior to release of a draft VWP permit.~~

[~~2. Reserved.~~]

C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ. When required, the method selected for the analysis shall assess water quality or habitat metrics and shall be coordinated with DEQ in advance of conducting the analysis.

1. No analysis shall be required when:

a. Wetland impacts per each single and complete project total 1.00 acre or less; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at standard mitigation ratios of 2:1 [for] forest, 1.5:1 [for] scrub-shrub, and 1:1 [for] emergent, or higher.

2. Analysis shall be required when wetland impacts per each single and complete project total 1.01 acres or more, and when any of the following applies:

a. The proposed compensatory mitigation consists of permittee-responsible compensatory mitigation, including water quality enhancements as replacement for wetlands; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at less than the standard mitigation ratios of 2:1 [for] forest, 1.5:1 [for] scrub-shrub, and 1:1 [for] emergent.

~~F. D. Incomplete application. Where an application is not accepted as complete by the board within 15 days of receipt, the board shall require the submission of additional information from the applicant; and may suspend processing of any application until such time as the applicant has supplied the requested information and the board considers the application complete. Further, where~~ 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, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application for purpose of reviews, review but shall not require an additional notice or an additional permit application fee. An incomplete permit application may be administratively withdrawn from processing by the board for failure to provide the required information after 180 60 days from the date that of the original permit application was received latest written information request made by the board for failure to provide required information. An applicant may request a suspension of application review by the board. A submission by the applicant making such a request shall not preclude the board from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee and may be subject to additional noticing requirements.

9VAC25-210-90. Conditions applicable to all VWP permits.

A. Duty to comply. The permittee shall comply with all conditions and limitations 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, toxic standards, and prohibitions. Any VWP permit violation or noncompliance is a violation of the law, Clean Water Act and State Water Control Law and is grounds for enforcement action, VWP permit termination, VWP permit revocation, VWP permit 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 VWP permit which that may have a reasonable likelihood of adversely affecting human health or the environment.

D. Inspection and entry. Upon presentation of credentials, the permittee shall allow the board or any duly authorized agent of the board, at reasonable times and under reasonable circumstances, to conduct the actions listed in this section. 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.

1. Enter upon 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.

E. 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, maps, conceptual reports, and other relevant information shall be submitted as required by the board prior to commencing construction.

F. 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 permit 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 as appropriate:

- a. The date, exact place and time of sampling or measurements;
- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

G. Duty to reapply. Any permittee desiring to continue a previously permitted activity after the expiration date of the VWP permit shall apply for and obtain a new permit or, if

applicable, shall request an extension in accordance with 9VAC25-210-180.

9VAC25-210-100. Signatory requirements.

A. Application. Any application for a VWP permit under this chapter ~~must~~ shall bear the applicant's signature or the signature of a person acting in the applicant's behalf, with the authority to bind the applicant. Electronic submittals containing the ~~original signature~~ original signature page, such as that contained in a scanned document file, are acceptable.

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.
 - 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 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."

9VAC25-210-110. Establishing applicable standards, limitations, or other VWP permit conditions.

A. In addition to the conditions established in 9VAC25-210-90 and 9VAC25-210-100, and for surface water withdrawals in 9VAC25-210-370, each VWP permit shall include conditions meeting the ~~following~~ requirements established in this section where applicable;.

A. Conditions applicable to surface water withdrawals:

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~~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 surface water may be withdrawn at certain times and conditions that require water conservation and reductions in water use.~~

~~a. In the development of conditions that limit the volume and rate at which surface water may be withdrawn, consideration shall be given to the seasonal needs of water users and the seasonal availability of surface water flow.~~

~~b. Consideration shall also be given to the affected stream reach and the amount of water that is put to a consumptive use in the process.~~

~~c. In the development of instream flow conditions for new withdrawals, the board shall take into consideration the combined effect on the hydrologic regime within an affected stream reach due to consumptive water uses associated with:~~

~~(1) All existing permitted withdrawals;~~

~~(2) The total amount of withdrawals excluded from VWP permit requirements; and~~

~~(3) Any other existing lawful withdrawals.~~

~~d. VWP Permits for surface water withdrawals, other than public water supplies, shall identify how alternate sources of water supply will be made available to support the operation of the permitted facility during times when surface water withdrawals will be curtailed due to instream flow requirements or shall provide for modification of the operation of the facility to assure compliance with permit conditions. Such modifications may include, but are not limited to, termination or reduction of activities at the facility that are dependent on the permitted withdrawal, increase capacity to capture and store higher flows or implementation of other potential management options.~~

~~2. VWP permits issued for surface water withdrawals from the Potomac River between the Shenandoah River confluence and Little Falls shall contain a condition that requires the permittee to reduce withdrawals when the restriction or emergency stage is declared in the Washington Metropolitan Area under the provisions of the Potomac River Low Flow Allocation Agreement; or when the operating rules outlined by the Drought Related Operations Manual for the Washington Metropolitan Area Water Suppliers, an attachment to the Water Supply Coordination Agreement, are in effect. The department, after consultation with the Section for Cooperative Water Supply Operations on the Potomac (CO-OP) shall direct~~

~~the permittee as to when, by what quantity and for what duration withdrawals shall be reduced.~~

~~3. New or expanded minor surface water withdrawals. The board may issue permits for new or expanded minor surface water withdrawals after July 25, 2007, which are not excluded from the requirements of this chapter by 9VAC25-210-60, based on the following criteria:~~

~~a. The amount of the surface water withdrawal is limited to the amount of water that can be put to beneficial use.~~

~~b. Based on the size and location of the surface water withdrawal, the withdrawal is not likely to have a detrimental impact on existing instream or off stream uses.~~

~~c. Based on an assessment by the board, this withdrawal, whether individually or in combination with other existing or proposed projects, does not cause or contribute to, or may not reasonably be expected to cause or contribute to:~~

~~(1) A significant impairment of the state waters or fish and wildlife resources;~~

~~(2) Adverse impacts on other existing beneficial uses; or~~

~~(3) A violation of water quality standards.~~

~~d. In cases where the board's assessment indicates that criteria contained subdivision 3 b or c of this subsection are not met, the board may:~~

~~(1) Issue a permit with any special conditions necessary to assure these criteria are met, or~~

~~(2) Require the applicant to apply for a VWP permit as described in 9VAC25-210-80 A and B. Such applications shall be subject to all applicable requirements contained in this regulation.~~

~~B. Water quality standards and state requirements. The VWP permit shall include requirements to comply with all appropriate provisions of state laws and regulations.~~

~~C. Toxic pollutants.~~

~~1. 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.~~

~~2. 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.

D. Monitoring requirements as conditions of VWP permits may include but are not limited to:

1. 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;
2. 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;
3. Applicable reporting requirements based upon the impact of the regulated activity on water quality; and
4. Requirements to report monitoring results with a frequency dependent on the nature and effect of the regulated activity.

E. ~~Best Management Practices~~ management practices (BMPs). The VWP permit may require the use of BMPs to control or abate the discharge of pollutants.

F. 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.

G. 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 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.

9VAC25-210-115. ~~Evaluation of project alternatives.~~ (Repealed.)

~~A. When a proposed activity involves a major surface water withdrawal, public surface water supply withdrawal project, or alteration of instream flows, the applicant shall first identify the purpose of the proposed project. In identifying the project purpose, the applicant shall provide a narrative describing the water supply issues that form the basis of the proposed project purpose.~~

~~B. When a proposed activity involves a major surface water withdrawal, a public surface water supply withdrawal project, or the alteration of instream flows, the applicant shall subsequently demonstrate to the satisfaction of the board that the project meets an established local water supply need. In establishing local need, the applicant shall provide the following information:~~

- ~~1. Existing supply sources, yields and demands, including:

 - a. Peak day and average daily withdrawal;
 - b. The safe yield and lowest daily flow of record;
 - c. Types of water uses; and
 - d. Existing water conservation measures and drought response plan, including what conditions trigger their implementation.~~
- ~~2. Projected demands over a minimum 30 year planning period, including the following:

 - a. Projected demand contained in the local or regional water supply plan developed in accordance with 9VAC25-780 or for the project service area, if such area is smaller than the planning area; or
 - b. Statistical population (growth) trends; and
 - c. Projected demands by use type; and
 - d. Projected demand without water conservation measures; and
 - e. Projected demands with long term water conservation measures.~~

~~C. For all proposed projects, the applicant shall demonstrate to the satisfaction of the board that avoidance and minimization opportunities have been identified and applied to the proposed activity, that practicable alternatives, including design alternatives, have been evaluated for the proposed activity, and that the proposed activity, in terms of impacts to water quality and fish and wildlife resources, is the least environmentally damaging practicable alternative.~~

- ~~1. Avoidance and minimization includes, but is not limited to, steps 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.~~
- ~~2. Any alternatives analysis conducted specifically for public surface water supply withdrawal projects shall include:

 - a. The range of alternatives to be analyzed by the applicant as follows:
 - (1) All applicable alternatives contained in the local or regional water supply plan developed in accordance with 9VAC25-780;
 - (2) Alternatives that are practicable or feasible from both a technical and economic standpoint that had not been identified in the local or regional water supply plan developed in accordance with 9VAC25-780;~~

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~~(3) Alternatives that are available to the applicant but not necessarily under the current jurisdiction of the applicant; and~~

~~(4) Water conservation measures that could be considered as a means to reduce demand for each alternative considered by the applicant.~~

~~b. The applicant shall provide a narrative description that outlines the opportunities and status of regionalization efforts undertaken by the applicant.~~

~~c. The criteria used to evaluate each alternative for the purpose of establishing the least environmentally damaging practicable alternative, which includes but is not limited to:~~

~~(1) Demonstration that the proposed alternative meets the project purpose and project demonstrated need as documented pursuant to subsections A and B of this section;~~

~~(2) Availability of the alternative to the applicant;~~

~~(3) Evaluation of interconnectivity of water supply systems (both existing and proposed);~~

~~(4) Evaluation of the cost of the alternative on an equivalent basis;~~

~~(5) Evaluation of alternative safe yields;~~

~~(6) Presence and potential impact of alternative on state and federally listed threatened and endangered species;~~

~~(7) Presence and potential impact of alternative on wetlands and streams (based on maps and aerial photos for all alternatives, field delineation required for preferred alternative);~~

~~(8) Evaluation of effects on instream flow; and~~

~~(9) Water Quality Considerations, including:~~

~~(a) Land use within a watershed where the type of land use may impact the water quality of the source;~~

~~(b) The presence of impaired streams and the type of impairment;~~

~~(c) The location of point source discharges; and~~

~~(d) Potential threats to water quality other than those listed in subdivisions 2 c (9) (a) through (c) of this subsection.~~

~~3. Any alternatives analysis conducted for projects that involve a surface water withdrawal or alteration of instream flows, other than public surface water supply withdrawal projects shall include all applicable items included in subdivision 2 of this subsection.~~

9VAC25-210-116. Compensation.

A. No net loss. Compensatory mitigation for project impacts shall be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters. 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.

B. Practicable and ecologically preferable compensation alternatives.

1. An analysis shall be required to justify that ~~off-site compensatory mitigation (including purchase or use of mitigation bank credits or contribution to an in-lieu fee fund) or out of kind compensatory mitigation~~ permittee-responsible compensatory mitigation is ~~more~~ ecologically preferable to ~~practicable on-site or in-kind compensation~~ the purchase of mitigation bank credits or in-lieu fee program credits, if such credits are available in sufficient quantity for the project at the projected time of need. The analysis shall address the ability of the permittee-responsible compensatory mitigation site or sites to replace lost wetland acreage and functions or lost stream functions and water quality benefits. The analysis comparing the impacted and compensation site or sites may use a method that assesses water quality or habitat metrics, such as that required by 9VAC25-210-80 C, or a method that assesses such criteria as water quality benefits, distance from impacts, hydrologic source and regime, watershed, vegetation type, soils, constructability, timing of compensation versus impact, property acquisition [§], and cost.

2. ~~Such 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 and regime; watershed; functions and values; vegetation type; soils; constructability; timing of compensation versus impact; property acquisition; and cost. The analysis shall compare the ability of each compensatory mitigation option to replace lost wetland acreage and functions or lost stream functions and water quality benefits. The applicant shall demonstrate that permittee-responsible compensatory mitigation can be protected in perpetuity through a protective mechanism approved by the Department of Environmental Quality, such as, but not limited to, a conservation easement held by a third party in accordance with the Virginia Conservation Easement Act (§ [~~10.1-1700~~ 10.1-1009] et seq. of the Code of Virginia) or the Virginia Open-Space Act (§ [~~10.1-1009~~ 10.1-1700] et seq. of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other protective instrument.~~

C. Compensatory mitigation proposals shall be evaluated as follows:

1. ~~On-site, in-kind compensatory mitigation. The purchase of mitigation bank credits and in-lieu fee program credits [§] when available [§] shall in most cases be deemed the most~~ 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 permittee-responsible compensatory mitigation may be considered. ~~When~~ when the applicant ~~can demonstrate~~ satisfactorily demonstrates that an off site or out of kind compensatory mitigation proposal permittee-responsible compensatory mitigation is practicable and ecologically preferable, then such proposal may be deemed appropriate for compensation of project impacts in accordance with subdivision B 1 of this section.

2. Compensatory mitigation for unavoidable wetland impacts may be met through the following options, which are preferred in the following sequence: mitigation banking, in-lieu fee program, and permittee-responsible compensatory mitigation. However, the appropriate compensatory mitigation option for project impacts shall be evaluated on a case-by-case basis, in terms of replacement of wetland acreage [~~or~~ and] functions and the greatest likelihood of success. When considering options for providing the required compensatory mitigation, DEQ shall consider the type and location options in the following order:

- a. ~~Wetland creation~~ Mitigation bank credits;
- b. ~~Wetland restoration~~ In-lieu fee program credits;
- c. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:23 of the Code of Virginia Permittee-responsible mitigation under a watershed approach;
- d. A contribution to an approved in-lieu fee fund Permittee-responsible mitigation through on-site and in-kind mitigation;
- e. Preservation of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 2 a, b, or c of this subsection, and when consistent with subsection A of this section Permittee-responsible mitigation through off-site or out-of-kind mitigation;
- f. Restoration, enhancement, or preservation of upland buffers adjacent to ~~state waters, wetlands~~ when utilized in conjunction with ~~subsection a, b, or c, subdivision 2 a, 2 b, 2 c, 2 d, or 2 e of this subsection~~ and when consistent with subsection A of this section; and
- g. Preservation of wetlands, when utilized in conjunction with subdivision 2 a, 2 b, ~~or 2 c, 2 d, or 2 e~~ of this subsection and when consistent with subsection A of this section [~~2~~].

3. Compensatory mitigation for unavoidable stream impacts to streams may be met through the following options, as appropriate to replace functions or water quality benefits which are preferred in the following sequence: mitigation banking, in-lieu fee program, and permittee-responsible mitigation. However, the appropriate compensatory mitigation option for project impacts shall be evaluated on a case-by-case basis, in terms of

replacement of stream functions and water quality benefits and the greatest likelihood of success. One factor in determining the required compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology acceptable to the DEQ approved by the board. When considering options for providing the required compensatory mitigation, DEQ shall consider the type and location options in the following order: [-]

- a. ~~Stream channel restoration or enhancement~~ Mitigation bank stream credits;
- b. ~~Riparian buffer restoration or enhancement~~ In-lieu fee program credits;
- c. ~~Riparian buffer preservation, when consistent with subsection A of this section~~ Permittee-responsible mitigation under a watershed approach;
- d. A contribution to an approved in-lieu fee fund Permittee-responsible mitigation through on-site and in-kind mitigation;
- e. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:23 of the Code of Virginia Permittee-responsible mitigation through off-site or out-of-kind mitigation;
- f. Restoration, enhancement, or preservation of upland buffers adjacent to streams when utilized in conjunction with subdivision 3 a, 3 b, 3 c, 3 d, or 3 e of this subsection and when consistent with subsection A of this section; and
- g. Preservation of stream channels and adjacent riparian buffers when utilized in conjunction with subdivision 3 a, 3 b, 3 c, 3 d, or 3 e of this subsection and when consistent with subsection A of this section.

4. 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 acreage and functions or stream functions and water quality benefits. Compensatory mitigation for open water impacts may be required to protect state waters and fish and wildlife resources from significant impairment, as appropriate. Compensation shall not be required for permanent or temporary impacts to open waters that are identified as palustrine by the Cowardin classification method, [~~except~~ 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.

D. In-lieu fee fund program 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 acreage and functions or stream functions and water quality benefits

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~~through the preservation, restoration and creation of wetlands or streams~~ The board may approve the use of a program by issuing a VWP permit for a specific project or by taking an enforcement action and following applicable public notice and comment requirements, or by granting approval of a program after publishing a notice of its intent in the Virginia Register of Regulations and accepting public comments on its approval for a minimum of 30 days.

~~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. Where a program is mandated by the Code of Virginia to be implemented and such program is approved by the U.S. Army Corps of Engineers, the program may be used as deemed appropriate for any VWP permit or enforcement action.~~

~~3. In order for the board to approve the use of a fund, the fund~~ An approved program must meet the following criteria:

a. ~~Demonstration of a no net loss policy in terms of wetland acreage [and ~~or~~] functions or stream functions and water quality benefits by adoption of operational goals or objectives for ~~preservation, restoration, creation or restoration, enhancement, or preservation;~~~~

b. ~~Consultation with DEQ on selection of sites for preservation, restoration, or creation~~ DEQ approval of each site for inclusion in the program;

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 compensatory 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 acreage [and ~~or~~] functions or stream functions and water quality benefits lost in the impacted watershed; and

e. Such terms and conditions as the board deems necessary to ensure a no net loss of wetland acreage [and ~~or~~] functions or stream functions and water quality benefits from permitted projects providing compensatory mitigation ~~through contributions to the fund.~~

~~4. Such approval~~ Approval may be granted for up to five 10 years and may be renewed by the board upon a demonstration that the ~~fund~~ program has enhanced wetland acreage or functions or stream functions and water quality benefits through the preservation, creation or restoration of wetlands or streams. Such demonstration may be made with the reports submitted pursuant to met the criteria in subdivision 3 e 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.~~

E. ~~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 § 62.1-44.15:23 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~~ 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; and

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.~~

F. ~~The~~ For permittee-responsible mitigation, the final compensatory mitigation plan ~~must~~ shall include complete information on all components of the conceptual compensatory mitigation plan detailed in 9VAC25-210-80 B 1 k(5) (b) and (c) m [and]:

1. For wetlands, the final compensation plan for review and approval by DEQ shall also include a summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of ~~photostations, photo-monitoring stations,~~ monitoring wells, vegetation sampling points, and reference wetlands or streams [~~(if available)~~ if available]; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for ~~protection~~ of the compensation site or sites, including all surface waters and buffer areas within its boundaries. ~~The final wetland compensation plan or plans shall include a mechanism for protection in perpetuity of the compensation sites to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place~~

within 120 days of final compensation plan approval. 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 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 or general permit, or waiver thereof, this restriction applies to ditching, land clearing or 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, or an equivalent instrument for government owned lands. Proof of recordation shall be submitted within 120 days of final compensation plan approval. The approved protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to DEQ prior to commencing impacts in surface waters.

2. For streams, the final compensation plan for review and approval by DEQ shall also include a site access plan; an erosion and sedimentation control plan, if appropriate; an abatement and control plan for undesirable plant species; a monitoring plan, including, a monitoring and reporting schedule, monitoring design, and methodologies for success; proposed success criteria; and location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; the mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries; a plan view sketch drawing depicting the pattern and all compensation measures being employed; a profile sketch drawing; and cross-sectional sketches drawing or drawings of the proposed compensation stream; and the final protective mechanism for the compensation site or sites, including all surface waters and buffer areas within its boundaries. ~~The final stream compensation plan or plans shall include a mechanism for protection in perpetuity of the compensation sites to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place within 120 days of final compensation plan approval. 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 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 or general permit, or waiver thereof, this restriction applies to ditching, land clearing or 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, or an equivalent instrument for government owned lands. Proof of recordation shall be submitted within 120 days of final compensation plan approval. The approved protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to DEQ prior to commencing impacts in surface waters.~~

9VAC25-210-130. 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 regulation. 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 regulation or authorization coverage;
3. When an applicant or permittee no longer qualifies for coverage under the VWP general permit ~~regulation or authorization;~~ and
4. When a permittee operating under a VWP general permit authorization coverage requests to be excluded from the coverage of the VWP general permit regulation 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 ~~authorization coverage~~ to the individual permittee is automatically terminated on the effective date of the VWP individual permit.

D. When a VWP general permit regulation is issued which applies to a permittee that is already covered by a VWP individual permit, such person may request exclusion from the provisions of the VWP general permit regulation and subsequent coverage under a VWP individual permit.

E. A VWP general permit ~~authorization coverage~~ may be revoked from an individual permittee for any of the reasons set forth in 9VAC25-210-180 subject to appropriate opportunity for a hearing.

~~F. When all permitted activities requiring notification have been completed, the~~ The permittee shall be required to submit a written notice of termination ~~unless the permittee has previously submitted a termination by consent request for the same permitted activities and such request has been approved by the board project completion and request a permit termination by consent within 30 days following the~~

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completion of all activities in all permitted impact areas [in accordance with subsection 90 A of the applicable VWP general permit regulation].

G. Activities authorized under a VWP general permit and general permit regulation shall be authorized for a the 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 continuation of a VWP general permit authorization beyond the expiration date of such authorization in order to complete monitoring requirements shall not be considered a new application for coverage and no application fee will be charged stated in the applicable VWP general permit and VWP general permit regulation.~~

H. The board may certify or certify with conditions a general, regional, or nationwide permit proposed by the ~~USACE~~ U.S. Army Corps of Engineers (USACE) in accordance with § 401 of the federal Clean Water Act as meeting the requirements of this ~~regulation~~ chapter and a VWP general permit, provided that the nationwide or regional permit and the certification conditions:

1. Require that wetland or stream impacts be avoided and minimized to the maximum extent practicable;
2. Prohibit impacts that cause or contribute to a significant impairment of state waters or fish and wildlife resources;
3. Require compensatory mitigation sufficient to achieve no net loss of existing wetland acreage [and ~~or~~] functions or stream functions and water quality benefits; and
4. Require that compensatory mitigation for unavoidable wetland impacts be provided ~~through the following options, as appropriate to replace acreage and function: in accordance with 9VAC25-210-116.~~

- ~~a. Wetland creation;~~
- ~~b. Wetland restoration;~~
- ~~c. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:23 of the Code of Virginia;~~
- ~~d. A contribution to an approved in lieu fee fund;~~
- ~~e. Preservation of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 4 a, b, or c of this subsection, and when consistent with 9VAC25-210-116 A;~~
- ~~f. Restoration of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 4 a, b, or c of this subsection, and when consistent with 9VAC25-210-116 A;~~
- ~~g. Preservation of wetlands, when utilized in conjunction with subdivision 4 a, b, or c of this subsection.~~

5. Require that compensatory mitigation for unavoidable stream impacts be ~~met through the following options as appropriate to replace functions or water quality benefits; one factor in determining the required compensation shall be provided in accordance with 9VAC25-210-116, including but not limited to~~ an analysis of stream impacts utilizing a stream impact assessment methodology approved by the board:

- ~~a. Stream channel restoration or enhancement;~~
- ~~b. Riparian buffer restoration or enhancement;~~
- ~~c. Riparian buffer preservation, when consistent with 9VAC25-210-116 A;~~
- ~~d. A contribution to an approved in lieu fee fund;~~
- ~~e. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:23 of the Code of Virginia.~~

I. The certifications allowed by subsection H of this section may be provided only after the board has advertised and accepted public comment on its intent to provide certification for at least 30 days.

J. Coverage under a general, regional, or nationwide permit promulgated by the USACE and certified by the board in accordance with this section shall be deemed coverage under a VWP general permit regulation upon submission of proof of coverage under the general, regional, or nationwide permit and any other information required by the board through the certification process. Notwithstanding the provisions of ~~9VAC25-20-10 9VAC25-20~~, no fee shall be required from applicants seeking coverage under this subsection.

Part III Public Involvement

9VAC25-210-140. Public notice of VWP permit applications, individual permit actions and public comment periods.

~~A. The initial application for surface water supply projects that requires both an individual Virginia Water Protection Permit and a Virginia Marine Resources permit under § 28.2-1205 of the Code of Virginia shall be advertised concurrently by the Department of Environmental Quality and the Virginia Marine Resources Commission. Such advertising shall be paid for by the applicant.~~

~~B. A.~~ Every draft VWP individual permit, with the exception of ~~an~~ a VWP Emergency Virginia Water Protection 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 the applicant's receipt of a draft VWP permit, or the 120-day VWP permit processing timeframe will be suspended until such publication.

~~C. 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.

~~D.~~ C. The contents of the public notice for a VWP permit application or proposed VWP permit action shall include:

1. Name and mailing address of the applicant;
2. The permit application number;
3. Project location. 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;
4. Brief description of the business or activity to be conducted at the site of the proposed activity;
5. Description of the area affected. Information on the number of acres of wetlands [~~and/or~~ and] the number of linear feet of streams affected, as well as the name of the receiving waterway and the name of the affected watershed should be included;
6. Description of what the applicant plans to do to compensate for the affected area;
7. A statement of the tentative determination to issue or deny a VWP permit;
8. A brief description of the final determination procedure;
9. The address, [~~e-mail~~ email] address and phone number of a specific person or persons at the state office from whom further information may be obtained; and
10. A brief description on how to submit comments and request a public hearing.

~~E.~~ 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.

~~F.~~ E. When a VWP permit is denied, the board ~~will~~ shall do so in accordance with 9VAC25-210-230.

9VAC25-210-150. Public access to information.

All information (i) pertaining to VWP permit or VWP general permit coverage processing or (ii) in reference to any activity requiring a VWP permit or VWP general permit coverage 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 prohibited~~ 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~~ the Virginia Marine Resources Commission.

9VAC25-210-160. Public comments and hearing.

A. The board shall consider all written comments and requests for a public hearing received during the VWP individual permit comment period; and shall make a determination on the necessity of a public hearing in accordance with ~~Procedural Rule No. 1 (9VAC25-230-10 et~~

~~seq.)~~ § 62.1-44.15:02 of the Code of Virginia. All proceedings, public hearings and decisions from it will be in accordance with ~~Procedural Rule No. 1 (9VAC25-230-10 et seq.)~~ § 62.1-44.15:02 of the Code of Virginia.

B. Should the board, in accordance with ~~Procedural Rule No. 1 (9VAC25-230-10 et seq.)~~ § 62.1-44.15:02 of the Code of Virginia, determine to dispense with the public hearing, it may grant the VWP individual 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 (9VAC25-230-10 et seq.)~~ § 62.1-44.15:02 of the Code of Virginia.

9VAC25-210-170. Public notice of hearing.

A. Public notice of any public hearing held pursuant to 9VAC25-210-160 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 9VAC25-210-160 shall include at least the following:

1. Name and mailing address of each person whose application will be considered at the public hearing and a brief description of the person's activities or operations including information on the number of acres of wetlands [~~and/or~~ and] the number of linear feet of streams affected, a description of the nature of the withdrawal and the amount of the withdrawal; as well as the name of the receiving waterway and the name of the affected watershed;
2. The precise location of the proposed activity and the surface waters that will, or may, be affected including, where possible, reference to route numbers, road intersections, map coordinates or similar information;
3. Description of what the applicant plans to do to compensate for the affected area;
4. A brief reference to the public notice issued for the VWP permit application or permit action, including the permit application number and date of issuance, unless the public notice includes the public hearing notice;

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5. Information regarding the time and location for the public hearing;
6. The purpose of the public hearing;
7. A concise statement of the relevant water quality, or fish and wildlife resource issues raised by the persons requesting the public hearing;
8. Contact person and the mailing address, ~~e-mail~~ email address, name of the ~~DEQ~~ Department of Environmental Quality regional office 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 9VAC25-210-120; and
9. 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 9VAC25-210-160 C shall be in accordance with ~~Procedural Rule No. 1 (9VAC25-230)~~ § 62.1-44.15:02 of the Code of Virginia.

Part IV

[~~VWP Permit Variances;~~] VWP Permit Modification, Revocation and Reissuance, Transfer, Termination and Denial

9VAC25-210-175. Variance from VWP permit conditions. (Repealed.)

~~A. For public water supplies. The board may grant a temporary variance to any condition of a VWP permit for a public surface water supply withdrawal that supports a public water supply to address a public water supply emergency during a drought. A permittee requesting such variance must provide all information required in the application for an Emergency Virginia Water Protection Permit identified in 9VAC25-210-80 D.~~

~~B. For all other water supplies. The board may grant a temporary variance to any condition of a VWP permit for a surface water withdrawal during a drought. A permittee requesting such variance must affirmatively demonstrate;~~

- ~~1. Public health and safety interests are served by the issuance of such variance; and~~
- ~~2. All management actions consistent with existing permits have been exhausted.~~

~~C. As a condition of any variance granted, the permittee shall:~~

- ~~1. Modify operations or facilities to comply with existing VWP permit conditions as soon as practicable; or~~
- ~~2. Provide new information to the board that alternate permit conditions are appropriate and either apply for a new VWP permit or a modification to their existing VWP permit. The board shall review any such application consistent with other sections of this regulation.~~

~~D. In addition, the board may require the permittee to take any other appropriate action to minimize adverse impacts to other beneficial uses.~~

~~E. Any variances issued by the board shall be of the shortest duration necessary for the permittee to gain compliance with existing permit conditions, apply for a new VWP permit, or request modification of existing permit conditions.~~

~~F. Public notice of any variance issued by the board shall be given as required for draft permits in 9VAC25-210-140 B, C, and D. Such notice shall be given concurrently with the issuance of any variance and the board may modify such variances based on public comment. Publication costs of all public notices shall be the responsibility of the permittee.~~

9VAC25-210-180. Rules for modification, revocation and reissuance, extension, transfer, and termination of VWP individual permits.

A. VWP individual permits shall may be modified in whole or in part, revoked and reissued, extended, transferred, or terminated only as authorized by this section.

~~B. A VWP permit may be modified in whole or in part, revoked and reissued, transferred 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. If the permittee wishes to continue one or more activities regulated by the VWP permit after the expiration date of the VWP permit, regardless of pending changes to the permitted activities, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9VAC25-210-185.

~~D. Modification, revocation and reissuance, or termination may be initiated by the board, upon the request of the permittee, or upon the request by another person at the board's discretion under applicable laws or the provisions of subsections D through H of this section. A B. VWP permit permits may be modified, or revoked and reissued with permittee consent, upon the request of the permittee or upon board initiative when any of the following developments occur:~~

- ~~1. When additions or alterations have been made to the affected facility or activity that require the application of VWP permit conditions that differ from those of the existing VWP permit or are absent from it;~~
- ~~2. 1. When new information becomes available about the operation project or activity covered by the VWP permit, including project additions or alterations, that 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. 2. 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. 3. When changes occur that are subject to "reopener clauses" in the VWP permit; or~~

~~6. When the board determines that minimum instream flow levels resulting directly from the permittee's withdrawal of surface water are detrimental to the instream beneficial use, existing at the time of permit issuance, and the withdrawal of surface 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~~

~~4. When developments applicable to surface water withdrawals as specified in 9VAC25-210-380 occur.~~

C. A request for a modification, except those addressed in subsection E of this section, shall include the applicable informational requirements of 9VAC25-210-80 B, updated to reflect the proposed changes to the project. The board may request additional information as necessary to review and prepare a draft permit. If the board tentatively decides to modify a permit, it shall prepare a draft permit incorporating the proposed changes in accordance with 9VAC25-210-120 and process the draft permit in accordance with 9VAC25-210-140 through 9VAC25-210-170.

D. During the drafting and authorization of a permit modification under this section, only those conditions to be modified shall be addressed with preparing a draft modified permit. VWP permit terms and conditions of the existing permit shall remain in full force and effect during the modification of the permit.

~~E. A VWP permit shall be transferred only if the VWP permit has been modified to reflect the transfer, has been revoked and reissued to the new permittee, or has been automatically transferred. Any individual 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 proposed 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;~~
- ~~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; and~~
- ~~4. The permit transferor and the permit transferee provide written notice to the board of the actual transfer date.~~

F. E. 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 contained in 9VAC25-210-140, 9VAC25-210-160, or 9VAC25-210-170. Any request for a minor modification shall be in writing and shall contain the facts or reasons supporting the request. The board may request additional information as necessary to review a request for minor modification. The board, at its discretion, may require that the changes proposed under a minor modification to be processed as a modification in accordance with subsections B and C of this section. For VWP permits, a minor modification may only be processed to:

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~~ a 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; result in a net loss of wetland acreage or of functions in all surface waters.
4. Allow for a change in ownership or operational control when the board determines that no other change in the VWP permit is necessary, permittee provided that a written agreement containing a specific date for transfer of VWP permit responsibility, ~~coverage~~ authorization, and liability from the current to the new permittee has been submitted to the board; A VWP permit shall be transferred only if the VWP permit has been modified to reflect the transfer, has been revoked and reissued to the new permittee, or has been automatically transferred. Any individual VWP permit shall be automatically transferred to a new permittee if the current permittee:
 - a. Notifies the board of the proposed transfer of the permit and provides a written agreement between the current and proposed permittees containing the date of transfer of VWP permit responsibility, authorization, and liability to the new permittee; and
 - b. The board does not within 15 days notify the current and new permittees of its intent to modify the VWP permit.
5. Change project plans or uses that do not result in an increase a change to permitted project impacts other than allowable by 9VAC25-210-180 F 8; 9VAC25-210-180 F 9; and 9VAC25-210-180 F 10; subdivisions 6 and 7 of this subsection.
6. Occur when facility expansion or production increases and modification will not cause significant change in the discharge of pollutants; Reduce wetland or stream impacts. Compensatory mitigation requirements may be modified in relation to the adjusted impacts, provided that the adjusted compensatory mitigation meets the initial compensatory mitigation goals. The Department of Environmental Quality shall not be responsible for ensuring refunds for

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mitigation bank credit purchases or in-lieu fee program credit purchases.

7. ~~Delete VWP permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated; Authorize additional impacts to surface waters that are proposed prior to impacting the additional areas. Proposed additional impacts shall meet the following requirements:~~

a. ~~The proposed additional impacts are located within the project boundary as depicted in the application for permit issuance, or are located in areas of directly related off-site work.~~

b. ~~The permittee has provided sufficient documentation that the board may reasonably determine that the additional impacts will not impact federal or state listed [~~or proposed~~] threatened or endangered species or [~~proposed or~~] designated critical habitat, or [~~to be result in~~] a taking of threatened or endangered species. [The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.]~~

c. ~~The cumulative, additional permanent wetland or open water impacts for one or more minor modifications do not exceed [the greater of either (i) 0.25 acre or (ii) 10% of the acres of originally permitted permanent wetland or open water impacts, not to exceed 1.00 acre one-quarter of an acre (0.25 acre or 10,890 square feet)].~~

d. ~~The cumulative, additional permanent stream impacts for one or more minor modifications do not exceed [the greater of either (i) 100 linear feet or (ii) 10% of the linear feet of originally permitted permanent stream impacts, not to exceed 1,500 linear feet 100 linear feet].~~

e. ~~Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-210-80 B 1 g.~~

f. ~~Compensatory mitigation for the proposed impacts, if required, meets the requirements of 9VAC25-210-80 B 1 m and 9VAC25-210-116. Prior to a minor modification approval, DEQ may require submission of a compensatory mitigation plan for the additional impacts.~~

g. ~~Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the board that the area to be temporarily impacted will be restored to its preconstruction elevations and contours [~~±~~] with topsoil from the impact area where practicable, such that the previous acreage and functions are restored. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.~~

8. ~~Occur when subsequent to issuance of a VWP individual or general permit authorization, the permittee determines that additional permanent wetland or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development or within logical termini, the unavoidable cumulative increase in the acreage of wetland or open water impacts is not greater than one quarter of an acre (0.25 acre or 10,890 square feet) and the unavoidable cumulative increase in stream impacts is less than 100 linear feet, and also provided that the additional permanent impacts are fully mitigated at ratios not less than compensatory mitigation ratios for the original impacts. A modification is not required subsequent to issuance for additional temporary impacts to surface waters, provided DEQ is notified in writing regarding additional temporary impacts, and the area is restored to preexisting conditions; Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program, or substitute all or a portion of the prior authorized permittee-responsible compensatory mitigation with a purchase of mitigation credits in accordance with 9VAC25-210-116 C from a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory mitigation requirement for which the compensatory mitigation is proposed to replace.~~

9. ~~Occur when, subsequent to issuance of a VWP individual or general permit authorization, the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial compensation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases, mitigation bank usage, or in-lieu fee fund contributions; Allow for extension of the expiration date of the VWP permit. 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 other than as may be allowed under this section, shall submit written notification requesting an extension. The permittee must file the request 90 days prior to the expiration date of the VWP permit. VWP permit modifications shall not be used to extend the term of a VWP permit beyond 15 years from the date of original issuance.~~

10. ~~Occur when, subsequent to issuance of a VWP individual or general permit authorization, substitution of a specified, approved mitigation bank(s) with another specified, approved mitigation bank is necessary. Activities or development applicable to surface water withdrawals as specified in 9VAC25-210-380 B.~~

~~G. F.~~ After notice and opportunity for a formal hearing pursuant to ~~Procedural Rule No. 1 (9VAC25-230-100)~~ § 62.1-44.15:02 of the Code of Virginia, a VWP permit can be terminated for cause. Reasons for termination for cause 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~~ or
6. A determination that the permitted activity has ceased and that the ~~compensatory mitigation~~ compensation for unavoidable adverse impacts has been successfully completed.

G. The board may terminate the permit without cause when the permittee is no longer a legal entity due to death, dissolution, or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the board shall follow the applicable procedures for termination under § 62.1-44.15:25 of the Code of Virginia and 9VAC25-230.

H. A VWP permit ~~can~~ may be terminated by consent, as initiated by the permittee, ~~when all permitted activities have been completed or if the authorized impacts will not occur.~~ The permittee shall submit a request for termination by consent within 30 days of ~~project completion or project cancellation~~ completing or canceling all permitted activities and all required compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project [completion]. The director may accept this termination on behalf of the board. The permittee shall submit the following information:

1. Name, mailing address [] and telephone number;
2. Name and location of the activity;
3. The VWP permit ~~authorization~~ number; and
4. One of the following certifications:
 - a. For project completion: "I certify under penalty of law that all activities and any ~~requested~~ required compensatory mitigation authorized by a VWP 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 permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit, unless otherwise excluded from obtaining a permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP permit."

b. For project cancellation: "I certify under penalty of law that the activities and any required compensatory mitigation authorized by this VWP permit will not occur. 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 permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit, unless otherwise excluded from obtaining a permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP permit, nor does it allow me to resume the permitted activities without reapplication and issuance of another permit."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement: "I certify under penalty of law that the activities or the required compensatory mitigation authorized by a this VWP permit have changed as the result of events beyond my control (see attached). 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 permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit, unless otherwise excluded from obtaining a permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP permit, nor does it allow me to resume the permitted activities without reapplication and issuance of another permit.

~~I. If a permittee files a request for VWP permit modification, revocation and reissuance, or termination, or files a notice of planned changes or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board.~~

9VAC25-210-185. Duration of VWP individual permits; extensions.

~~A. Duration of VWP permits.~~ VWP permits issued under this chapter shall have an effective date and expiration date ~~that will determine the life of~~ specified in the permit. ~~VWP permits~~ The permit term 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

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years ~~and will be specified in the conditions of the VWP permit, unless administratively continued. When a permit term, other than that of an Emergency Virginia Water Protection Permit, is less than 15 years, an extension of the permit terms and conditions may be granted in accordance with 9VAC25-210-180.~~ Emergency Virginia Water Protection Permits shall not exceed a duration of one year or shall expire upon the issuance of a regular Virginia Water Protection Permit, whichever comes first.

~~B. 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 original and the extended permit terms together exceed a total of 15 years. If the request for extension is denied, the VWP permit will expire on its original date and, therefore, the permittee should allow sufficient time for the board to evaluate the extension request and, in the case of denial of the request, to process a new VWP permit application or an application for a VWP permit modification, if applicable.~~

9VAC25-210-220. Waiver of VWP permit or § 401 certification.

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 9VAC25-210-10. ~~Any~~ Upon request by the board, any person claiming this waiver ~~bears the burden to~~ shall demonstrate to the satisfaction of the board 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~~ U.S. Army Corps of Engineers and receives a permit from the ~~VMRC~~ Virginia Marine Resources Commission or wetlands boards, 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.

C. The board shall ~~waive the requirement for~~ not require coverage under a VWP general permit ~~authorization or a~~ VWP individual permit when the proposed activity meets the exclusion set forth in [~~subdivision 10 a of~~] 9VAC25-210-60 [~~A-10-a~~] regardless of the issuance of an individual a permit by the ~~United States~~ U.S. Army Corps of Engineers.

9VAC25-210-230. Denial of the VWP permit or variance request.

A. The board shall make a decision to tentatively deny the VWP permit or variance request 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 9VAC25-260.

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 wetland acreage [and ~~of~~] function and no net loss of functions in all surface waters.

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 9VAC25-210-50.

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 9VAC25-210-80 B 1 n, ~~C-9~~ [~~q-g~~] or ~~D-1-g~~ [~~or~~] 9VAC25-210-340 C 1 g.

9. The board determines that the applicant for an Emergency Virginia Water Protection Permit has not demonstrated that there is a substantial threat to public health and safety, and that normal Virginia Water Protection Permit procedures, including public comment provisions, should be followed.

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 or variance 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—Public and Formal Hearing Procedures (9VAC25-230)~~ § 62.1-44.15:02 of the Code of Virginia of his right to a public hearing to consider the denial.

Part V Enforcement

9VAC25-210-240. Enforcement. (Repealed.)

~~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

9VAC25-210-250. Delegation of authority. (Repealed.)

~~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.~~

9VAC25-210-260. Transition. (Repealed.)

~~A. All applications received on or after July 25, 2007, will be processed in accordance with these new procedures.~~

~~B. VWP individual permits issued prior to July 25, 2007, will remain in full force and effect until such permits expire, are revoked, or are terminated.~~

~~C. Modifications and all other types of modification that are received by the board prior to July 25, 2007, will be processed in accordance with the VWP permit regulations in effect at that time. Modifications and all other types of notification to the board that are received on or after July 25, 2007, will be processed in accordance with these new procedures.~~

~~D. 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.~~

Part V
Surface Water Withdrawals

9VAC25-210-300. Definitions for surface water withdrawals.

The following words and terms when used in this part shall have the following meanings:

"Affected stream reach" means the portion of a surface water body beginning at the location of a withdrawal and ending at a point where effects of the withdrawal are not reasonably expected to adversely affect beneficial uses.

"Agricultural surface water withdrawal" means a withdrawal of surface water in Virginia or from the Potomac River for the purpose of agricultural, silvicultural, horticultural, or aquacultural operations. Agricultural surface water withdrawals include withdrawals for turf farm operations, but do not include withdrawals for landscaping activities, or turf installment and maintenance associated with landscaping activities.

"Consumptive use" means any use of water withdrawn from a surface water other than a nonconsumptive use.

"Drought" means the declaration of a drought stage by the Virginia Drought Coordinator or the Governor of Virginia for a particular area or locality within Virginia. Drought stage declarations include watch, warning, and emergency, depending upon severity, as defined by the Virginia Drought Assessment and Response Plan dated March 28, 2003.

"Drought of record" means the time period during which the most severe drought conditions occurred for a particular area or location, as indicated by the available hydrologic and meteorologic data.

"Emergency Virginia Water Protection Permit" means a Virginia Water Protection Permit issued pursuant to § 62.1-44.15:22 C of the Code of Virginia authorizing a new or increased surface water withdrawal to address insufficient public drinking water supplies that are caused by a drought

and may result in a substantial threat to human health or public safety.

"Human consumption" means the use of water to support human survival and health, including drinking, bathing, showering, cooking, dishwashing, and maintaining hygiene.

"Instream flow" means the existing volume of water flowing in a stream or water body including any seasonal variations of water levels and flow.

"Intake structure" means any portion of a surface water withdrawal system used to withdraw surface water that is located within the surface water, such as, but not limited to, a pipe, culvert, hose, tube, or screen.

"Major river basin" means 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, or the Tennessee-Big Sandy River Basin.

"Nonconsumptive use" means the use of water withdrawn from a surface water in such a manner that it is returned to the surface water 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.

"Potomac River Low Flow Allocation Agreement" means the agreement among the United States of America, the State of Maryland, the Commonwealth of Virginia, the District of Columbia, the Washington Suburban Sanitation Commission, and the Fairfax County Water Authority dated January 11, 1978, consented to by the United States Congress in § 181 of the Water Resources Development Act of 1976, Public Law 94-587, as modified on April 22, 1986.

"Public water supply" means a withdrawal of surface water in Virginia or from the Potomac River for the production of drinking water, distributed to the general public for the purpose of, but not limited to, domestic use.

"Public water supply emergency" means a substantial threat to public health or safety due to insufficient public drinking water supplies caused by drought.

["~~Public water supply safe yield~~" means the highest volumetric rate of water that can be withdrawn by a surface water withdrawal during the drought of record since 1930, including specific operational conditions established in a Virginia Water Protection permit, when applicable.]

"Section for Cooperative Water Supply Operations on the Potomac" means a section of the Interstate Commission on the Potomac River Basin designated by the Water Supply Coordination Agreement as responsible for coordination of water resources during times of low flow in the Potomac River.

"Surface water withdrawal" means a removal or diversion of surface water in Virginia or from the Potomac River for consumptive or nonconsumptive use thereby altering the instream flow or hydrologic regime of the surface water. Projects that do not alter the instream flow or that alter the

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instream flow but whose sole purpose is flood control or stormwater management are not included in this definition.

"Surface water withdrawal system" means any device or combination of devices used to withdraw surface water such as, but not limited to, a machine, pump, culvert, hose, tube, screen, or fabricated concrete or metal structure.

"Variance" means a mechanism that allows temporary waiver of the generally applicable withdrawal limitation requirements or instream flow conditions of a VWP permit during a drought.

"Water Supply Coordination Agreement" means the agreement among the United States of America, the Fairfax County Water Authority, the Washington Suburban Sanitary Commission, the District of Columbia, and the Interstate Commission on the Potomac River Basin, dated July 22, 1982, which establishes agreement among the suppliers to operate their respective water supply systems in a coordinated manner and which outlines operating rules and procedures for reducing impacts of severe droughts in the Potomac River Basin.

"Water supply plan" means a document developed in compliance with 9VAC25-780.

9VAC25-210-310. Exclusions from permits for surface water withdrawals.

A. The following surface water withdrawals are excluded from VWP permit requirements. Activities [] other than the surface water withdrawal [] that are contained in 9VAC25-210-50 and are associated with the construction and operation of the surface water withdrawal are subject to VWP permit requirements [] unless excluded by 9VAC25-210-60. Other permits under state and federal law may be required.

1. Any surface 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. To qualify for this exclusion, the surface water withdrawal shall be deemed to be in existence on July 1, 1989, if there was an actual withdrawal on or before that date [~~that~~ and the withdrawal] has not been abandoned.

a. Abandonment of a surface water withdrawal. A surface water withdrawal shall be deemed to be abandoned if the owner of the surface water withdrawal system (i) notifies the Department of Environmental Quality in writing that the withdrawal has been abandoned or (ii) removes or disables the surface water withdrawal system with the intent to permanently cease such withdrawal. Transfer of ownership or operational control of the surface water withdrawal system, a change in use of the water, or temporary cessation of the withdrawal shall not be deemed evidence of abandonment. The notification shall be signed by the owner of record or shall include evidence satisfactory to DEQ that the signatory is authorized to submit the notice on behalf of the owner of record. Evidence may include, but shall not be limited to,

a resolution of the governing body of the owner or corporate minutes.

b. Information to be furnished to DEQ. Each owner or operator of a permanent surface water withdrawal system engaging in a withdrawal that is subject to this exclusion shall provide DEQ the estimated maximum capacity of the intake structure, the location of the existing intake structure, and any other information that may be required by the board. Each owner or operator of a temporary surface water withdrawal system engaging in a withdrawal that is subject to this exclusion, where the purpose of the withdrawal is for agriculture, shall provide to DEQ the maximum annual surface water withdrawal over the last 10 years. The information shall be provided within one year of the date that notice of such request is received from DEQ and shall be updated when the maximum capacity of the existing intake structure changes. The information provided to DEQ shall not constitute a limit on the exempted withdrawal. Such information shall be utilized by DEQ and board to protect existing beneficial uses and shall be considered when evaluating applications for new withdrawal permits.

2. Any surface water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a § 401 certification before January 1, 1989, [~~with respect to~~ that authorized the] installation of any necessary withdrawal structures to make such withdrawal [however. However], a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

3. Any existing lawful unpermitted surface water withdrawal initiated between July 1, 1989, and July 25, 2007, that has complied with the Water Withdrawal Reporting regulations (9VAC25-200) and that is not subject to other exclusions contained in this section. Any increase in that withdrawal above the limited amount identified in subdivision a of this subdivision A 3 shall require an application for a permit for the surface water withdrawal system.

a. The largest 12-consecutive month surface water withdrawal that occurred in the 10 years prior to July 25, 2007, shall constitute a limit on the withdrawal that is excluded from permit requirements. For agricultural surface water withdrawals that did not report annually as required by the Water Withdrawal Reporting regulations (9VAC25-200) prior to July 25, 2007, the limit excluded from permit requirements was established for the operations that were in existence during the 10 years prior to July 25, 2007, by estimating the largest 12-consecutive month withdrawal based upon the following information associated with that timeframe: the area irrigated, depth of irrigation, and annual number of irrigations; pumping capacity and annual pumping time;

annual energy consumption for pumps; number and type of livestock watered annually; and number and type of livestock where water is used for cooling purposes.

b. All owners and operators of surface water withdrawals excluded from permit requirements by this section shall annually report withdrawals as required by the Water Withdrawal Reporting regulations (9VAC25-200). Failure to file annual reports either reporting actual withdrawals or the fact that withdrawals did not occur may result in the owner or operator being required to cease withdrawals, file an application, and receive a permit prior to resuming any withdrawal. Information regarding excluded withdrawal amounts shall be utilized by DEQ and the board to protect existing beneficial uses and shall be considered when evaluating applications for new withdrawal permits.

4. Agricultural surface water withdrawals that total less than:

- a. One million gallons in a single month from nontidal waters.
- b. 60 million gallons in a single month from tidal waters.

5. Surface water withdrawals from tidal waters for nonconsumptive uses.

6. Surface water withdrawals from nontidal or tidal waters, regardless of the volume withdrawn, for the following uses:

- a. Firefighting or for the training activities related to firefighting, such as dry hydrants and emergency surface water withdrawals.
- b. Hydrostatic pressure testing of water tight containers, pipelines, and vessels.
- c. Normal single-family home residential gardening and lawn and landscape maintenance.

7. Surface water withdrawals placed into portable containers by persons owning property on or holding easements to riparian lands.

8. Surface water withdrawals that return withdrawn water to the stream of origin; do not divert more than half of the instantaneous flow of the stream; have the withdrawal point and the return point not separated by more than 1,000 feet of stream channel; and have both banks of the affected stream segment located within one property boundary.

9. Surface water withdrawals from quarry pits that do not alter the physical, biological, or chemical properties of surface waters connected to the quarry pit.

10. Surface water withdrawals from a privately owned agriculture pond, emergency water storage facility, or other water retention facility, provided that such pond or facility is not placed in the bed of a perennial or intermittent stream or wetland. Surface water withdrawals from such facilities constructed in beds of ephemeral streams are excluded from permit requirements.

11. Surface water withdrawals for all other purposes not otherwise excluded by subdivisions 4 through 10 of this subsection that total less than:

- a. 10,000 gallons per day from nontidal waters.
- b. Two million gallons per day from tidal waters.

B. DEQ may require any owner or operator of a surface water withdrawal system excluded from permit requirements by subdivisions A 3 through A 11 of this section to cease withdrawals and file an application and receive a permit prior to resuming any withdrawal when the board's assessment indicates that a withdrawal, whether individually or in combination with other existing or proposed projects:

- 1. Causes or contributes to, or may reasonably be expected to cause or contribute to, a significant impairment of the state waters or fish and wildlife resources;
- 2. Adversely impacts other existing beneficial uses; or
- 3. Will cause or contribute to a violation of water quality standards.

9VAC25-210-320. Preapplication procedures for new or expanded surface water withdrawals.

A. Preapplication review panel. At the request of a potential applicant for a surface water withdrawal proposing to the Department of Environmental Quality to withdraw 90 million gallons a month or greater, a preapplication review panel shall be convened prior to submission of a VWP application. The preapplication review panel shall assist potential applicants that are proposing surface water withdrawals with the early identification of issues related to the protection of beneficial instream and offstream uses of state waters and the identification of the affected stream reach. DEQ shall notify the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Virginia Department of Game and Inland Fisheries, the Virginia Department of Conservation and Recreation, the Virginia Department of Health, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, and other appropriate local, state, and federal agencies of the preapplication review panel request. These agencies shall participate to the extent practicable in the preapplication review panel by providing information and guidance on the potential natural resource impacts and regulatory implications of the options being considered by the applicant and shall provide comments within 60 days of the initial meeting of the preapplication panel.

B. Preapplication public notice. For new or expanded surface water withdrawals requiring an individual VWP permit and proposing to withdraw 90 million gallons a month or greater, a potential applicant shall provide information on the project, shall provide an opportunity for public comment on the proposed project, and shall assist in identifying public concerns or issues prior to filing a VWP individual permit application.

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1. Except as provided in this subsection, the potential applicant shall provide for publication of notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the surface water withdrawal is proposed to be located.

2. If requested by any person, the potential applicant shall hold at least one public information meeting. Notice of any public information meeting held pursuant to this subsection shall be provided at least 14 days prior to the public information meeting date and shall be published in the same manner as required in subdivision 1 of this subsection. A potential applicant shall submit the notice to DEQ for posting on the DEQ website. At a minimum, any notice required by this subsection shall include:

- a. A statement of the potential applicant's intent to apply for a VWP permit for a surface water withdrawal;
- b. The proposed location of the surface water withdrawal;
- c. Information on how the public may request a public information meeting or, in the alternative, the date, time, and location of the public information meeting;
- d. The name, address, and telephone number of the potential applicant, or an authorized representative who can answer questions or receive comments on the proposed surface water withdrawal; and
- e. A statement of how oral or written public comments will be used.

3. In accordance with the provisions of 9VAC25-780-50 C 11 and 9VAC25-780-150, a potential applicant shall not be required to publish public notice or provide an opportunity for a public information meeting if a public meeting has been held within two years prior to the submittal of an application for a VWP permit on a local or regional water supply plan, which includes the proposed project.

4. The potential applicant shall maintain a list of persons making comment and their addresses and shall make a good faith effort to notify commenters at the address provided by the commenter when the public notice for the draft VWP individual permit is available.

9VAC25-210-330. Coordinated review with the Virginia Marine Resources Commission on applications for surface water withdrawals.

A. The Department of Environmental Quality shall coordinate the review of an application for surface water withdrawals that also requires a Virginia Marine Resources Commission (VMRC) permit under Chapter 12 (§ 28.2-1200 et seq.) of Title 28.2 of the Code of Virginia with the VMRC in accordance with § 62.1-44.15:5.01 of the Code of Virginia.

B. The initial application for surface water withdrawals that requires both an individual Virginia Water Protection Permit and a VMRC permit shall be advertised concurrently by DEQ and VMRC. When appropriate, such advertisement may be in the form of a joint public notice of the application, prepared

by VMRC with the assistance of DEQ, published once in a newspaper of general circulation in the area affected by the proposed activity in accordance with VMRC regulations and policy. Such advertising shall be paid for by the applicant.

9VAC25-210-340. Application requirements for surface water withdrawals.

A. Persons proposing to initiate a new or expanded surface water withdrawal not excluded from requirements of this chapter by 9VAC25-210-310, proposing to reapply for a current permitted withdrawal, or a [~~FERC~~ Federal Energy Regulatory Commission (FERC)] license or relicense associated with a surface water withdrawal, shall apply for a VWP permit.

B. In addition to [informational] requirements of 9VAC25-210-80 [B and if applicable, 9VAC25-210-80 C], applications for surface water withdrawals or a [~~Federal Energy Regulatory Commission (FERC)~~ FERC] license or relicense associated with a surface water withdrawal shall include:

1. As part of identifying the project purpose, a narrative describing the water supply issues that form the basis of the proposed project purpose.

2. The drainage area, the average annual flow and the median monthly flows at the withdrawal point, and historical low flows [,] if available;

3. The average daily withdrawal; the maximum daily, monthly, annual, and instantaneous withdrawals; and information on the variability of the demand by season. If the project has multiple intake structures, provide for each individual intake structure and the cumulative volumes for the entire surface water withdrawal system.

4. The monthly consumptive use volume in million gallons and the average daily return flow in million gallons per day of the proposed project and the location of the return flow, including the latitude and longitude and the drainage area in square miles at the discharge point.

5. Information on flow dependent beneficial uses along the affected stream reach. For projects that propose a transfer of water resources from a major river basin to another major river basin, this analysis should include both the source and receiving basins.

a. Evaluation of the flow dependent instream and offstream beneficial 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.

b. The aquatic life, including species and habitat requirements.

c. How the proposed withdrawal will alter flows.

6. Information on the proposed use of and need for the surface water and information on how 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). If during the water supply planning process, the need for the withdrawal was established, the applicant may submit the planning process information, provided that the submittal [address addresses] all requirements of 9VAC25-210-360. The board shall deem such a submittal as meeting the requirements of this subsection. For surface water withdrawals for public water supply, see also 9VAC25-780-100 and 9VAC25-780-130.

7. Information describing the intake structure, to include intake screen mesh size [] and intake velocity.

8. For withdrawals proposed from an impoundment, the following:

a. Description of the flow or release control structures, including the minimum rate of flow, in cubic feet per second, size and capacity of the structure, and the mechanism to control the release.

b. Surface area in acres, maximum depth in feet, normal pool elevation, total storage capacity, and unusable storage volume in acre-feet.

c. The stage-storage relationship. For example, the volume of water in the impoundment at varying stages of water depth.

9. Whether the proposed surface water withdrawal is addressed in the water supply plan that covers the area in which the withdrawal is proposed to be located. If the proposed withdrawal is included, provide a discussion as to how the proposed withdrawal is addressed in the water supply plan, specifically in terms of projected demand, analysis of alternatives, and water conservation measures. If all or a portion of the withdrawn water will be transferred to an area not covered by the plan, the discussion shall also include the water supply plan for the area of the receiving watershed.

10. An alternatives analysis for the proposed surface water withdrawal, including at a minimum, the criteria in 9VAC25-210-360.

11. For new or expanded surface water withdrawals proposing to withdraw 90 million gallons a month or greater, a summary of the steps taken to seek public input as required by 9VAC25-210-320 and an identification of the issues raised during the course of the public information meeting process.

12. For new or expanded surface water withdrawals that involve a transfer of water between major river basins that may impact a river basin in another state, a plan describing procedures to notify potentially affected persons, both in and outside of Virginia, of the proposed project.

13. For surface water withdrawals, other than for public water supply, information to demonstrate that alternate sources of water supply are available to support the operation of the facility during times of reduced instream flow.

C. Applications for an Emergency Virginia Water Protection Permit.

1. Applications for an Emergency Virginia Water Protection Permit to address a public water supply emergency shall include the information noted in subdivisions 1 a through 1 o of this subsection. The JPA may be used for emergency [applications application] purposes, provided that all of the information in subdivisions [1] a through [1] o of this [subdivision C 1 subsection] is included:

a. [Name The applicant's legal name], mailing address, telephone number, and if applicable, fax number and electronic mail address [of applicant];

b. If different from applicant, name, mailing address, telephone number, and if applicable, fax number and electronic mail address of property owner;

c. If applicable, authorized agent's name, mailing address, telephone number, and [] if applicable, fax number and electronic mail address;

d. Name of water body or water bodies, or receiving waters, as applicable;

e. Name of the city or county where the project occurs;

f. Signed and dated signature page (electronic submittals containing the original signature page, such as that contained in a scanned document file are acceptable);

g. Permit application fee in accordance with 9VAC25-20;

h. The drainage area, the average annual flow and the median monthly flows at the withdrawal point, and historical low flows [,] if available;

i. Information on the aquatic life along the affected stream reach, including species and habitat requirements;

j. Recent and current water use including monthly water use in the previous calendar year and weekly water use in the previous six months prior to the application. The application shall identify the sources of such water and also identify any water purchased from other water suppliers;

k. A description of the severity of the public water supply emergency, including (i) for reservoirs, an estimate of days of remaining supply at current rates of use and replenishment; (ii) for wells, current production; and (iii) for intakes, current streamflow;

l. A description of mandatory water conservation measures taken or imposed by the applicant and the dates when the measures were implemented; for the purposes of obtaining an Emergency Virginia Water Protection Permit, mandatory water conservation measures shall

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include, but not be limited to, the prohibition of lawn and landscape watering, vehicle washing, watering of recreation fields, refilling of swimming pools, and washing of paved surfaces;

m. An estimate of water savings realized by implementing mandatory water conservation measures;

n. Documentation that the applicant has exhausted all management actions that would minimize the threat to public welfare, safety, and health and will avoid the need to obtain an emergency permit, and that are consistent with existing permit limitations; and

o. Any other information that demonstrates that the condition is a substantial threat to public health or safety.

2. Within 14 days after the issuance of an Emergency Virginia Water Protection Permit, the permit holder shall apply for a VWP permit under the other provisions of this chapter.

9VAC25-210-350. Duty to reapply for a permit for a continuation of a surface water withdrawal.

A. Any permittee with an effective permit for a surface water withdrawal shall submit a new permit application at least 270 days before the expiration date of an effective permit [,] unless permission for a later date has been granted by the board. The Department of Environmental Quality may administratively continue an expiring permit in accordance with 9VAC25-210-65.

B. The applicant shall provide all information described in 9VAC25-210-340 and applicable portions of 9VAC25-210-80 for any reapplication. The information may be provided by referencing information previously submitted to the department that remains accurate and relevant to the permit application. The board may waive any requirement of 9VAC25-210-340 and the applicable portions of 9VAC25-210-80 B, if it has access to substantially identical information.

9VAC25-210-360. Evaluation of project alternatives for surface water withdrawals.

The applicant shall demonstrate to the satisfaction of the board that the project meets an established [~~local water supply~~] need [for water to meet the project purpose]. In establishing [~~local~~] need, the applicant shall provide the following information:

1. Existing supply sources, yields, and demands, including:

a. Peak day and average daily withdrawal;

b. The [public water supply] safe yield and lowest daily flow of record;

c. Types of water uses; and

d. Existing water conservation measures and drought response plan, including what conditions trigger their implementation.

2. Projected demands over a minimum 30-year planning period, including the following:

a. Projected demand contained in the local or regional water supply plan developed in accordance with 9VAC25-780 or for the project service area, if such area is smaller than the planning area; [if applicable] or

b. Statistical population (growth) trends; [if applicable,] projected demands by use type; projected demand without water conservation measures; and projected demands with long-term water conservation measures.

3. Any alternatives analysis conducted specifically for withdrawals for public water supply shall include:

a. The range of alternatives to be analyzed by the applicant as follows:

(1) All applicable alternatives contained in the local or regional water supply plan developed in accordance with 9VAC25-780;

(2) Alternatives that are practicable or feasible from both a technical and economic standpoint that had not been identified in the local or regional water supply plan developed in accordance with 9VAC25-780;

(3) Alternatives that are available to the applicant but not necessarily under the current jurisdiction of the applicant; and

(4) Water conservation measures that could be considered as a means to reduce demand for each alternative considered by the applicant.

b. The applicant shall provide a narrative description that outlines the opportunities and status of regionalization efforts undertaken by the applicant.

c. The criteria used to evaluate each alternative for the purpose of establishing the least environmentally damaging practicable alternative, which includes but is not limited to:

(1) Demonstration that the proposed alternative meets the project purpose and project demonstrated need as documented pursuant to this section;

(2) Availability of the alternative to the applicant;

(3) Evaluation of interconnectivity of water supply systems, both existing and proposed;

(4) Evaluation of the cost of the alternative on an equivalent basis;

(5) Evaluation of alternative [public water supply] safe yields;

(6) Presence and potential impact of alternative on state and federally listed threatened and endangered species;

(7) Presence and potential impact of alternative on wetlands and streams (based on maps and aerial photos for all alternatives, field delineation required for preferred alternative);

(8) Evaluation of effects on instream flow; and

(9) Water quality considerations, including:

- (a) Land use within a watershed where the type of land use may impact the water quality of the source;
- (b) The presence of impaired streams and the type of impairment;
- (c) The location of point source discharges; and
- (d) Potential threats to water quality other than those listed in this subdivision 3 [~~(e)~~ c (9)].

4. Any alternatives analysis conducted for surface water withdrawals other than for public water supply shall include [~~all applicable items included in this subdivision 3 of this section~~ the following items of subdivision 3 of this section: subdivisions 3 a (3), 3 a (4), and 3 c. The analysis shall also include applicable items of subdivisions 3 a (1), 3 a (2), and 3 b].

9VAC25-210-370. VWP permit conditions applicable to surface water withdrawal permits.

A. In addition to the conditions established in 9VAC25-210-90 and 9VAC25-210-100, each VWP permit shall include conditions meeting the requirements established in this section, where applicable.

B. 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 surface water may be withdrawn at certain times, the public water supply safe yield, and conditions that require water conservation and reductions in water use.

1. In the development of conditions that limit the volume and rate at which surface water may be withdrawn, consideration shall be given to the seasonal needs of water users and the seasonal availability of surface water flow.
2. Consideration shall also be given to the affected stream reach and the amount of water that is put to a consumptive use in the process.
3. In the development of instream flow conditions for new withdrawals, the board shall take into consideration the combined effect on the hydrologic regime of the surface water within an affected stream reach due to consumptive water uses associated with:
 - a. All existing permitted withdrawals;
 - b. The total amount of withdrawals excluded from VWP permit requirements; and
 - c. Any other existing lawful withdrawals.

4. VWP permits for surface water withdrawals, other than for public water supply, shall identify how alternate sources of water supply will be made available to support the operation of the permitted facility during times when surface water withdrawals will be curtailed due to instream flow requirements or shall provide for modification of the

operation of the facility to ensure compliance with permit conditions. Such modifications may include, but are not limited to, termination or reduction of activities at the facility that are dependent on the permitted withdrawal, increase capacity to capture [$\frac{1}{2}$] and store higher flows [$\frac{1}{2}$] or implementation of other potential management options.

C. VWP permits issued for surface water withdrawals from the Potomac River between the Shenandoah River confluence and Little Falls shall contain a condition that requires the permittee to reduce withdrawals when the restriction or emergency stage is declared in the Washington Metropolitan Area under the provisions of the Potomac River Low Flow Allocation Agreement or when the operating rules outlined by the Drought-Related Operations Manual for the Washington Metropolitan Area Water Suppliers, an attachment to the Water Supply Coordination Agreement, are in effect. The department, after consultation with the Section for Cooperative Water Supply Operations on the Potomac (CO-OP), shall direct the permittee as to when, by what quantity, and for what duration withdrawals shall be reduced.

D. The board may issue permits for new or expanded surface water withdrawals that are not excluded from the requirements of this chapter by 9VAC25-210-310 based on the following criteria:

1. The amount of the surface water withdrawal is limited to the amount of water that can be put to beneficial use.
2. Based on the size and location of the surface water withdrawal, the withdrawal is not likely to have a detrimental impact on existing instream or offstream uses.
3. Based on an assessment by the board, this withdrawal, whether individually or in combination with other existing or proposed projects, does not cause or contribute to, or may not reasonably be expected to cause or contribute to:
 - a. A significant impairment of the state waters or fish and wildlife resources;
 - b. Adverse impacts on other existing beneficial uses; or
 - c. A violation of water quality standards.
4. In cases where the board's assessment indicates that criteria contained in subdivisions 2 and 3 of this subsection are not met, the board may issue a permit with special conditions necessary to assure these criteria are met.

9VAC25-210-380. Modifications to surface water withdrawal permits.

A. In addition to the requirements of 9VAC25-210-180 B, VWP permits for surface water withdrawals may be modified when any of the following developments occur:

1. When the board determines that minimum instream flow levels resulting directly from the permittee's withdrawal of surface water are detrimental to the instream beneficial use, existing at the time of permit issuance, and the withdrawal of surface water should be subject to further net limitations or when an area is declared a surface water

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management area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.

2. Significant changes to the location of the surface water withdrawal system are proposed such that the Department of Environmental Quality determines a new review is warranted due to the potential effect of the surface water withdrawal to existing beneficial uses of the new location.

3. Changes to the permitted project or the surface water withdrawal, including increasing the storage capacity for the surface water withdrawal, that propose an increase in the maximum permitted withdrawal volumes or rate of withdrawal or that cause more than a minimal change to the instream flow requirements with potential to result in a detrimental effect to existing beneficial uses.

4. A revision to the purpose of the surface water withdrawal that proposes to include a new use or uses that were not identified in the permit application or a modification of the existing authorized use or uses such that the use description in the permit application and permit is no longer applicable. [Examples of uses include, but are not limited to agricultural irrigation, golf course irrigation, public water supply, manufacturing, and electricity generation.]

B. Minor modifications may be made in the VWP permit for surface water withdrawals without following the public involvement requirements of 9VAC 25-210-140, 9VAC 25-210-160, or 9VAC 25-210-170. Any request for a minor modification shall be in writing and shall contain the facts or reasons supporting the request. The board may request additional information as necessary to review a request for a minor modification. Minor modifications may only occur in accordance with 9VAC25-210-180 E and the following items specific to surface water withdrawals:

1. Minor changes to the location of the surface water withdrawal system, as determined by DEQ, and thus not warranting a new review of the effect of the surface water withdrawal to existing beneficial uses.

2. Allow for temporary changes to instream flow requirements or operational permit requirements to address situations such as surface water withdrawal system improvements, environmental studies, or as otherwise determined appropriate by DEQ.

3. Changes to the permitted project [, including increasing the storage capacity for the surface water withdrawal,] that do not cause more than a minimal change to the instream flow requirements and do not have the potential to result in a detrimental effect to existing beneficial uses.

4. Changes to the monitoring methods or locations of monitoring sites for instream flow requirements or surface water withdrawal requirements.

9VAC25-210-390. Variance from surface water withdrawal permit conditions.

A. For public water supplies. The board may grant a temporary variance to any condition of a VWP permit for a surface water withdrawal for a public water supply to address a public water supply emergency during a drought. A permittee requesting such variance must provide all information required in the application for an Emergency Virginia Water Protection Permit identified in 9VAC25-210-340 C.

B. For all other water supplies. The board may grant a temporary variance to any condition of a VWP permit for a surface water withdrawal during a drought. A permittee requesting such variance must affirmatively demonstrate:

1. Public health and safety interests are served by the issuance of such variance; and

2. All management actions consistent with existing permits have been exhausted.

C. As a condition of any variance granted, the permittee shall:

1. Modify operations or facilities to comply with existing VWP permit conditions as soon as practicable; or

2. Provide new information to the board that alternate permit conditions are appropriate and either apply for a new VWP permit or a modification to its existing VWP permit. The board shall review any such application consistent with other sections of this chapter.

D. In addition, the board may require the permittee to take any other appropriate action to minimize adverse impacts to other beneficial uses.

E. Any variances issued by the board shall be of the shortest duration necessary for the permittee to gain compliance with existing permit conditions, apply for a new VWP permit, or request modification of existing permit conditions.

F. Public notice of any variance issued by the board shall be given as required for draft permits in 9VAC25-210-140 A, B, and C. Such notice shall be given concurrently with the issuance of any variance and the board may modify such variances based on public comment. Publication costs of all public notices shall be the responsibility of the permittee.

Part VI Enforcement

9VAC25-210-500. 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 VII
Miscellaneous

9VAC25-210-600. 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.

9VAC25-210-610. Transition.

A. All applications received on or after [~~(insert effective date of regulation)~~ August 2, 2016], will be processed in accordance with these new procedures.

B. VWP individual permits issued prior to [~~(insert effective date of regulation)~~ August 2, 2016], will remain in full force and effect until such permits expire, are revoked, or are terminated and during any period of administrative continuance in accordance with 9VAC25-210-65.

C. 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.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC25-210)

[~~Department of Environmental Quality Water Division Permit Application Fee Form (rev. 10/14)~~

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

~~Standard Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 7/08)~~

~~Joint Permit Application for Projects in Tidewater Virginia (eff. 10/04)~~

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

~~Tidewater Joint Permit Application for Projects Involving Tidal Waters, Tidal Wetlands and/or Dunes and Beaches in Virginia (eff. 3/2014)~~

~~Virginia Department of Transportation, Joint Permit Application, IACM Coordination Form (eff. 6/08)~~

~~Monthly Reporting of Impacts Less than One Tenth Acre Statewide (eff. 8/07)~~

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

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

[Tidewater Joint Permit Application for Projects Involving Tidal Waters, Tidal Wetlands and/or Dunes and Beaches in Virginia \(rev. 3/2014\)](#)

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

~~DEQ Application for New or Expanded Minor Surface Water Withdrawals Initiated on or after July 25, 2007~~

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-210)

~~Virginia Stormwater Management Handbook, First Edition, 1999, Volume I, Chapter 3, Department of Conservation and Recreation.~~

[Classification of Wetlands and Deepwater Habitats of the United States, Cowardin, Lewis M. II, et al., United States Fish and Wildlife Service, December 1979, Reprinted 1992](#) [±]

[Corps of Engineers Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region \(Version 2.0\), April 2012](#) [±]

[Corps of Engineers Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region \(Version 2.0\), November 2010](#) [±]

~~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, Fourth Edition, 2002, Department of Forestry~~ [±]

~~Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230~~ [±]

[~~Hydric Soils of the United States, updated annually, United States Department of Agriculture, Natural Resources Conservation Service.~~]

~~Potomac River Low Flow Allocation Agreement, January 11, 1978, § 181 of the Water Resources Development Act of 1976, Public Law 94-587, as modified on April 22, 1986~~ [±]

~~Virginia Agricultural Best Management Practices (BMP) Manual, Revised June 2000, Department of Conservation and Recreation~~ [±]

~~Virginia Drought Assessment and Response Plan, March 28, 2003, Drought Response Technical Advisory Committee~~ [±]

~~Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation~~ [±]

~~Virginia Stormwater Management Handbook, First Edition, 1999, Volume I, Chapter 3, Department of Conservation and Recreation~~ [±]

~~Guideline for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230 (Federal Register December 24, 1980).~~

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~~Potomac River Low Flow Allocation Agreement, January 11, 1978, § 181 of the Water Resources Development Act of 1976, Public Law 94-587, as modified on April 22, 1986.~~

Water Supply Coordination Agreement, July 22, 1982, an attachment to the Drought-Related Operations Manual for the Washington Metropolitan Area Water Suppliers [-]

VA.R. Doc. No. R14-4015; Filed May 13, 2016, 8:01 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: 9VAC25-660. Virginia Water Protection General Permit for Impacts Less Than One-Half of an Acre (amending 9VAC25-660-10 through 9VAC25-660-100; adding 9VAC25-660-15, 9VAC25-660-25, 9VAC25-660-27, 9VAC25-660-35; repealing 9VAC25-660-95).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Effective Date: August 2, 2016.

Agency Contact: Brenda Winn, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 233218, telephone (804) 698-4516, FAX (804) 698-4032, or email brenda.winn@deq.virginia.gov.

Summary:

The regulatory action reissues the existing general permit that expires on August 1, 2016. The amendments (i) revise or clarify which activities in specific water sources require application for a permit authorization and which activities are excluded; (ii) revise and clarify the application process, including the administrative and technical information required to achieve a complete permit application; (iii) revise and clarify the compensatory mitigation requirements, including the sequencing of acceptable compensatory mitigation actions and compensatory mitigation provisions, the requirements for compensating impacts to open waters, or the compensation necessary for temporary impacts; (iv) modify provisions

related to application processing, informational requirements, or actions occurring post-permit authorization for coverage; (v) modify permit authorization transitions between general permit cycles; (vi) delete the authorization term of three years and provisions for continuation of permit authorization coverage; (vii) incorporate certain federal regulatory provisions; (viii) clarify and update definitions; (ix) reorganize the regulation; and (x) correct grammar, spelling, and references.

CHAPTER 660

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

9VAC25-660-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Program Regulation (9VAC25-210) unless a different meaning is required by the context clearly indicates otherwise or unless otherwise is indicated below.

"Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.

"Bioengineering method" means a biological measure incorporated into a facility design to benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent practicable, for long-term aquatic resource protection and improvement.

~~"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.~~

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

"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 the 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 typically possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.~~

"DEQ" means the Department of Environmental Quality.

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

"Impacts" means results caused by human induced activities conducted in surface waters as specified in § 62.1-44.15:20 A 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 phased project that depend upon other phases of the project do not have independent utility. Portions of a phased project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent public and economic utility.

~~"Isolated Wetland of Minimal Ecological Value (IWOMEV)" means a wetland that (i) does not have a surface water connection to other state waters; (ii) is less than one-tenth of an acre in size; (iii) is not located in a Federal Emergency Management Agency designated 100 year floodplain; (iv) is not identified by the Virginia Natural Heritage Program as a rare or state significant natural community; (v) is not forested; and (vi) does not contain listed federal or state threatened or endangered species.~~

~~"Less than one-half of an acre" means 0.49 less than 0.50 acre (21,779 square feet) or less (21,780 square feet).~~

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

~~"Open water" means an area that, during a year with normal patterns of precipitation, has standing water for sufficient duration to establish an ordinary high water mark. The term "open water" includes lakes and ponds but does not include ephemeral waters, stream beds, or wetlands.~~

"Ordinary high water" or "ordinary high water mark" means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

~~"Perennial stream" means a well defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for~~

~~most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

~~"Permanent impacts" means those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.~~

~~"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation, or any other legal entity.~~

~~"Riprap" means a layer of nonerodible material such as stone or chunks of concrete.~~

"Single and complete project" means the total project proposed or accomplished by a person, which also has independent utility, as defined in this section. For linear projects, the "single and complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single ~~waterbody~~ water body) and to multiple crossings of the same ~~waterbody~~ water body at separate and distinct locations. Phases of a project that have independent public and economic utility may each be considered single and complete.

"State program general permit (SPGP)" means a general permit that is issued by the Department of the Army in accordance with ~~33 USC 1344(e), 33 CFR 325.2(e)(2), 33 USC § 1344 and 33 CFR 325.3(b) 33 CFR 325.5(c)(3)~~ and that is founded on a state program. The SPGP is designed to avoid duplication between the federal and state programs.

~~"Stream bed" means the substrate of a stream, as measured between the ordinary high water marks along a length of stream. The substrate may consist of organic matter, bedrock or inorganic particles that range in size from clay to boulders, or a combination of both. Areas contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.~~

~~"Surface waters" means all state waters that are not ground water as defined in § 62.1-255 of the Code of Virginia.~~

~~"Temporary impacts" are those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface water, or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction conditions, contours, or elevations, such that previous functions and values are restored.~~

"Up to 300 linear feet" means ~~≥0.00 to~~ 300.00 linear feet or less, as measured along the center of the main channel of the stream segment.

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

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"Utility line" means a pipe or pipeline for the transportation of a gaseous, liquid, liquefiable or slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term "utility line" does not include activities that drain a surface water to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

9VAC25-660-15. Statewide information requirements.

The board may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's discharge on the quality of state waters or (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a VWP permit or general permit coverage shall provide the information requested by the board.

9VAC25-660-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this [~~regulation chapter~~] is to establish VWP General Permit Number WP1 under [~~the VWP permit program regulation 9VAC25-210~~] to govern permanent and temporary impacts to less than one-half of an acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed. Applications for coverage by this VWP general permit shall be processed for approval, approval with conditions, or denial by the board. ~~Authorization, authorization~~ Coverage, coverage with conditions, or application denial by the board shall constitute the VWP general permit action. ~~Each VWP general permit action and~~ shall follow all provisions in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each VWP general permit action is exempt.

B. The director, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. ~~This VWP general permit regulation will become effective on August 1, 2006, and will expire on August 1, 2016.~~

D. ~~Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9VAC25-660-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for three years.~~

9VAC25-660-25. Authorization for coverage under VWP general permit effective August 1, 2006.

A. All complete applications or notifications received by the board through 11:59 p.m. on August 1, 2016, shall be processed in accordance with the VWP general permit regulation in effect August 1, 2006, through August 1, 2016.

If the application or notification is incomplete or if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a completeness determination, the applicant shall reapply for coverage under the VWP general permit effective August 2, 2016, or apply for a VWP individual permit, including payment of any required permit application fee. No refund of permit application fees shall be made.

B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016, shall remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP authorization cover page, unless otherwise revoked or terminated or unless a notice of project completion is received by the board on or before that date. Any permittee that desires to continue an authorized activity beyond the stated expiration date must reapply for coverage under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and conditions, or apply for a VWP individual permit, including payment of any required permit application fee. This section shall only apply to permittees holding valid authorizations for coverage granted under the VWP general permit effective August 1, 2006, through August 1, 2016.

9VAC25-660-27. VWP general permit coverage; transition; continuation.

A. All applications or notifications received on or after August 2, 2016, will be processed in accordance with the VWP general permit regulation effective August 2, 2016.

B. The general permit in 9VAC25-660-100 is effective August 2, 2016, and expires August 1, [~~2031~~ 2026]. Any coverage that is granted pursuant to 9VAC25-660-30 shall remain in full force and effect until 11:59 p.m. on August 1, [~~2031~~ 2026], unless the general permit coverage is terminated or revoked [~~or unless a notice of project completion is received by the board~~] on or before this date. Where a permittee that has received general permit coverage desires to continue or complete the authorized activities beyond August 1, [~~2031~~ 2026], the permittee shall reapply for new general permit coverage or for a VWP individual permit, including payment of any required permit application fee. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the board.

C. Application may be made at any time for a VWP individual permit in accordance with 9VAC25-210. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the board.

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

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

1. The applicant submits notification as required in 9VAC25-660-50 and 9VAC25-660-60.

2. The applicant remits ~~the any~~ required permit application processing fee ~~in accordance with 9VAC25-20.~~

3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of ~~9VAC25-660-100~~ the VWP general permit; the general permit coverage [letter]; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.

~~4. The applicant receives approval from the Virginia Department of Environmental Quality.~~

~~5. 4.~~ The applicant has not been required to obtain a VWP individual permit under [~~the VWP permit regulation (9VAC25-210)~~ 9VAC25-210] for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another applicable VWP general permit, in lieu of coverage under this VWP general permit.

~~6. 5.~~ Impacts, both temporary and permanent, result from a single and complete project, including all attendant features.

a. Where a road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the board may, at its discretion, require a VWP individual permit.

b. For the purposes of this chapter, when an interchange has multiple crossings of surface waters, the entire interchange shall be considered the single and complete project.

~~7. 6.~~ The stream impact criterion applies to all components of the project, including structures and stream channel manipulations.

~~8. [Compensation] 7.~~ When required, [compensation] for unavoidable impacts is provided in ~~the form of the purchase or use of credits from an approved mitigation bank or a contribution to an approved in lieu fee fund~~ accordance with 9VAC25-660-70 and the associated provisions of 9VAC25-210-116.

~~B. Only activities in nontidal waters may qualify for coverage under this VWP general permit.~~

~~C. B.~~ The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in ~~9VAC25-660-10~~ 9VAC25-210-10. Any Upon request by the board, any person claiming this waiver bears the burden to shall demonstrate to the satisfaction of the board that he qualifies for the waiver.

~~D. C.~~ Receipt of Coverage under this VWP general permit does not relieve the permittee of the responsibility to comply

with any other applicable federal, state, or local statute, ordinance, or regulation.

~~E. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure or structures.~~

~~F. D.~~ Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued § 401 certification ~~existing in accordance with 9VAC25-210-130 H as of August 1, 2006~~ August 2, 2016, shall constitute coverage under this VWP general permit [] unless a state program general permit (SPGP) is approved required and granted 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 9VAC25-210-130 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.~~

~~G. E.~~ When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require ~~individual applications and a VWP individual permits~~ permit in accordance with 9VAC25-210-130 B rather than ~~approving~~ granting coverage under this VWP general permit.

9VAC25-660-35. Administrative continuance.

Beginning on August 2, 2016, in any case where an existing permittee has submitted a timely and complete notification or application for coverage under the next consecutive VWP general permit, in accordance with 9VAC25-660-50 and 9VAC25-660-60 and the board, through no fault of the permittee, does not issue the next consecutive VWP general permit with an effective date on or before the expiration date of the expiring VWP general permit, the conditions of that expiring VWP general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive VWP general permit.

9VAC25-660-40. Exceptions to coverage.

A. ~~Authorization for coverage~~ Coverage under this VWP general permit ~~will not apply in the following areas: is not required if the activity is excluded from permitting in accordance with 9VAC25-210-60.~~

1. ~~Wetlands composed of 10% or more of the following species (singly or in combination) in a vegetative stratum: Atlantic white cedar (Chamaecyparis thyoides), bald eypress (Taxodium distichum), water tupelo (Nyssa aquatica), or overcup oak (Quercus lyrata). Percentages shall be based on either basal area or percent areal cover in the area of impact.~~

2. ~~Wetlands underlain by histosols.~~

3. ~~Nontidal wetlands adjacent to tidal waters.~~

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~~4. 100-year floodplains as identified by FEMA's flood insurance rate maps or FEMA approved local floodplain maps.~~

~~5. Surface waters where the proposed activity will impact federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.~~

B. ~~Authorization for coverage~~ Coverage under this VWP general permit cannot be used in combination with ~~authorizations for coverage~~ under other VWP general permits in order to impact greater than one-half of an acre of nontidal wetlands or open water or greater than 300 linear feet of nontidal stream bed. ~~More than one authorization for~~ Granting coverage under this VWP general permit more than once for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the limits specified here.

C. The activity to impact surface waters shall not have been prohibited by state law or regulations, nor shall it contravene applicable Water Quality Standards (9VAC25-260).

D. The board shall deny application for coverage under this VWP general permit to any applicant ~~for conducting~~ activities that cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to significantly affect aquatic life, or for activities that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

E. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that cause more than minimal degradation of the water quality of a stream.

F. ~~This Coverage under this VWP general permit may shall~~ Coverage under this VWP general permit may shall not be used granted for:

1. ~~Any Construction of~~ a stormwater management facility ~~that is located~~ in perennial streams or in waters designated as ~~oxygen oxygen-impaired or temperature-impaired~~ oxygen-impaired or temperature-impaired (does not include wetlands).

2. The construction of an irrigation impoundment on a perennial stream.

3. Any water withdrawal activities.

4. The location of animal feeding operations or waste storage facilities in state waters.

5. The pouring of wet or uncured concrete ~~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 or unless approved by the Department of Environmental Quality.

6. Dredging or maintenance dredging.

7. Return flow discharges from dredge disposal sites.

8. The construction of new ski areas or oil and gas wells.

9. The Any activity in surface waters that will impact federal or state listed [or proposed] threatened or endangered species [or proposed] or designated critical habitat, or [be the result in a] taking of threatened or endangered species in accordance with the following:

a. As pursuant to § 29.1-564 of the Code of Virginia, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 [(P.L. Public Law] 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568 of the Code of Virginia.

b. As pursuant to § 29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any [~~state listed~~ state listed] endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.

10. Any activity in 100-year floodplains, as identified by the Federal Emergency Management Agency's (FEMA) flood insurance rate maps or FEMA-approved local floodplain maps.

11. Any activity in wetlands composed of 10% or more, singularly or in combination, based upon either basal area or percent areal cover in the area of impact, in a vegetative stratum: Atlantic white cedar (*Chamaecyparis thuyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*).

12. Any activity in wetlands underlain by histosols.

13. Any activity in tidal waters or in nontidal wetlands adjacent to tidal waters.

9VAC25-660-50. Notification.

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

1. An application for ~~authorization of coverage for~~ proposed, permanent nontidal wetland or open water impacts greater than one-tenth of an acre, or ~~of for~~ proposed, permanent nontidal stream bed impacts greater than 300 linear feet shall include all information pursuant to 9VAC25-660-60 B, ~~except for 9VAC25-660-60 B 20 when the application is for a Virginia Department of Transportation (VDOT) administered project. VDOT shall provide the information in 9VAC25-660-60 B 20 through the VDOT State Environmental Review Process, the National Environmental Policy Act (42 USC § 4321 et seq.) (for federal actions), or the VDOT Geographic Information System. Compensatory mitigation may be required for all permanent impacts in accordance with Parts I, II, and III of this VWP general permit regulation. All temporary impacts shall be restored to preexisting~~

conditions, as per Parts I, II, and III of this VWP general permit regulation.

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

a. For a proposed VDOT administered project that is not subject to subdivision 2 c of this subsection, the application shall include the information required by subdivisions 1 through 8, 13, 15, and 21 of 9VAC25-660-60 B. The VDOT Quarterly Reporting of Impacts Less Than One Tenth Acre application may be used, provided that it contains the required information. Compensatory mitigation may be required for all permanent impacts once the notification limits of one-tenth acre wetlands or open water, or 300 linear feet of stream bed, are exceeded. All temporary impacts, regardless of amount, shall be restored to preexisting conditions, as per Parts I and III of this VWP general permit regulation. For any proposed project in wetlands, open water, streams, or compensatory mitigation sites that are under a deed restriction, conservation easement, declaration of restrictive covenant, or other land use protective instrument (hereafter "protected areas"), when such restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to activities in wetlands and compensatory mitigation sites, the application shall include all of the information required by 9VAC25-660-60 B. Compensatory mitigation may be required for all permanent impacts.

b. For all other projects that are not subject to subdivision 2 c of this subsection, the application shall include the information required by subdivisions 1 through 9, 13, 15, 20, and 21 1 through 7, 10, 11, 15, and 16 of 9VAC25-660-60 B; and documentation that verifies the quantity and type of impacts. Compensatory mitigation may be required for all permanent impacts once the notification limits of one-tenth acre wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required, the application shall include the information in 9VAC25-660-60 B 12. All temporary impacts, regardless of amount, shall be restored to preexisting conditions, as per Parts I and III of this VWP general permit regulation.

c. For any proposed project in wetlands, open water, streams, or compensatory mitigation sites that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (hereafter protected areas), when such restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to activities in wetlands and compensatory mitigation sites, the application shall include all of the information required

by 9VAC25-660-60 B, and documentation that verifies the quantity and type of impacts. Application for a VDOT administered project shall provide the required information in 9VAC25-660-60 B 20 through the VDOT State Environmental Review Process, the National Environmental Policy Act (for federal actions), or the VDOT Geographic Information System. Compensatory mitigation may be required for all permanent impacts, regardless of amount. All temporary impacts, regardless of amount, shall be restored to preexisting conditions, as per Parts I and III of this VWP general permit regulation.

B. A Joint Permit Application (JPA), a Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA), or a VDOT Quarterly Reporting of Impacts Less Than One Tenth Acre The Department of Environmental Quality-approved application forms shall serve as an application under this regulation for a VWP permit or VWP general permit coverage.

C. The board will determine whether the proposed activity requires coordination with the United States U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and the Virginia Department of Game and Inland Fisheries regarding the presence of federal or state [proposed or] listed threatened and endangered species or [proposed or] designated critical habitat. Based upon consultation with these agencies, the board may deny application for coverage under this general permit. The applicant may also consult with these agencies prior to submitting an application. Species or habitat information that the applicant provides will assist DEQ the Department of Environmental Quality in reviewing and processing the application.

9VAC25-660-60. Application.

A. Applications shall be filed with the board as follows: 1. The applicant shall file a complete application in accordance with 9VAC25-660-50 and this section for a coverage under this VWP General Permit WP1 general permit for impacts to nontidal wetlands or open water of less than one-half of an acre and up to 300 linear feet of nontidal stream bed, which will serve as a notice of intent for coverage under this VWP general permit.

2. The VDOT may use its monthly IACM process for submitting applications.

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

1. The applicant's legal name, mailing address, and telephone number, and; if applicable, electronic mail address and fax number.

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~~2. If different from the applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number of property owner.~~

~~2. The~~ 3. If applicable, the authorized agent's (if applicable) name, mailing address, telephone number, and, if applicable, fax number and electronic mail address.

~~3. 4. The existing VWP general permit tracking number (if applicable), if applicable.~~

~~4. The name of the project, narrative description of project purpose, and a description of the proposed activity in surface waters.~~

~~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, including the project boundary. The map shall be of sufficient detail such that the site may be easily located for site inspection.~~

~~10. (Reserved.)~~

~~11. The project plan view. Plan view sketches shall 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. In addition, cross sectional or profile sketches with the above information may be required to detail impact areas.~~

~~12. (Reserved.)~~

~~13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, the areal extent of the impact (area of wetland in square feet and acres; area of stream, length of stream, and average width); the location (latitude and longitude) at the center of the impact, or at the center of each impact for linear projects; and the type of surface water impact (open water; wetlands according to the Cowardin classification or similar terminology; or perennial and nonperennial for streams). The board encourages applicants to coordinate the determination of perennial or nonperennial streams with the appropriate local government agency in Tidewater Virginia.~~

~~14. (Reserved.)~~

~~15. A description of the specific on-site measures considered and taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable.~~

~~16. A conceptual plan for the intended compensation for unavoidable impacts, including:~~

~~a. Applicants proposing compensation involving contributions to an in lieu fee fund shall state such as their conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior to issuance of this VWP general permit authorization; and~~

~~b. Applicants proposing compensation involving the purchase or use of mitigation banking credits shall include as their conceptual compensation plan:~~

~~(1) The name of the proposed mitigation bank and the HUC in which it is located;~~

~~(2) The number of credits proposed to be purchased or used; 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 9VAC25-210-45, including the wetlands data sheets. The delineation map shall also include the on-site location of streams, open water, and the approximate limits of Chesapeake Bay Resource Protection Areas (RPAs), as other state or local requirements may apply if the project is located within an RPA. 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 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.~~

~~18. A copy of the FEMA flood insurance rate map or FEMA approved local floodplain map for the project site (impacts that include linear feet of stream bed must be converted to a square footage or acreage using the stream width in order to calculate the permit application fee).~~

~~19. The appropriate application processing fee for a VWP general permit in accordance with 9VAC25-20. The permit application fee for VWP permit authorizations is based on acres only. Therefore, impacts that include linear feet of stream bed must be converted to an acreage in order to calculate the permit application fee.~~

~~20. A written disclosure identifying all wetlands, open water, streams, and associated upland buffers within the proposed project or compensation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (protected areas). Such disclosure shall include the nature of the prohibited activities within the protected areas.~~

~~21. 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 application shall be signed in accordance with 9VAC25-210-100. 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.

5. Project name and proposed project schedule.

6. The following information for the project site location [; if applicable]:

a. The physical street address, nearest street, or nearest route number; city or county; zip code; and if applicable, parcel number of the site or sites.

b. Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.

c. The latitude and longitude to the nearest second at the center of the site or sites.

d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site or sites.

e. A detailed map depicting the location of the site or sites, including the project boundary [and all existing preservation areas on the site or sites]. The map (e.g., a [~~United States U.S.~~] Geologic Survey topographic quadrangle map) should be of sufficient detail to easily locate the site or sites for inspection.

[~~f. GIS compatible shapefile or shapefiles of the project boundary and all existing preservation areas on the site or sites, unless otherwise approved by or coordinated with DEQ. The requirement for a GIS compatible shapefile or shapefiles may be waived by DEQ on a case by case basis.~~]

7. A narrative description of the project, including project purpose and need.

8. Plan-view drawing or drawings of the project site sufficient to assess the project, including at a minimum the following:

a. North arrow, graphic scale, and existing and proposed topographic or bathymetric contours.

b. Limits of proposed impacts to surface waters.

c. Location of all existing and proposed structures.

d. All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface waters and waterway name [;] if designated; ebb and flood or direction of flow; and ordinary high water mark in nontidal areas.

e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant [;] and if available, the limits as approved by the locality in which the project site is located [;] unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

f. The limits of areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas).

9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings of each proposed impact area shall include at a minimum a graphic scale, existing structures, existing and proposed elevations, limits of surface water areas, ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits, and location of all existing and proposed structures. Profile drawing or drawings with this information may be required on a case-by-case basis to demonstrate minimization of impacts. Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond the limits of proposed impact.

10. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters and any physical alteration to surface waters. Surface water impacts shall be identified as follows:

a. Wetland impacts identified according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) [;] and for each classification, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

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

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c. Open water impacts identified according to their Cowardin classification, and for each type, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

d. A copy of the approved jurisdictional determination [~~if~~ when] available, or [when unavailable, (i)] the preliminary jurisdictional determination from the U.S. Army Corps of Engineers (USACE), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ [~~;~~] or [(ii)] other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable.

e. A delineation map [~~and GIS compatible shapefile or shapefiles of the delineation map~~] that [(i)] depicts the geographic area or areas of all surface water boundaries delineated in accordance with 9VAC25-210-45 and confirmed in accordance with the jurisdictional determination process; [(ii)] identifies such areas in accordance with subdivisions 10 a, 10 b, and 10 c of this subsection; and [(iii)] quantifies and identifies any other surface waters according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) or similar terminology [~~, if applicable~~]. [~~The requirements for a delineation map or GIS compatible shapefile or shapefiles may be waived by DEQ on a case by case basis.~~]

11. An alternatives analysis for the proposed project detailing the specific on-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific on-site measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. The analysis shall demonstrate to the satisfaction of the board that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.

12. A compensatory mitigation plan to achieve no net loss of wetland acreage [~~or~~ and] functions or stream functions and water quality benefits. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-lieu

fee program credits shall include the number and type of credits proposed to be purchased and documentation from the approved bank or in-lieu fee program sponsor of the availability of credits at the time of application.

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

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

15. A written description and a graphical depiction identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensatory mitigation areas located within the proposed project boundary that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas). Such description and a graphical depiction shall include the nature of the prohibited activities within the protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant [,] and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), as additional state or local requirements may apply if the project is located within an RPA.

16. Signature page that has been signed, dated, and certified by the applicant in accordance with 9VAC25-210-100. If the applicant is a business or other organization, the signature must be made by an individual with the authority to bind the business or organization, and the title of the signatory must be provided. The application signature page, either on the copy submitted to the Virginia Marine Resources Commission or to DEQ, must have an original signature. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

~~D. C.~~ Upon receipt of an application from the Department of Transportation for a road or highway construction project by the appropriate DEQ office, the board has 10 business days, pursuant to § 33.2-258 of the Code of Virginia, to review the application and either determine the information requested in subsection B of this section is complete or inform the Department of Transportation that additional information is required to make the application complete (pursuant to § 33.1-19.1 of the Code of Virginia). Upon receipt of an application from other applicants for any type of project, the board has 15 days to review the application and either determine that the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. ~~For Department of Transportation road or highway construction projects, Pursuant to § 33.2-258 of the Code of Virginia,~~

[~~application for~~] coverage under this VWP general permit for Department of Transportation road or highway construction projects shall be [~~approved, approved with conditions, or denied~~ approved or approved with conditions, or the application shall be denied,] within 30 business days of receipt of a complete application (pursuant to § 33.1-19.1 of the Code of Virginia). For all other projects, [~~application for~~] coverage under this VWP general permit shall be [~~approved, approved with conditions, or denied~~ approved or approved with conditions, or the application shall be denied,] within 45 days of receipt of a complete application. If the board fails to act within the applicable 30 or 45 days on a complete application, coverage under this VWP general permit shall be deemed approved granted.

1. In evaluating the application, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage Application for coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional conditions requirements on a project in order to ~~approve authorization grant coverage~~ under this VWP general permit. However, ~~these conditions the requirements~~ must be consistent with [~~the VWP general permit program regulation this chapter~~].

~~E. D.~~ Incomplete application. Where an application is ~~incomplete not accepted as complete~~ by the board within the applicable 10 or 15 days of receipt, the board ~~may~~ shall require the submission of additional information from the applicant and may suspend processing ~~the of any~~ application until such time as the applicant has supplied the requested information and the application is complete. Where the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or in ~~reports any report~~ to the board, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application; for the purposes of review but shall not require an additional permit application fee. An incomplete permit application may be administratively withdrawn from processing by the board for failure to provide the required information after ~~180 60~~ days from the date ~~that of the original permit application was received~~ latest written information request made by the board. An applicant may request a suspension of application review by the board, but requesting a suspension shall not preclude the board from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

9VAC25-660-70. Compensation.

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

~~B. Generally, the sequence of preferred compensation options shall be restoration, then creation, then mitigation banking, and then in lieu fee fund. Also, 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, for~~ For the purposes of this VWP general permit chapter, the board shall assume that the purchase ~~or use~~ of mitigation bank credits or ~~a contribution to an~~ the purchase of in-lieu fee ~~fund~~ program credits is ecologically preferable to practicable on-site or other off-site surface water compensation options, ~~and no further demonstration is necessary.~~ Compensatory mitigation and any compensatory mitigation proposals shall be in accordance with this section and the associated provisions of 9VAC25-210-116.

~~C. In order for contribution to an in lieu fee fund to be an acceptable form of compensation, the fund must be approved for use by the board according to the provisions of 9VAC25-210-116 D. The applicant shall provide proof of contribution to DEQ prior to commencing activities in impact areas.~~

~~D. In order for purchase or use of bank credits to be an acceptable form of compensation, the bank shall be operating in accordance with the provisions of § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 E. The applicant shall provide proof of purchase, use, or debit to DEQ prior to commencing activities in impact areas.~~

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

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

~~G. E.~~ Compensation for permanent open water impacts, other than to streams, may be required at a an in-kind or out-of-kind mitigation ratio of 1:1 ~~replacement to impact ratio or less~~, as calculated on an area basis, to offset impacts to state waters and fish and wildlife resources ~~from significant impairment.~~ Compensation shall not be required for permanent or temporary impacts to open waters identified as palustrine by the Cowardin classification method, [except but compensation may be required] when such open waters are

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located in areas of karst topography in Virginia and are formed by the natural solution of limestone.

~~H. Compensation~~ F. When conversion results in a permanent alteration of the functions of a wetland, compensatory mitigation for conversion impacts to wetlands shall be required at a 1:1 compensation to impact mitigation ratio, as calculated on an area basis, when such conversion results in a permanent alteration of the functions and values of the wetland. For example, the permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this [regulation chapter]. Compensation for conversion of other types of surface waters may be required, as appropriate, to offset impacts to state waters and fish and wildlife resources ~~from significant impairment.~~

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

A. The permittee shall notify the board in advance of ~~the a~~ planned change, and ~~the planned change~~ an application or request will for modification to coverage shall be reviewed according to all provisions of this regulation chapter. Coverage shall not be modified if (i) the cumulative total of permanent and temporary impacts [for a single and complete project] equals or exceeds one-half acre of nontidal wetlands or open water or exceeds 300 linear feet of nontidal stream bed or (ii) the criteria in subsection B of this section are not met. The applicant may submit a new permit application for consideration under a VWP individual permit.

B. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully mitigated. Prior to a planned change approval, DEQ may require submission of a compensatory mitigation plan for the additional impacts. In cases where the original impacts totaled less than 1/10 acre of wetlands or open water, or less than 300 linear feet of stream bed, and the additional impacts result in these limits being exceeded, the notice of planned change will not be approved. However, the applicant may submit a new permit application and permit application fee for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

C. Authorization under this VWP general permit may be modified after issuance if the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals. DEQ shall not be

responsible for ensuring refunds for mitigation bank credit purchases, mitigation bank usage, or in lieu fee fund contributions.

~~D. Authorization under this VWP general permit may be modified after issuance for a change in project plans that does not result in a change in project impacts.~~

~~E. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use in 9VAC25-210-116 E are met.~~

~~F. Authorization under the VWP general permit may be modified after issuance for typographical errors.~~

~~G. A Notice of Planned Change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and the area is restored to preexisting conditions in accordance with Part I-C 11 of this general permit. In no case can the additional temporary impacts exceed the general permit threshold for use.~~

~~H. In no case can this authorization be modified to exceed the general permit threshold for use.~~

~~I. A notice of planned change shall be denied if fish and wildlife resources are significantly impacted or if the criteria in subsection B of this section are not met. However, the original VWP general permit authorization shall remain in effect. The applicant may submit a new permit application and permit application fee for consideration under a VWP individual permit.~~

B. VWP general permit coverage may be modified subsequent to issuance under the following circumstances:

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

a. The additional impacts are proposed prior to impacting those additional areas.

b. The proposed additional impacts are located within the project boundary as depicted in the application for coverage or are located in areas of directly-related off-site work [,] unless otherwise prohibited by this [VWP general permit regulation chapter].

c. The permittee has provided sufficient documentation that the board may reasonably determine that the additional impacts will not impact federal or state listed [or proposed] threatened or endangered species or [proposed or] designated critical habitat, or [be the result in a] taking of threatened or endangered species. [The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.]

d. The cumulative, additional permanent wetland or open water impacts for one or more notices of planned change do not exceed 0.25 acre.

e. The cumulative, additional permanent stream impacts for one or more notices of planned change do not exceed 100 linear feet.

f. Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-660-60 B 11.

g. Compensatory mitigation for the proposed impacts, if required, meets the requirements of 9VAC25-660-70 and the associated provisions of 9VAC25-210-116. Prior to a planned change approval, the Department of Environmental Quality may require submission of a compensatory mitigation plan for the additional impacts.

h. Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the board that the area to be temporarily impacted will be restored to its preconstruction elevations and contours [±] with topsoil from the impact area where practicable, such that the previous acreage and functions are restored [±] in accordance with Part I A 3 and B 11 of 9VAC25-660-100. The additional temporary impacts shall not cause the cumulative total impacts to exceed the general permit threshold for use. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

i. The additional proposed impacts do not change the category of the project, based on the original impact amounts as specified in 9VAC25-660-50 A 2. However, the applicant may submit a new permit application for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

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

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

4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program in accordance with 9VAC25-210-116 C. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory

mitigation requirement for which the compensatory mitigation is proposed to replace.

5. Correct typographical errors.

9VAC25-660-90. Termination of ~~authorization by consent coverage.~~

~~When all permitted activities requiring notification under 9VAC25-660-50 A and all compensatory mitigation requirements have been completed, or if the authorized impacts will not occur, the A. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation completing or canceling all authorized activities requiring notification under 9VAC25-660-50 A and all compensatory mitigation requirements.~~ When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of ~~authorization coverage~~ on behalf of the board. The permittee shall submit the following information:

1. Name, mailing address, and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP general permit authorization tracking number; and
4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this the~~ VWP general permit ~~authorization or coverage.~~"

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by ~~this the~~ VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any

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violations of ~~this the~~ VWP general permit ~~authorization or coverage~~, nor does it allow me to resume the ~~permitted authorized~~ activities without reapplication and ~~reauthorization coverage~~."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by [~~DEQ~~] the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by a the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of this the VWP general permit authorization or coverage, nor does it allow me to resume the permitted authorized activities without reapplication and reauthorization coverage."

B. VWP general permit coverage may be terminated for cause in accordance with 9VAC25-210-180 F and [9VAC25-230 § 62.1-44.15:02 of the Code of Virginia] or without cause in accordance with 9VAC25-210-180 G and [9VAC25-230 § 62.1-44.15:02].

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

~~A. All applications received on or after August 1, 2006, will be processed in accordance with these new procedures.~~

~~B. VWP general permit authorizations issued prior to August 1, 2006, will remain in full force and effect until such authorizations expire, are revoked, or are terminated.~~

~~C. Notices of planned change and all other types of notification that are received by the board prior to August 1, 2006, will be processed in accordance with the VWP general permit regulation in effect at that time. Notices of planned change and all other types of notification to the board that are received on or after August 1, 2006, will be processed in accordance with these new procedures.~~

9VAC25-660-100. VWP general permit.

Any applicant whose application has been accepted by the board shall be subject to the following requirements:

~~VWP General Permit No. WP1~~

~~Authorization expiration date:~~

~~Authorization Note(s):~~

~~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~~

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

Effective date: August 2, 2016

Expiration date: August 1, [2034 2026]

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein complied with, 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, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

Subject The permanent or temporary impact of less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein [;] any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to permanently or temporarily impact less than one half of an acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed.

Permittee:

Address:

Activity Location:

Activity Description:

~~The authorized activity shall be in accordance with this cover page, Part I Special Conditions, Part II Compensation, 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~~ The activities authorized by this chapter shall not cause more than the permanent or temporary impacts to less than one-half of an acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed, according to the information provided in the approved and complete application. [Additional permit requirements as stipulated by the board in the coverage letter, if any, shall be enforceable conditions of this permit.]

2. Any changes to the authorized permanent impacts to surface waters ~~associated with this project~~ shall require ~~either~~ a notice of planned change in accordance with 9VAC25-660-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters ~~associated with this project~~ shall require written notification to ~~DEQ~~ and approval from the Department of Environmental Quality in accordance with 9VAC25-660-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit ~~authorization~~.

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

~~5. The activities authorized by this VWP general permit must commence and be completed within three years of the date of this authorization.~~

~~B. Continuation of coverage. Reapplication 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 compensation) has not been completed within three years of the date of authorization. The request for continuation of coverage 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 continuation of the VWP general permit authorization is necessary.~~

C. ~~B.~~ Overall project conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts Pipes and culverts placed in streams must be installed to maintain low flow conditions: and shall be

countersunk at both inlet and outlet ends of the pipe or culvert [,] unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing [pipes and] culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. 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. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters [,] unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or [aste waste] concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with ~~this the~~ project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

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8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of ~~permitted~~ authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours; with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, ~~scrub/shrub~~ scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their ~~original~~ preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment, ~~and the banks.~~ Streambanks shall be seeded or planted with the same vegetation cover type originally present ~~along the streambanks,~~ including [any necessary,] supplemental erosion control grasses [~~if necessary~~], ~~except for invasive.~~ Invasive species identified on ~~DCR's~~ the Department of Conservation and Recreation's Virginia Invasive Alien Plant Species of Virginia List List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to ~~original~~ preconstruction elevations and contours; with topsoil from the impact area where practicable; restored within 30 days following removal of

the stockpile; and restored with the same vegetation cover type originally present, including [any necessary,] supplemental erosion control grasses [~~if necessary~~], ~~except for invasive.~~ Invasive species identified on ~~DCR's~~ the Department of Conservation and Recreation's Virginia Invasive Alien Plant Species of Virginia List List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Game and Inland Fisheries, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in a Department of Environmental Quality VWP general permit coverage [letter], and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities, ~~unless allowed by this permit authorization.~~

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless ~~otherwise~~ authorized by this VWP general permit the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

~~D.~~ C. Road crossings.

1. Access roads and associated bridges ~~or pipes,~~ and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours and elevations in surface waters must be bridged, piped, or culverted to maintain surface flows.

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

~~E.~~ D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its ~~original~~ preconstruction elevations and

contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by ~~this VWP general permit~~ the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including [any necessary,] supplemental erosion control grasses [~~if necessary~~], ~~except for invasive~~. Invasive species identified on DCR's the Department of Conservation and Recreation's Virginia Invasive Alien Plant Species of Virginia list List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

F. E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection control structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

G. F. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize

adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit ~~authorization~~ coverage or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and are accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II. Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide ~~appropriate and practicable any required~~ compensation for all impacts meeting in accordance with the conditions ~~outlined~~ in this VWP general permit [, the coverage letter,] and the chapter promulgating the general permit.

2. The types of compensation options that may be considered for activities covered under this VWP general permit include the purchase ~~or use~~ of mitigation bank credits or ~~a contribution to an~~ the purchase of in-lieu fee fund program credits in accordance with 9VAC25-660-70 and the associated provisions of 9VAC25-210-116 and 9VAC25-660-70, provided that all impacts are compensated at a 2:1 ratio.

3. ~~A written statement that conveys the applicant's proposal to use a mitigation bank or in-lieu fee fund for compensation shall be submitted with the application and shall constitute the final compensation plan for the approved project. The final compensation plan shall be submitted to and approved by the board prior to a construction activity in permitted impacts areas.~~ The board shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final ~~compensation~~ plan as approved by the board shall be an enforceable requirement of any coverage under this VWP general permit authorization. Deviations from the approved final plan must shall be submitted and approved in advance by the board.

4. ~~The permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or usage or of the fund contribution has been submitted to and received by DEQ.~~

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall ~~document the preexisting conditions,~~

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activities during construction, and post-construction conditions. Monitoring shall consist of one of the following options:

a. ~~Photographs shall be taken during construction at the end of the first, second and third months after commencing construction, and then every six months thereafter, for the remainder of the construction project. Photos are not required during periods of no activity within impact areas.~~

b. ~~An ortho rectified photograph shall be taken prior to construction, and then annually thereafter until all impacts are taken. All photos shall clearly show the delineated surface waters and authorized impact areas.~~

c. ~~In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months after commencing construction, and then every six months thereafter, for the remainder of the construction activities. Narratives are not required during periods of no activity within the impact areas.~~

2. ~~As part of construction monitoring, photographs taken at the photo stations or the narrative shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; surface water discharges from the site; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.~~

3. ~~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.~~

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs remain on the project site and shall depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar

month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all [~~on-site~~ on-site] permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

4. 2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to DEQ the Department of Environmental Quality in accordance with the procedures in Part II-E 9VAC25-660-100 Part II C. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH [₂] and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH [₂] and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Reporting.

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

2. DEQ The Department of Environmental Quality shall be notified in writing at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include a projected schedule for initiation and completion of work at each permitted impact area.

3. Construction monitoring reports shall be submitted to DEQ no later than the 10th day of the month following the month in which the monitoring event specified in Part II B

takes place. The reports shall include the following, as appropriate:

- ~~a. For each permitted impact area, a written narrative stating whether work was performed during the monitoring period, and if work was performed, a description of the work performed, when the work was initiated, and expected date of completion.~~
- ~~b. Photographs labeled with the permit number, the photo station number, the photo orientation, the date and time of the photo, the name of the person taking the photograph, and a brief description of the construction activities. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in a permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration. The post construction photographs shall be submitted within 30 days of documenting post construction conditions.~~
- ~~c. Summary of activities conducted to comply with the permit conditions.~~
- ~~d. Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.~~
- ~~e. Summary of anticipated work to be completed during the next monitoring period and an estimated date of construction completion at all impact areas.~~
- ~~f. Labeled site map depicting all impact areas and photo stations.~~

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

- a. Construction activities have not yet started;
- b. Construction activities have started;
- c. Construction activities have started but are currently inactive; or
- d. Construction activities are complete.

~~4. DEQ The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all permitted authorized impact areas authorized under this permit.~~

5. The permittee shall notify DEQ the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered that require

debris removal or involve a potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by ~~DEQ~~ the Department of Environmental Quality.

6. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate DEQ [the] Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

7. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ Department of Environmental Quality office no later than the end of the business day following discovery.

8. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

~~8. 9. Submittals required by this VWP general permit shall contain the following signed certification statement:~~

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with

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all applicable federal and state statutes, regulations, [and] toxic standards [] and prohibitions. ~~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 for cause, VWP general permit authorization revocation, or denial of a continuation of coverage request.~~

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

C. Reopener. This VWP general permit ~~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 revoking and reissuing the 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 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 property rights, ~~nor or 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 Inspection and entry. ~~The~~ Upon presentation of credentials, the permittee shall allow the board or ~~its agents, upon the presentation of credentials~~ any duly authorized agent of the board, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to; inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit ~~authorization~~ coverage. This VWP general permit ~~authorization~~ coverage may be transferred to another person by a permittee when all of the criteria listed ~~below~~ in this subsection are met. On the date of the VWP general permit ~~authorization~~ coverage transfer, the transferred VWP general permit ~~authorization~~ coverage shall be as fully effective as if it had been ~~issued~~ granted directly to the new permittee.

1. The current permittee notifies the board of the proposed transfer of the ~~title to the facility or property.~~ 2. ~~The notice to the board includes~~ general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit ~~authorization~~ responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the ~~permitted~~ authorized activity.

~~3.~~ 2. The board does not within 15 days notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit ~~authorization~~ within 15 days.

I. Notice of planned change. ~~Authorization under this VWP general permit coverage may be modified subsequent to issuance in one or more of the cases listed below accordance with 9VAC25-660-80. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and the planned change request will be reviewed according to all provisions of this regulation.~~

~~1. The permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and all additional impacts are fully compensated.~~

~~2. The project results in less wetland or stream impacts, in which case compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals.~~

~~3. There is a change in the project plans that does not result in a change in project impacts.~~

~~4. There is a change in the mitigation bank at which credits are purchased or used, provided that the same amount of~~

credits are purchased or used and all criteria for use are met, as detailed in 9VAC25-210-116 E.

5. ~~Typographical errors need to be corrected.~~

J. ~~VWP general permit authorization coverage~~ termination for cause. ~~This VWP general permit authorization coverage is subject to termination for cause by the board after public notice and opportunity for a hearing pursuant to [9VAC25-230 § 62.1-44.15:02 of the Code of Virginia].~~ Reasons for termination for cause are as follows:

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

K. ~~The board may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the board shall follow the applicable procedures for termination under §[62.1-44.15:02 and] 62.1-44.15:25 of the Code of Virginia [and 9VAC25-230].~~

~~L. VWP general permit authorization coverage termination by consent. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9VAC25-660-50 A and all compensatory mitigation have been completed or when the authorized impacts will not occur. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation completing or canceling all authorized activities requiring notification under 9VAC25-660-50 A and all compensatory mitigation requirements. When submitted for project~~

completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of authorization coverage on behalf of the board. The request for termination by consent permittee shall contain submit the following information:

1. Name, mailing address, and telephone number ~~of the permittee;~~
2. Name and location of the activity;
3. The VWP general permit authorization tracking number; and
4. One of the following certifications:
 - a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of this the VWP general permit authorization or coverage."

- b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by ~~this the~~ the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of this the VWP general permit authorization or coverage, nor does it allow me to resume the permitted authorized activities without reapplication and reauthorization coverage."

- c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by a the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of

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termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this~~ the VWP general permit authorization or coverage, nor does it allow me to resume the ~~permitted authorized~~ authorized activities without reapplication and ~~reauthorization coverage~~."

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

~~M.~~ N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

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

~~O.~~ P. Duty to provide information.

1. The permittee shall furnish to the board information ~~which~~ that the board may request to determine whether cause exists for modifying, revoking ~~and reissuing, and, or~~ terminating ~~the VWP permit authorization, coverage or to~~ determine compliance with the VWP general permit authorization or general permit coverage. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the board prior to commencing construction.

~~P.~~ Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings

for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of ~~the general permit expiration of a granted VWP permit~~ the general permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include, as appropriate:

- a. The date, exact place, and time of sampling or measurements;
- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

~~Q.~~ R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

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

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-660-27.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the

Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC25-660)

~~[Department of Environmental Quality Water Division Permit Application Fee Form (rev. 10/14)~~

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

~~Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 10/04)~~

~~[Joint Permit Application for Projects in Tidewater, Virginia (eff. 10/04) (eff. 3/2014)~~

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

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

~~Virginia Department of Transportation Inter-Agency Coordination Meeting Joint Permit Application (eff. 10/02) (eff. 6/2008)~~

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

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

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

~~Quarterly Reporting of Impacts Less than One-Tenth Acre (insert reporting period) Statewide (eff. 4/03)~~

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-660)

[Classification of Wetlands and Deepwater Habitats of the United States, Cowardin, Lewis M. II, et al., United States Fish and Wildlife Service, December 1979, Reprinted 1992](#)

[Guidelines for Specification of Disposal Sites for Dredged \[of or \] Fill Material, 40 CFR Part 230](#)

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

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

V.A.R. Doc. No. R14-4057; Filed May 13, 2016, 8:20 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ [62.1-44.2](#) et seq.), Chapter 24 (§ [62.1-242](#) et seq.) of Title 62.1, and Chapter 25 (§ [62.1-254](#) et seq.) of Title 62.1 if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § [2.2-4007.01](#); (ii) following the passage of 30 days from the publication of the

Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § [2.2-4007.03](#); and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-670. 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 (amending 9VAC25-670-10 through 9VAC25-670-100; adding 9VAC25-670-15, 9VAC25-670-25, 9VAC25-670-27, 9VAC25-670-35; repealing 9VAC25-670-95).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Effective Date: August 2, 2016.

Agency Contact: Brenda Winn, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 233218, telephone (804) 698-4516, FAX (804) 698-4032, or email brenda.winn@deq.virginia.gov.

Summary:

The regulatory action reissues the existing general permit that expires on August 1, 2016. The amendments (i) revise or clarify which activities in specific water sources require application for a permit authorization and which activities are excluded; (ii) revise and clarify the application process, including the administrative and technical information required to achieve a complete permit application; (iii) revise and clarify the compensatory mitigation requirements, such as the sequencing of acceptable compensatory mitigation actions and compensatory mitigation provisions, the requirements for compensating impacts to open waters, or the compensation necessary for temporary impacts; (iv) modify provisions related to application processing, informational requirements, or actions occurring post-permit authorization for coverage; (v) modify permit authorization transitions between general permit cycles; (vi) delete authorization term of seven years and provisions for continuation of permit authorization coverage; (vii) incorporate certain federal regulatory provisions; (viii) clarify and update definitions; (ix) reorganize the regulation; and (x) correct grammar, spelling, and references.

9VAC25-670-10. 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

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Protection (VWP) Permit Program Regulation (9VAC25-210) unless a different meaning is required by the context clearly indicates otherwise or unless otherwise is indicated below.

"Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.

~~"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.~~

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

~~"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.~~

~~"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.~~

~~"Greater than one acre" means more than 1.00 acre (43,560 square feet).~~

~~"Impacts" means results caused by human induced activities conducted in surface waters, as specified in § 62.1-44.15:20 A of the Code of Virginia.~~

"DEQ" means the Department of Environmental Quality.

"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a phased project that depend upon other phases of the project do not have independent utility. Portions of a phased project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent public and economic utility.

~~"Isolated Wetland of Minimal Ecological Value (IWOMEV)" means a wetland that: (i) does not have a surface water connection to other state waters; (ii) is less than one tenth of an acre in size; (iii) is not located in a Federal~~

~~Emergency Management Agency designated 100 year floodplain; (iv) is not identified by the Virginia Natural Heritage Program as a rare or state significant natural community; (v) is not forested; and (vi) does not contain listed federal or state threatened or endangered species.~~

~~"Less than one half of an acre" means 0.49 acre (21,779 square feet) or less.~~

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

~~"Open water" means an area that, during a year with normal patterns of precipitation, has standing water for sufficient duration to establish an ordinary high water mark. The term "open water" includes lakes and ponds but does not include ephemeral waters, stream beds, or wetlands.~~

~~"Ordinary high water" or "ordinary high water mark" means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.~~

~~"Perennial stream" means a well defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

~~"Permanent impacts" means those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.~~

~~"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation, or any other legal entity.~~

~~"Riprap" means a layer of nonerodible material such as stone or chunks of concrete.~~

~~"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 a person, which also has independent utility, as defined in this section. For linear projects, the "single and complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single waterbody water body) and to multiple crossings of the same waterbody water body at separate and distinct locations. Phases of a project that have

independent public and economic utility may each be considered single and complete.

"State program general permit (SPGP)" means a general permit issued by the Department of the Army in accordance with ~~33 USC 1344(e), 33 CFR 325.2(e)(2), 33 USC § 1344 and 33 CFR 325.3(b)~~ 33 CFR 325.5(c)(3) that is founded on a state program. The SPGP is designed to avoid duplication between the federal and state programs.

~~"Stream bed" means the substrate of a stream, as measured between the ordinary high water marks along a length of stream. The substrate may consist of organic matter, bedrock or inorganic particles that range in size from clay to boulders, or a combination of both. Areas contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.~~

~~"Surface waters" means all state waters that are not ground water as defined in § 62.1-255 of the Code of Virginia.~~

~~"Temporary impacts" are those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface water, or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction conditions, contours, or elevations, such that previous functions and values are restored.~~

"Up to 300 linear feet" means ~~>0.00 to~~ 300.00 linear feet or less, as measured along the center of the main channel of the stream segment.

"Up to 1500 1,500 linear feet" means ~~>0.00 to 1500.00~~ 1,500.00 linear feet or less, as measured along the center of the main channel of the stream segment.

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

"Up to two acres" one acre means ~~2.00 acres (87,120 square feet)~~ 1.00 acre (43,560 square feet) or less.

"Utility line" means a pipe or pipeline for the transportation of a gaseous, liquid, liquefiable or slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities 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.

9VAC25-670-15. Statewide information requirements.

The board may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's discharge on the quality of state waters or (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a VWP permit or general permit coverage shall provide the information requested by the board.

9VAC25-670-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this [~~regulation chapter~~] is to establish VWP General Permit Number WP2 under [~~the VWP permit program regulation 9VAC25-210~~] to govern permanent and temporary 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. ~~Authorization, authorization~~ Coverage, coverage with conditions, or application denial by the board shall constitute the VWP general permit action. ~~Each VWP general permit action and~~ shall follow all provisions in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each VWP general permit action is exempt.

B. The director, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. ~~This VWP general permit regulation will become effective on August 1, 2006, and will expire on August 1, 2016.~~

~~D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9VAC25-670-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for seven years.~~

9VAC25-670-25. Authorization for coverage under VWP general permit effective August 1, 2006.

A. All complete applications or notifications received by the board through 11:59 p.m. on August 1, 2016, shall be processed in accordance with the VWP general permit regulation in effect August 1, 2006, through August 1, 2016. If the application or notification is incomplete or if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a completeness determination, the applicant shall reapply for coverage under the VWP general permit effective August 2, 2016, or apply for a VWP individual permit, including payment of any required permit application fee. No refund of permit application fees shall be made.

B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016, shall remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP authorization cover page, unless otherwise revoked or terminated or unless a notice of project completion is received by the board on or before that date. Any permittee that desires to continue an authorized activity beyond the stated expiration date must reapply for coverage under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and conditions, or apply for a VWP individual permit, including payment of any required permit application fee. This section shall only apply to permittees holding valid

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authorizations for coverage granted under the VWP general permit effective August 1, 2006, through August 1, 2016.

9VAC25-670-27. VWP general permit coverage; transition; continuation.

A. All applications or notifications received on or after August 2, 2016, will be processed in accordance with the VWP general permit regulation effective August 2, 2016.

B. The general permit in 9VAC25-670-100 is effective August 2, 2016, and expires August 1, [2034 2026]. Any coverage that is granted pursuant to 9VAC25-670-30 shall remain in full force and effect until 11:59 p.m. on August 1, [2034 2026], unless the general permit coverage is terminated or revoked [or unless a notice of project completion is received by the board] on or before this date. Where a permittee that has received general permit coverage desires to continue or complete the authorized activities beyond August 1, [2034 2026], the permittee shall reapply for new general permit coverage or for a VWP individual permit, including payment of any required permit application fee. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the board.

C. Application may be made at any time for a VWP individual permit in accordance with 9VAC25-210. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the board.

9VAC25-670-30. Authorization to impact surface waters.

A. Any person governed by this granted coverage under the VWP general permit is authorized to effective August 2, 2016, may permanently or temporarily impact up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed 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:

1. The applicant submits notification as required in 9VAC25-670-50 and 9VAC25-670-60.
2. The applicant remits the any required permit application processing fee in accordance with 9VAC25-20.
3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of 9VAC25-670-100 the VWP general permit; the general permit coverage [letter]; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.
4. The applicant receives approval from the Virginia Department of Environmental Quality.
- 5- 4. The applicant has not been required to obtain a VWP individual permit under [the VWP permit regulation (9VAC25-210) 9VAC25-210] for the proposed project impacts. The applicant, at his discretion, may seek a VWP

individual permit or coverage under another applicable VWP general permit in lieu of this VWP general permit.

~~6- 5.~~ Impacts, both temporary and permanent, result from a single and complete project, including all attendant features.

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 (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the board may, at its discretion, require a VWP individual permit.

~~7- 6.~~ The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations.

~~8- 7.~~ When functions and values of surface waters are permanently adversely affected, such as for conversion of forested to emergent wetlands in a permanently maintained utility right-of-way, compensation shall be required for impacts outside of a 20-foot wide permanently maintained corridor. Compensation shall not be required for impacts within the 20-foot wide portion of permanently maintained corridor. For example, with a 50-foot wide, permanently maintained corridor, compensation on each side of the 20-foot portion would be required for impacts that occur between the 20-foot and the 50-foot marks.

~~9- [Compensation] 8.~~ When required, [compensation] for unavoidable impacts is provided in accordance with 9VAC25-670-70 and 9VAC25-210-116.

B. Activities that may be authorized granted coverage 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.
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 ~~9VAC25-670-10~~ 9VAC25-210-10. ~~Any~~ Upon request by the board, any person claiming this waiver ~~bears the burden to~~ shall demonstrate to the satisfaction of the board that he qualifies for the waiver.

D. ~~Receipt of Coverage~~ Coverage under this VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

~~E. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure or structures.~~

~~F. E.~~ 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 in accordance with 9VAC25-210-130 H~~ as of ~~August 1, 2006~~ August 2, 2016, shall constitute coverage under this VWP general permit [,] unless a state program general permit (SPGP) is ~~approved required and granted~~ 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 9VAC25-210-130 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.~~

~~G. F.~~ 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 a VWP individual permits permit in accordance with 9VAC25-210-130 B~~ individual applications and a VWP individual permits permit in accordance with 9VAC25-210-130 B rather than ~~approving granting~~ approving coverage under this VWP general permit.

9VAC25-670-35. Administrative continuance.

Beginning on August 2, 2016, in any case where an existing permittee has submitted a timely and complete notification or application for coverage under the next consecutive VWP general permit in accordance with 9VAC25-670-50 and 9VAC25-670-60 and the board, through no fault of the permittee, does not issue the next consecutive VWP general permit with an effective date on or before the expiration date of the expiring VWP general permit, the conditions of that expiring VWP general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive VWP general permit.

9VAC25-670-40. Exceptions to coverage.

A. ~~Authorization for coverage~~ Coverage under this VWP general permit ~~will not apply in the following areas: is not required if the activity is excluded from permitting in accordance with 9VAC25-210-60.~~

- ~~1. Wetlands composed of 10% or more of the following species (singly or in combination) in a vegetative 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 in the area of impact.~~

~~2. Surface waters where the proposed activity will impact federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.~~

B. ~~Authorization for coverage~~ Coverage under this VWP general permit cannot be used in combination with ~~authorizations for~~ coverage under other VWP general permits in order to impact greater than one acre of nontidal wetlands or open water or greater than 1,500 linear feet of nontidal stream bed. ~~More than one authorization for~~ Granting coverage under this VWP general permit ~~more than once~~ for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the limits specified here.

C. The activity to impact surface waters shall not have been prohibited by state law or regulations, nor shall it contravene applicable Water Quality Standards (9VAC25-260).

D. The board shall deny application for coverage under this VWP general permit to any applicant ~~for~~ conducting activities that cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to significantly affect aquatic life, or for activities that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

E. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that cause more than minimal degradation of the water quality of a stream.

F. ~~This~~ Coverage under this VWP general permit ~~may~~ shall not be ~~used~~ granted for:

1. Construction of a stormwater management facility in perennial streams or in waters designated as oxygen-impaired or temperature-impaired (does not include wetlands).
2. Any water withdrawal activities.
3. The pouring of wet or uncured 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 or unless approved by the Department of Environmental Quality.
4. Dredging or maintenance dredging.
5. ~~The~~ Any activity in surface waters that will impact federal or state listed [or proposed] threatened or endangered species or [proposed or] designated critical habitat, or [be the result in a] taking of threatened or endangered species in accordance with the following:

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a. As pursuant to § 29.1-564 of the Code of Virginia, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 [(P.L. ~~(Public Law)~~] 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568 of the Code of Virginia.

b. As pursuant to § 29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any [~~state-listed~~ state listed] endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.

6. Any activity in wetlands composed of 10% or more, singularly or in combination, based upon either basal area or percent areal cover in the area of impact, in a vegetative stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*).

7. Any activity in tidal waters.

9VAC25-670-50. Notification.

~~A. Notification to the board is not required for utility line activities that have only temporary impacts provided the impacts do not involve mechanized land clearing of forested wetlands.~~

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

1. An application for ~~authorization of~~ coverage for proposed, permanent nontidal wetland or open water impacts greater than one-tenth of an acre, or for proposed permanent nontidal stream bed impacts greater than 300 linear feet, shall include all information pursuant to 9VAC25-670-60 B. Compensatory mitigation may be required for all permanent impacts ~~in accordance with Parts I, II, and III of this VWP general permit regulation. All temporary impacts shall be restored to preexisting conditions, as per Parts I, II, and III of this VWP general permit regulation.~~

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

a. For any proposed project in wetlands, open water, streams, or compensatory mitigation sites that are under a deed restriction, conservation easement, declaration of restrictive covenant, or other land use protective instrument (hereafter "protected areas"), when such restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to

activities in wetlands and compensatory mitigation sites, the application shall include all of the information required by 9VAC25-670-60 B. Compensatory mitigation may be required for all permanent impacts.

~~a. b. For all other projects [that are not subject to subdivision 2 b of this subsection], the application shall include the information required by subdivisions ~~4 through 9, 13, 15, 20, and 21~~ 1 through 7, 10, 11, 14, and 15 of 9VAC25-670-60 B, and documentation that verifies the quantity and type of impacts. Compensatory mitigation may be required for all permanent impacts once the notification limits of one-tenth acre wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required, the application shall include the information in 9VAC25-670-60 B 12. All temporary impacts, regardless of amount, shall be restored to preexisting conditions, as per Parts I and III of this VWP general permit regulation.~~

~~b. For any proposed project in wetlands, open water, streams, or compensatory mitigation sites that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (hereafter protected areas), when such restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to activities in wetlands and compensatory mitigation sites, the application shall include all of the information required by 9VAC25-670-60 B, and documentation that verifies the quantity and type of impacts. Compensatory mitigation may be required for all permanent impacts, regardless of amount. All temporary impacts, regardless of amount, shall be restored to preexisting conditions, as per Parts I and III of this VWP general permit regulation.~~

~~C. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA)~~

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

~~D. C.~~ The board will determine whether the proposed activity requires coordination with the [~~United States U.S.~~] Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Game and Inland Fisheries regarding the presence of federal or state [~~proposed or~~] listed threatened and endangered species or [~~proposed or~~] designated critical habitat. Based upon consultation with these agencies, the board may deny application for coverage under this general permit. The applicant may also consult with these agencies prior to submitting an application. Species or habitat information that the applicant provides will assist ~~DEQ~~ the

Department of Environmental Quality in reviewing and processing the application.

9VAC25-670-60. Application.

A. Applications shall be filed with the board, as follows: 1. The applicant shall file a complete application in accordance with 9VAC25-670-50 and this section for a coverage under this VWP General Permit WP2 general permit for impacts to surface waters resulting from utility activities of utilities, which will serve as a notice of intent for coverage under this VWP general permit.

2. The VDOT may use its monthly IACM process for submitting applications.

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

1. The applicant's legal name, mailing address, and telephone number, and, if applicable, electronic mail address and fax number.

2. If different from the applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number of property owner.

2. The 3. If applicable, the authorized agent's (if applicable) name, mailing address, telephone number, and, if applicable, fax number and electronic mail address.

3. 4. The existing VWP general permit tracking number (if applicable), if applicable.

4. The name of the project, narrative description of project purpose, and a description of the proposed activity in surface waters.

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, including the project boundary. The map shall be of sufficient detail such that the site may be easily located for site inspection.

10. (Reserved.)

11. Project plan view. Plan view sketches shall 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. In addition, cross sectional or profile sketches with the above information may be required to detail impact areas.

12. (Reserved.)

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, the areal extent of the impact (area of wetland in square feet and acres; area of stream, length of stream, and average width), the location (latitude and longitude at the center of the impact, or at the center of each impact for linear projects) and the type of surface water impact (open water; wetlands according to the Cowardin classification or similar terminology; or perennial and nonperennial for streams). The board encourages applicants to coordinate the determination of perennial or nonperennial streams with the appropriate local government agency in Tidewater Virginia.

14. Functional values assessment for impacts to wetlands greater than one acre, which shall consist of a summary of field observations of the existing wetland functions and values and an assessment of the impact that the project will have on these functions and values. The following parameters and functions shall be directly addressed: surrounding land uses and cover types; nutrient, sediment, and pollutant trapping; flood control and flood storage capacity; erosion control and shoreline stabilization; groundwater recharge and discharge; aquatic and wildlife habitat; and unique or critical habitats.

15. A description of the specific on site measures considered and taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable.

16. A conceptual plan for the intended compensation for unavoidable impacts, including:

a. For wetlands, the conceptual compensation plan shall include: the goals and objectives in terms of replacement of wetland acreage and function; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including latitude and longitude (to the nearest second) at the center of the site; a description of the surrounding land use; 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; a map for existing surface water areas on the proposed site or sites, including a wetland delineation confirmation for any existing wetlands; a conceptual grading plan; a conceptual planting scheme, including suggested plant species and zonation of each vegetation type proposed; and a description of existing soils, including general information on topsoil and subsoil conditions, permeability, and the need for soil amendments.

b. For streams, the conceptual compensation plan shall include: the goals and objectives in terms of water

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quality benefits and replacement of stream functions; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including the latitude and longitude to the nearest second; the proposed stream segment restoration locations, including plan view and cross section sketches; the stream deficiencies that need to be addressed; the proposed restoration measures to be employed, including channel measurements, proposed design flows and types of instream structures; and reference stream data, if available.

e. Applicants proposing to compensate off site, including purchase or use of mitigation bank credits, or contribution to an in lieu fee fund, shall submit an evaluation of the feasibility of on site compensation. If on site compensation is practicable, applicants shall provide documentation as to why the proposed off-site compensation is ecologically preferable. The evaluation shall 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.

d. Applicants proposing compensation involving contributions to an in lieu fee fund shall state such as the conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior to issuance of this general permit authorization.

e. Applicants proposing compensation involving the purchase or use of mitigation banking credits shall include as their conceptual compensation plan:

- (1) The name of the proposed mitigation bank and the HUC in which it is located;
- (2) The number of credits proposed to be purchased or used; and
- (3) Certification from the bank owner of the availability of credits.

17. A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9VAC25-210-45, including the wetlands data sheets. The delineation map shall also include the location of streams, open water, and the approximate limits of Chesapeake Bay Resource Protection Areas (RPAs), as other state or local requirements may apply if the project is located within an RPA. 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 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.

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 in accordance with 9VAC25-20. The permit application fee for VWP permit authorizations is based on acres only. Therefore, impacts that include linear feet of stream bed must be converted to an acreage in order to calculate the permit application fee.

20. A written disclosure identifying all wetlands, open water, streams, and associated upland buffers within the proposed project or compensation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (protected areas). Such disclosure shall include the nature of the prohibited activities within the protected areas.

21. 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 application shall be signed in accordance with 9VAC25-210-100. 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.

5. Project name and proposed project schedule.

6. The following information for the project site location and any related permittee-responsible compensatory mitigation site [, if applicable]:

a. The physical street address, nearest street, or nearest route number; city or county; zip code; and if applicable, parcel number of the site or sites.

b. Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.

c. The latitude and longitude to the nearest second at the center of the site or sites.

d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site or sites.

e. A detailed map depicting the location of the site or sites, including the project boundary [and all existing preservation areas on the site or sites]. The map (e.g., a [United States U.S.] Geologic Survey topographic

quadrangle map) should be of sufficient detail to easily locate the site or sites for inspection.

~~[f. GIS compatible shapefile or shapefiles of the project boundary and all existing preservation areas on the site or sites, unless otherwise approved by or coordinated with DEQ. The requirement for a GIS compatible shapefile or shapefiles may be waived by DEQ on a case by case basis.]~~

7. A narrative description of the project, including project purpose and need.

8. Plan-view drawing or drawings of the project site sufficient to assess the project, including at a minimum the following:

a. North arrow, graphic scale, and existing and proposed topographic or bathymetric contours.

b. Limits of proposed impacts to surface waters.

c. Location of all existing and proposed structures.

d. All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface waters and waterway name, if designated; ebb and flood or direction of flow; and ordinary high water mark in nontidal areas.

e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant [,] and if available, the limits as approved by the locality in which the project site is located [,] unless the proposed use is exempt from the Chesapeake Bay reservation Area Designation and Management Regulations (9VAC25-830).

f. The limits of any areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas).

9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings of each proposed impact area shall include at a minimum a graphic scale, existing structures, existing and proposed elevations, limits of surface water areas, ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits, and location of all existing and proposed structures. Profile drawing or drawings with this information may be required on a case-by-case basis to demonstrate minimization of impacts. Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond the limits of proposed impact.

10. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters and any physical alteration to

surface waters. Surface water impacts shall be identified as follows:

a. Wetland impacts identified according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) [;] and for each classification, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

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

c. Open water impacts identified according to their Cowardin classification, and for each type, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

d. A copy of the approved jurisdictional determination, [~~if when~~] available, or [when unavailable, (i)] the preliminary jurisdictional determination from the U.S. Army Corps of Engineers (USACE), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ [;] or [(ii)] other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable.

e. A delineation map [~~and GIS compatible shapefile or shapefiles of the delineation map~~] that [(i)] depicts the geographic area or areas of all surface water boundaries delineated in accordance with 9VAC25-210-45 and confirmed in accordance with the jurisdictional determination process; [(ii)] identifies such areas in accordance with subdivisions 10 a, 10 b, and 10 c of this subsection; and [(iii)] quantifies and identifies any other surface waters according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) or similar terminology [-if applicable]. [~~The requirements for a delineation map or GIS compatible shapefile or shapefiles may be waived by DEQ on a case by case basis.~~]

11. An alternatives analysis for the proposed project detailing the specific on-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill

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Material, 40 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific on-site measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. The analysis shall demonstrate to the satisfaction of the board that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.

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

a. If permittee-responsible compensation is proposed for wetland impacts, a conceptual wetland compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of replacement of wetland acreage [~~or~~ and] functions; (ii) a detailed location map including latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) a hydrologic analysis including a draft water budget for nontidal areas based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; (vi) wetland delineation confirmation, data sheets, and maps for existing surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii) a conceptual planting scheme including suggested plant species and zonation of each vegetation type proposed; (ix) a description of existing soils including general information on both topsoil and subsoil conditions, permeability, and the need for soil amendments; (x) a draft design of any water control structures; (xi) inclusion of buffer areas; (xii) a description of any structures and features necessary for the success of the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv) measures for the control of undesirable species.

b. If permittee-responsible compensation is proposed for stream impacts, a conceptual stream compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of water quality benefits and replacement of stream functions; (ii) a detailed location map including the latitude and longitude to the nearest second and the fourth order

subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) the proposed stream segment restoration locations including plan view and cross-sectional drawings; (v) the stream deficiencies that need to be addressed; (vi) data obtained from a DEQ-approved, stream impact assessment methodology such as the Unified Stream Methodology; (vii) the proposed restoration measures to be employed including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; (viii) reference stream data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities; and (xi) measures for the control of undesirable species.

c. For any permittee-responsible compensatory mitigation, the conceptual compensatory mitigation plan shall also include a draft of the intended protective mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but not limited to, a conservation easement held by a third party in accordance with the Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other protective instrument. The draft intended protective mechanism shall contain the information in subdivisions c (1), c (2), and c (3) of this subdivision 12 or in lieu thereof shall describe the intended protective mechanism or mechanisms that contains the information required below:

(1) A provision for access to the site;

(2) The following minimum restrictions: no ditching, land clearing, or discharge of dredge or fill material, and no activity in the area designated as compensatory mitigation area with the exception of maintenance; corrective action measures; or DEQ-approved activities described in the approved final compensatory mitigation plan or long-term management plan; and

(3) A long-term management plan that identifies a long-term steward and adequate financial assurances for long-term management in accordance with the current standard for mitigation banks and in-lieu fee program sites, except that financial assurances will not be necessary for permittee-responsible compensation provided by government agencies on government property. If approved by DEQ, permittee-responsible compensation on government property and long-term protection may be provided through federal facility management plans, integrated natural resources management plans, or other alternate management plans submitted by a government agency or public authority.

d. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-lieu fee program

credits shall include the number and type of credits proposed to be purchased and documentation from the approved mitigation bank or in-lieu fee program sponsor of the availability of credits at the time of application.

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

14. A written description and a graphical depiction identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensatory mitigation areas located within the proposed project boundary or permittee-responsible compensatory mitigation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas). Such description and a graphical depiction shall include the nature of the prohibited activities within the protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant [] and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), as additional state or local requirements may apply if the project is located within an RPA.

15. Signature page that has been signed, dated, and certified by the applicant in accordance with 9VAC25-210-100. If the applicant is a business or other organization, the signature must be made by an individual with the authority to bind the business or organization, and the title of the signatory must be provided. The application signature page, either on the copy submitted to the Virginia Marine Resources Commission or to DEQ, must have an original signature. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ. When required, the method selected for the analysis shall assess water quality or habitat metrics and shall be coordinated with DEQ in advance of conducting the analysis.

1. No analysis shall be required when:

a. Wetland impacts per each single and complete project total 1.00 acre or less; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent, or higher.

2. Analysis shall be required when wetland impacts per each single and complete project total 1.01 acres or more and when any of the following applies:

a. The proposed compensatory mitigation consists of permittee-responsible compensation, including water quality enhancements as replacement for wetlands; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent.

D. Upon receipt of an application by the appropriate DEQ office, the board has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. Coverage under the VWP general permit shall be approved, or approved with conditions, or the application shall be denied [] within 45 days of receipt of a complete application. If the board fails to act within 45 days on a complete application, coverage under the VWP general permit shall be deemed ~~approved~~ granted.

1. In evaluating the application, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage Application for 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~~ requirements on a project in order to ~~approve authorization grant coverage~~ under this VWP general permit. However, ~~these conditions~~ the requirements must be consistent with [~~the VWP general permit regulation~~ this chapter].

E. Incomplete application. Where an application is ~~incomplete~~ not accepted as complete by the board within 15 days of receipt, the board shall require the submission of additional information from the applicant and may suspend processing ~~the~~ of any application until such time as the applicant has supplied the requested information and the application is complete. Where the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or ~~in reports~~ any report to the board, ~~he~~ the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application; for the purposes of review but shall not require an additional permit application fee. An incomplete permit application may be administratively withdrawn from processing by the board for failure to provide the required information after ~~180~~ 60 days from the date ~~that~~ of the original permit application was received latest written information request made by the board. An applicant may request a suspension of application review by the board, but requesting a suspension shall not preclude the board from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project, after such time that the original permit application

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was administratively withdrawn, shall require submittal of an additional permit application fee.

9VAC25-670-70. Compensation.

~~A. In accordance with 9VAC25-670-50 B, compensatory Compensatory mitigation may be required for all permanent, nontidal surface water impacts as specified in 9VAC25-670-50 A. All temporary, nontidal surface water impacts shall be restored to preexisting conditions in accordance with 9VAC25-670-100.~~

~~B. Generally, the sequence of preferred compensation options shall be restoration, then creation, then mitigation banking, and then in lieu fee fund. Also, 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 to practicable on site or in kind compensation may be considered. When the applicant can demonstrate satisfactorily that an off site or out of kind compensatory mitigation proposal is ecologically preferable, then such proposal may be deemed appropriate for compensation of project impacts.~~

~~C. For the purposes of this VWP general permit, compensatory mitigation for unavoidable wetland impacts may be met through the following:~~

- ~~1. Wetland creation.~~
- ~~2. Wetland restoration.~~
- ~~3. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:23 of the Code of Virginia.~~
- ~~4. A contribution to an approved in lieu fee fund.~~
- ~~5. Preservation of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection and when consistent with 9VAC25-210-116 A.~~
- ~~6. Restoration of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection and when consistent with 9VAC25-210-116 A.~~
- ~~7. Preservation of wetlands, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection.~~

~~D. For the purposes of this VWP general permit, compensatory mitigation for unavoidable stream impacts may be met through the following:~~

- ~~1. Stream channel restoration or enhancement.~~
- ~~2. Riparian buffer restoration or enhancement.~~
- ~~3. Riparian buffer preservation, when consistent with 9VAC25-210-116 A.~~
- ~~4. A contribution to an approved in lieu fee fund.~~
- ~~5. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:23 of the Code of Virginia.~~

~~E. In order for contribution to an in lieu fee fund to be an acceptable form of compensation, the fund must be approved for use by the board according to the provisions of 9VAC25-210-116 D. The applicant shall provide proof of contribution to DEQ prior to commencing activities in impact areas.~~

~~F. In order for purchase or use of bank credits to be an acceptable form of compensation, the bank shall be operating in accordance with the provisions of § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 E. The applicant shall provide proof of purchase, use, or debit to DEQ prior to commencing activities in impact areas.~~

~~G. B. Compensatory mitigation and any compensatory mitigation proposals shall be in accordance with this section and 9VAC25-210-116.~~

~~Compensation C. When required, compensatory mitigation for unavoidable permanent wetland impacts shall be provided at the following minimum compensation to impact mitigation ratios:~~

- ~~1. Impacts to forested wetlands shall be mitigated at 2:1, as calculated on an area basis.~~
- ~~2. Impacts to scrub-shrub wetlands shall be mitigated at 1.5:1, as calculated on an area basis.~~
- ~~3. Impacts to emergent wetlands shall be mitigated at 1:1, as calculated on an area basis.~~

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

~~I. E. Compensation for permanent open water impacts, other than to streams, may be required at a an in-kind or out-of-kind mitigation ratio of 1:1 replacement to impact ratio or less, as calculated on an area basis, to offset impacts to state waters and fish and wildlife resources from significant impairment. Compensation shall not be required for permanent or temporary impacts to open waters identified as palustrine by the Cowardin classification method, [except 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.~~

~~J. Compensation F. When conversion results in a permanent alteration of the functions of a wetland, compensatory mitigation for conversion impacts to wetlands shall be required at a 1:1 replacement to impact mitigation ratio, as calculated on an area basis, when such conversion results in a permanent alteration of the functions and values of the wetland. For example, the permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this [regulation chapter]. Compensation for conversion of other types of surface waters may be required, as appropriate, to offset~~

impacts to state waters and fish and wildlife resources from significant impairment.

9VAC25-670-80. Notice of planned changes; modifications to coverage.

A. The permittee shall notify the board in advance of the a planned change, and the planned change an application or request will for modification of an authorization for coverage shall be reviewed according to all provisions of this regulation chapter. Coverage shall not be modified if (i) the cumulative total of permanent and temporary impacts [for a single and complete project] exceeds one acre of nontidal wetlands or open water or exceeds 1,500 linear feet of nontidal stream bed or (ii) the criteria in subsection B of this section are not met. The applicant may submit a new permit application for consideration under a VWP individual permit.

B. Authorization under this VWP general permit coverage may be modified subsequent to issuance if the permittee determines that additional permanent wetland, open water, or stream under the following circumstances:

1. Additional impacts to surface waters are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development or within logical termini, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully mitigated. Prior to a planned change approval, DEQ may require submission of a compensatory mitigation plan for the additional impacts. In cases where the original impacts totaled less than 1/10 acre of wetlands or open water, or less than 300 linear feet of stream bed, and the additional impacts result in these limits being exceeded, the notice of planned change will not be approved. However, the applicant may submit a new permit application and permit application fee for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit:

- a. The additional impacts are proposed prior to impacting those additional areas.
- b. The proposed additional impacts are located within the project boundary as depicted in the application for coverage or are located in areas of directly-related off-site work [,] unless otherwise prohibited by this [VWP general permit regulation chapter].
- c. The permittee has provided sufficient documentation that the board may reasonably determine that the additional impacts will not impact federal or state listed [or proposed] threatened or endangered species or [proposed or] designated critical habitat, or [be the result in a] taking of threatened or endangered species. [The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.]

d. The cumulative, additional permanent wetland or open water impacts for one or more notices of planned change do not exceed 0.25 acre.

e. The cumulative, additional permanent stream impacts for one or more notices of planned change do not exceed 100 linear feet.

f. Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-670-60 B 11.

g. Compensatory mitigation for the proposed impacts, if required, meets the requirements of 9VAC25-670-70 and 9VAC25-210-116. Prior to a planned change approval, the Department of Environmental Quality may require submission of a compensatory mitigation plan for the additional impacts.

h. Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the board that the area to be temporarily impacted will be restored to its preconstruction elevations and contours [;] with topsoil from the impact area where practicable, such that the previous acreage and functions are restored [;] in accordance with Part I A 3 and B 11 of 9VAC25-670-100. The additional temporary impacts shall not cause the cumulative total impacts to exceed the general permit threshold for use. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

i. The additional [proposed] impacts do not change the category of the project, based on the original impact amounts as specified in 9VAC25-670-50 A 2. However, the applicant may submit a new permit application for the total impacts to be considered under this VAP general permit, another VWP general permit, or a VWP individual permit.

C. Authorization under this VWP general permit may be modified after issuance if the project results in less 2. A reduction in wetland or stream impacts. Compensation Compensatory mitigation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation compensatory mitigation meets the initial authorization compensation compensatory mitigation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases, mitigation bank usage, or in-lieu fee fund contributions program credit purchases.

D. Authorization under this VWP general permit may be modified after issuance for a 3. A change in project plans or use that does not result in a change in to authorized project impacts other than those allowed in subdivisions 1 and 2 of this subsection.

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~~E. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use in 9VAC25-210-116 E are met.~~

~~F. Authorization under the VWP general permit may be modified after issuance for typographical errors.~~

~~G. A notice of planned change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and the area is restored to preexisting conditions in accordance with Part I-C 11 of this general permit. In no case can the additional temporary impacts exceed the general permit threshold for use.~~

~~H. In no case can this authorization be modified to exceed the general permit threshold for use.~~

~~I. A notice of planned change shall be denied if fish and wildlife resources are significantly impacted or if the criteria in subsection B of this section are not met. However, the original VWP general permit authorization shall remain in effect. The applicant may submit a new permit application and permit application fee for consideration under a VWP individual permit.~~

4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program or substitute all or a portion of the prior authorized permittee-responsible compensation with a purchase of mitigation credits in accordance with 9VAC25-210-116 C from a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory mitigation requirement for which the compensatory mitigation is proposed to replace.

5. Correct typographical errors.

9VAC25-670-90. Termination of ~~authorization by consent coverage.~~

~~When all permitted activities requiring notification under 9VAC25-670-50 B and all compensatory mitigation requirements have been completed, or if the authorized impacts will not occur, the A. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation completing or canceling all authorized activities requiring notification under 9VAC25-670-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 E. The director may accept this termination of authorization coverage on behalf of the board. The permittee shall submit the following information:~~

1. Name, mailing address, and telephone number of the permittee;

2. Name and location of the activity;

3. The VWP general permit authorization tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this the~~ the VWP general permit authorization or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by ~~this the~~ the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this the~~ the VWP general permit authorization or coverage, nor does it allow me to resume the ~~permitted authorized~~ activities without reapplication and ~~reauthorization coverage.~~

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by ~~DEQ~~ the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by a the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any

violations of ~~this the~~ VWP general permit authorization or coverage, nor does it allow me to resume the ~~permitted authorized~~ activities without reapplication and ~~reauthorization coverage.~~"

B. VWP general permit coverage may be terminated for cause in accordance with 9VAC25-210-180 F and [~~9VAC25-230 § 62.1-44.15:02 of the Code of Virginia~~], or without cause in accordance with 9VAC25-210-180 G and [~~9VAC25-230 § 62.1-44.15:02~~].

9VAC25-670-95. Transition. (Repealed.)

A. All applications received on or after August 1, 2006, will be processed in accordance with these new procedures.

B. VWP general permit authorizations issued prior to August 1, 2006, will remain in full force and effect until such authorizations expire, are revoked, or are terminated.

C. Notices of planned change and all other types of notification that are received by the board prior to August 1, 2006, will be processed in accordance with the VWP general permit regulation in effect at that time. Notices of planned change and all other types of notification to the board that are received on or after August 1, 2006, will be processed in accordance with these new procedures.

9VAC25-670-100. VWP general permit.

Any applicant whose application has been accepted by the board shall be subject to the following requirements:

- VWP General Permit No. WP2
- Authorization expiration date:
- Authorization Note(s):

~~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

VWP GENERAL PERMIT NO. WP2 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

Effective date: August 2, 2016
Expiration date: August 1, [~~2031~~ 2026]

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the

activity authorized by this VWP general permit, if ~~conducted in accordance with the conditions set forth herein~~ conducted with, 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, and will not cause or contribute to a significant impairment of surface waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.~~

Subject The permanent or temporary impact of up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to permanently or temporarily impact up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed.

- Permittee:
- Address:
- Activity Location:
- Activity Description:

~~The authorized activity shall be in accordance with this cover page, Part I Special Conditions, Part II Compensation, Monitoring, and Reporting, and Part III Conditions Applicable to All VWP Permits, as set forth herein.~~

Director, Department of Environmental Quality	Date
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Part I. Special Conditions.

A. Authorized activities.

1. ~~This permit authorizes~~ The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed according to the information provided in the approved and complete application. [Additional permit requirements as stipulated by the board in the coverage letter, if any, shall be enforceable conditions of this permit.]
2. Any changes to the authorized permanent impacts to surface waters ~~associated with this project~~ shall require ~~either~~ a notice of planned change in accordance with 9VAC25-670-80. An application or request for modification to coverage or another VWP permit application may be required.
3. Any changes to the authorized temporary impacts to surface waters ~~associated with this project~~ shall require written notification to ~~DEQ~~ and approval from the Department of Environmental Quality in accordance with 9VAC25-670-80 prior to initiating the impacts and

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restoration to preexisting conditions in accordance with the conditions of this permit ~~authorization~~.

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

~~5. The activities authorized for coverage under this VWP general permit must commence and be completed within seven years of the date of this authorization.~~

~~B. Continuation of coverage. Reapplication 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 compensation) has not been completed within seven years of the date of authorization. Notwithstanding any other provision, a request for continuation of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered a new application, and no application fee will be charged. The request for continuation of coverage 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 continuation of the VWP general permit authorization is necessary.~~

~~C. B. Overall project conditions.~~

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. ~~Culverts Pipes and culverts~~ placed in streams must be installed to maintain low flow conditions- and shall be countersunk at both inlet and outlet ends of the pipe or culvert [,] unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. ~~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. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and~~

culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters [,] unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with ~~this~~ the 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 or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of ~~permitted~~ authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude any unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours, with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their original preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment, ~~and the banks.~~ Streambanks shall be seeded or planted with the same vegetation cover type originally present along the streambanks, including [any necessary,] supplemental erosion control grasses [if necessary], except for invasive. Invasive species identified on DCR's the Department of Conservation and Recreation's Virginia Invasive Alien Plant Species of Virginia list List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original preconstruction elevations and contours, with topsoil from the impact areas where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including [any necessary,] supplemental erosion control grasses [if necessary]; ~~except for invasive.~~ Invasive species identified on DCR's the Department of Conservation and Recreation's Virginia Invasive Alien Plant Species of Virginia list List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Game and Inland Fisheries, the Virginia Marine Resources Commission, or other

interested and affected agencies, as contained, when applicable, in a Department of Environmental Quality VWP general permit coverage [letter], and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities ~~unless allowed by this permit authorization.~~

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by ~~this VWP general permit the~~ Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted steam flow must be fully established before construction activities in the old stream channel can begin.

~~D.~~ C. Road crossings.

1. Access roads and associated bridges ~~or, pipes,~~ and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours and elevations in surface waters must be bridged, piped, or culverted to maintain surface flows.

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

~~E.~~ D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by ~~this VWP general permit the~~ Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including [any necessary,] supplemental erosion control grasses [if necessary]; ~~except for invasive.~~ Invasive species identified on DCR's the Department of Conservation and Recreation's Virginia Invasive Alien Plant Species of Virginia list List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands, not to exceed 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

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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 trench drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

~~F.~~ E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

Part II. Construction and Compensation Requirements,
Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide ~~appropriate and practicable~~ any required compensation for ~~all impacts meeting in accordance with~~ the conditions ~~outlined~~ in this VWP general permit [, the coverage letter,] and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in 9VAC25-670-70 and 9VAC25-210-116.

3. The permittee-responsible compensation site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site ~~for the approved project~~. A site change ~~will~~ may require a modification to ~~the authorization coverage~~.

4. For compensation involving the purchase ~~or use~~ of mitigation bank credits or ~~a contribution to an~~ the purchase of in-lieu fee fund program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase ~~or usage~~ or of the ~~fund contribution in-lieu fee program credit purchase~~ has been submitted to and received by ~~DEQ~~ the Department of Environmental Quality.

5. ~~All aspects of the compensation~~ The final compensation plan shall be finalized, submitted ~~to~~ and approved by the board prior to a construction activity in permitted impact areas. The board shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final ~~compensation~~ plan as approved by the board shall be an enforceable requirement of any coverage under this VWP general permit ~~authorization~~. Deviations from the approved final plan ~~must~~ shall be submitted and approved in advance by the board.

6. a. The final permittee-responsible wetlands compensation plan shall include:

~~a. The goals and objectives of the plan in terms of replacement of wetland acreage and functions, by wetland type;~~

~~b. Location map, including latitude and longitude (to the nearest second) at the center of the site;~~

~~c. Summary of the type and acreage of the existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;~~

~~d. Grading plan with existing and proposed elevations at one foot or less contours;~~

~~e. Schedule for compensation site construction, including sequence of events with estimated dates;~~

~~f. Hydrologic analysis, including a water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year;~~

~~g. Groundwater elevation data for the site, or the location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;~~

~~h. Design of water control structures;~~

~~i. Planting scheme and schedule, indicating plant species, zonation, and acreage of each vegetation type proposed;~~

~~j. An abatement and control plan covering all undesirable plant species, as listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of their presence, methods of removal, and the control of such species;~~

~~k. Erosion and sedimentation control plan;~~

~~l. A soil preparation and amendment plan addressing both topsoil and subsoil conditions;~~

~~m. A discussion of structures and features considered necessary for the success of the site;~~

~~n. A monitoring plan, including success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations and monitoring wells, sampling points, and, if applicable, reference wetlands;~~

~~o. Site access plan;~~

~~p. The location and composition of any buffers; and~~

~~q. The mechanism for protection of the compensation areas.~~

(1) The complete information on all components of the conceptual compensation plan.

(2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams [(if available), if available]; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

7. b. The final permittee-responsible stream compensation plan shall include:

a. The goals and objectives of the compensation plan in terms of replacement of stream functions and water quality benefits;

b. A location map, including latitude and longitude (to the nearest second) at the center of the site;

c. An evaluation, discussion, and plan sketches of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width depth ratio, sinuosity, slope, substrate, etc.);

d. The identification of existing geomorphological stream type being impacted and proposed geomorphological stream type for compensation purposes;

~~e. Detailed design information for the proposed restorative measures, including geomorphological measurements and reference reach information as appropriate;~~

~~f. Riparian buffer plantings, including planting scheme, species, buffer width;~~

~~g. Livestock access limiting measures, to the greatest extent possible;~~

~~h. A site access plan;~~

~~i. An erosion and sedimentation control plan, if appropriate;~~

~~j. An abatement and control plan covering all undesirable plant species, as listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of a their presence, methods for removal, and the control of any such species;~~

~~k. A schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;~~

~~l. A monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams;~~

~~m. The mechanism for protection of the compensation area; and~~

~~n. Plan view sketch depicting the pattern and all compensation measures being employed, a profile sketch, and cross section sketches of the proposed compensation stream.~~

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing or drawings of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the

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proposed compensation stream; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

~~8. For final 6. The following criteria shall apply to permittee-responsible wetland or stream compensation plans, the:~~

a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent USDA U.S. Department of Agriculture Plant Hardiness Zone or NRCS Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan or plans.

~~9. The final wetland or stream compensation plan(s) shall include a mechanism for protection in perpetuity of the compensation site(s) to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place within 120 days of final compensation plan approval. 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 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 or 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, or any equivalent instrument for government-owned lands. Proof of recordation shall be submitted within 120 days of survey or final compensation plan approval.~~

10. b. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.

11. DEQ c. The Department of Environmental Quality shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation site(s) site.

~~12. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final wetland or stream compensation plan(s).~~

~~13. d. Point sources of stormwater runoff shall be prohibited from entering a wetland 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, or forebays.~~

~~14. e. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.~~

~~15. 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 region's killing frost free growing season, as defined in the soil survey for the locality of the compensation site or the NRCS WETS table, measured in consecutive days under typical precipitation conditions, and as defined in the water budget of the final compensation plan. For the purpose of this regulation, the growing season is defined as the period in which temperatures are expected to be above 28 degrees Fahrenheit in five out of 10 years, or the period during which the soil temperature in a wetland compensation site is greater than biological zero (five degrees Celsius) at a depth of 50 centimeters (19.6 inches), if such data is available.~~

~~16. The wetland plant community shall be considered established according to the performance criteria specified in the final compensation plan and approved by the board. The proposed vegetation success criteria in the final compensation plan shall include the following:~~

~~a. Species composition shall reflect the desired plant community types stated in the final wetlands compensation plan by the end of the first growing season and shall be maintained through the last monitoring year.~~

~~b. 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, by the end of the first growing season and shall be maintained through the last monitoring year.~~

~~17. Undesirable plant species shall be identified and controlled as described in the undesirable plant species 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 DEQ when undesirable plant species comprise greater than 5.0% of the vegetation by areal coverage on wetland or stream compensation sites. The notification shall include the methods of removal and control, and whether the methods are successful.~~

18. f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan shall be submitted to ~~DEQ~~ the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at a minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by ~~DEQ~~ the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year [;] or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for ~~DEQ~~ Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

19. g. The surveyed wetland boundary for the compensation 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. Data shall be submitted by December 31 of the final monitoring year.

20. h. Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means, unless authorized by ~~DEQ~~ the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall ~~document the preexisting conditions, activities during construction, and post-construction conditions.~~ Monitoring shall consist of one of the following options:

a. ~~Photographs shall be taken during construction at the end of the first, second, and third months after commencing construction, and then every six months~~

~~thereafter for the remainder of the construction project. Photos are not required during periods of no activity within impact areas.~~

b. ~~An ortho-rectified photograph shall be taken by a firm specializing in ortho-rectified photography prior to construction, and then annually thereafter, until all impacts are taken. Photos shall clearly show the delineated surface waters and authorized impact areas.~~

c. ~~In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months after commencing construction, and then every six months thereafter, for the remainder of the construction activities. Narratives are not required during periods of no activity within the impact areas.~~

2. ~~As part of construction monitoring, photographs taken at the photo stations or the narrative shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; surface water discharges from the site; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.~~

3. ~~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.~~

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50

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feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

4. 2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to ~~DEQ~~ the Department of Environmental Quality in accordance with the procedures in ~~Part II E 9VAC25-670-100 Part II E~~. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH [] and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH [] and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Wetland Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation 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 at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on the first day of the first complete growing season (monitoring year 1) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by ~~DEQ~~ the Department of Environmental Quality. In all cases, if all success criteria have not been met in the fifth monitoring 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. 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 following ~~DEQ~~ Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from ~~DEQ~~ the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-670-100 Part II E 6.

D. Stream Permittee-responsible stream compensation, ~~restoration~~ and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank, or upon prior authorization from the Department of Environmental Quality, heavy equipment shall may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent [~~photo~~ photo-monitoring] stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise ~~determined~~ approved by ~~DEQ~~ the Department of Environmental Quality. In all cases, 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.

8. All stream compensation site monitoring reports shall be submitted in accordance with 9VAC25-670-100 Part II E 6.

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~~ tracking number shall be included on all correspondence.

2. ~~DEQ~~ The Department of Environmental Quality shall be notified in writing ~~at least 10 days~~ prior to the start of construction activities at the first ~~permitted site~~ authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include projected schedule for initiation and completion of work at each permitted impact area.

3. ~~Construction monitoring reports shall be submitted to DEQ no later than the 10th day of the month following the month in which the monitoring event specified in Part II B takes place. The reports shall include the following, as appropriate:~~

a. ~~For each permitted impact area, a written narrative stating whether work was performed during the monitoring period, and if work was performed, a description of the work performed, when the work was initiated, and the expected date of completion.~~

b. ~~Photographs labeled with permit number, the photo station number, the photo orientation, the date and time of the photo, the name of the person taking the photograph, and a brief description of the construction activities. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in a permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration. The post construction photographs shall be submitted within 30 days of documenting post construction conditions.~~

c. ~~Summary of activities conducted to comply with the permit conditions.~~

d. ~~Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.~~

e. ~~Summary of anticipated work to be completed during the next monitoring period and an estimated date of construction completion at all impact areas.~~

f. ~~Labeled site map depicting all impact areas and photo stations.~~

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking

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number and one of the following statements for each authorized surface water impact location:

- a. Construction activities have not yet started;
- b. Construction activities have started;
- c. Construction activities have started but are currently inactive; or
- d. Construction activities are complete.

4. ~~DEQ~~ The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all ~~permitted~~ authorized impact areas ~~authorized under this permit.~~

5. ~~DEQ~~ The Department of Environmental Quality shall be notified in writing ~~at least 10 days~~ prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year ~~of authorization~~, in which case the report shall be submitted at least 60 days prior to the expiration of ~~authorization under~~ the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

- (1) General description of the site including a site location map identifying [~~photo~~ photo-monitoring] stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.
- (2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.
- (3) Description of monitoring methods.
- (4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.
- (5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.
- (6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.
- (7) Photographs labeled with the permit number, the name of the compensation site, the ~~photo~~ photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting

shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan [~~, which~~ that] includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying [~~photo~~ photo-monitoring] stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) [~~An evaluation~~ Evaluation] and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the ~~photo~~ photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) [~~A discussion~~ Discussion] of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) [~~A summary~~ Summary] of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) [~~A corrective~~ Corrective] action plan [~~, which~~ that] includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by ~~DEQ~~ the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify ~~DEQ~~ the Department of Environmental Quality 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 a structure are prohibited until approved by ~~DEQ~~ the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate ~~DEQ~~ Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported ~~within 24 hours~~ to the appropriate ~~DEQ~~ Department of Environmental Quality office ~~no later than the end of the business day following discovery~~.

10. ~~The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.~~

~~10.~~ 11. Submittals required by this VWP general permit shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, ~~limitations, and other requirements~~ of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and

State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations ~~and~~, [~~and~~] toxic standards [~~and~~] and prohibitions. ~~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 for cause, VWP general permit authorization revocation, or denial of a continuation of coverage request.~~

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

C. Reopener. This VWP general permit ~~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 revoking and reissuing the 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 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 property rights, nor or 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 Inspection and entry. The~~ Upon presentation of credentials, the permittee shall allow the board or its agents, upon the presentation of credentials any duly authorized agent of the board, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or

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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 coverage. This VWP general permit authorization coverage may be transferred to another person by a permittee when all of the criteria listed below in this subsection are met. On the date of the VWP general permit authorization coverage transfer, the transferred VWP general permit authorization coverage shall be as fully effective as if it had been issued granted directly to the new permittee.~~

~~1. The current permittee notifies the board of the proposed transfer of the title to the facility or property. 2. The notice to the board includes general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit authorization responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the permitted authorized activity.~~

~~3. 2. The board does not within the 15 days notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit authorization within the 15 days.~~

I. ~~Notice of planned change. Authorization under this VWP general permit coverage may be modified subsequent to issuance in one or more of the cases listed below accordance with 9VAC25-670-80. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and the planned change request will be reviewed according to all provisions of this regulation.~~

~~1. The permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully compensated.~~

~~2. The project results in less wetland or stream impacts, in which case, compensation requirements may be modified~~

~~in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals.~~

~~3. There is a change in the project plans that does not result in a change in project impacts.~~

~~4. There is a change in the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use are met, as detailed in 9VAC25-210-116 E.~~

~~5. Typographical errors need to be corrected.~~

J. ~~VWP general permit authorization coverage termination for cause. This VWP general permit authorization coverage is subject to termination for cause by the board after public notice and opportunity for a hearing pursuant to [9VAC25-230 § 62.1-44.15:02 of the Code of Virginia]. Reasons for termination for cause are as follows:~~

~~1. Noncompliance by the permittee with any provision of [the VWP general permit regulation this chapter], any condition of the VWP general permit authorization, or any requirement in general permit coverage;~~

~~2. The permittee's failure in the application or during the VWP general permit authorization issuance process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;~~

~~3. The permittee's violation of a special or judicial order; and~~

~~4. A determination by the board that the permitted authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to the VWP general permit authorization planned change coverage or a termination for cause [;]~~

~~5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or~~

~~6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.~~

~~K. The board may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the board shall follow the applicable procedures for termination under § [§ 62.1-44.15:02 and] 62.1-44.15:25 of the Code of Virginia [and 9VAC25-230].~~

~~L. VWP general permit authorization coverage termination by consent. This VWP general permit authorization may be terminated by consent when all~~

~~permitted activities requiring notification under 9VAC25-670-50 B and all compensatory mitigation have been completed or when the authorized impacts do not occur. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation completing or canceling all authorized activities requiring notification under 9VAC25-670-50 A and all compensatory mitigation requirements.~~ When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of authorization coverage on behalf of the board. The ~~request for termination by consent~~ permittee shall contain submit the following information:

1. Name, mailing address, and telephone number ~~of the permittee;~~
2. Name and location of the activity;
3. The VWP general permit authorization tracking number; and
4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this the VWP general permit authorization or coverage.~~"

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by ~~this the VWP general permit and general permit coverage~~ will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this the VWP general permit authorization or coverage,~~ nor does it allow me to resume the ~~permitted authorized~~ activities without reapplication and ~~reauthorization coverage.~~"

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by ~~DEQ~~ the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by a the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this the VWP general permit authorization or coverage,~~ nor does it allow me to resume the ~~permitted authorized~~ activities without reapplication and ~~reauthorization coverage.~~"

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

~~M. N.~~ N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

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

~~O. P.~~ P. Duty to provide information.

1. The permittee shall furnish to the board any information ~~which that~~ the board may request to determine whether cause exists for modifying, revoking ~~and reissuing and,~~ or terminating the VWP permit authorization, coverage or to determine compliance with the VWP general permit authorization or general permit coverage. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the board prior to commencing construction.

~~P. Q.~~ Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of

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pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of the general permit 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, as appropriate:

- a. The date, exact place, and time of sampling or measurements;
- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

Q. R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
4. On and after October 1, 2001, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly 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.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-670-27.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC25-670)

[~~Department of Environmental Quality Water Division Permit Application Fee Form (rev. 10/14)~~]

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

[~~Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (rev. 10/04)~~]

[~~Joint Permit Application for Projects in Tidewater, Virginia (eff. 10/04) (eff. 03/14)~~]

[~~Monthly Reporting of Impacts Less than or Equal to One-Tenth Acre Statewide (eff. 08/07)~~]

[~~Standard Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 03/14)~~]

[~~Virginia Department of Transportation Inter Agency Coordination Meeting Joint Permit Application (eff. 10/02) (eff. 06/08)~~]

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

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

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

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-670)

[~~[Classification of Wetlands and Deepwater Habitats of the United States, Cowardin, Lewis M. II, et al., United States Fish and Wildlife Service, December 1979, Reprinted 1992](#)]]~~

[~~[Guidelines for Specification of Disposal Sites for Dredged \[of or \] Fill Material, 40 CFR Part 230 \[\(Federal Register December 24, 1980\): \]](#)]]~~

[~~[Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation](#)]]~~

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

VA.R. Doc. No. R14-4058; Filed May 13, 2016, 8:27 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: 9VAC25-680. Virginia Water Protection General Permit for Linear Transportation Projects (amending 9VAC25-680-10 through 9VAC25-680-100; adding 9VAC25-680-15, 9VAC25-680-25, 9VAC25-680-27, 9VAC25-680-35; repealing 9VAC25-680-95).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Effective Date: August 2, 2016.

Agency Contact: Brenda Winn, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 233218, telephone (804) 698-4516, FAX (804) 698-4032, or email brenda.winn@deq.virginia.gov.

Summary:

The regulatory action reissues the existing general permit that expires on August 1, 2016. The amendments (i) revise or clarify which activities in specific water sources require application for a permit authorization and which activities are excluded; (ii) revise and clarify the application process, including the administrative and technical information required to achieve a complete permit application; (iii) revise and clarify the compensatory mitigation requirements, including the sequencing of acceptable compensatory mitigation actions and compensatory mitigation provisions, the requirements for compensating impacts to open waters, or the compensation necessary for temporary impacts; (iv) modify provisions related to application processing, informational requirements, or actions occurring post-permit authorization for coverage; (v) modify permit authorization transitions between general permit cycles; (vi) delete the authorization term of seven years and provisions for continuation of permit authorization coverage; (vii) incorporate certain federal regulatory

provisions; (viii) clarify and update definitions; (ix) reorganize the regulation; and (x) correct grammar, spelling, and references.

9VAC25-680-10. 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 Program Regulation (9VAC25-210) unless a different meaning is required by the context clearly indicates otherwise or unless otherwise or is indicated below.

"Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.

"Bioengineering method" means a biological measure incorporated into a facility design to benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent practicable, for long-term aquatic resource protection and improvement.

~~"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.~~

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

~~"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.~~

~~"Greater than one acre" means more than 1.00 acre (43,560 square feet).~~

~~"Impacts" means results caused by human induced activities conducted in surface waters, as specified in § 62.1-44.15:20 A of the Code of Virginia.~~

~~"DEQ" means the Department of Environmental Quality.~~

"Independent utility" means a test to determine what constitutes a single and complete project. A project is

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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 public and economic utility.

~~"Isolated Wetland of Minimal Ecological Value (IWOMEV)" means a wetland that (i) does not have a surface water connection to other state waters; (ii) is less than one-tenth of an acre in size; (iii) is not located in a Federal Emergency Management Agency designated 100 year floodplain; (iv) is not identified by the Virginia Natural Heritage Program as a rare or state significant natural community; (v) is not forested; and (vi) does not contain listed federal or state threatened or endangered species.~~

~~"Less than one half of an acre" means 0.00 to 0.49 acre (0 to 21,779 square feet).~~

"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.

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

~~"Open water" means an area that, during a year with normal patterns of precipitation, has standing water for sufficient duration to establish an ordinary high water mark. The term "open water" includes lakes and ponds but does not include ephemeral waters, stream beds, or wetlands.~~

~~"Ordinary high water" or "ordinary high water mark" means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.~~

~~"Perennial stream" means a well defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

~~"Permanent impacts" means those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.~~

~~"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation, or any other legal entity.~~

~~"Riprap" means a layer of nonerodible material such as stone or chunks of concrete.~~

~~"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 a person, which also has independent utility, as defined in this section. For linear projects, the "single and complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single waterbody water body) and to multiple crossings of the same waterbody water body at separate and distinct locations. Phases of a project that have independent public and economic utility may each be considered single and complete.

"State program general permit (SPGP)" means a general permit issued by the Department of the Army in accordance with ~~33 USC 1344(e), 33 CFR 325.2(e)(2), 33 USC § 1344 and 33 CFR 325.3(b), 33 CFR 325.5(c)(3)~~ and that is founded on a state program. The SPGP is designed to avoid duplication between the federal and state programs.

~~"Stream bed" means the substrate of a stream, as measured between the ordinary high water marks along a length of stream. The substrate may consist of organic matter, bedrock or inorganic particles that range in size from clay to boulders, or a combination of both. Areas contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.~~

~~"Surface waters" means all state waters that are not ground water as defined in § 62.1-255 of the Code of Virginia.~~

~~"Temporary impacts" are those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface water, or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction conditions, contours, or elevations, such that previous functions and values are restored.~~

"Up to 300 linear feet" means ≥ 0.00 to 300.00 linear feet or less, as measured along the center of the main channel of the stream segment.

"Up to 1500 1,500 linear feet" means ≥ 0.00 to 1500.00 1,500.00 linear feet or less, as measured along the center of the main channel of the stream segment.

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

"Up to two acres" means 2.00 acres (87,120 square feet) or less.

"Utility line" means a pipe or pipeline for the transportation of any gaseous, liquid, liquefiable or slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities 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.

9VAC25-680-15. Statewide information requirements.

The board may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's discharge on the quality of state waters or (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a VWP permit or general permit coverage shall provide the information requested by the board.

9VAC25-680-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this [~~regulation chapter~~] is to establish VWP General Permit Number WP3 under [~~the VWP permit program regulation 9VAC25-210~~] to govern permanent and temporary 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. ~~Authorization, authorization~~ Coverage, coverage with conditions, or ~~application~~ denial by the board shall constitute the VWP general permit action. ~~Each VWP general permit action and~~ shall follow all provisions in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each VWP general permit action is exempt.

B. The director or his designee may perform any act of the board provided under this chapter, ~~except as limited by~~ § 62.1-44.14 of the Code of Virginia.

~~C. This VWP general permit regulation will become effective on August 1, 2006, and will expire on August 1, 2016.~~

~~D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9VAC25-680-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for seven years.~~

9VAC25-680-25. Authorization for coverage under VWP general permit effective August 1, 2006.

A. All complete applications or notifications received by the board through 11:59 p.m. on August 1, 2016, shall be processed in accordance with the VWP general permit regulation in effect August 1, 2006, through August 1, 2016. If the application or notification is incomplete or if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a completeness determination, the applicant shall reapply for coverage under the VWP general permit effective August 2, 2016, or apply for a VWP individual permit, including payment of any required permit application fee. No refund of permit application fees shall be made.

B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016, shall remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP authorization cover page, unless otherwise revoked or terminated or unless a notice of project completion is received by the board on or before that date. Any permittee that desires to continue an authorized activity beyond the stated expiration date must reapply for coverage under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and conditions, or apply for a VWP individual permit, including payment of any required permit application fee. This section shall only apply to permittees holding valid authorizations for coverage granted under the VWP general permit effective August 1, 2006, through August 1, 2016.

9VAC25-680-27. VWP general permit coverage; transition; continuation.

A. All applications or notifications received on or after August 2, 2016, will be processed in accordance with the VWP general permit regulation effective August 2, 2016.

B. The general permit in 9VAC25-680-100 is effective August 2, 2016, and expires August 1, [~~2031~~ 2026]. Any coverage that is granted pursuant to 9VAC25-680-30 shall remain in full force and effect until 11:59 p.m. on August 1, [~~2031~~ 2026], unless the general permit coverage is terminated or revoked [~~or unless a notice of project completion is received by the board~~] on or before this date. Where a permittee that has received general permit coverage desires to continue or complete the authorized activities beyond August 1, [~~2031~~ 2026], the permittee shall reapply for new general permit coverage or for a VWP individual permit, including payment of any required permit application fee. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the board.

C. Application may be made at any time for a VWP individual permit in accordance with 9VAC25-210. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the board.

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9VAC25-680-30. Authorization to impact surface waters.

A. Any person ~~governed by this granted coverage under the VWP general permit is authorized to effective August 2, 2016, may~~ permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed for linear transportation projects, provided that:

1. The applicant submits notification as required in 9VAC25-680-50 and 9VAC25-680-60.

2. The applicant remits ~~the~~ any required permit application ~~processing fee in accordance with 9VAC25-20.~~

3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of 9VAC25-680-100 the VWP general permit; the general permit coverage [letter]; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.

~~4. The applicant receives approval from the Virginia Department of Environmental Quality.~~

~~5. 4.~~ The applicant has not been required to obtain a VWP individual permit under ~~[the VWP permit regulation (9VAC25-210) 9VAC25-210]~~ for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another applicable VWP general permit, in lieu of coverage under this VWP general permit.

~~6. 5.~~ Impacts, both temporary and permanent, result from a single and complete project, including all attendant features.

a. Where a road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of 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.

~~7. 6.~~ The stream impact criterion applies to all components of the project, including structures and stream channel manipulations.

~~8. 7.~~ Dredging does not exceed 5,000 cubic yards.

~~9. [Compensation] 8. When required, [compensation]~~ for unavoidable impacts is provided in accordance with 9VAC25-680-70 and 9VAC25-210-116.

B. Activities that may be authorized granted coverage 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 general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in ~~9VAC25-680-10 9VAC25-210-10.~~ Any Upon request by the board, any person claiming this waiver ~~bears the burden to shall demonstrate to the satisfaction of the board~~ that he qualifies for the waiver.

D. ~~Receipt of Coverage~~ under this VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

~~E. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure or structures.~~

~~F. E.~~ 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 in accordance with 9VAC25-210-130 H as of the ~~effective date of this regulation August 2, 2016,~~ shall constitute coverage under this VWP general permit [] unless a state program general permit (SPGP) is approved required and granted 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 9VAC25-210-130 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.~~

~~G. F.~~ 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 a VWP individual permits permit in accordance with 9VAC25-210-130 B rather than ~~approving granting~~ coverage under this VWP general permit.

9VAC25-680-35. Administrative continuance.

Beginning on August 2, 2016, in any case where an existing permittee has submitted a timely and complete notification or application for coverage under the next consecutive VWP general permit in accordance with 9VAC25-680-50 and 9VAC25-680-60 and the board, through no fault of the permittee, does not issue the next consecutive VWP general permit with an effective date on or before the expiration date of the expiring VWP general permit, the conditions of that expiring VWP general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive VWP general permit.

9VAC25-680-40. Exceptions to coverage.

A. ~~Authorization for coverage Coverage~~ under this VWP general permit ~~will not apply in the following areas: is not required if the activity is excluded from permitting in accordance with 9VAC25-210-60.~~

~~1. Wetlands composed of 10% or more of the following species (singly or in combination) in a vegetative 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 in the area of impact.~~

~~2. Surface waters where the proposed activity will impact federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.~~

B. ~~Authorization for coverage~~ Coverage under this VWP general permit cannot be used in combination with ~~authorizations for coverage under other VWP general permits~~ in order to impact greater than two acres of nontidal wetlands or open water or greater than 1,500 linear feet of nontidal stream bed. ~~More than one authorization for~~ Granting coverage under this VWP general permit ~~more than once~~ for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the limits specified here.

C. This VWP general permit ~~may not~~ cannot be used to ~~authorize for~~ 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 (9VAC25-260).

E. The board shall deny ~~application for~~ coverage under this VWP general permit to any applicant conducting activities that cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to significantly affect aquatic life, or for activities that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

F. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that cause more than minimal degradation of the water quality of a stream.

G. ~~This~~ Coverage under this VWP general permit ~~may~~ shall not be ~~used~~ granted for:

1. Construction of a stormwater management facility in perennial streams or in ~~oxygen or~~ waters designated as ~~oxygen-impaired or~~ temperature-impaired ~~waters~~ (does not include wetlands).
2. The construction of an irrigation impoundment on a perennial stream.
3. Any water withdrawal activities.
4. The location of animal feeding operations or waste storage facilities in state waters.

5. The pouring of wet or uncured concrete 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; or unless approved by ~~DEQ~~ the Department of Environmental Quality.

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~~ or other highly productive areas.

10. Federal navigation projects.

11. ~~The~~ Any activity in surface waters that will impact federal or state listed [~~or proposed~~] threatened or endangered species or [~~proposed or~~] designated critical habitat, or [~~be the result in a~~] taking of threatened or endangered species in accordance with the following:

a. As pursuant to § 29.1-564 of the Code of Virginia, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (~~P.L.~~ Public Law 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568 of the Code of Virginia.

b. As pursuant to § 29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any [~~state listed~~ state listed] endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.

12. Any activity in wetlands composed of 10% or more, singularly or in combination, based upon either basal area or percent areal cover in the area of impact, in a vegetative stratum: Atlantic white cedar (Chamaecyparis thyoides), bald cypress (Taxodium distichum), water tupelo (Nyssa aquatica), or overcup oak (Quercus lyrata).

13. Any activity in tidal waters.

9VAC25-680-50. Notification.

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

1. When the Virginia Department of Transportation is the applicant for coverage under this VWP general permit, the notification requirements shall be in accordance with this section and 9VAC25-680-60, unless otherwise authorized by the Department of Environmental Quality.

2. An application for ~~authorization of~~ coverage for proposed, permanent nontidal wetland or open water impacts greater than one-tenth of an acre; or [~~of for~~] proposed permanent nontidal stream bed impacts greater than 300 linear feet; shall include all information pursuant to 9VAC25-680-60 B, ~~except for~~ 9VAC25-680-60 B-20

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when the application is for a Virginia Department of Transportation (VDOT) administered project. VDOT shall provide the information in 9VAC25-680-60 B 20 through the VDOT State Environmental Review Process, the National Environmental Policy Act (42 USC § 4321 et seq.) (for federal actions), or the VDOT Geographic Information System. Compensatory mitigation may be required for all permanent impacts in accordance with Parts I, II, and III of this VWP general permit regulation. All temporary impacts shall be restored to preexisting conditions, as per Parts I, II, and III of this VWP general permit regulation.

~~2. 3.~~ An application for the authorization of coverage for proposed, permanent nontidal wetland or open water impacts up to one-tenth of an acre; or [of for] proposed, permanent nontidal stream bed impacts up to 300 linear feet; shall be submitted as follows in accordance with either subdivision 3 a or 3 b of this subsection:

a. ~~For a proposed VDOT administered project that is not subject to subdivision 2 c of this subsection, the application shall include the information required by subdivisions 1 through 8, 13, 15, and 21 of 9VAC25-680-60 B. The VDOT Quarterly Reporting of Impacts Less Than One Tenth Acre application may be used, provided that it contains the required information. Compensatory mitigation may be required for all permanent impacts once the notification limits of one-tenth acre wetlands or open water, or 300 linear feet of stream bed, are exceeded. All temporary impacts, regardless of amount, shall be restored to preexisting conditions, as per Parts I and III of this VWP general permit regulation. For any proposed project in wetlands, open water, streams, or compensatory mitigation sites that are under a deed restriction, conservation easement, declaration of restrictive covenant, or other land use protective instrument (hereafter "protected areas"), when such restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to activities in wetlands and compensatory mitigation sites, the application shall include all of the information required by 9VAC25-680-60 B. Compensatory mitigation may be required for all permanent impacts.~~

b. ~~For all other projects that are not subject to subdivision 2 c of this subsection, the application shall include the information required by subdivisions 1 through 9, 13, 15, 20, and 21 1 through 7, 11, 12, 15, and 16 of 9VAC25-680-60 B; and documentation that verifies the quantity and type of impacts. Compensatory mitigation may be required for all permanent impacts once the notification limits of one-tenth acre wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required, the application shall include the information in 9VAC25-680-60 B 13. All temporary impacts, regardless of amount, shall be restored to preexisting conditions, as per Parts I and III of this VWP general permit regulation.~~

~~c. For any proposed project in wetlands, open water, streams, or compensatory mitigation sites that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (hereafter protected areas), when such restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to activities in wetlands and compensatory mitigation sites, the application shall include all of the information required by 9VAC25-680-60 B, and documentation that verifies the quantity and type of impacts. Application for a VDOT administered project shall provide the required information in 9VAC25-680-60 B 20 through the VDOT State Environmental Review Process, the National Environmental Policy Act (for federal actions), or the VDOT Geographic Information System. Compensatory mitigation may be required for all permanent impacts, regardless of amount. All temporary impacts, regardless of amount, shall be restored to preexisting conditions, as per Parts I and III of this VWP general permit regulation.~~

B. A Joint Permit Application (JPA), a Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA), or a VDOT Quarterly Reporting of Impacts Less Than One Tenth Acre The Department of Environmental Quality-approved application forms shall serve as an application under this regulation for a VWP permit or VWP general permit coverage.

C. The board will determine whether the proposed activity requires coordination with the [United States U.S.] Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services [,] and the Virginia Department of Game and Inland Fisheries regarding the presence of federal or state [proposed or] listed threatened and endangered species or [proposed or] designated critical habitat. Based upon consultation with these agencies, the board may deny application for coverage under this general permit. The applicant may also consult with these agencies prior to submitting an application. Species or habitat information that the applicant provides will assist ~~DEQ~~ the Department of Environmental Quality in reviewing and processing the application.

9VAC25-680-60. Application.

A. Applications shall be filed with the board as follows:

1. The applicant shall file a complete application in accordance with 9VAC25-680-50, and this section for a coverage under this VWP General Permit Number WP3 general permit for impacts to surface waters from linear transportation projects, ~~which will serve as a notice of intent for coverage under this VWP general permit [activities projects]~~.

2. The VDOT may use its monthly IACM process for submitting applications.

B. ~~The required~~ A complete application shall contain for VWP general permit coverage, at a minimum, consists of the following information [,] if applicable to the project:

1. The applicant's legal name, mailing address, and telephone number, and; if applicable, electronic mail address and fax number.
2. If different from the applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number of property owner.
2. ~~The~~ 3. If applicable, authorized agent's (if applicable) name, mailing address, telephone number, and; if applicable, fax number and electronic mail address.
3. ~~4.~~ The existing VWP general permit tracking number (if applicable), if applicable.
4. ~~The name of the project, narrative description of project purpose, and a description of the proposed activity in surface waters.~~
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, including the project boundary. The map shall be of sufficient detail such that the site may be easily located for site inspection.~~
10. ~~(Reserved.)~~
11. ~~Project plan view. Plan view sketches shall 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. In addition, cross sectional or profile sketches with the above information may be required to detail impact areas.~~
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, the areal extent of the impact (area of wetland in square feet and acres; area of stream, length of stream, and average width); the location (latitude and longitude at the center of the impact, or at the center of each impact for linear projects)) and the type of surface water impact (open water; wetlands~~

~~according to the Cowardin classification or similar terminology; or perennial and nonperennial for streams). The board encourages applicants to coordinate the determination of perennial or nonperennial streams with the appropriate local government agency in Tidewater Virginia.~~

~~14. Functional values assessment for impacts to wetlands greater than one acre, which shall consist of a summary of field observations of the existing wetland functions and values and an assessment of the impact that the project will have on these functions and values. The following parameters and functions shall be directly addressed: surrounding land uses and cover types; nutrient, sediment, and pollutant trapping; flood control and flood storage capacity; erosion control and shoreline stabilization; groundwater recharge and discharge; aquatic and wildlife habitat; and unique or critical habitats.~~

~~15. A description of the specific on site measures considered and taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable.~~

~~16. A conceptual plan for the intended compensation for unavoidable impacts, including:~~

a. ~~For wetlands, the conceptual compensation plan shall include: the goals and objectives in terms of replacement of wetland acreage and function; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including latitude and longitude (to the nearest second) at the center of the site; a description of the surrounding land use; 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; a map for existing surface water areas on the proposed site or sites, including a wetland delineation confirmation for any existing wetlands; a conceptual grading plan; a conceptual planting scheme, including suggested plant species and zonation of each vegetation type proposed; and a description of existing soils, including general information on topsoil and subsoil conditions, permeability, and the need for soil amendments.~~

b. ~~For streams, the conceptual compensation plan shall include: the goals and objectives in terms of water quality benefits and replacement of stream functions; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including the latitude and longitude to the nearest second; the proposed stream segment restoration locations, including plan view and cross section sketches; the stream deficiencies that need to be addressed; the proposed restoration measures to be employed, including channel measurements,~~

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proposed design flows and types of instream structures; and reference stream data, if available.

~~e. Applicants proposing to compensate off site, including purchase or use of mitigation bank credits, or contribution to an in lieu fee fund, shall submit an evaluation of the feasibility of on site compensation. If on site compensation is practicable, applicants shall provide documentation as to why the proposed off site compensation is ecologically preferable. The evaluation shall 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.~~

~~d. Applicants proposing compensation involving contributions to an in lieu fee fund shall state such as the conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior to issuance of this general permit authorization.~~

~~e. Applicants proposing compensation involving the purchase or use of mitigation banking credits shall include as their conceptual compensation plan:~~

~~(1) The name of the proposed mitigation bank and the HUC in which it is located;~~

~~(2) The number of credits proposed to be purchased or used; and~~

~~(3) Certification from the bank owner of the availability of credits.~~

~~17. A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9VAC25-210-45, including the wetlands data sheets. The delineation map shall also include the location of streams, open water, and the approximate limits of Chesapeake Bay Resource Protection Areas (RPAs), as other state or local requirements may apply if the project is located within an RPA. 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 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.~~

~~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 in accordance with 9VAC25-20-10 et seq. The permit application fee for VWP permit authorizations is based on acres only. Therefore, impacts that include linear~~

~~feet of stream bed must be converted to an acreage in order to calculate the permit application fee.~~

~~20. A written disclosure identifying all wetlands, open water, streams, and associated upland buffers within the proposed project or compensation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (protected areas). Such disclosure shall include the nature of the prohibited activities within the protected areas.~~

~~21. 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 application shall be signed in accordance with 9VAC25-210-100. 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.~~

5. Project name and proposed project schedule.

6. The following information for the project site location, and any related permittee-responsible compensatory mitigation site [, if applicable]:

a. The physical street address, nearest street, or nearest route number; city or county; zip code; and [;] if applicable, parcel number of the site or sites.

b. Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.

c. The latitude and longitude to the nearest second at the center of the site or sites.

d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site or sites.

e. A detailed map depicting the location of the site or sites, including the project boundary [and all existing preservation areas on the site or sites]. The map (e.g., a [United States U.S.] Geologic Survey topographic quadrangle map) should be of sufficient detail to easily locate the site or sites for inspection.

[f. GIS compatible shapefile or shapefiles of the project boundary and all existing preservation areas on the site or sites, unless otherwise approved by or coordinated with DEQ. The requirement for a GIS compatible shapefile or

~~shapefiles may be waived by DEQ on a case by case basis.]~~

7. A narrative description of the project, including project purpose and need.

8. Plan-view drawing or drawings of the project site sufficient to assess the project, including at a minimum the following:

a. North arrow, graphic scale, and existing and proposed topographic or bathymetric contours.

b. Limits of proposed impacts to surface waters.

c. Location of all existing and proposed structures.

d. All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface waters and waterway name, if designated; ebb and flood or direction of flow; and ordinary high water mark in nontidal areas.

e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant [,] and if available, the limits as approved by the locality in which the project site is located [,] unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

f. The limits of any areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas).

9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings of each proposed impact area shall include at a minimum a graphic scale, existing structures, existing and proposed elevations, limits of surface water areas, ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits, and location of all existing and proposed structures. Profile drawing or drawings with this information may be required on a case-by-case basis to demonstrate minimization of impacts. Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond the limits of proposed impact.

10. Materials assessment. Upon request by the board, the applicant shall provide evidence or certification that the material is free from toxic contaminants prior to disposal or that the dredging activity will not cause or contribute to a violation of water quality standards during dredging. 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.

11. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters and any physical alteration to surface waters. Surface water impacts shall be identified as follows:

a. Wetland impacts identified according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) [;] and for each classification, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

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

c. Open water impacts identified according to their Cowardin classification; and for each type, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

d. A copy of the approved jurisdictional determination [; if when] available, or [when unavailable, (i)] the preliminary jurisdictional determination from the U.S. Army Corps of Engineers (USACE), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ [;] or [(ii)] other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable.

e. A delineation map [~~and GIS compatible shapefile or shapefiles of the delineation map~~] that [(i)] depicts the geographic area or areas of all surface water boundaries delineated in accordance with 9VAC25-210-45 and confirmed in accordance with the jurisdictional determination process; [(ii)] identifies such areas in accordance with subdivisions 11 a [~~through~~, 11 b, and] 11 c of this subsection; and [(iii)] quantifies and identifies any other surface waters according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) or similar terminology [, if applicable]. [~~The requirements for a delineation map or GIS compatible shapefile or shapefiles may be waived by DEQ on a case-by-case basis.~~]

12. An alternatives analysis for the proposed project detailing the specific on-site measures taken during project design and development to first avoid and then minimize

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impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific on-site measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. The analysis shall demonstrate to the satisfaction of the board that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.

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

a. If permittee-responsible compensation is proposed for wetland impacts, a conceptual wetland compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of replacement of wetland acreage [~~or~~ and] functions; (ii) a detailed location map including latitude and longitude [~~to~~ to] the nearest [~~second~~ second] and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) a hydrologic analysis including a draft water budget for nontidal areas based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; (vi) wetland delineation confirmation, data sheets, and maps for existing surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii) a conceptual planting scheme including suggested plant species and zonation of each vegetation type proposed; (ix) a description of existing soils including general information on both topsoil and subsoil conditions, permeability, and the need for soil amendments; (x) a draft design of any water control structures; (xi) inclusion of buffer areas; (xii) a description of any structures and features necessary for the success of the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv) measures for the control of undesirable species.

b. If permittee-responsible compensation is proposed for stream impacts, a conceptual stream compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a

minimum (i) the goals and objectives in terms of water quality benefits and replacement of stream functions; (ii) a detailed location map including the latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) the proposed stream segment restoration locations including plan view and cross-sectional drawings; (v) the stream deficiencies that need to be addressed; (vi) data obtained from a DEQ-approved, stream impact assessment methodology such as the Unified Stream Methodology; (vii) the proposed restoration measures to be employed including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; (viii) reference stream data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities; and (xi) measures for the control of undesirable species.

c. For any permittee-responsible compensatory mitigation, the conceptual compensatory mitigation plan shall also include a draft of the intended protective mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but not limited to, a conservation easement held by a third party in accordance with the Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other protective instrument. The draft intended protective mechanism shall contain the information in subdivisions c (1), c (2), and c (3) of this subdivision 13 or in lieu thereof shall describe the intended protective mechanism or mechanisms that contains the information required below:

(1) A provision for access to the site;

(2) The following minimum restrictions: no ditching, land clearing, or discharge of dredge or fill material, and no activity in the area designated as compensatory mitigation area with the exception of maintenance; corrective action measures; or DEQ-approved activities described in the approved final compensatory mitigation plan or long-term management plan; and

(3) A long-term management plan that identifies a long-term steward and adequate financial assurances for long-term management in accordance with the current standard for mitigation banks and in-lieu fee program sites, except that financial assurances will not be necessary for permittee-responsible compensation provided by government agencies on government property. If approved by DEQ, permittee-responsible compensation on government property and long-term protection may be provided through federal facility management plans, integrated natural resources

management plans, or other alternate management plans submitted by a government agency or public authority.

d. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-lieu fee program credits shall include the number and type of credits proposed to be purchased and documentation from the approved mitigation bank or in-lieu fee program sponsor of the availability of credits at the time of application.

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

15. A written description and a graphical depiction identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensatory mitigation areas located within the proposed project boundary or permittee-responsible compensatory mitigation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas). Such description and a graphical depiction shall include the nature of the prohibited activities within the protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant [] and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), as additional state or local requirements may apply if the project is located within an RPA.

16. Signature page that has been signed, dated, and certified by the applicant in accordance with 9VAC25-210-100. If the applicant is a business or other organization, the signature must be made by an individual with the authority to bind the business or organization, and the title of the signatory must be provided. The application signature page, either on the copy submitted to the Virginia Marine Resources Commission or to DEQ, must have an original signature. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ. When required, the method selected for the analysis shall assess water quality or habitat metrics and shall be coordinated with DEQ in advance of conducting the analysis.

1. No analysis shall be required when:

a. Wetland impacts per each single and complete project total 1.00 acre or less; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent, or higher.

2. Analysis shall be required when wetland impacts per each single and complete project total 1.01 acres or more and when any of the following applies:

a. The proposed compensatory mitigation consists of permittee-responsible compensation, including water quality enhancements as replacement for wetlands; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent.

D. Upon receipt of an application from the Department of Transportation for a road or highway construction project by the appropriate DEQ office, the board has 10 business days, pursuant to § 33.2-258 of the Code of Virginia, to review the application and either determine the information requested in subsection B of this section is complete or inform the Department of Transportation that additional information is required to make the application complete (~~pursuant to § 33.1-19.1 of the Code of Virginia~~). Upon receipt of an application from other applicants for any type of project, the board has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. ~~For Department of Transportation road or highway construction projects, Pursuant to § 33.2-258 of the Code of Virginia, [application for] coverage under this VWP general permit for Department of Transportation road or highway construction projects shall be approved, or approved with conditions, or the application shall be denied [] within 30 business days of receipt of a complete application (pursuant to § 33.1-19.1 of the Code of Virginia).~~ For all other projects, [application for] coverage under this VWP general permit shall be approved, or approved with conditions, or the application shall be denied [] within 45 days of receipt of a complete application. If the board fails to act within the applicable 30 or 45 days on a complete application, coverage under this VWP general permit shall be deemed ~~approved~~ granted.

1. In evaluating the application, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. ~~Coverage~~ Application for coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional ~~conditions~~ requirements on a project in order to ~~approve authorization grant coverage~~ under this VWP general permit. However, ~~these conditions~~ the requirements must be consistent with [~~the VWP general permit regulation this chapter~~].

E. Incomplete application. Where an application is ~~incomplete~~ not accepted as complete by the board within the applicable 10 or 15 days of receipt, the board shall require the

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submission of additional information from the applicant and may suspend processing ~~the of any~~ application until such time as the applicant has supplied the requested information and the application is complete. Where the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or in ~~reports any report~~ to the board, ~~he the~~ applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application; for the purposes of review but shall not require an additional permit application fee. An incomplete permit application may be administratively withdrawn from processing by the board for failure to provide the required information after ~~180~~ 60 days from the date ~~that of the original permit application was received latest written information request made~~ by the board. An applicant may request a suspension of application review by the board, but requesting a suspension shall not preclude the board from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

9VAC25-680-70. Compensation.

A. ~~In accordance with 9VAC25-680-50 A,~~ Compensatory mitigation may be required for all permanent, nontidal surface water impacts as specified in 9VAC25-680-50 A. All temporary, nontidal surface water impacts shall be restored to preexisting conditions in accordance with 9VAC25-680-100.

B. ~~Generally, the sequence of preferred compensation options shall be restoration, then creation, then mitigation banking, and then in lieu fee fund. Also, 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 to practicable on site or in kind compensation may be considered. When the applicant can demonstrate satisfactorily that an off site or out of kind compensatory mitigation proposal is ecologically preferable, then such proposal may be deemed appropriate for compensation of project impacts. Compensatory mitigation and any compensatory mitigation proposals shall be in accordance with this section and 9VAC25-210-116.~~

~~C. For the purposes of this VWP general permit, compensatory mitigation for unavoidable wetland impacts may be met through the following:~~

- ~~1. Wetland creation.~~
- ~~2. Wetland restoration.~~
- ~~3. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:23 of the Code of Virginia.~~
- ~~4. A contribution to an approved in lieu fee fund.~~

~~5. Preservation of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection and when consistent with 9VAC25-210-116 A.~~

~~6. Restoration of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection and when consistent with 9VAC25-210-116 A.~~

~~7. Preservation of wetlands, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection.~~

~~D. For the purposes of this VWP general permit, compensatory mitigation for unavoidable stream impacts may be met through the following:~~

- ~~1. Stream channel restoration or enhancement.~~
- ~~2. Riparian buffer restoration or enhancement.~~
- ~~3. Riparian buffer preservation, when consistent with 9VAC25-210-116 A.~~
- ~~4. A contribution to an approved in lieu fee fund.~~
- ~~5. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:23 of the Code of Virginia.~~

~~E. In order for contribution to an in lieu fee fund to be an acceptable form of compensation, the fund must be approved for use by the board according to the provisions of 9VAC25-210-116 D. The applicant shall provide proof of contribution to DEQ prior to commencing activities in impact areas.~~

~~F. In order for purchase or use of bank credits to be an acceptable form of compensation, the bank shall be operating in accordance with the provisions of § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 E. The applicant shall provide proof of purchase, use, or debit to DEQ prior to commencing activities in impact areas.~~

~~G. Compensation C. When required, compensatory mitigation for unavoidable, permanent wetland impacts shall be provided at the following minimum compensation to impact mitigation ratios:~~

- ~~1. Impacts to forested wetlands shall be mitigated at 2:1, as calculated on an area basis.~~
- ~~2. Impacts to [~~scrub shrub~~ scrub-shrub] wetlands shall be mitigated at 1.5:1, as calculated on an area basis.~~
- ~~3. Impacts to emergent wetlands shall be mitigated at 1:1, as calculated on an area basis.~~

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

~~I. E. Compensation for permanent open water impacts, other than to streams, may be required at a in-kind or out-of-kind mitigation ratio of 1:1 replacement to impact ratio or~~

less, as calculated on an area basis, to offset impacts to state waters and fish and wildlife resources ~~from significant impairment~~. Compensation shall not be required for permanent or temporary impacts to open waters identified as palustrine by the Cowardin classification method, [~~except 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.

~~J. Compensation~~ F. When conversion results in a permanent alteration of the functions of a wetland, compensatory mitigation for conversion impacts to wetlands shall be required at a 1:1 replacement to impact mitigation ratio, as calculated on an area basis, when such conversion results in a permanent alteration of the functions and values of the wetlands. For example, the permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this [~~regulation chapter~~]. Compensation for conversion of other types of surface waters may be required, as appropriate, to offset impacts to state waters and fish and wildlife resources ~~from significant impairment~~.

9VAC25-680-80. Notice of planned changes; modifications to coverage.

A. The permittee shall notify the board in advance of ~~the a~~ planned change, and ~~the planned change an application or request will~~ for modification to coverage shall be reviewed according to all provisions of this ~~regulation chapter~~. Coverage shall not be modified if (i) the cumulative total of permanent and temporary impacts [for a single and complete project] exceeds two acres of nontidal wetlands or open water or exceeds 1,500 linear feet of nontidal stream bed or (ii) the criteria in subsection B of this section are not met. The applicant may submit a new permit application for consideration under a VWP individual permit.

B. ~~Authorization under this VWP general permit coverage~~ may be modified subsequent to issuance ~~if the permittee determines that additional permanent wetland, open water, or stream~~ under the following circumstances:

1. Additional impacts to surface waters are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development or within logical termini, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully mitigated. Prior to a planned change approval, DEQ may require submission of a compensatory mitigation plan for the additional impacts. In cases where the original impacts totaled less than 1/10 acre of wetlands or open water, or less than 300 linear feet of stream bed, and the additional impacts result in these limits being exceeded, the notice of planned change will not be approved. However, the applicant may submit a new permit application and permit

application fee for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit:

a. The additional impacts are proposed prior to impacting the additional areas.

b. The proposed additional impacts are located within the project boundary as depicted in the application for coverage or are located in areas of directly-related off-site work [.] unless otherwise prohibited in this [~~VWP general permit regulation~~ chapter].

c. The permittee has provided sufficient documentation that the board may reasonably determine that the additional impacts will not impact federal or state listed [~~or proposed~~] threatened or endangered species or [~~proposed or~~] designated critical habitat [.] or [~~be the result in a~~] taking of threatened or endangered species. [The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.]

d. The cumulative, additional permanent wetland or open water impacts for one or more notices of planned change do not exceed 0.25 acre.

e. The cumulative, additional permanent stream impacts for one or more notices of planned change do not exceed 100 linear feet.

f. Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-680-60 B 12.

g. Compensatory mitigation for the proposed impacts, if required, meets the requirements of 9VAC25-680-70 and 9VAC25-210-116. Prior to a planned change approval, the Department of Environmental Quality may require submission of a compensatory mitigation plan for the additional impacts.

h. Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the board that the area to be temporarily impacted will be restored to its preconstruction elevations and contours [.] with topsoil from the impact area where practicable, such that the previous acreage and functions are restored [.] in accordance with Parts I A 3 and B 11 of 9VAC25-680-100. The additional temporary impacts shall not cause the cumulative total impacts to exceed the general permit threshold for use. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

i. The additional proposed impacts do not change the category of the project, based on the original impact amounts as specified in 9VAC25-680-50 A 2. However, the applicant may submit a new permit application for

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the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

~~C. Authorization under this VWP general permit may be modified after issuance if the project results in less 2. A reduction in wetland or stream impacts. Compensation Compensatory mitigation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation compensatory mitigation meets the initial authorization compensation compensatory mitigation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases, mitigation bank usage, or in-lieu fee fund contributions program credit purchases.~~

~~D. Authorization under this VWP general permit may be modified after issuance for a 3. A change in project plans or use that does not result in a change in to authorized project impacts other than those allowed in subdivisions 1 and 2 of this subsection.~~

~~E. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use in 9VAC25-210-116-E are met.~~

~~F. Authorization under the VWP general permit may be modified after issuance for typographical errors.~~

~~G. A Notice of Planned Change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and the area is restored to preexisting conditions in accordance with Part I-C 11 of this general permit. In no case can the additional temporary impacts exceed the general permit threshold for use.~~

~~H. In no case can this authorization be modified to exceed the general permit threshold for use.~~

~~I. A notice of planned change shall be denied if fish and wildlife resources are significantly impacted or if the criteria in subsection B of this section are not met. However, the original VWP general permit authorization shall remain in effect. The applicant may submit a new permit application and permit application fee for consideration under a VWP individual permit.~~

4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program or substitute all or a portion of the prior authorized permittee-responsible compensation with a purchase of mitigation credits in accordance with 9VAC25-210-116 C from a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory mitigation requirement for which the compensatory mitigation is proposed to replace.

5. Correct typographical errors.

9VAC25-680-90. Termination of authorization by consent coverage.

~~When all permitted activities requiring notification under 9VAC25-680-50 A and all compensatory mitigation requirements have been completed, or if the authorized impacts will not occur, the A. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation completing or canceling all authorized activities requiring notification under 9VAC25-680-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of authorization coverage on behalf of the board. The permittee shall submit the following information:~~

1. Name, mailing address, and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP general permit authorization tracking number; and
4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of this the VWP general permit authorization or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by this the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or for coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of this the VWP general permit authorization or coverage, nor does it allow me to resume the permitted

authorized activities without reapplication and reauthorization coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by ~~DEQ~~ the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by a the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this~~ the VWP general permit authorization or coverage, nor does it allow me to resume the ~~permitted~~ authorized activities without reapplication and reauthorization coverage."

B. VWP general permit coverage may be terminated for cause in accordance with 9VAC25-210-180 F and [9VAC25-230 § 62.1-44.15:02 of the Code of Virginia], or without cause in accordance with 9VAC25-210-180 G and [9VAC25-230 § 62.1-44.15:02].

9VAC25-680-95. Transition. (Repealed.)

~~A. All applications received on or after August 1, 2006, will be processed in accordance with these new procedures.~~

~~B. VWP general permit authorizations issued prior to August 1, 2006, will remain in full force and effect until such authorizations expire, are revoked, or are terminated.~~

~~C. Notices of planned change and all other types of notification that are received by the board prior to August 1, 2006, will be processed in accordance with the VWP general permit regulation in effect at that time. Notices of planned change and all other types of notification to the board that are received on or after August 1, 2006, will be processed in accordance with these new procedures.~~

9VAC25-680-100. VWP general permit.

Any applicant whose application has been accepted by the board shall be subject to the following requirements:

VWP General Permit No. WP3
Authorization Expiration date:
Authorization Notes(s):

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~~

VWP GENERAL PERMIT NO. WP3 FOR LINEAR TRANSPORTATION PROJECTS UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016

Expiration date: August 1, [~~2031~~ 2026]

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein complied with, 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, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.~~

Subject The permanent or temporary impact of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed.

Permittee:

Address:

Activity Location:

Activity Description:

~~The authorized activity shall be in accordance with this cover page, Part I Special Conditions, Part II Compensation, Monitoring, and Reporting, and Part III Conditions Applicable to All VWP Permits, as set forth herein.~~

Director, Department of Environmental Quality Date

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Part I. Special Conditions.

A. Authorized activities.

1. ~~This permit authorizes~~ The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed according to the information provided in the approved and complete application. [Additional permit requirements as stipulated by the board in the coverage letter, if any, shall be enforceable conditions of this permit.]

2. Any changes to the authorized permanent impacts to surface waters ~~associated with this project~~ shall require ~~either~~ a notice of planned change in accordance with 9VAC25-680-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters ~~associated with this project~~ shall require written notification to ~~DEQ~~ and approval from the Department of Environmental Quality in accordance with 9VAC25-680-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit authorization.

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

5. ~~The activities authorized for coverage under this VWP general permit must commence and be completed within seven years of the date of this authorization.~~

~~B. Continuation of Coverage. Reapplication 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 compensation) has not been completed within seven years of the date of authorization. Notwithstanding any other provision, a request for continuation of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered a new application and no application fee will be charged. The request for continuation of coverage 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 continuation of the VWP general permit authorization is necessary.~~

~~C. B.~~ Overall ~~project~~ conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless

the primary purpose of the activity is to impound water. ~~Culverts~~ Pipes and culverts placed in streams must be installed to maintain low flow conditions, ~~and shall be countersunk at both inlet and outlet ends of the pipe or culvert [,] unless specifically approved by the Department of Environmental Quality on a case-by-case basis and as follows:~~ The requirement to countersink does not apply to extensions or maintenance of existing [pipes and] culverts that are not countersunk, ~~floodplain~~ floodplain pipe and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes or culverts required to be placed on slopes 5.0% or greater. ~~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. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.~~

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by DEQ the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with ~~this~~ the project shall be accomplished in a manner that minimizes construction or waste materials

from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of ~~permitted~~ authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours, with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, ~~scrub/shrub~~ scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their ~~original~~ preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment, ~~and the banks.~~ Streambanks shall be seeded or planted with the same vegetation cover type originally present along the streambanks, including [any necessary,] supplemental erosion control grasses [if necessary], except for invasive. Invasive species identified on DCR's the Department of Conservation and Recreation's Virginia Invasive Alien Plant Species of Virginia list List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to ~~original~~ preconstruction elevations and

contours, with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including [any necessary] supplemental erosion control grasses [~~if necessary~~]; ~~except for invasive.~~ Invasive species identified on DCR's the Department of Conservation and Recreation's Virginia Invasive Alien Plant Species of Virginia list List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Game and Inland Fisheries, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in Department of Environmental Quality VWP general permit coverage, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities, ~~unless allowed by this permit authorization.~~

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by this VWP general permit the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

~~D.~~ C. Road crossings.

1. Access roads and associated bridges ~~or, pipes, and~~ culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours and elevations in surface waters must be bridged, piped, or culverted to maintain surface flows.

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

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~~E.~~ D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its ~~original~~ preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by ~~this VWP general permit~~ the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including [any necessary] supplemental erosion control grasses [~~if necessary~~], ~~except for invasive~~. Invasive species identified on DCR's the Department of Conservation and Recreation's Virginia Invasive Alien Plant Species of Virginia list List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

~~F.~~ E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap 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 stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

~~G.~~ F. 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 the 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 buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.

b. 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 filter bags, or other similar filtering practices, any of which~~ 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.~~ G. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the

facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit ~~authorization~~ coverage or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II. Construction and Compensation Requirements, Monitoring and Reporting.

A. Minimum compensation requirements [\pm]

1. The permittee shall provide ~~appropriate and practicable any required~~ compensation for all impacts meeting in accordance with the conditions outlined in this VWP general permit [, the coverage letter,] and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in 9VAC25-680-70 and 9VAC25-210-116.

3. The permittee-responsible compensation site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site ~~for the approved project.~~ A site change will may require a modification to ~~the authorization coverage.~~

4. For compensation involving the purchase ~~or use~~ of mitigation bank credits or ~~a contribution to an~~ the purchase of in-lieu fee fund program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase ~~or usage~~ or of the ~~fund contribution in-lieu fee program credit purchase~~ has been submitted to and received by ~~DEQ~~ the Department of Environmental Quality.

5. ~~All aspects of the compensation~~ The final compensatory mitigation plan shall be ~~finalized,~~ submitted to and approved by the board prior to a construction activity in permitted impact areas. The board shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final

~~compensation~~ plan as approved by the board shall be an enforceable requirement of any coverage under this VWP general permit ~~authorization.~~ Deviations from the approved final plan must shall be submitted and approved in advance by the board.

~~6. a.~~ The final permittee-responsible wetlands compensation plan shall include:

~~a. The goals and objectives of the plan in terms of replacement of wetland acreage and functions, by wetland type;~~

~~b. Location map, including latitude and longitude (to the nearest second) at the center of the site;~~

~~c. Summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;~~

~~d. Grading plan with existing and proposed elevations at one foot or less contours;~~

~~e. Schedule for compensation site construction, including sequence of events with estimated dates;~~

~~f. Hydrologic analysis, including a water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year;~~

~~g. Groundwater elevation data for the site, or the location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;~~

~~h. Design of water control structures;~~

~~i. Planting scheme and schedule, indicating plant species zonation, and acreage of each vegetation type proposed;~~

~~j. An abatement and control plan covering all undesirable plant species, as listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of their presence, methods of removal, and the control of such species;~~

~~k. Erosion and sedimentation control plan;~~

~~l. A soil preparation and amendment plan addressing both topsoil and subsoil conditions;~~

~~m. A discussion of structures and features considered necessary for the success of the plan;~~

~~n. A monitoring plan, including success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations and monitoring wells, sampling points and, if applicable, reference wetlands;~~

~~o. Site access plan;~~

~~p. The location and composition of any buffers; and~~

~~q. The mechanism for protection of the compensation areas.~~

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(1) The complete information on all components of the conceptual compensation plan.

(2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams [~~(if available)~~, if available]; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

7. b. The final permittee-responsible stream compensation plan shall include:

a. The goals and objectives of the compensation plan in terms of replacement of stream functions and water quality benefits;

b. A location map, including latitude and longitude (to the nearest second) at the center of the site;

c. An evaluation, discussion, and plan sketches of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);

d. The identification of existing geomorphological stream type being impacted and proposed geomorphological stream type for compensation purposes;

e. Detailed design information for the proposed restorative measures, including geomorphological measurements and reference reach information as appropriate;

f. Riparian buffer plantings, including planting scheme, species, buffer width;

g. Livestock access limiting measures, to the greatest extent possible;

h. A site access plan;

i. An erosion and sedimentation control plan, if appropriate;

j. Abatement and control plan covering all undesirable plant species, as listed on DCR's Invasive Alien Plant Species of Virginia list that includes the proposed

procedures for notifying DEQ of their presence, methods for removal, and the control of such species;

k. A schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;

l. A monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams;

m. The mechanism for protection of the compensation area; and

n. Plan view sketch depicting the pattern and all compensation measures being employed, a profile sketch, and cross section sketches of the proposed compensation stream.

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing or drawings of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

8. For final 6. The following criteria shall apply to permittee-responsible wetland or stream compensation plans, the:

a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent USDA U.S. Department of Agriculture Plant Hardiness Zone or NRCS Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan or plans.

~~9. The final wetland or stream compensation plan or plans shall include a mechanism for protection in perpetuity of the compensation sites to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place within 120 days of final compensation plan approval. 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 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 or 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, or an equivalent instrument for government owned lands. Proof of recordation shall be submitted within 120 days of final compensation plan approval.~~

~~10. b.~~ All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.

~~11. DEQ c.~~ The Department of Environmental Quality shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation sites site.

~~12. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final wetlands or stream compensation plan(s).~~

~~13. d.~~ Point sources of stormwater runoff shall be prohibited from entering a wetland 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, or forebays.

~~14. e.~~ The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

~~15. 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 region's killing frost free growing season, as defined in the soil survey for the locality of the compensation site or the NRCS WETS table, measured in consecutive days under typical precipitation conditions, and as defined in the water budget of the final compensation plan. For the purpose of this regulation, the growing season is defined as the period in which temperatures are expected to be above 28 degrees Fahrenheit in five out of 10 years, or the period during which the soil temperature in a wetland compensation site is greater than biological zero (five degrees Celsius) at a depth of 50 centimeters (19.6 inches), if such data is available.~~

~~16. The wetland plant community shall be considered established according to the performance criteria specified in the final compensation plan and approved by the board. The proposed vegetation success criteria in the final compensation plan shall include the following:~~

~~a. Species composition shall reflect the desired plant community types stated in the final wetland compensation plan by the end of the first growing season and shall be maintained through the last monitoring year.~~

~~b. 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, by the end of the first growing season and shall be maintained through the last monitoring year.~~

~~17. Undesirable plant species shall be identified and controlled as described in the undesirable plant species 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 DEQ when undesirable plant species comprise greater than 5.0% of the vegetation by areal coverage on wetland or stream compensation sites. The notification shall include the methods of removal and control, and whether the methods are successful.~~

~~18. f.~~ If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan shall be submitted to ~~DEQ~~ the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete as confirmed by ~~DEQ~~ the Department of

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Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year [;] or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for DEQ the Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

19. g. The surveyed wetland boundary for the compensation 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. Data shall be submitted by December 31 of the final monitoring year.

20. h. Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means only, unless authorized by DEQ the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall ~~document the preexisting conditions, activities during construction, and post-construction conditions. Monitoring shall consist of one of the following options:~~

~~a. Photographs shall be taken during construction at the end of the first, second and third months of commencing construction, and then every six months thereafter for the remainder of the construction project. Photos are not required during periods of no activity within impact areas.~~

~~b. An ortho-rectified photograph shall be taken by a firm specializing in ortho-rectified photography prior to construction, and annually thereafter, until all impacts are taken. Photos shall clearly show the delineated surface waters and authorized impact areas.~~

~~e. In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months after commencing construction, and then every six months thereafter, for the remainder of~~

~~the construction activities. Narratives are not required during periods of no activity with the impact areas.~~

~~2. As part of construction monitoring, photographs taken at the photo stations or the narrative shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; surface water discharges from the site; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.~~

~~3. 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.~~

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all [~~on-site~~ on-site] permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

4. 2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below.

The permittee shall report violations of water quality standards to ~~DEQ~~ the Department of Environmental Quality in accordance with the procedures in ~~Part II E~~ 9VAC25-680-100 Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

- a. A sampling station shall be located upstream and immediately downstream of the relocated channel.
- b. Temperature, pH [] and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.
- c. Temperature, pH [] and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. ~~Wetland~~ Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites, including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.
2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation 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 at a time specified in the final compensation plan during every monitoring year.
3. Compensation site monitoring shall begin on the first day of the first complete growing season (monitoring year 1) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by ~~DEQ~~ the Department of Environmental Quality. In all cases, 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.
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. 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~~ Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from ~~DEQ~~ the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.
6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.
7. The presence of undesirable plant species shall be documented.
8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-680-100 Part II E 6.

D. ~~Stream~~ Permittee-responsible stream compensation, ~~restoration,~~ and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.
2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks and channel relocation shall be completed in the dry whenever practicable.
3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.
4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank, or upon prior authorization from the Department of Environmental Quality, heavy equipment ~~shall~~ may be authorized for use within the stream channel.
5. Photographs shall be taken at the compensation site from the vicinity of the permanent [~~photo~~ photo-monitoring] stations identified in the final compensation plan. The

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photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise ~~determined~~ approved by ~~DEQ~~ the Department of Environmental Quality. In all cases, 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.

8. All stream compensation site monitoring reports shall be submitted in accordance with 9VAC25-680-100 Part II E 6.

E. Reporting.

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

2. ~~DEQ~~ The Department of Environmental Quality shall be notified in writing ~~at least 10 days~~ prior to the start of construction activities at the first ~~permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include a projected schedule for initiation and completion of work at each permitted impact area.~~

3. ~~Construction monitoring reports shall be submitted to DEQ no later than the 10th day of the month following the month in which the monitoring event specified in Part II B takes place, unless otherwise specified below. The reports shall include the following, as appropriate:~~

~~a. For each permitted impact area, a written narrative stating whether work was performed during the monitoring period, and if work was performed, a description of the work performed, when the work was initiated, and the expected date of completion.~~

~~b. Photographs labeled with the permit number, the photo station number, the photo orientation, the date and time of the photo, the name of the person taking the photograph, and a brief description of the construction activities. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in a permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration. The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions.~~

~~e. Summary of activities conducted to comply with the permit conditions.~~

~~d. Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.~~

~~e. Summary of anticipated work to be completed during the next monitoring period and an estimated date of construction completion at all impact areas.~~

~~f. Labeled site map depicting all impact areas and photo stations.~~

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

a. Construction activities have not yet started;

b. Construction activities have started;

c. Construction activities have started but are currently inactive; or

d. Construction activities are complete.

4. DEQ The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all permitted authorized impact areas authorized under this permit.

5. DEQ The Department of Environmental Quality shall be notified in writing at least 10 days prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year of ~~authorization~~, in which case the report shall be submitted at least 60 days prior to the expiration of authorization under the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying [~~photo~~ photo-monitoring] stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the ~~photo~~ photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan [~~which~~ that] includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying [~~photo~~ photo-monitoring] stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) [~~An evaluation~~ Evaluation] and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the ~~photo~~ photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) [~~A discussion~~ Discussion] of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) [~~A summary~~ Summary] of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) [~~A corrective~~ Corrective] action plan [~~which~~ that] includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by ~~DEQ~~ the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify ~~DEQ~~ the Department of Environmental Quality 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 a structure are prohibited until approved by ~~DEQ~~ the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate ~~DEQ~~ Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported ~~within 24 hours~~ to the appropriate ~~DEQ~~

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Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

~~10.~~ 11. Submittals required by this VWP general permit shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions. ~~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 for cause, VWP general permit authorization, revocation, or denial of a continuation of coverage request.~~

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent 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 revoking and reissuing the 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 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 property rights, ~~nor or 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 Inspection and entry.~~ The Upon presentation of credentials, the permittee shall allow the board or its agents, upon the presentation of credentials any duly authorized agent of the board, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit ~~authorization coverage.~~ This VWP general permit ~~authorization~~ coverage may be transferred to another person by a permittee when all of the criteria listed below in this subsection are met. On the date of the VWP general permit ~~authorization~~ coverage transfer, the transferred VWP general permit ~~authorization~~ coverage shall be as fully effective as if it had been issued granted directly to the new permittee.

1. The current permittee notifies the board of the proposed transfer of the title to the facility or property. 2. The notice to the board includes general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit ~~authorization~~ responsibility, coverage, and

liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the ~~permitted~~ authorized activity.

~~3. 2.~~ The board does not within 15 days notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit ~~authorization within 15 days.~~

I. Notice of planned change. ~~Authorization under this VWP general permit coverage may be modified subsequent to issuance in one or more of the cases listed below accordance with 9VAC25-680-80. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and the planned change request will be reviewed according to all provisions of this regulation.~~

~~1. The permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully compensated.~~

~~2. The project results in less wetland or stream impacts, in which case compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals.~~

~~3. There is a change in the project plans that does not result in a change in project impacts.~~

~~4. There is a change in the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use are met, as detailed in 9VAC25-210-116 E.~~

~~5. Typographical errors need to be corrected.~~

J. VWP general permit ~~authorization coverage~~ termination for cause. ~~This VWP general permit authorization coverage is subject to termination for cause by the board after public notice and opportunity for a hearing pursuant to [9VAC25-230 § 62.1-44.15:02 of the Code of Virginia].~~ Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of [the VWP general permit regulation this chapter], any condition of the VWP general permit authorization, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the ~~VWP general permit authorization issuance~~ process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order; ~~and~~

4. A determination by the board that the ~~permitted authorized~~ activity endangers human health or the environment and can be regulated to acceptable levels by a modification to VWP general permit authorization-planned change coverage or a termination-for-cause;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The board may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the board shall follow the applicable procedures for termination under §[§ 62.1-44.15:02 and] 62.1-44.15:25 of the Code of Virginia [and 9VAC25-230].

~~K. L.~~ VWP general permit authorization coverage termination by consent. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9VAC25-680-50 A and all compensatory mitigation have been completed or when the authorized impacts will not occur. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation completing or [cancelling canceling] all authorized activities requiring notification under 9VAC25-680-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of authorization coverage on behalf of the board. The request for termination by consent permittee shall contain submit the following information:

1. Name, mailing address, and telephone number ~~of the permittee;~~

2. Name and location of the activity;

3. The VWP general permit authorization tracking number; and

4. One of the following certifications:

a. For project completion:

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"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this~~ the VWP general permit authorization coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by ~~this~~ the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this~~ the VWP general permit authorization or coverage, nor does it allow me to resume the ~~permitted~~ authorized activities without reapplication and ~~reauthorization~~ coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by ~~DEQ~~ the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by a the VWP general permit and general permit coverage have [~~been completed~~ changed as the result of events beyond my control] (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this~~ the VWP general permit authorization or coverage, nor does it allow me to resume the ~~permitted~~ authorized activities without reapplication and ~~reauthorization~~ coverage."

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

~~M.~~ N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

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

~~O.~~ P. Duty to provide information.

1. The permittee shall furnish to the board any information ~~which that~~ the board may request to determine whether cause exists for modifying, revoking ~~and reissuing and, or~~ terminating ~~the VWP permit authorization, coverage~~ or to determine compliance with the VWP general permit authorization or general permit coverage. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the board prior to commencing construction.

~~P.~~ Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of ~~the general permit~~ 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, as appropriate:

a. The date, exact place, and time of sampling or measurements;

- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

Q. R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
4. On and after 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.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-680-27.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC25-680)

~~[Department of Environmental Quality Water Division Permit Application Fee Form (rev. 10/14)~~

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

~~Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 10/04)~~

~~[Joint Permit Application for Projects in Tidewater, Virginia (eff. 10/04) (eff. 3/14)~~

~~Monthly Reporting of Impacts Less than or Equal to One-Tenth Acre Statewide (eff. 08/2007)~~

~~Standard Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 03/2014)~~

~~Virginia Department of Transportation Inter Agency Coordination Meeting Joint Permit Application (eff. 10/02) (eff. 06/2008)~~

[Standard Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia \(eff. 3/2014\)](#)

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

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

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-680)

[Classification of Wetlands and Deepwater Habitats of the United States, Cowardin, Lewis M. II, et al., United States Fish and Wildlife Service, December 1979, Reprinted 1992](#) []

[Guidelines for Specification of Disposal Sites for Dredged \[~~of~~ or \] Fill Material, 40 CFR Part 230 \[\(~~Federal Register~~ December 24, 1980\) \]](#)

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

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

VA.R. Doc. No. R14-4059; Filed May 13, 2016, 8:29 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

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Title of Regulation: 9VAC25-690. **Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (amending 9VAC25-690-10 through 9VAC25-690-100; adding 9VAC25-690-15, 9VAC25-690-25, 9VAC25-690-27, 9VAC25-690-35; repealing 9VAC25-690-95).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Effective Date: August 2, 2016.

Agency Contact: Brenda Winn, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 233218, telephone (804) 698-4516, FAX (804) 698-4032, or email brenda.winn@deq.virginia.gov.

Summary:

The regulatory action reissues the existing general permit that expires on August 1, 2016. The amendments (i) revise or clarify which activities in specific water sources require application for a permit authorization and which activities are excluded; (ii) revise and clarify the application process, including the administrative and technical information required to achieve a complete permit application; (iii) revise and clarify the compensatory mitigation requirements, including the sequencing of acceptable compensatory mitigation actions and compensatory mitigation provisions, the requirements for compensating impacts to open waters, or the compensation necessary for temporary impacts; (iv) modify provisions related to application processing, informational requirements, or actions occurring post-permit authorization for coverage; (v) modify permit authorization transitions between general permit cycles; (vi) delete the authorization term of seven years and provisions for continuation of permit authorization coverage; (vii) incorporate certain federal regulatory provisions; (viii) clarify and update definitions; (ix) reorganize the regulation; and (x) correct grammar, spelling, and references.

9VAC25-690-10. Definitions.

The words and terms used in this ~~regulation 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 Program Regulation (9VAC25-210) unless a different meaning is required by the context ~~clearly indicates otherwise or unless otherwise is~~ indicated below.

"Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.

"Bioengineering method" means a biological measure incorporated into a facility design to benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent practicable, for long-term aquatic resource protection and improvement.

~~"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.~~

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

~~"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.~~

"Greater than one acre" means more than 1.00 acre (43,560 square feet).

"DEQ" means the Department of Environmental Quality.

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

~~"Impacts" means results caused by human induced activities conducted in surface waters, as specified in § 62.1-44.15:20 A 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 phased development project that depend upon other phases of the project do not have independent utility. Portions of a phased development project that would be constructed even if the other phases are not

built can be considered as separate single complete projects with independent public and economic utility.

"In-stream mining" means activities or operations that remove accumulated sand, gravel, and mineral deposits directly from stream channels using equipment such as, but not limited to, hydraulic dredges, clamshell dredges, or draglines for the sole purpose of processing and selling the material. In-stream mining does not include dredging activities, whose main purpose is to maintain channels and harbors for navigation, nor does it include the recovery of spilled material, such as sand, gravel, and aggregate, that was inadvertently spilled into a waterway during loading activities.

~~"Isolated Wetland of Minimal Ecological Value (IWOMEV)" means a wetland that (i) does not have a surface water connection to other state waters; (ii) is less than one-tenth of an acre in size; (iii) is not located in a Federal Emergency Management Agency designated 100 year floodplain; (iv) is not identified by the Virginia Natural Heritage Program as a rare or state significant natural community; (v) is not forested; and (vi) does not contain listed federal or state threatened or endangered species.~~

~~"Less than one half of an acre" means 0.49 acre (21,779 square feet) or less.~~

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

~~"Open water" means an area that, during a year with normal patterns of precipitation, has standing water for sufficient duration to establish an ordinary high water mark. The term "open water" includes lakes and ponds but does not include ephemeral waters, stream beds, or wetlands.~~

~~"Ordinary high water" or "ordinary high water mark" means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.~~

~~"Perennial stream" means a well defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

~~"Permanent impacts" means those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.~~

~~"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation, or any other legal entity.~~

"Phased development" means more than one project proposed for a single piece of property or an assemblage of contiguous properties under consideration for development by the same person, or by related persons, that will begin and be completed at different times. Depending on the relationship between the projects, [(i)] a phased development may be considered a single and complete project [,] or [(ii)] each project may be considered a single and complete project [;] if each project has independent utility, as defined in this subsection.

"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 nonerodible material such as stone or chunks of concrete.~~

~~"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 a person, which also has independent utility, as defined in this section. For linear projects, the "single and complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single waterbody) water body) and to multiple crossings of the same waterbody water body at separate and distinct locations. Phases of a project that have independent public and economic utility may each be considered single and complete.

"State program general permit (SPGP)" means a general permit issued by the Department of the Army in accordance with 33 USC 1344(e), 33 CFR 325.2(e)(2), 33 USC § 1344 and 33 CFR 325.3(b) 33 CFR 325.5(c)(3) and that is founded on a state program. The SPGP is designed to avoid duplication between the federal and state programs.

~~"Stream bed" means the substrate of a stream, as measured between the ordinary high water marks along a length of stream. The substrate may consist of organic matter, bedrock or inorganic particles that range in size from clay to boulders, or a combination of both. Areas contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.~~

~~"Surface waters" means all state waters that are not ground water as defined in § 62.1-255 of the Code of Virginia.~~

~~"Temporary impacts" are those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland. Temporary impacts include activities in which the ground is~~

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~~restored to its preconstruction conditions, contours, or elevations, such that previous functions and values are restored.~~

"Up to 300 linear feet" means ~~>0.00 to~~ 300.00 linear feet or less as measured along the center of the main channel of the stream segment.

"Up to ~~1500~~ 1,500 linear feet" means ~~>0.00 to 1500.00~~ 1,500.00 linear feet or less, as measured along the center of the main channel of the stream segment.

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

"Up to two acres" means 2.00 acres (87,120 square feet) or less.

"Utility line" means a pipe or pipeline for the transportation of a gaseous, liquid, liquefiable or slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities 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.

9VAC25-690-15. Statewide information requirements.

The board may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's discharge on the quality of state waters or (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a VWP permit or general permit coverage shall provide the information requested by the board.

9VAC25-690-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this [~~regulation chapter~~] is to establish VWP General Permit Number WP4 under [~~the VWP permit program regulation 9VAC25-210~~] to govern permanent and temporary impacts related to the construction and maintenance of development activities; and to activities directly associated with aggregate mining (e.g., sand, gravel, and crushed or broken stone); hard rock/mineral mining (e.g., metalliferous ores); and surface coal, natural gas, and coalbed methane gas mining, as authorized by the Virginia Department of Mines, Minerals and Energy. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board. ~~Authorization, authorization~~ Coverage, coverage with conditions, or application denial by the board shall constitute the VWP general permit action and shall follow all provisions in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each VWP general permit ~~authorization, authorization with conditions, or denial action~~ is exempt.

B. The director or his designee may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

~~C. This VWP general permit regulation will become effective on August 1, 2006, and will expire on August 1, 2016.~~

~~D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9VAC25-690-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for seven years.~~

9VAC25-690-25. Authorization for coverage under VWP general permit effective August 1, 2006.

A. All complete applications or notifications received by the board through 11:59 p.m. on August 1, 2016, shall be processed in accordance with the VWP general permit regulation in effect August 1, 2006, through August 1, 2016. If the application or notification is incomplete or if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a completeness determination, the applicant shall reapply for coverage under the VWP general permit effective August 2, 2016, or apply for a VWP individual permit, including payment of any required permit application fee. No refund of permit application fees shall be made.

B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016, shall remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP authorization cover page, unless otherwise revoked or terminated or unless a notice of project completion is received by the board on or before that date. Any permittee that desires to continue an authorized activity beyond the stated expiration date must reapply for coverage under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and conditions, or apply for a VWP individual permit, including payment of any required permit application fee. This section shall only apply to permittees holding valid authorizations for coverage granted under the VWP general permit effective August 1, 2006, through August 1, 2016.

9VAC25-690-27. VWP general permit coverage; transition; continuation.

A. All applications or notifications received on or after August 2, 2016, will be processed in accordance with the VWP general permit regulation effective August 2, 2016.

B. The general permit in 9VAC25-690-100 is effective August 2, 2016, and expires August 1, [~~2034~~ 2026]. Any coverage that is granted pursuant to 9VAC25-690-30 shall remain in full force and effect until 11:59 p.m. on August 1, [~~2034~~ 2026], unless the general permit coverage is terminated or revoked [~~or unless a notice of project completion is received by the board~~] on or before this date. Where a permittee that has received general permit coverage

desires to continue or complete the authorized activities beyond August 1, [2034 2026], the permittee shall reapply for new general permit coverage or for a VWP individual permit, including payment of any required permit application fee. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the board.

C. Application may be made at any time for a VWP individual permit in accordance with 9VAC25-210. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the board.

9VAC25-690-30. Authorization to impact surface waters.

A. Any person ~~governed by this~~ granted coverage under the VWP general permit is authorized to effective August 2, 2016, may permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed for general development and certain mining activities, provided that:

1. The applicant submits notification as required in 9VAC25-690-50 and 9VAC25-690-60.
2. The applicant remits ~~the any~~ any required permit application processing fee in accordance with 9VAC25-20.
3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of 9VAC25-690-100 the VWP general permit; the general permit coverage [letter]; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.
4. ~~The applicant receives approval from the Virginia Department of Environmental Quality.~~
5. ~~4.~~ The applicant has not been required to obtain a VWP individual permit under [~~the VWP permit program regulation (9VAC25-210) 9VAC25-210~~] for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit [,] or coverage under another applicable VWP general permit [,] in lieu of coverage under this VWP general permit.
6. ~~5.~~ Impacts, both temporary and permanent, result from a single and complete project including all attendant features.
 - a. Where a road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the board may, at its discretion, require a VWP individual permit.
 - b. For the purposes of this chapter, when an interchange has multiple crossings of surface waters, the entire interchange shall be considered the single and complete project.

~~7. 6.~~ The stream impact criterion applies to all components of the project, including structures and stream channel manipulations.

~~8. 7.~~ Dredging does not exceed 5,000 cubic yards.

~~9. [Compensation]~~ 8. When required, [compensation] for unavoidable impacts is provided in accordance with 9VAC25-690-70 and 9VAC25-210-116.

B. Activities that may be ~~authorized~~ granted coverage 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.

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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, traps, 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.

(6) Be designed using best management practices (BMPs) and watershed protection techniques. Examples of such BMPs are described in the Virginia Stormwater Management Handbook and include, but are not limited to, forebays, vegetated buffers, bioengineering methods, and siting considerations to minimize adverse effects to aquatic resources.

c. Maintenance excavation shall be in accordance with the original facility maintenance plan, or when unavailable, an alternative plan approved by the Department of Environmental Quality, and shall not exceed to the maximum extent practicable, the character,

scope, or size detailed in the original contours design of the facility as approved and constructed.

4. Mining facilities. The construction or expansion of mining facilities and attendant features for a single and complete project. This general permit may not be used to authorize impacts from in-stream mining activities or operations as defined in 9VAC25-690-10.

a. Mining facilities include activities directly associated with aggregate mining (e.g., sand, gravel, and crushed or broken stone); hard rock/mineral mining (e.g., metalliferous ores); and surface coal, natural gas, and coalbed methane gas mining, as authorized by the Virginia Department of Mines, Minerals [] and Energy.

b. Attendant features are authorized provided they are directly related to the mining facility, and include, but are not limited to, access road construction, parking lots, offices, maintenance shops, garages, and stormwater management facilities.

c. Both direct impacts (e.g., footprints of all fill areas, road crossings, sediment ponds, and stormwater management facilities; mining through state waters; stockpile of overburden, and excavation) and indirect impacts (e.g., diversion of surface water and reach of state waters affected by sediment pond pool and sediment transport) shall be considered when ~~issuing an authorization~~ granting coverage under this 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 ~~9VAC25-690-10~~ 9VAC25-210-10. ~~Any~~ Upon request by the board, any person claiming this waiver bears the burden to shall demonstrate to the satisfaction of the board that he qualifies for the waiver.

D. ~~Receipt of this Coverage under~~ VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

E. ~~In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure of structures.~~

F. ~~E.~~ 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 in accordance with 9VAC25-210-130 H as of ~~August 1, 2006~~ August 2, 2016, shall constitute coverage under this VWP general permit [] unless a state program general permit (SPGP) is approved required and granted 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 9VAC25-210-130 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.~~

~~G. E.~~ Coverage under a permit issued by the Department of Mines, Minerals and Energy under the Virginia Coal Surface Mining Control and Reclamation Act, Chapter 19 (§ 45.1-226 et seq.) of Title 45.1 of the Code of Virginia, where such permit authorizes activities that may be permitted by this ~~regulation chapter~~ and contains a mitigation plan for the impacts from the mining activities, shall also constitute coverage under this VWP general permit.

~~H. G.~~ 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 a VWP individual permits permit in accordance with 9VAC25-210-130 B~~ rather than ~~approving granting~~ coverage under this VWP general permit.

9VAC25-690-35. Administrative continuance.

Beginning on August 2, 2016, in any case where an existing permittee has submitted a timely and complete notification or application for coverage under the next consecutive VWP general permit in accordance with 9VAC25-690-50 and 9VAC25-690-60 and the board, through no fault of the permittee, does not issue the next consecutive VWP general permit with an effective date on or before the expiration date of the expiring VWP general permit, the conditions of that expiring VWP general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive VWP general permit.

9VAC25-690-40. Exceptions to coverage.

~~A. Authorization for coverage~~ Coverage under this VWP general permit ~~will not apply in the following areas: is not required if the activity is excluded from permitting in accordance with 9VAC25-210-60.~~

~~1. Wetlands composed of 10% or more of the following species (singly or in combination) in a vegetative 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 in the area of impact.~~

~~2. Wetlands underlain by histosols.~~

~~3. Surface waters where the proposed activity will impact federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.~~

~~B. Authorization for coverage~~ Coverage under this VWP general permit cannot be used in combination with ~~authorization for coverage under other VWP general permits in order to impact greater than two acres of nontidal wetlands or open water or greater than 1,500 linear feet of nontidal stream bed. More than one authorization for Granting coverage under this VWP general permit more than once for a single and complete project is prohibited, except when the~~

cumulative impact to surface waters does not exceed the limits specified here.

C. This VWP general permit cannot be used for an activity in a phased development ~~which that~~ would cause the aggregate total loss of nontidal wetlands or open water in the subdivision to exceed two acres; or to exceed 1,500 linear feet of nontidal stream bed.

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 (9VAC25-260).

E. The board shall deny application for coverage under this VWP general permit to any applicant ~~for conducting~~ activities that cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to significantly affect aquatic life, or for activities that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

F. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that cause more than minimal degradation of the water quality of a stream.

G. ~~This Coverage under this VWP general permit may shall~~ not be used granted for:

1. Construction of a stormwater management facility in perennial streams or in waters designated as oxygen-oxygen-impaired or temperature-impaired (does not include wetlands).
2. The construction of an irrigation impoundment on a perennial stream.
3. Any water withdrawal activities.
4. The location of animal feeding operations or waste storage facilities in state waters.
5. The pouring of wet or uncured concrete ~~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 or unless approved by the Department of Environmental Quality.
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.
12. The Any activity in surface water that will impact federal or state listed [or proposed] threatened or endangered species or [proposed or] designated critical

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habitat, or ~~[be the result in a]~~ taking of threatened or endangered species in accordance with the following:

a. As pursuant to § 29.1-564 of the Code of Virginia, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 [(P.L. ~~Public Law~~] 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568 of the Code of Virginia.

b. As pursuant to § 29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any ~~[state-listed state listed]~~ endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.

13. Any activity in wetlands composed of 10% or more, singularly or in combination, based upon either basal area or percent areal cover in the area of impact, in a vegetative stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*).

14. Any activity in wetlands underlain by histosols.

15. Any activity in tidal waters.

9VAC25-690-50. Notification.

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

1. An application for ~~authorization of coverage for~~ proposed, permanent nontidal wetland or open water impacts greater than one-tenth ~~of an acre~~, or ~~of for~~ proposed permanent nontidal stream bed impacts greater than 300 linear feet, shall include all information pursuant to 9VAC25-690-60 B. Compensatory mitigation may be required for all permanent impacts ~~in accordance with Parts I, II, and III of this VWP general permit regulation.~~ ~~All temporary impacts shall be restored to preexisting conditions, as per Parts I, II, and III of this VWP general permit regulation.~~

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

a. For any proposed project in wetlands, open water, streams, or compensatory mitigation sites that are under a deed restriction, conservation easement, declaration of restrictive covenant, or other land use protective instrument (hereafter "protected areas"), when such restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to activities in wetlands and compensatory mitigation sites,

the application shall include all of the information required by 9VAC25-690-60 B. Compensatory mitigation may be required for all permanent impacts.

~~a. b. For all other projects that are not subject to subdivision 2 b of this subsection, the application shall include the information required by subdivisions ~~4 through 9, 13, 15, 20, and 21~~ 1 through 7, 11, 12, 15, and 16 of 9VAC25-690-60 B, and documentation that verifies the quantity and type of impacts. Compensatory mitigation may be required for all permanent impacts once the notification limits of one-tenth acre wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required, the application shall include the information in 9VAC25-690-60 B 13. All temporary impacts, regardless of amount, shall be restored to preexisting conditions, as per Parts I and III of this VWP general permit regulation.~~

~~b. For any proposed project in wetlands, open water, streams, or compensatory mitigation sites that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (hereafter protected areas), when such restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to activities in wetlands and compensatory mitigation sites, the application shall include all of the information required by 9VAC25-690-60 B, and documentation that verifies the quantity and type of impacts. Compensatory mitigation may be required for all permanent impacts, regardless of amount. All temporary impacts, regardless of amount, shall be restored to preexisting conditions, as per Parts I and III of this VWP general permit regulation.~~

B. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) The Department of Environmental Quality-approved application forms shall serve as an application under this regulation for a VWP permit or VWP general permit coverage.

C. The board will determine whether the proposed activity requires coordination with the [~~United States U.S.~~] Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Game and Inland Fisheries regarding the presence of federal or state [~~proposed or~~] listed threatened and endangered species or [~~proposed or~~] designated critical habitat. Based upon consultation with these agencies, the board may deny application for coverage under this general permit. The applicant may also consult with these agencies prior to submitting an application. Species or habitat information that the applicant provides will assist ~~DEQ~~ the Department of Environmental Quality in reviewing and processing the application.

9VAC25-690-60. Application.

~~A. Applications shall be filed with the board as follows: 1. The applicant shall file a complete application in accordance with 9VAC25-690-50 and this section for a coverage under this VWP general permit number WP4 for impacts to surface waters from development and certain mining activities, which will serve as a notice of intent for coverage under this VWP general permit.~~

~~2. The VDOT may use its monthly IACM process for submitting applications.~~

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

1. The applicant's legal name, mailing address, telephone number, and; if applicable, electronic mail address and fax number.

2. If different from the applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number of property owner.

~~2. The~~ 3. If applicable, the authorized agent's (if applicable) name, mailing address, telephone number, and; if applicable, fax number and electronic mail address.

~~3. 4. The existing VWP general permit tracking number (if applicable), if applicable.~~

~~4. The name of the project, narrative description of project purpose, and a description of the proposed activity in surface waters.~~

~~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, including the project boundary. The map shall be of sufficient detail such that the site may be easily located for site inspection.~~

~~10. (Reserved.)~~

~~11. Project plan view. plan view sketches shall 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. In addition, cross sectional or profile sketches with the above information may be required to detail impact areas.~~

~~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, the areal extent of the impact (area of wetland in square feet and acres; area of stream, length of stream, and average width); the location (latitude and longitude at the center of the impact, or at the center of each impact for linear projects); and the type of surface water impact (open water; wetlands according to the Cowardin classification or similar terminology; or perennial and nonperennial for streams). The board encourages applicants to coordinate the determination of perennial or nonperennial streams with the appropriate local government agency in Tidewater Virginia.~~

~~14. Functional values assessment for impacts to wetlands greater than one acre, which shall consist of a summary of field observations of the existing wetland functions and values and an assessment of the impact that the project will have on these functions and values. The following parameters and functions shall be directly addressed: surrounding land uses and cover types; nutrient, sediment, and pollutant trapping; flood control and flood storage capacity; erosion control and shoreline stabilization; groundwater recharge and discharge; aquatic and wildlife habitat; and unique or critical habitats.~~

~~15. A description of the specific on site measures considered and taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable.~~

~~16. A conceptual plan for the intended compensation for unavoidable impacts, including:~~

- ~~a. For wetlands, the conceptual compensation plan shall include: the goals and objectives in terms of replacement of wetland acreage and function; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including latitude and longitude (to the nearest second) at the center of the site; a description of the surrounding land use; 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; a map for existing surface water areas on the proposed site or sites, including a wetland delineation confirmation for any existing wetlands; a conceptual grading plan; a conceptual planting scheme, including suggested plant species and zonation of each vegetation type proposed; and a description of existing soils including general information on topsoil and subsoil~~

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conditions, permeability, and the need for soil amendments.

b. For streams, the conceptual compensation plan shall include: the goals and objectives in terms of water quality benefits and replacement of stream functions; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including the latitude and longitude to the nearest second; the proposed stream segment restoration locations, including plan view and cross section sketches; the stream deficiencies that need to be addressed; the proposed restoration measures to be employed, including channel measurements, proposed design flows and types of instream structures; and reference stream data, if available.

c. Applicants proposing to compensate off site, including purchase or use of mitigation bank credits, or contribution to an in lieu fee fund, shall submit an evaluation of the feasibility of on site compensation. If on site compensation is practicable, applicants shall provide documentation as to why the proposed off site compensation is ecologically preferable. The evaluation shall 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.

d. Applicants proposing compensation involving contributions to in lieu fee programs shall state such as the conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior to issuance of this general permit authorization.

e. Applicants proposing compensation involving the purchase or use of mitigation banking credits shall include as their conceptual compensation plan:

- (1) The name of the proposed mitigation bank and the HUC in which it is located;
- (2) The number of credits proposed to be purchased or used; and
- (3) Certification from the bank owner of the availability of credits.

17. A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9VAC25-210-45, including the wetlands data sheets. The delineation map shall also include the location of streams, open water, and the approximate limits of Chesapeake Bay Resource Protection Areas (RPAs), as other state or local requirements may apply if the project is located within an RPA. 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 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.

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 in accordance with 9VAC25-20. The permit application fee for VWP permit authorizations is based on acres only. Therefore, impacts calculated using linear feet of stream bed must be converted to an acreage in order to calculate the total permit application fee.

20. A written disclosure identifying all wetlands, open water, streams, and associated upland buffers within the proposed project or compensation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (protected areas). Such disclosure shall include the nature of the prohibited activities within the protected areas.

21. 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 application shall be signed in accordance with 9VAC25-210-100. 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.

5. Project name and proposed project schedule.

6. The following information for the project site location, and any related permittee-responsible compensatory mitigation site [-if applicable]:

a. The physical street address, nearest street, or nearest route number; city or county; zip code; and [] if applicable, parcel number of the site or sites.

b. Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.

c. The latitude and longitude to the nearest second at the center of the site or sites.

d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site or sites.

e. A detailed map depicting the location of the site or sites, including the project boundary [and all existing preservation areas on the site or sites]. The map (e.g., a [~~United States~~ U.S.] Geologic Survey topographic quadrangle map) should be of sufficient detail to easily locate the site or sites for inspection.

[~~f. GIS-compatible shapefile or shapefiles of the project boundary and all existing preservation areas on the site or sites, unless otherwise approved by or coordinated with DEQ. The requirement for a GIS-compatible shapefile or shapefiles may be waived by DEQ on a case-by-case basis.~~]

7. A narrative description of the project, including project purpose and need.

8. Plan-view drawing or drawings of the project site sufficient to assess the project, including at a minimum the following:

a. North arrow, graphic scale, and existing and proposed topographic or bathymetric contours.

b. Limits of proposed impacts to surface waters.

c. Location of all existing and proposed structures.

d. All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface waters and waterway name, if designated; ebb and flood or direction of flow; and ordinary high water mark in nontidal areas.

e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant [,] and if available [,] the limits as approved by the locality in which the project site is located [,] unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

f. The limits of any areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas).

9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings of each proposed impact area shall include at a minimum a graphic scale, existing structures, existing and proposed elevations, limits of surface water areas, ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits, and location of all existing and proposed structures. Profile drawing or drawings with this information may be required on a case-by-case basis to demonstrate minimization of impacts. Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the beginning and end of the pipe or

culvert, extending to a minimum of 10 feet beyond the limits of proposed impact.

10. Materials assessment. Upon request by the board, the applicant shall provide evidence or certification that the material is free from toxic contaminants prior to disposal or that the dredging activity will not cause or contribute to a violation of water quality standards during dredging. 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.

11. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters and any physical alteration to surface waters. Surface water impacts shall be identified as follows:

a. Wetland impacts identified according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) [;] and for each classification, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

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

c. Open water impacts identified according to their Cowardin classification, and for each type, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

d. A copy of the approved jurisdictional determination [; if when] available, or [when unavailable, (i)] the preliminary jurisdictional determination from the U.S. Army Corps of Engineers (USACE), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ [;] or [(ii)] other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable.

e. A delineation map [~~and GIS-compatible shapefile or shapefiles of the delineation map~~] that [(i)] depicts the geographic area or areas of all surface water boundaries delineated in accordance with 9VAC25-210-45 and confirmed in accordance with the jurisdictional determination process; [(ii)] identifies such areas in

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accordance with subdivisions 11 a, 11 b, and 11 c of this subsection; and [(iii)] quantifies and identifies any other surface waters according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) or similar terminology [, if applicable]; [~~The requirements for a delineation map or GIS compatible shapefile or shapefiles may be waived by DEQ on a case by case basis.~~]

12. An alternatives analysis for the proposed project detailing the specific on-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific on-site measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. The analysis shall demonstrate to the satisfaction of the board that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.

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

a. If permittee-responsible compensation is proposed for wetland impacts, a conceptual wetland compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of replacement of wetland acreage [~~or~~ and] functions; (ii) a detailed location map including latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) a hydrologic analysis including a draft water budget for nontidal areas based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; (vi) wetland delineation confirmation, data sheets, and maps for existing surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii) a conceptual planting scheme including suggested plant species and zonation of each vegetation type proposed; (ix) a description of existing soils including general information on both topsoil and subsoil conditions,

permeability, and the need for soil amendments; (x) a draft design of any water control structures; (xi) inclusion of buffer areas; (xii) a description of any structures and features necessary for the success of the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv) measures for the control of undesirable species.

b. If permittee-responsible compensation is proposed for stream impacts, a conceptual stream compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of water quality benefits and replacement of stream functions; (ii) a detailed location map including the latitude and longitude [~~to~~] the nearest [~~second~~] and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) the proposed stream segment restoration locations including plan view and cross-sectional drawings; (v) the stream deficiencies that need to be addressed; (vi) data obtained from a DEQ-approved, stream impact assessment methodology such as the Unified Stream Methodology; (vii) the proposed restoration measures to be employed including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; (viii) reference stream data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities; and (xi) measures for the control of undesirable species.

c. For any permittee-responsible compensatory mitigation, the conceptual compensatory mitigation plan shall also include a draft of the intended protective mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but not limited to, a conservation easement held by a third party in accordance with the Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other protective instrument. The draft intended protective mechanism shall contain the information in subdivisions c (1), c (2), and c (3) of this subdivision 13 or in lieu thereof shall describe the intended protective mechanism or mechanisms that contains the information required below:

(1) A provision for access to the site;

(2) The following minimum restrictions: no ditching, land clearing, or discharge of dredge or fill material, and no activity in the area designated as compensatory mitigation area with the exception of maintenance; corrective action measures; or DEQ-approved activities described in the approved final compensatory mitigation plan or long-term management plan; and

(3) A long-term management plan that identifies a long-term steward and adequate financial assurances for long-term management in accordance with the current standard for mitigation banks and in-lieu fee program sites, except that financial assurances will not be necessary for permittee-responsible compensation provided by government agencies on government property. If approved by DEQ, permittee-responsible compensation on government property and long-term protection may be provided through federal facility management plans, integrated natural resources management plans, or other alternate management plans submitted by a government agency or public authority.

d. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-lieu fee program credits shall include the number and type of credits proposed to be purchased and documentation from the approved bank or in-lieu fee program sponsor of the availability of credits at the time of application.

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

15. A written description and a graphical depiction identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensatory mitigation areas located within the proposed project boundary or permittee-responsible compensatory mitigation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas). Such description and a graphical depiction shall include the nature of the prohibited activities within the protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant [_] and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), as additional state or local requirements may apply if the project is located within an RPA.

16. Signature page that has been signed, dated, and certified by the applicant in accordance with 9VAC25-210-100. If the applicant is a business or other organization, the signature must be made by an individual with the authority to bind the business or organization, and the title of the signatory must be provided. The application signature page, either on the copy submitted to the Virginia Marine Resources Commission or to DEQ, must have an original signature. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ. When required, the method selected for the analysis shall assess water quality or

habitat metrics and shall be coordinated with DEQ in advance of conducting the analysis.

1. No analysis shall be required when:

a. Wetland impacts per each single and complete project total 1.00 acre or less; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent, or higher.

2. Analysis shall be required when wetland impacts per each single and complete project total 1.01 acres or more and when any of the following applies:

a. The proposed compensatory mitigation consists of permittee-responsible compensation, including water quality enhancements as replacement for wetlands; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent.

D. Upon receipt of an application by the appropriate DEQ office, the board has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. Coverage under this VWP general permit shall be approved, or approved with conditions, or ~~the application shall be denied~~ [_] within 45 days of receipt of a complete application. If the board fails to act within 45 days on a complete application, coverage under this VWP permit general permit shall be deemed ~~approved~~ granted.

1. In evaluating the application, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. ~~Coverage~~ Application for coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional ~~conditions~~ requirements on a project in order to ~~approve authorization grant coverage~~ under this VWP general permit. However, ~~these conditions~~ the requirements must be consistent with [~~the VWP general permit regulation~~ this chapter].

E. Incomplete application. Where an application is ~~incomplete~~ not accepted as complete by the board within 15 days of receipt, the board shall require the submission of additional information from the applicant and may suspend processing ~~the~~ of any application until such time as the applicant has supplied the requested information and the application is complete. Where the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or in ~~reports~~ any report to the board, the applicant shall immediately submit such facts or the correct

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information. A revised application with new information shall be deemed a new application; for purposes of review but shall not require an additional permit application fee. An incomplete permit application may be administratively withdrawn from processing by the board for failure to provide the required information after ~~180~~ 60 days from the date ~~that of the original permit application was received~~ latest written information request made by the board. An applicant may request a suspension of application review by the board, but requesting a suspension shall not preclude the board from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

9VAC25-690-70. Compensation.

A. ~~In accordance with 9VAC25-690-50 A, compensatory~~ Compensatory mitigation may be required for all permanent, nontidal surface water impacts as specified in 9VAC25-690-50 A. All temporary, nontidal surface water impacts shall be restored to preexisting conditions in accordance with 9VAC25-690-100.

B. ~~Generally, the sequence of preferred compensation options shall be restoration, then creation, then mitigation banking, and then in lieu fee fund. Also, 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 to practicable on site or in kind compensation may be considered. When the applicant can demonstrate satisfactorily that an off site or out of kind compensatory mitigation proposal is ecologically preferable, then such proposal may be deemed appropriate for compensation of project impacts. Compensatory mitigation and any compensatory mitigation proposals shall be in accordance with this section and 9VAC25-210-116.~~

C. ~~For the purposes of this VWP general permit, compensatory mitigation for unavoidable wetland impacts may be met through the following:~~

- ~~1. Wetland creation.~~
- ~~2. Wetland restoration.~~
- ~~3. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:23 of the Code of Virginia.~~
- ~~4. A contribution to an approved in lieu fee fund.~~
- ~~5. Preservation of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection and when consistent with 9VAC25-210-116 A.~~
- ~~6. Restoration of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection and when consistent with 9VAC25-210-116 A.~~

~~7. Preservation of wetlands, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection.~~

~~D. For the purposes of this VWP general permit, compensatory mitigation for unavoidable stream impacts may be met through the following:~~

- ~~1. Stream channel restoration or enhancement.~~
- ~~2. Riparian buffer restoration or enhancement.~~
- ~~3. Riparian buffer preservation, when consistent with 9VAC25-210-116 A.~~
- ~~4. A contribution to an approved in lieu fee fund.~~
- ~~5. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:23 of the Code of Virginia.~~

~~E. In order for contribution to an in lieu fee fund to be an acceptable form of compensation, the fund must be approved for use by the board according to the provisions of 9VAC25-210-116 D. The applicant shall provide proof of contribution to DEQ prior to commencing activities in impact areas.~~

~~F. In order for purchase or use of bank credits to be an acceptable form of compensation, the bank shall be operating in accordance with the provisions of § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 E. The applicant shall provide proof of purchase, use, or debit to DEQ prior to commencing activities in impact areas.~~

~~G. Compensation~~ C. When required, compensatory mitigation for unavoidable, permanent wetland impacts shall be provided at the following minimum ~~compensation to impact~~ mitigation ratios:

1. Impacts to forested wetlands shall be mitigated at 2:1, as calculated on an area basis.
2. Impacts to [~~scrub shrub~~ scrub-shrub] wetlands shall be mitigated at 1.5:1, as calculated on an area basis.
3. Impacts to emergent wetlands shall be mitigated at 1:1, as calculated on an area basis.

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

~~I. E. Compensation for permanent open water impacts, other than to streams, may be required at a an in-kind or out-of-kind mitigation ratio of 1:1 replacement to impact ratio or less, as calculated on an area basis, to offset impacts to state waters and fish and wildlife resources from significant impairment. Compensation shall not be required for permanent or temporary impacts to open waters identified as palustrine by the Cowardin classification method, [except 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.~~

~~J. Compensation~~ F. When conversion results in a permanent alteration of the functions of a wetland, compensatory mitigation for conversion impacts to wetlands shall be required at a 1:1 replacement to impact mitigation ratio, as calculated on an area basis, ~~when such conversion results in a permanent alteration of the functions and values of the wetland.~~ For example, the permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this [~~regulation~~ chapter]. Compensation for conversion of other types of surface waters may be required, as appropriate, to offset impacts to state waters and fish and wildlife resources ~~from significant impairment.~~

9VAC25-690-80. Notice of planned changes; modifications to coverage.

A. The permittee shall notify the board in advance of ~~the a~~ planned change, and ~~the planned changes an~~ application or request ~~will for modification to coverage~~ shall be reviewed according to all provisions of this ~~regulation~~ chapter. Coverage shall not be modified if (i) the cumulative total of permanent and temporary impacts [for a single and complete project] exceeds two acres of nontidal wetlands or open water exceeds 1,500 linear feet of nontidal stream bed or (ii) the criteria in subsection B of this section are not met. The applicant may submit a new permit application for consideration under a VWP individual permit.

B. ~~Authorization under this~~ VWP general permit coverage may be modified subsequent to issuance if the permittee determines that additional permanent wetland, open water, or stream under the following circumstances:

1. Additional impacts to surface waters are necessary, provided that ~~the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully mitigated.~~ Prior to a planned change approval, DEQ may require submission of a compensatory mitigation plan for the additional impacts. In cases where the original impacts totaled less than 1/10 acre of wetlands or open water, or less than 300 linear feet of stream bed, and the additional impacts result in these limits being exceeded, the notice of planned change will not be approved.:

a. The additional impacts are proposed prior to impacting the additional areas.

b. The proposed additional impacts are located within the project boundary as depicted in the application for coverage or are located in areas of directly-related off-site work [,] unless otherwise prohibited in this [~~VWP general permit regulation~~ chapter].

c. The permittee has provided sufficient documentation that the board may reasonably determine that the

additional impacts will not impact federal or state listed [~~or proposed~~] threatened or endangered species or [~~proposed or~~] designated critical habitat [,] or [~~be the~~ result in a] taking of threatened or endangered species. [The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.]

d. The cumulative, additional permanent wetland or open water impacts for one or more notices of planned change do not exceed 0.25 acre.

e. The cumulative, additional permanent stream impacts for one or more notices of planned change do not exceed 100 linear feet.

f. Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-690-60 B 12.

g. Compensatory mitigation for the proposed impacts, if required, meets the requirements of 9VAC25-690-70 and 9VAC25-210-116. Prior to a planned change approval, the Department of Environmental Quality may require submission of a compensatory mitigation plan for the additional impacts.

h. Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the board that the area to be temporarily impacted will be restored to its preconstruction elevations and contours [,] with topsoil from the impact area where practicable, such that the previous acreage and functions are restored [,] in accordance with Parts I A 3 and B 11 of 9VAC25-690-100. The additional temporary impacts shall not cause the cumulative total impacts to exceed the general permit threshold for use. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

i. The additional proposed impacts do not change the category of the project, based on the original impacts amounts as specified in 9VAC25-690-50 A 2. However, the applicant may submit a new permit application and permit application fee for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

~~C. Authorization under this~~ VWP general permit may be modified after issuance if the project results in less 2. A reduction in wetland or stream impacts. ~~Compensation~~ Compensatory mitigation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted ~~compensation~~ compensatory mitigation meets the initial ~~authorization~~ compensation compensatory mitigation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank

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credit purchases, ~~mitigation bank usage~~, or in-lieu fee fund contributions program credit purchases.

~~D. Authorization under this VWP general permit may be modified after issuance for a~~ 3. A change in project plans or use that does not result in a change ~~in~~ to authorized project impacts other than those allowed by subdivisions 1 and 2 of this subsection.

~~E. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use in 9VAC25-210-116 E are met~~ 4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program or substitute all or a portion of the prior authorized permittee-responsible compensation with a purchase of mitigation credits in accordance with 9VAC25-210-116 C from a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory mitigation requirement for which the compensatory mitigation is proposed to replace.

5. Correct typographical errors.

~~F. Authorization under the VWP general permit may be modified after issuance for typographical errors.~~

~~G. A Notice of Planned Change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and the area is restored to preexisting conditions in accordance with Part I C 11 of this general permit. In no case can the additional temporary impacts exceed the general permit threshold for use.~~

~~H. In no case can this authorization be modified to exceed the general permit threshold for use.~~

~~I. A notice of planned change shall be denied if fish and wildlife resources are significantly impacted or if the criteria in subsection B of this section are not met. However, the original VWP general permit authorization shall remain in effect. The applicant may submit a new permit application and permit application fee for consideration under a VWP individual permit.~~

9VAC25-690-90. Termination of ~~authorization by consent coverage~~.

When all permitted activities requiring notification under 9VAC25-690-50 A and all compensatory mitigation requirements have been completed, or if the authorized impacts will not occur, the ~~A~~. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation ~~completing or [cancelling canceling]~~ all authorized activities requiring notification under 9VAC25-690-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of

project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of ~~authorization coverage~~ on behalf of the board. The permittee shall submit the following information:

1. Name, mailing address, and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP ~~general permit authorization~~ tracking number; and
4. One of the following certifications:
 - a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a ~~the~~ VWP general permit ~~and general permit coverage~~ have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit ~~and general permit coverage~~, and that performing activities in surface waters is unlawful where the activity is not authorized by a ~~the~~ VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this~~ ~~the~~ VWP general permit ~~authorization or coverage~~."

- b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by ~~this~~ ~~the~~ VWP general permit ~~and general permit coverage~~ will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit ~~and general permit coverage~~, and that performing activities in surface waters is unlawful where the activity is not authorized by a ~~the~~ VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this~~ ~~the~~ VWP general permit ~~authorization or coverage~~, nor does it allow me to resume the ~~permitted authorized~~ activities without reapplication and ~~reauthorization coverage~~."

- c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by ~~DEQ~~ the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by a ~~the~~ VWP general permit ~~and general permit coverage~~ have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP

general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of this the VWP general permit authorization or coverage, nor does it allow me to resume the permitted authorized activities without reapplication and reauthorization coverage."

B. VWP general permit coverage may be terminated for cause in accordance with 9VAC25-210-180 F and [~~9VAC25-230~~ § 62.1-44.15:02 of the Code of Virginia], or without cause in accordance with 9VAC25-210-180 G and [~~9VAC25-230~~ § 62.1-44.15:02].

9VAC25-690-95. Transition. (Repealed.)

A. All applications received on or after August 1, 2006, will be processed in accordance with these new procedures.

B. VWP general permit authorizations issued prior to August 1, 2006, will remain in full force and effect until such authorizations expire, are revoked, or are terminated.

C. Notices of planned change and all other types of notification that are received by the board prior to August 1, 2006, will be processed in accordance with the VWP general permit regulation in effect at that time. Notices of planned change and all other types of notification to the board that are received on or after August 1, 2006, will be processed in accordance with these new procedures.

9VAC25-690-100. VWP general permit.

Any applicant whose application has been accepted by the board shall be subject to the following requirements:

- VWP General Permit No. WP4
- Authorization effective date:
- Authorization expiration date:
- Authorization Notes(s):

VWP GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT AND CERTAIN MINING 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

VWP GENERAL PERMIT NO. WP4 FOR IMPACTS FROM DEVELOPMENT AND CERTAIN MINING ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016
Expiration date: August 1, [~~2031~~ 2026]

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the

activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein complied with, 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, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.~~

Subject The permanent or temporary impact of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this general permit; 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 permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed.

- Permittee:
- Address:
- Activity Location:
- Activity Description:

~~The authorized activity shall be in accordance with this cover page, Part I Special Conditions, Part II Compensation, 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~~ The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed according to the information provided in the approved and complete application. [Additional permit requirements as stipulated by the board in the coverage letter, if any, shall be enforceable conditions of this permit.]
2. Any changes to the authorized permanent impacts to surface waters ~~associated with this project~~ shall require either a notice of planned change in accordance with 9VAC25-690-80, An application or request for modification to coverage or another VWP permit application may be required.
3. Any changes to the authorized temporary impacts to surface waters ~~associated with this project~~ shall require written notification to ~~DEQ~~ and approval from the Department of Environmental Quality in accordance with 9VAC25-690-80 prior to initiating the impacts and

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restoration to preexisting conditions in accordance with the conditions of this permit ~~authorization~~.

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

~~5. The activities authorized for coverage under this VWP general permit must commence and be completed within seven years of the date of this authorization.~~

~~B. Continuation of coverage. Reapplication 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 compensation) has not been completed within seven years of the date of authorization. Notwithstanding any other provision, a request for continuation of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered a new application, and no application fee will be charged. The request for continuation of coverage 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 continuation of the VWP general permit authorization is necessary.~~

~~C.~~ B. Overall project conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. ~~Culverts Pipes and culverts~~ placed in streams must be installed to maintain low flow conditions- and shall be countersunk at both inlet and outlet ends of the pipe or culvert [,] unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does ~~no~~ not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. ~~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. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and~~

culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters [,] unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or for mining activities covered by this general permit, the standards issued by the Virginia Department of Mines, Minerals and Energy that are effective as those in the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with ~~this the~~ project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of ~~permitted~~ authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory

mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, ~~scrub/shrub~~ scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their ~~original~~ preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment, ~~and the banks.~~ Streambanks shall be seeded or planted with the same vegetation cover type originally present along the streambanks, including [any necessary] supplemental erosion control grasses [if necessary], except for invasive. Invasive species identified on DCR's the Department of Conservation and Recreation's Virginia Invasive Alien Plant Species of Virginia list List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to ~~original~~ preconstruction elevations and contours, with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including [any necessary] supplemental erosion control grasses [if necessary]; ~~except for invasive.~~ Invasive species identified on DCR's the Department of Conservation and Recreation's Virginia Invasive Alien Plant Species of Virginia list List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Game and Inland Fisheries, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in Department of Environmental Quality VWP general permit coverage, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities, ~~unless allowed by this permit authorization.~~

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by ~~this VWP general permit~~ the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

~~D. C.~~ Road crossings.

1. Access roads and associated bridges ~~or pipes~~, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours and elevations in surface waters must be bridged, piped, or culverted to maintain surface flows.

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

~~E. D.~~ Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its ~~original~~ preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by ~~this VWP general permit~~ the Department of Environmental Quality. Restoration shall be the seeding of planting of the same vegetation cover type originally present, including [any necessary] supplemental erosion control grasses [if necessary]; ~~except for invasive.~~ Invasive species identified on DCR's the Department of Conservation and Recreation's Virginia Invasive Alien Plant Species of Virginia list List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

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2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

~~F.~~ E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

~~G.~~ F. 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~~ Department of Environmental Quality shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent the 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 buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design

channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.

b. 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 filter bags, or other similar filtering practices, any of which~~ 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.~~ G. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit ~~authorization~~ coverage or compensation provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II. Construction and Compensation Requirements,
Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide ~~appropriate and practicable any required~~ compensation for all impacts ~~meeting in accordance with~~ the conditions ~~outlined in this VWP general permit [, the coverage letter,] and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.~~
2. Compensation options that may be considered under this VWP general permit shall meet the criteria in 9VAC25-690-70 ~~and 9VAC25-210-116.~~
3. The ~~permittee-responsible compensation~~ site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site ~~for the approved project. A site change will may~~ require a modification to ~~the authorization coverage.~~
4. For compensation involving the purchase ~~or use~~ of mitigation bank credits or ~~a contribution to an~~ the purchase of in-lieu fee fund program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase ~~or usage~~ or of the ~~fund contribution in-lieu fee program credit purchase~~ has been submitted to and received by ~~DEQ the Department of Environmental Quality.~~
5. ~~All aspects of the~~ The final compensation plan shall be ~~finalized,~~ submitted to and approved by the board prior to a construction activity in permitted impact areas. The board shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final ~~compensation~~ plan as approved by the board shall be an enforceable requirement of any coverage under this VWP general permit authorization. Deviations from the approved final plan ~~must~~ shall be submitted and approved in advance by the board.
6. ~~a.~~ The final permittee-responsible wetlands compensation plan shall include:
 - ~~a.~~ The goals and objectives of the plan in terms of replacement of wetland acreage and functions, by wetland type;
 - ~~b.~~ Location map, including latitude and longitude (to the nearest second) at the center of the site;
 - ~~e.~~ Summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;

- ~~d.~~ Grading plan with existing and proposed elevations at one foot or less contours;
- ~~e.~~ Schedule for compensation site construction, including sequence of events with estimated dates;
- ~~f.~~ Hydrologic analysis, including a water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a wet year, and a dry year;
- ~~g.~~ Groundwater elevation data for the site, or the location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;
- ~~h.~~ Design of water control structures;
- ~~i.~~ Planting scheme and schedule, indicating plant species, zonation, and acreage of each vegetation type proposed;
- ~~j.~~ An abatement and control plan covering all undesirable plant species, as listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of their presence, methods of removal, and the control of such species;
- ~~k.~~ Erosion and sedimentation control plan;
- ~~l.~~ A soil preparation and amendments plan addressing both topsoil and subsoil conditions;
- ~~m.~~ A discussion of structures and features considered necessary for the success of the site;
- ~~n.~~ A monitoring plan, including success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations and monitoring wells, sampling points, and, if applicable, reference wetlands;
- ~~o.~~ Site access plan;
- ~~p.~~ The location and composition of any buffers; and
- ~~q.~~ The mechanism for protection of the compensation area(s).
 - (1) The complete information on all components of the conceptual compensation plan.
 - (2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams [(if available), if available]; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the compensation site or sites, including all surface waters and buffer areas within its boundaries.
 - (3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the

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property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

7. b. The final permittee-responsible stream compensation plan shall include:

a. The goals and objectives of the compensation plan in terms of replacement of stream functions and water quality benefits;

b. A location map, including latitude and longitude (to the nearest second) at the center of the site;

c. An evaluation, discussion, and plan sketches of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width depth ratio, sinuosity, slope, substrate, etc.);

d. The identification of existing geomorphological stream type being impacted and proposed geomorphological stream type for compensation purposes;

e. Detailed design information for the proposed restorative measures, including geomorphological measurements and reference reach information as appropriate;

f. Riparian buffer plantings, including planting scheme, species, buffer width;

g. Livestock access limiting measures, to the greatest extent possible;

h. A site access plan;

i. An erosion and sedimentation control plan, if appropriate;

j. An abatement and control plan covering all undesirable plant species, listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of their presence, methods for removal, and the control of such species;

k. A schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;

l. A monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams;

m. The mechanism for protection of the compensation area; and

n. Plan view sketch depicting the pattern and all compensation measures being employed, a profile sketch,

and cross section sketches of the proposed compensation stream.

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing or drawings of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

8. For final 6. The following criteria shall apply to permittee-responsible wetland or stream compensation plans, the:

a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent USDA U.S. Department of Agriculture Plant Hardiness Zone or NRCS Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan or plans.

9. The final wetland or stream compensation plan(s) shall include a mechanism for protection in perpetuity of the compensation sites(s) to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place within 120 days of final compensation plan approval. 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 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 or 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, or an equivalent instrument for government owned lands. Proof of recordation shall be submitted within 120 days of final compensation plan approval.~~

~~10. b.~~ All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.

~~11. DEQ c.~~ The Department of Environmental Quality shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation site(s) site.

~~12. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final wetlands or stream compensation plan(s).~~

~~13. d.~~ Point sources of stormwater runoff shall be prohibited from entering a wetland 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, or forebays.

~~14. e.~~ The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

~~15. 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 region's killing frost free growing season, as defined in the soil survey for the locality of the compensation site or the NRCS WETS table, measured in consecutive days under typical precipitation conditions, and as defined in the water budget of the final compensation plan. For the purpose of this regulation, the growing season is defined as the period in which temperatures are expected to be above 28 degrees Fahrenheit in five out of 10 years, or the period during which the soil temperature in a wetland compensation site is greater than biological zero (five degrees Celsius) at a depth of 50 centimeters (19.6 inches), if such data is available.~~

~~16. The wetland plant community shall be considered established according to the performance criteria specified in the final compensation plan and approved by the board. The proposed vegetation success criteria in the final compensation plan shall include the following:~~

~~a. Species composition shall reflect the desired plant community types stated in the final wetland compensation plan by the end of the first growing season and shall be maintained through the last monitoring year.~~

~~b. 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, by the end of the first growing season and shall be maintained through the last monitoring year.~~

~~17. Undesirable plant species shall be identified and controlled as described in the undesirable plant species 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 DEQ when undesirable plant species comprise greater than 5.0% of the vegetation by areal coverage on wetland or stream compensation sites. The notification shall include the methods of removal and control, and whether the methods are successful.~~

~~18. f.~~ If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined, and a corrective action plan shall be submitted to ~~DEQ~~ the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by ~~DEQ~~ the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year [τ] or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for ~~DEQ~~ Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

~~19. g.~~ The surveyed wetland boundary for the wetlands compensation 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

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wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

~~20. h.~~ Herbicides or algicides shall not be used in or immediately adjacent to the wetlands or stream compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means, unless authorized by ~~DEQ~~ the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall ~~document the preexisting conditions, activities during construction, and post construction conditions. Monitoring shall consist of one of the following options:~~

~~a. Photographs shall be taken during construction at the end of the first, second, and third months after commencing construction, and then every six months thereafter for the remainder of the construction project. Photos are not required during periods of no activity within impact areas.~~

~~b. An ortho rectified photograph shall be taken by a firm specializing in ortho rectified photography prior to construction, and then annually thereafter, until all impacts are taken. Photos shall clearly show the delineated surface waters and authorized impact areas.~~

~~c. In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months after commencing construction, and then every six months thereafter, for the remainder of the construction activities. Narratives are not required during periods of no activity within the impact areas.~~

2. As part of construction monitoring, ~~photographs taken at the photo stations or the narrative shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; surface water discharges from the site; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.~~

3. 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.~~

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept [~~on site~~ on site] and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

4. 2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to ~~DEQ~~ the Department of Environmental Quality in accordance with the procedures in ~~Part II E 9VAC25-690-100 Part II E~~. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH [₁] and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH [₁] and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. ~~Wetland~~ Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation 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 at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by ~~DEQ~~ the Department of Environmental Quality. In all cases [] 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.

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. 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~~ Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from ~~DEQ~~ the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-690-100 Part II E 6.

D. ~~Stream~~ Permittee-responsible stream compensation, ~~restoration,~~ and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank, or upon prior authorization from the Department of Environmental Quality, heavy equipment ~~shall~~ may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent [~~photo~~ photo-monitoring] stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be

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submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise ~~determined~~ approved by ~~DEQ~~ the Department of Environmental Quality. In all cases, 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.

8. All stream compensation site monitoring reports shall be submitted by in accordance with 9VAC25-690-100 Part II E 6.

E. Reporting.

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

2. ~~DEQ~~ The Department of Environmental Quality shall be notified in writing ~~at least 10 days~~ prior to the start of construction activities at the first ~~permitted site~~ authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include a projected schedule for initiation and completion of work at each permitted impact area.

~~3. Construction monitoring reports shall be submitted to DEQ no later than the 10th day of the month following the month in which the monitoring event specified in Part II B takes place, unless otherwise specified below. The reports shall include the following, as appropriate:~~

~~a. For each permitted impact area, a written narrative stating whether work was performed during the monitoring period, and if work was performed, a description of the work performed, when the work was initiated, and the expected date of completion.~~

~~b. Photographs labeled with the permit number, the photo station number, the photo orientation, the date and time of the photo, the name of the person taking the photograph, and a brief description of the construction activities. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in a permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration. The~~

~~post-construction photographs shall be submitted within 30 days of documenting post construction conditions.~~

~~e. Summary of activities conducted to comply with the permit conditions.~~

~~d. Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.~~

~~e. Summary of anticipated work to be completed during the next monitoring period, and an estimated date of construction completion at all impact areas.~~

~~f. Labeled site map depicting all impact areas and photo stations.~~

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

a. Construction activities have not yet started;

b. Construction activities have started;

c. Construction activities have started but are currently inactive; or

d. Construction activities are complete.

4. DEQ The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all permitted authorized impact areas authorized under this permit.

5. DEQ The Department of Environmental Quality shall be notified in writing at least 10 days prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to the expiration of authorization under the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying [~~photo~~ photo-monitoring] stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

- (3) Description of monitoring methods.
 - (4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.
 - (5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.
 - (6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.
 - (7) Photographs labeled with the permit number, the name of the compensation site, the ~~photo~~ photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.
 - (8) Discussion of wildlife or signs of wildlife observed at the compensation site.
 - (9) Comparison of site conditions from the previous monitoring year and reference site.
 - (10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.
 - (11) Corrective action plan [~~, which~~ that] includes proposed actions, a schedule, and monitoring plan.
- b. All stream compensation site monitoring reports shall include, as applicable, the following:
- (1) General description of the site including a site location map identifying [~~photo~~ photo-monitoring] stations and monitoring stations.
 - (2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.
 - (3) Description of monitoring methods.
 - (4) [~~An evaluation~~ Evaluation] and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.
 - (5) Photographs shall be labeled with the permit number, the name of the compensation site, the ~~photo~~ photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of

- completion of activities shall be included in the first monitoring report.
- (6) [~~A discussion~~ Discussion] of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.
- (7) Documentation of undesirable plant species and summary of abatement and control measures.
- (8) [~~A summary~~ Summary] of wildlife or signs of wildlife observed at the compensation site.
- (9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.
- (10) [~~A corrective~~ Corrective] action plan [~~, which~~ that] includes proposed actions, a schedule and monitoring plan.
- (11) Additional submittals that were approved by ~~DEQ~~ the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify ~~DEQ~~ the Department of Environmental Quality 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 a structure are prohibited until approved by ~~DEQ~~ the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate ~~DEQ~~ Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported ~~within 24 hours~~ to the appropriate ~~DEQ~~ Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

~~10.~~ 11. 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

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supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit [2] the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, [and] toxic standards [2] and prohibitions. ~~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 for cause, VWP general permit authorization revocation, or denial of a continuation of coverage request.~~

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

C. Reopener. This VWP general permit ~~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 revoking and reissuing the 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 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 property rights, ~~nor or any~~ infringement of federal, state [2] or local laws or regulations.

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

G. ~~Right of Inspection and~~ entry. The Upon presentation of credential, the permittee shall allow the board or its agents, upon the presentation of credentials any duly authorized agent of the board, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to; inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit ~~authorization coverage.~~ This VWP general permit authorization coverage may be transferred to another person by a permittee when all of the criteria listed below in this subsection are met. On the date of the VWP general permit ~~authorization coverage~~ transfer, the transferred VWP general permit ~~authorization coverage~~ shall be as fully effective as if it had been issued granted directly to the new permittee.

1. The current permittee notifies the board of the proposed transfer of the title to the facility or property. 2. ~~The notice to the board includes general permit coverage and provides~~ a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit ~~authorization~~ responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the ~~permitted~~ authorized activity.

3. ~~2.~~ The board does not within 15 days notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit ~~authorization within 15 days.~~

I. Notice of planned change. ~~Authorization under the VWP general permit coverage~~ may be modified subsequent to issuance in one or more of the cases listed below accordance with 9VAC25-690-80. ~~A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing,~~

the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and the planned change request will be reviewed according to all provisions of this regulation.

1. The permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully compensated.
2. The project results in less wetland or stream impacts, in which case, compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals.
3. There is a change in the project plans that does not result in a change in project impacts.
4. There is a change in the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use are met, as detailed in 9VAC25-210-116 E.
5. Typographical errors need to be corrected.

J. VWP general permit authorization coverage termination for cause. This VWP general permit authorization coverage is subject to termination for cause by the board after public notice and opportunity for a hearing pursuant to [9VAC25-230 § 62.1-44.15:02 of the Code of Virginia]. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of [the VWP general permit regulation this chapter], any condition of the VWP general permit authorization, or any requirement in general permit coverage;
2. The permittee's failure in the application or during the VWP general permit authorization issuance process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order; and
4. A determination by the board that the permitted authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to VWP general permit authorization planned change coverage or a termination-for-cause;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The board may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the board shall follow the applicable procedures for termination under §[§ 62.1-44.15:02 and] 62.1-44.15:25 of the Code of Virginia [and 9VAC25-230].

~~K. L.~~ VWP general permit authorization coverage termination by consent. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9VAC25-690-50 A and all compensatory mitigation have been completed or when the authorized impacts will not occur. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation completing or [cancelling canceling] all authorized activities requiring notification under 9VAC25-690-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of authorization coverage on behalf of the board. The request for termination by consent permittee shall contain submit the following information:

1. Name, mailing address, and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP general permit authorization tracking number; and
4. One of the following certifications:
 - a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of this the VWP general permit authorization or coverage."

- b. For project cancellation:

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"I certify under penalty of law that the activities and any required compensatory mitigation authorized by ~~this~~ the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this~~ the VWP general permit authorization or coverage, nor does it allow me to resume the permitted authorized activities without reapplication and reauthorization coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by ~~DEQ~~ the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by a the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by a the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of ~~this~~ the VWP general permit authorization or coverage, nor does it allow me to resume the permitted authorized activities without reapplication and reauthorization coverage."

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

~~M.~~ N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

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

~~O.~~ P. Duty to provide information.

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

~~P.~~ Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of ~~the general permit~~ 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, as appropriate:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The name of the individuals who performed the sampling or measurements;
 - c. The date and time the analyses were performed;
 - d. The name of the individuals who performed the analyses;
 - e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;
 - f. The results of such analyses; and
 - g. Chain of custody documentation.

~~Q.~~ R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
4. On and after October 1, 2001, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly 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.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-690-27.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC25-690)

[Department of Environmental Quality Water Division Permit Application Fee Form (rev. 10/14)

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

~~Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 10/04)~~

~~[Joint Permit Application for Projects of Tidewater, Virginia (eff. 10/04) (eff. 03/14)~~

~~Monthly Reporting of Impacts Less than or Equal to One-Tenth Acre Statewide (eff. 08/07)~~

~~Standard Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 03/14)~~

~~Virginia Department of Transportation Inter-Agency Coordination Meeting Joint Permit Application (eff. 10/02) (eff. 06/08)~~

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

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

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

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-690)

[Classification of Wetlands and Deepwater Habitats of the United States, Cowardin, Lewis M. II, et al., United States Fish and Wildlife Service, December 1979, Reprinted 1992](#)

[Guidelines for Specification of Disposal Sites for Dredged \[of or \] Fill Material, 40 CFR Part 230 \[\(Federal Register December 24, 1980\) \]](#)

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

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

Virginia Stormwater Management Handbook, First Edition, 1999, Department of Conservation and Recreation

VA.R. Doc. No. R14-4060; Filed May 13, 2016, 8:33 a.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the Department of Health. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: 12VAC5-31. Virginia Emergency Medical Services Regulations.

Agency Contact: Michael D. Berg, Manager, Regulation and Compliance, 1041 Technology Park Drive, Glen Allen, VA 23509-4500, email michael.berg@vdh.virginia.gov.

FORMS (12VAC5-31)

[EMT Clinical Training Summary Record, EMS.TR.05 \(rev. 8/2012\)](#)

[Training Program Complaint Form, EMS.TR.30 \(rev. 1/2011\)](#)

[Course Approval Request, EMS.TR.01 \(rev. 4/2016\)](#)

~~CTS Payment Request Form, EMS.TR.CTS.001 (rev. 6/2012)~~

[Psychomotor Examination Payment Request Form, EMS.TR.CTS.001 \(rev. 3/2013\)](#)

[EMS Variance/Exemption Application for Providers, EMS 6036 \(rev. 6/2011\)](#)

[EMS Variance/Exemption Application for Agencies, EMS 6037 \(rev. 6/2011\)](#)

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[Course Summary Form, EMS.TR.03 \(rev. 6/2011\)](#)
[EMS Certification Application, Form A \(undated\)](#)
[EMS Training Program Enrollment Form, Form E \(undated\)](#)
[EMS Continuing Education Registration Card \(undated\)](#)
~~[Application for EMS Agency License \(rev. 8/2012\)](#)~~
~~[Application for EMS Vehicle Permit and Instructions \(rev. 8/2012\)](#)~~
[Application for EMS Agency License \(undated\)](#)
[Application for EMS Vehicle Permit with Instructions, EMS 6022 \(rev. 8/2015\)](#)
[Complaint Report Form \(rev. 11/2010\)](#)
[Operational Medical Director Agreement \(rev. 8/2012\)](#)
[ALS-Coordinator Application, EMS.TR.31 \(rev. 11/2011\)](#)
[Emergency Medical Services Medical Record \(rev. 6/2010\)](#)
[BLS Course Student Information Package, EMS.TR.09 \(rev. 5/2012\)](#)
[ALS Course Student Information Package, EMS.TR.10 \(rev. 5/2012\)](#)
[BLS Individual Age, Clinical and Skill Performance Verification, EMS.TR.33 \(rev. 1/2011\)](#)
[Student Permission Form for BLS Students Less than 18 Years Old, EMS.TR.07 \(rev. 7/2011\)](#)
[Physician Assistant & Nurse Practitioner Paramedic Challenge Competency Summary, EMS.TR.37 \(rev. 2/2012\)](#)
[Program Accreditation Application, Instructions and Self Study - Paramedic \(rev. 7/2012\)](#)
[Program Accreditation Application, Instructions and Self Study - Intermediate \(rev. 7/2012\)](#)
[Alternative Site Application for EMS Programs in Virginia \(rev. 7/2012\)](#)
[Rescue Squad Assistance Fund Grant Application, Office of Emergency Services \(<http://www.vdh.virginia.gov/OEMS/Agency/Grants/index.htm>\)](#)
[EMS System Initiative Award Application, Office of Emergency Services \(<http://www.vdh.virginia.gov/OEMS/Agency/Grants/index.htm>\)](#)
~~[OEMS Grant Program Memorandum of Agreement \(rev. 1/2012\)](#)~~

VA.R. Doc. No. R16-4726; Filed May 19, 2016, 2:39 p.m.

Final Regulation

Title of Regulation: **12VAC5-507. Nursing Scholarships and Loan Repayment Program Requiring Service in a Long-Term Care Facility (adding 12VAC5-507-10 through 12VAC5-507-240).**

Statutory Authority: §§ 32.1-12, 32.1-122.6:01, and 54.1-3011.2 of the Code of Virginia.

Effective Date: July 13, 2016.

Agency Contact: Adrienne McFadden, MD, JD, Director, Office of Minority Health and Health Equity, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7425, or email adrienne.mcfadden@vdh.virginia.gov.

Summary:

Chapter 400 of the 2000 Acts of Assembly amended § 32.1-122.6:01 of the Code of Virginia to require the establishment of a program under which participants can receive a scholarship or educational loan repayment in exchange for a period of nursing service in a long-term care facility in the Commonwealth. The regulations establish a nursing scholarship and loan repayment program for registered nurses, licensed practical nurses, and certified nurse aides who agree to perform a period of service in a Commonwealth long-term care facility. The regulations cover eligibility for and conditions of scholarships and the loan repayment program, the application process, deadlines, selection criteria, and repayment information.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

[CHAPTER 507]

NURSING SCHOLARSHIP AND LOAN REPAYMENT PROGRAM REQUIRING SERVICE IN A LONG-TERM CARE FACILITY

Part I

[~~Legislative Authority and~~] General Information

[12VAC5-507-10. Legislative authority and general information.

~~Sections 32.1-122.6:01 of the Code of Virginia provides the Board of Health the authority to award certain nursing scholarships and loan repayment funds. Fee requirements are specified in §§ 54.1-3011.1 and 54.1-3011.2 of the Code of Virginia to establish the nursing scholarship and loan repayment fund.~~

~~All scholarship and loan repayment award recommendations will be made by the Nursing Scholarship Advisory Committee appointed by the State Board of Health. The commissioner may act for the Board of Health when it is not in session. The committee shall consist of eight members: four deans or directors of schools of nursing, two former scholarship participants, and two members with experience in the administration of student financial aid programs. Committee appointments are for two year terms and members may not serve for more than two successive terms.~~

~~The Virginia Department of Health serves as the staff element to the advisory committee and plays no role in the determination of scholarship or loan repayment participants.~~

~~After scholarships are awarded, depending upon availability of funds, nursing educational loans will be repaid for those registered nurses, licensed practical nurses, and certified~~

~~nurse aides applying and meeting eligibility criteria as set forth in this chapter.~~

~~This chapter sets forth the criteria for eligibility for the scholarship and loan repayment program for registered nurses, licensed practical nurses, or certified nurse aides; the general terms and conditions applicable to the obligation of each scholarship and loan repayment participant to practice in a long term care facility in the Commonwealth; and penalties for a participant's failure to fulfill the practice requirements.~~

12VAC5-507-15 12VAC5-507-10. **Definitions.**

The following words and terms when used in this chapter shall have the following meanings [~~unless the context clearly indicates otherwise~~]:

[Approved nurse education program] means an approved educational program pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.]

"Board" or "Board of Health" means the State Board of Health.

"Certified nurse aide" or "CNA" means [~~an individual who has completed a nurse aide education program that is approved~~ a person who is certified] by the Board of Nursing [~~, successfully passed the competency evaluation, and made application and been given certification by the Board of Nursing in the Commonwealth of Virginia under the provisions of Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia~~].

"Commercial loans" means loans made by banks, credit unions, savings and loan associations, insurance companies, schools, and either financial or credit institutions that are subject to examination and supervision in their capacity as lenders by an agency of the United States or of the state in which the lender has its principal place of business.

"Commissioner" means the State Health Commissioner.

"Department" means Virginia Department of Health.

"Full-time" means at least 32 hours per week for 45 weeks per year.

"Licensed practical nurse" or "LPN" means a [~~nurse who has completed a practical nurse program and is licensed by the Commonwealth of Virginia to provide routine care under the supervision of a licensed medical practitioner, a professional nurse, registered nurse, registered professional nurse, or other licensed health professional authorized by regulations of the Board of Nursing~~ person who is licensed or holds a multistate licensure privilege under the provisions of Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia to practice practical nursing as defined in § 54.1-3000 of the Code of Virginia].

"Long-term care facility" means a [~~licensed~~ certified nursing] facility [~~in the Commonwealth traditionally known as a nursing home, including both skilled nursing facilities and intermediate care facilities depending on the extent of~~

~~nursing and related medical care provided or nursing home as defined in § 32.1-123 of the Code of Virginia~~].

"Participant" [~~or "loan repayment participant"~~] means an eligible registered nurse, a licensed practical nurse, or a certified nurse aide student or graduate who enters into a contract with the commissioner and participates in the scholarship or loan repayment program.

[~~"Interest" means the legal rate of interest pursuant to the Code of Virginia.~~]

"Penalty" means [~~twice~~] the amount of [~~money equal to twice the amount of~~] all monetary payments to the scholarship or loan repayment participant, less any service obligation completed.

"Reasonable educational expenses" means the costs of education, exclusive of tuition, that are considered to be required by the school's degree program or an eligible program of study, such as fees for room, board, transportation and commuting costs, books, supplies, educational equipment and materials, and travel [~~,~~] that [~~was were~~] a part of the estimated student budget of the school in which the participant [is or] was enrolled.

"Registered nurse" or "RN" means a [~~nurse person~~] who [~~has passed a state registration examination and has been licensed to practice nursing by the Board of Nursing in the Commonwealth of Virginia~~ is licensed or holds a multistate licensure privilege under the provisions of Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia to practice professional nursing as defined in § 54.1-3000 of the Code of Virginia].

12VAC5-507-15. Nursing Scholarship Advisory Committee.

All scholarship and loan repayment awards shall be made by an Advisory Committee appointed pursuant to § 23-35.9 of the Code of Virginia.]

Part II

Administration of Nursing [Scholarship Program Scholarships]

12VAC5-507-20. Eligibility for scholarships.

In order to be considered for a scholarship, [~~applicants must meet the following criteria~~ an applicant shall]:

1. Be a [~~bona fide resident of Virginia for at least one year as determined by § 23-7.4 of the Code of Virginia~~ United States citizen, a United States national, or a qualified alien pursuant to 8 USC § 1621];
2. [~~Be a bonafide resident of Virginia by being domiciled in the Commonwealth for at least one year as defined in § 23-74 of the Code of Virginia;~~
3.] Be accepted for enrollment or enrolled in an approved nursing education program [~~in the Commonwealth of Virginia~~] preparing [~~them him~~] for examination for licensure as [a] practical [~~nurses~~ nurse] or registered [~~nurses~~ nurse] or accepted for enrollment or enrolled in an

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approved nurse aide education program in the Commonwealth of Virginia] preparing [~~them~~ him] for certification;

[4. If already enrolled in an approved nursing education program in the Commonwealth of Virginia or an approved nurse aide education program in the Commonwealth of Virginia, have a cumulative grade point average of 2.5 in core nursing classes;]

[~~3.~~ 5.] Submit a completed application form and appropriate grade transcript prior to the established deadline dates; [~~and~~

~~4.~~ 6.] Demonstrate financial need [.] which is verified by the [school's] financial aid [~~officer/authorized officer or authorized~~] person [as part of the application process; and

7. Not have an active military obligation] .

[~~Failure to comply with~~ An applicant who fails to meet] all of these [~~criteria will cause the applicant to~~ requirements shall] be ineligible for a scholarship.

12VAC5-507-30. Conditions of scholarships.

[A. Prior to becoming a participant in the nursing scholarship program, the applicant shall enter into a contract with the commissioner agreeing to the terms and conditions upon which the scholarship is granted.

B.] For each [~~\$100~~ \$2,000] of scholarship money received, the participant agrees to engage in the equivalent of one [~~month~~ year] of full-time nursing practice in a long-term care facility in the Commonwealth. [~~Employment must begin within 90 days of the participant's graduation date~~ The participant shall notify the department, within 180 days of being awarded a nursing diploma or degree, of the type of nursing practice to be performed and give the name and address of the employer for approval]. Voluntary military service, even if stationed in Virginia, cannot be used to repay the service obligation required when a scholarship is awarded.

[~~The participant shall notify the department in writing of his employment location within 30 days of his employment at a long-term care facility in the Commonwealth.~~

~~The participant may request approval of a change of employment. The board in its discretion may approve such a request.~~

The participant may request approval of a change of practice site. Such requests shall be made in writing. The department in its discretion may approve such a request.

C.] If a participant fails to complete his studies, the full amount of the scholarship or scholarships received, plus applicable interest charge, must be repaid.

[D.] If upon graduation a participant leaves the [~~state~~ Commonwealth] or fails to engage or ceases to engage in nursing practice in a long-term care facility in Virginia before all employment conditions of the scholarship award are fulfilled, the participant [~~must~~ shall] repay the award amount

reduced by the proportion of obligated years served plus applicable interest and penalty.

[E.] If the participant is in default due to death or permanent disability so as not to be able to engage in nursing practice in a long-term care facility, the participant or his personal representative may be relieved of [~~this~~ his] obligation under the contract to engage in nursing practice upon repayment of the total amount of scholarship or loan repayment funds received plus applicable interest. For participants completing part of the nursing obligation prior to becoming permanently disabled or in the event of death, the total amount of scholarship or loan repayment funds owed shall be reduced by the proportion of obligated years served. The obligation to make restitution may be waived by the board upon application of the participant or the participant's [~~estate~~ personal representative] to the board.

[F.] Individual cases [~~of hardship~~] may be considered by the board for [~~forgiveness of payment or service~~ a variance of payment or service, pursuant to § 32.1-12 of the Code of Virginia, if the board finds compliance with the applicable service requirements or default repayment would pose an undue hardship on the participant] .

[~~Partial fulfillment of the participant's obligation shall reduce the amount of restitution plus penalty and applicable interest due by an amount of money equal to the same percentage of time employed.~~

~~All refund checks should be made payable to the Commonwealth of Virginia.~~

~~Before any scholarship is awarded, the applicant must sign a written contract agreeing to the terms established by law and the Board of Health.~~

G. All default payments shall be made payable to the Commonwealth of Virginia.]

12VAC5-507-40. Number of applications per student.

Scholarships are awarded for single academic years. However, the same student may, after demonstrating satisfactory progress in his studies, [which is demonstrated by a cumulative grade point average of 2.5 in core nursing classes,] apply for and receive scholarship awards for [~~any~~ a] succeeding academic year or years. No student [~~may~~ shall] receive scholarships for more than a total of four years.

12VAC5-507-50. Amounts of scholarships.

The [~~amount number~~] of [~~each scholarship award is~~ scholarships awarded shall be] dependent upon the amount of money appropriated by the General Assembly [. the amount of the funds available within the Nursing Scholarship and Loan Repayment Fund administered by the Board of Nursing pursuant to § 54.1-3011.2 of the Code of Virginia,] and the number of qualified applicants. [~~No~~ Each] participant [~~will~~ shall] receive an award [~~for less than \$150~~ of \$2,000 per year] .

12VAC5-507-60. How to apply [for a scholarship],

~~[Application, guidelines, and additional information may be available from the dean/director of a nursing program or from the financial aid office or from the department.~~

~~It is preferred that applications are completed online by going to Eligible applicants shall submit a complete application on a form made available by the department on the department's website. A complete application shall include documentation of all eligibility requirements. The deadline for submission of the application shall be announced by the department on] the department's website.~~

[~~12VAC5-507-70. Deadline dates.~~

~~Applications will not be accepted more than two months in advance of the deadline, which is June 30.~~

~~Applications or transcripts received after 5 p.m. on the above date will not be considered for scholarship awards.~~

Part III

Administration of the Nursing Loan Repayment Program

~~12VAC5-507-80. Administration of the nursing loan repayment program.~~

~~The commissioner, as executive officer of the Board of Health, shall administer this program. Any requests for variance from this chapter shall be considered on an individual basis by the board.~~

~~12VAC5-507-70. Reporting requirements of scholarship participants.~~

~~Reporting requirements of the scholarship participant are as follows:~~

- ~~1. Each participant shall provide information as required by the department to verify compliance with the practice requirements of the nursing scholarship program (e.g., verification of employment in a long-term care facility by submitting a Verification of Employment form once every six months).~~
- ~~2. Each participant shall promptly notify the department in writing within 30 days if any of the following events occur:

 - ~~a. Participant changes name;~~
 - ~~b. Participant changes address;~~
 - ~~c. Participant changes practice site (participant is required to request in writing and obtain prior approval of changes in practice site);~~
 - ~~d. Participant no longer intends to or is unable to fulfill service obligation as a nurse in the Commonwealth in a long-term care facility;~~
 - ~~e. Participant ceases to practice as a registered nurse, licensed practical nurse, or certified nurse aide; or~~
 - ~~f. Participant ceases to or no longer intends to complete his nursing school program.~~~~

12VAC5-507-80. (Reserved.)

Part III

Administration of the Nursing Loan Repayment Program]

~~12VAC5-507-90. [Eligible applicants Eligibility for the nursing loan repayment program],~~

~~An eligible applicant for the nursing loan repayment program [must shall]:~~

- ~~1. Be a [bona fide resident of Virginia for at least one year as determined by § 23-7.4 of the Code of Virginia United States citizen, a United States national, or a qualified alien pursuant to 8 USC § 1621;~~
- ~~2. Be domiciled in Virginia for at least one year as defined in § 23-7.4 of the Code of Virginia];~~
- ~~[2. 3.] Be a registered nurse, licensed practical nurse, or certified nurse aide;~~
- ~~[3. 4.] Have graduated from an approved [educational nurse education] program pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia;~~
- ~~[4. 5.] Have a valid unrestricted Virginia license to practice nursing [or be certified as a nurse aide as an RN, LPN, or CNA], a copy of which shall be furnished to the nursing loan repayment program;~~
- ~~[5. 6.] Have submitted a completed application to participate in the nursing loan repayment program; [and~~
- ~~6. 7.] Have [signed and submitted, a written contract agreeing to repay educational loans and to serve in a long-term care facility for the applicable period of obligated service in the Commonwealth; no other contractual service obligation unless completely satisfied before the nursing loan repayment program contract has been signed;~~
- ~~8. Not have an active military obligation;~~
- ~~9. Be employed or have a contract for employment in a long-term care facility within a month of the application date;~~
- ~~10. Not have a history of failing to comply with, or inability to comply with, service or payment obligations;~~
- ~~11. Not have a history of noncompliance within any other state or federal scholarship or loan repayment program; and~~
- ~~12. Have an educational loan balance that can be verified].~~

~~12VAC5-507-100. Application requirement [and restrictions],~~

~~The applicant [must shall] submit a completed application [for loan repayment for the nursing loan repayment program, and the application must be received in the department between the dates of January 1 and May 1 of the year in which the applicant intends to initiate practice in the Commonwealth. The applicant must agree to serve a minimum of one year for a loan amount up to \$1,200 to a maximum of four years for a loan amount up to \$4,800, including documentation of eligibility requirements, to the~~

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nursing loan repayment program, and the application must be received in the department by the deadline date published on the department's website. The application form shall be available on the department's website].

12VAC5-507-110. Selection criteria.

Applicants shall be competitively reviewed and selected by the Nursing Scholarship Advisory Committee for recommendation to the commissioner] for participation in the nursing loan repayment program based upon the following criteria:

~~1. [Commitment to serve in a long term care facility. The individual's stated commitment to serve in a long term care facility in the Commonwealth. Qualifications. Decisions for determining loan repayment participants shall be based on an evaluation of an individual's qualifications and competency to practice. These qualifications may include attainment and maintenance of a Virginia nursing license or certification, additional certification in a specialty, professional achievements, and other indices of competency received from supervisors and program directors].~~

~~2. Virginia graduates. Preferential consideration [will shall] be given to individuals who are graduates of Virginia nursing schools (verification will be obtained by the nursing loan repayment program).~~

~~3. Availability for service. [Individuals Preferential consideration shall be given to individuals] who are immediately eligible and available for service in a long-term care facility [will be given preferential consideration].~~

~~4. Length of proposed commitment. Preferential consideration [will shall] be given to individuals who commit to longer periods of service in a long-term care facility.~~

~~[5. Selection for participation. All of an individual's professional qualifications and competency to practice will be considered, including but not limited to certification in a specialty, professional achievements, and other indicators of competency received from supervisors and program directors.~~

~~6. No other obligations. Individuals shall have no other obligation for health professional service to the federal government or state government unless such obligation will be completely satisfied prior to the beginning of service under the nursing loan repayment program.]~~

12VAC5-507-120. Loan repayment amount.

[The amount that the state agrees to repay will depend upon availability of funds and the applicant's indebtedness, but no amount will exceed the total indebtedness. The nursing loan repayment program requires one year of service in a long-term care facility in the Commonwealth for up to \$1,200 in loans paid by this program.

The applicant shall agree to provide full-time nursing services in a long-term care facility in the Commonwealth a minimum of one year for a loan repayment amount up to \$2,000 with an option for renewal in the second, third, and fourth year upon submitting a new application, with a potential maximum award amount of \$8,000. Renewals shall only be granted if an applicant can show a reduction in his educational loan balances. The loan repayment amount shall depend upon availability of funds and the applicant's indebtedness, but no amount shall exceed the total indebtedness.]

12VAC5-507-130. Loans qualifying for repayment.

[A.] Based on the availability of funds, the loan repayment program [will pay for the cost of education necessary to obtain a nursing certificate, diploma or degree. The program will shall] pay toward the outstanding principal [; and] interest [, and related expense] of [verifiable] federal, state, or local government loans and commercial loans obtained by the participant for [the following]:

- ~~1. School tuition and required fees incurred by the participant Tuition expenses];~~
- ~~2. Other reasonable educational expenses, and~~
- ~~3. Reasonable living expenses as [determined by the board estimated by the school as part of the school's standard student budget and determined reasonable by the department].~~

[B. All loan award payments shall be applied only to outstanding educational loans secured while attending an approved nurse education program that led to RN, LPN, or CNA licensure. Qualifying outstanding educational loans shall:

- ~~1. Have sufficient documentation verifying the educational use of the loans;~~
- ~~2. Not exceed the "reasonable" level as determined by the school's standard budget in the year the loan was made; and~~
- ~~3. Not include loans from friends and relatives.~~

C. The department shall be the final authority in determining qualifying educational loans.]

12VAC5-507-140. [~~Repayment restrictions~~ Release of information].

[A. The following financial debts or service obligations are not qualified for repayment by the loan repayment program:

- ~~1. Public Health Service Nursing Shortage Area Scholarship;~~
- ~~2. Public Health and National Health Service Corps Scholarship Training Program;~~
- ~~3. Indian Health Service Scholarship Program;~~
- ~~4. Armed Forces Health Professions Scholarship Programs;~~

~~5. National Health Service Corps Scholarship Program financial damages or loans obtained to repay such damages;~~

~~6. Indian Health Corps Scholarship or loan obtained to repay such damages;~~

~~7. Financial damages or loans obtained to repay damages incurred as a result of breach of contract with any other federal, state, local agency or commercial institution;~~

~~8. Loans for which documentation verifying the educational use of the loans is not available or is not sufficient;~~

~~9. Loans or part of loans obtained for educational or personal expenses during the participant's education that exceed the "reasonable" level as determined by the school's standard budget in the year the loan was made;~~

~~10. Loans that have been repaid in full; and loans that incur their own obligation for service which has not yet been performed;~~

~~11. Loans from friends and relatives;~~

~~12. The Mary Marshall Nursing Scholarship Program; and-~~

~~13. The Nursing Scholarship Program with a commitment to service in a long-term care facility.~~

~~B. The board will be the final authority in determining qualifying educational loans.~~

12VAC5-507-150. Release of information.

~~Applicants shall agree to execute a release [of information] to allow the [department board] access to loan records, credit information, and information from lenders necessary to verify eligibility and to determine loan repayments. To facilitate the process, applicants [should shall] submit [pay-off payment] statements from each lending institution.~~

~~Participants who have consolidated qualifying loans with other loans [may be asked to shall] submit [on request] other documentation, such as copies of original loan applications, to verify the portion of the loan that qualifies for repayment.~~

~~The applicant shall submit all requested loan documentation prior to approval by the [board department].~~

[12VAC5-507-160 12VAC5-507-150], Effective date for start of service.

~~Applicants [shall] become participants in the loan repayment program only when the applicant and the commissioner or his designee have signed the loan repayment program contract. The effective start date of the obligated service under the contract [is shall begin on or after] the date of [employment in a long term care facility or the date of] the commissioner's signature [, whichever is later].~~

[12VAC5-507-160. Repayment procedure.

~~Loan repayment shall be limited to qualified loans as determined by 12VAC5-507-130. Repayment of loans shall begin after the commissioner has received notification that~~

~~the participant has officially accepted placement and has begun the required service obligation. Payment shall be a lump sum payment based on availability of funds. Payment shall be made to the participant. Verification of payment made to the lender shall be required and submitted to the department by the participant. It shall be the responsibility of the participant to negotiate with each lending institution the terms of the educational loan repayments.~~

12VAC5-507-170. Repayment policy.

~~It will be the responsibility of the participant to negotiate with each lending institution for the terms of the educational loan repayments. Each lending institution must certify that the participant's debt is a valid educational loan prior to payment by the loan repayment program. Any penalties associated with early repayment shall be the responsibility of the participant.~~

12VAC5-507-180. Disbursement procedure.

~~The financial institution holding the educational loan will be paid one lump sum payment. This payment will be credited to the account of the participant in an amount up to \$1,200 for a one year commitment within 45 days of the contract being signed by the applicant and the commissioner or his designee. If a participant wishes to commit to another year of service, he will be required to sign another contract. Depending on availability of funds, the nursing loan repayment program will pay the applicable financial institution another lump sum payment up to \$1,200 for the additional year commitment. Payment will be made approximately 45 days after the beginning of the subsequent year. The maximum number of loans a participant can receive is four.~~

12VAC5-507-190 12VAC5-507-170.] Compensation during service.

~~Each participant is responsible for negotiating his own compensation package directly with the site where he will provide nursing services in a long-term care facility.~~

[12VAC5-507-200-12VAC5-507-180.] Monitoring during service.

~~Monitoring of the [participant's] service [by participants obligation] shall be conducted on an ongoing basis by department staff. Service verification forms shall be submitted by the participant to the department semi-annually (every six months) and countersigned by a representative of the service site (e.g., the medical director, human resource coordinator, chief executive officer, etc.) certifying continuous full-time service by [participants the participant].~~

~~The participant [is required to shall] maintain practice records in a manner that will allow the department to readily determine if the individual has complied with or is complying with the terms and conditions of the [participation agreement contract].~~

[12VAC5-507-210 12VAC5-507-190], Terms of service.

~~The following are the terms of service for the loan repayment program:~~

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~~1. The participant shall contract to provide one year of service with a maximum of up to four years in whole year increments. Additional service beyond the one year commitment is dependent upon the availability of state funds for the nursing loan repayment program. An existing contract may be renewed for one year at a time up to a maximum of four years as funds become available;~~

~~2. The participant shall begin service within 90 days from entering into the contract;~~

~~3. The participant shall provide full time service. Time spent in an "on call" status will not count toward the number of hours worked per week. Any exceptions to the "on call" provisions of this subdivision must be approved in advance by the board prior to acceptance in the loan repayment program;~~

~~4. No period of advanced training may count toward satisfying a period of obligated service under this loan repayment program;~~

1. The applicant shall agree to provide full-time nursing services in a long-term care facility in the Commonwealth for a minimum of one year with an option for renewal in the second, third, and fourth year upon submitting a new application, with a potential to serve up to four years. Additional years of loan repayment beyond the one-year commitment are dependent upon the availability of state funds for the nursing loan repayment program;

2. The participant shall provide full-time service; and

3. No period of advanced training shall count toward satisfying a period of obligated service under this loan repayment program.

12VAC5-507-220 12VAC5-507-200]. Loan repayment contract.

Prior to becoming a participant in the nursing loan repayment program, the applicant shall enter into a contract with the [~~board~~ commissioner] agreeing to the terms and conditions upon which the loan repayment is granted. The contract shall:

1. Include the terms and conditions to carry out the purposes and intent of this program;

2. Provide that the participant [~~will be required to~~ shall] provide [full-time] nursing services [as an RN, LPN, or CNA] in a long-term care facility in the Commonwealth for a minimum period of one year;

3. Provide for repayment of all amounts paid [by the board], plus interest and penalties, less any service time if the participant is found to be in breach of contract;

4. Be signed by the applicant; [~~and~~]

5. Be signed by the commissioner or [~~her~~ his] designee [; and

6. Include other provisions as the commissioner may deem appropriate].

[Part IV Contract

12VAC5-507-230 12VAC5-507-210]. Breach of contract [for loan repayment program].

The following may constitute breach of contract:

1. Participant's failure to begin or complete his term of obligated service in a long-term care facility under the terms and conditions of the nursing loan repayment contract [~~, regardless of the length of the agreed period of obligated service~~];

2. Participant's falsification or misrepresentation of information [~~or misrepresentation of information~~] on the program application or verification forms or other required [~~document~~ documents];

3. Participant's employment [~~being~~ is] terminated for good cause as determined by the employer and confirmed by the department. If employment is terminated for reasons beyond the participant's control (e.g., closure of site), the participant [~~must~~ shall] transfer to another [board-approved] long-term care facility site in the Commonwealth within six months of termination. Failure of participant to transfer to another site shall be deemed to be a breach of the contract; and

4. Participant's failure to provide [~~all reasonable, usual, and customary full time health care service~~ the required nursing service] in a long-term care facility [~~for at least 45 weeks per year~~].

[12VAC5-507-240 12VAC5-507-220]. [Waiver—~~or suspension, or both~~ Postponement or waiver of service for loan repayment program].

Participants have the obligation to complete full-time continuous service for the period of their entire commitment. Under unusual circumstances (e.g., illness), a participant may request that the board agree to a postponement of the service obligation. This postponement, if granted, [~~will~~ shall] not relieve the participant of the responsibility to complete the remaining portion of the obligation. Such postponement [~~will~~ shall] not be permitted as a matter of course, but may be allowed in [~~the most compelling~~] cases [of undue hardship].

[~~If the participant is in default due to death or permanent disability, the obligation to make restitution may be waived by the board upon application of the participant or the participant's estate to the board. The board may grant a variance to service requirements or default repayments upon participant request if it finds compliance with the applicable service requirements or default repayment would pose an undue hardship on the participant.~~

12VAC5-507-250 12VAC5-507-230]. Cash reimbursement and penalty [for loan repayment program].

[~~Participants who serve less than their obligated service are liable to pay monetary damages to the Commonwealth as~~

stated in the contract, reduced by the proportion of obligated years served. The default penalty will require the participant to repay twice the total amount of the award received. For example, if a participant owes \$1,200, he would have to repay at total of \$2,400.]

Participants who serve less than their obligated service [~~due to permanent disability or in the event of death shall have the total amount of scholarship or loan repayment funds owed shall make repayment, including interest and penalty, to the Commonwealth as stated in the contract,] reduced by the proportion of obligated years served.~~

[~~Part V~~
Records and Reporting

~~12VAC5-507-260~~ 12VAC5-507-240]. **Reporting requirements [of loan repayment participants].**

Reporting requirements of the loan repayment participant are as follows:

1. Each participant shall [at any time] provide information as required by the [~~board~~ department] to verify compliance with the practice requirements of the nursing loan repayment program (e.g., verification of employment in a long-term care facility [by submitting a Verification of Employment form once every six months]).
2. Each participant shall promptly notify the [~~board~~ department] in writing within 30 days [~~before if~~] any of the following events occur:
 - a. Participant changes name;
 - b. Participant changes address;
 - c. Participant changes practice site [(participant is required to request and obtain in writing prior approval of changes in practice site)];
 - d. Participant no longer intends to fulfill service obligation as a nurse in the Commonwealth in a long-term care facility; or
 - e. Participant ceases to practice as a registered nurse, licensed practical nurse, or certified nurse aide.

VA.R. Doc. No. R10-1890; Filed May 23, 2016, 9:21 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

CEMETERY BOARD

Final Regulation

Title of Regulation: 18VAC47-20. Cemetery Board Rules and Regulations (amending 18VAC47-20-180, 18VAC47-20-190, 18VAC47-20-270; adding 18VAC47-20-280).

Statutory Authority: §§ 54.1-201 and 54.1-2313 of the Code of Virginia (18VAC47-20-270).

§§ 54.1-201, 54.1-2312.01, and 54.1-2313 of the Code of Virginia (18VAC47-20-180, 18VAC47-20-190, 18VAC47-20-280).

Effective Date: September 1, 2016.

Agency Contact: Christine Martine, Executive Director, Cemetery Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email cemetery@dpor.virginia.gov.

Summary:

The amendments (i) reduce the length of training courses from eight hours to four hours and (ii) incorporate provisions on pet interments and pet and owner interments to align with Chapter 500 of the 2014 Acts of Assembly.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

18VAC47-20-180. Records of interments.

A permanent record shall be kept of every interment in the cemetery, showing the date of the interment, the name of the person interred, together with information identifying the specific location in which the interment was made. For interments made pursuant to § 54.1-2312.01 of the Code of Virginia, the permanent records shall also include the type and name of the pet interred and the name of the owner with information identifying the specific location in which the pet interment was made.

18VAC47-20-190. Prohibited activities.

In addition to the acts set forth in §§ 54.1-2314, 54.1-2315, and 54.1-2316 of the Code of Virginia, the board may discipline a licensee or registrant for the following acts:

1. Employing or affiliating with by independent contract, sales personnel not registered with the board.
2. Unless otherwise addressed in this chapter, failing to retain for a period of three years all records required by this chapter or Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia at the place of business in Virginia of the licensed cemetery company.
3. Failing to produce to the board or any of its agents, upon request, any document, book, or record required by this chapter or Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia.
4. Failing to respond to an inquiry by the board or any of its agents within 21 days.
5. Advertising in any name other than the name in which licensed or registered.
6. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license or registration.

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7. Allowing a cemetery company license or sales personnel registration to be used by an unlicensed cemetery company or unregistered sales personnel.

8. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

9. Having failed to inform the board in writing, within 30 days, that the company, an officer, director, or compliance agent, has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or any crime involving moral turpitude.

10. Having failed to inform the board in writing, within 30 days, of a disciplinary action in a jurisdiction where licensed, including suspension, revocation, or surrender in connection with a disciplinary action.

11. Failing to reasonably maintain the buildings, grounds, and facilities of a cemetery licensed to a cemetery company.

12. Failing to file any report required by Chapter 23.1 of Title 54.1 of the Code of Virginia.

13. Engaging in negligent, improper, fraudulent, or dishonest conduct.

14. Failing to segregate entirely the section of the cemetery dedicated to the interment of pets or the interment of human remains and the pets of such deceased humans by means such as hedge, wall, tree line, fence, roadway, or other similar physical barrier or boundary.

15. Permitting the interment of a pet in the same grave, crypt, or niche as the remains of a human.

16. If a cemetery company has a section devoted to the interment of pets or the interment of human remains and the pets of such deceased humans, any advertisements failing to clearly state the cemetery company has such section or sections in its cemetery.

17. Failing to clearly mark the section or sections devoted to the interment of pets or the interment of human remains and the pets of such deceased humans with signage that is reasonably apparent to the general public.

18VAC47-20-270. Standards of approval of training course.

All training courses shall be approved by the board. The training course shall be at least ~~eight~~ four hours and include appropriate testing procedures to demonstrate an understanding of the topics. The training program shall include, but is not limited, to the following topics:

1. Cemetery Board statute and regulations;
2. Perpetual care trust fund requirements;
3. Preneed trust fund requirements;
4. Preneed burial contracts;
5. Interment records;
6. General price list;

7. Itemized statement of goods and services provided;

8. Advertising;

9. Solicitation;

10. Funeral rule; and

11. Proper care, maintenance, administration, and embellishment of the cemetery.

18VAC47-20-280. Special interment requirement

A licensed cemetery company may establish a section in its cemetery devoted to the interment of pets or the interment of human remains and the pets of such deceased humans in accordance with § 54.1-2312.01 of the Code of Virginia. All other provisions of this chapter shall apply.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

[FORMS (18VAC47-20)

Cemetery Company/Personnel Forms

[Cemetery Company License Application, 4901LIC-v2 \(rev. 1/14\)](#)

[Cemetery Company Renewal/Reinstatement Application, 4901RENREI-v2 \(rev. 1/14\)](#)

[Sales Personnel Registration Form, 4903REG-v3 \(rev. 1/14\)](#)

[Compliance Agent Designee Application, 49CAD-v1 \(rev. 9/13\)](#)

[Compliance Agent/Officer/Director Change Form, 49ADO_CHG-v1 \(rev. 9/13\)](#)

[Compliance Agent Designee Application, A462-49CAD-v2 \(rev. 6/2016\)](#)

[Compliance Agent/Officer/Director Change Form, A462-49ADO_CHG-v2 \(rev. 6/2016\)](#)

[Cemetery Addition Form, 4901ADD-v3 \(rev. 1/14\)](#)

Perpetual Care Forms

[Perpetual Care Fidelity Bond Form, 49PCFBND-v1 \(rev. 9/13\)](#)

[Perpetual Care Trust Fund Financial Report, 49PCTFR-v1 \(rev. 9/13\)](#)

[Perpetual Care Trust Fund Financial Report Instructions, 49PCTINS-v1 \(rev. 9/13\)](#)

[Perpetual Care Trust Fund Financial Report - Schedule A \(Statement of Receipts and Expenses\), 49PCTFRA-v1 \(rev. 9/13\)](#)

[Perpetual Care Trust Fund Financial Report - Schedule B \(Statement of Required Deposits\), 49PCTFRB-v1 \(rev. 9/13\)](#)

[Perpetual Care Trust Fund Financial Report - Schedule C \(Statement of Expenses Incurred for the General Care, Maintenance, Embellishment, and Administration of Cemeteries\), 49PCTFRC-v1 \(rev. 9/13\)](#)

[Perpetual Care Trust Fund Financial Report - Schedule D \(Statement of Investment Securities\), 49PCTFRD-v1 \(rev. 9/13\)](#)

[Perpetual Care Trust Fund Financial Report - Schedule E \(Cemeteries Covered by Trust Fund\), 49PCTFRE-v1 \(rev. 9/13\)](#)

Preneed Forms

[Preneed Burial Contract \(undated\)](#)

[Preneed Fidelity Bond Form, 49PFBND-v1 \(rev. 9/13\)](#)

[Preneed Trust Fund Financial Report, 49PTFR-v1 \(rev. 9/13\)](#)

[Preneed Trust Fund Financial Report Instructions, 49PTINS-v1 \(rev. 9/13\)](#)

[Preneed Trust Fund Financial Report - Schedule A \(Statement of Receipts and Expenses\), 49PTFRA-v1 \(rev. 9/13\)](#)

[Preneed Trust Fund Financial Report - Schedule B \(Statement of Financial Deposits\), 49PTFRB-v1 \(rev. 9/13\)](#)

[Preneed Trust Fund Financial Report - Schedule C \(Statement of Investment Securities\), 49PTFRC-v1 \(rev. 9/13\)](#)

Trustee Forms

[Perpetual Care Trust Fund Trustee Verification, 49TRVER-v1 \(rev. 9/13\)](#)

[Trustee Approval Application, 49TRAPP-v1 \(rev. 9/13\)](#)

[New Trustee/Transfer of Funds Notification Form, 4901NEWTR-v1 \(rev. 9/13\) \]](#)

VA.R. Doc. No. R15-4107; Filed May 23, 2016, 1:23 p.m.

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

Withdrawal of Proposed Regulation

Title of Regulation: 18VAC80-30. Opticians Regulations (amending 18VAC80-30-50).

Statutory Authority: § 54.1-201 of the Code of Virginia.

Notice is hereby given that the Board for Hearing Aid Specialists and Opticians has WITHDRAWN the proposed regulation titled **18VAC80-30, Opticians Regulations**, which was published in [32:4 VA.R. 545-549 October 19, 2015](#). Due to changes in the board's financial position, a fee adjustment is no longer necessary at this time

Agency Contact: Demetrios J. Melis, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email hearingaidspec@dpor.virginia.gov.

VA.R. Doc. No. R14-3948; Filed May 20, 2016, 8:34 a.m.

BOARD OF MEDICINE

Fast-Track Regulation

Title of Regulation: 18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (amending 18VAC85-80-71).

Statutory Authority: §§ 54.1-2400 and 54.1-2912.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 13, 2016.

Effective Date: July 28, 2016.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Subdivision 6 of § 54.1-2400 of the Code of Virginia authorizes the Board of Medicine to promulgate regulations to administer effectively the regulatory system.

Purpose: The purpose of the amendments is to (i) clarify that the Continued Competency Activity and Assessment Form must be completed and retained with supporting documentation of continued competency courses or activities, but that the form is not necessary for renewal of an active license and (ii) allow maintenance of National Board of Certification in Occupational Therapy (NBCOT) certification to fulfill the continued competency requirements for a biennium. Since maintenance of NBCOT certification requires completion of evidence-based professional development units, it is likely that the content is equal to or superior to traditional continuing education courses in preparing a licensee to practice with skill and competency and therefore protects public health and safety. In addition, the amendments will eliminate the percentage of licensees that must be audited to determine compliance with continued competency requirements.

Rationale for Using Fast-Track Rulemaking Process: There is no controversy in the adoption of these amendments; the addition of NBCOT certification provides an option for licensees in fulfilling continued competency requirements. The Advisory Board on Occupational Therapy and the staff of the Board of Medicine support the changes.

Substance: The amended regulations (i) clarify that the Continued Competency Activity and Assessment Form must

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be completed and retained with supporting documentation of continued competency courses or activities, but that the form is not necessary for renewal of an active license; (ii) allow maintenance of NBCOT certification to fulfill the continued competency requirements for a biennium; (iii) eliminate the percentage of licensees that must be audited; and (iv) amend the title of the chapter to be consistent with other professional regulations.

Issues: There are no primary advantages or disadvantages to the public. Simplification of the audit process for verification of continued competency may be an advantage to the agency. There are no disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medicine (Board) proposes to: 1) allow occupational therapists and occupational therapy assistants to fulfill licensure continued competency requirements by maintenance of current certification by the National Board of Certification in Occupational Therapy, 2) clarify that licensees must complete and retain the Continued Competency Activity and Assessment Form along with their supporting documentation of courses and activities, and 3) amend the title of this regulation to "Regulations Governing the Practice of Occupational Therapy."

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Under the current regulations, in order to renew an active license biennially, occupational therapists and occupational therapy assistants must complete at least 20 contact hours of continuing learning activities as follows:

1. A minimum of 10 of the 20 hours shall be in Type 1 activities offered by a sponsor or organization recognized by the profession and may include in-service training, self-study courses, continuing education courses, specialty certification or professional workshops.
2. No more than 10 of the 20 hours may be Type 2 activities, which may include consultation with another therapist, independent reading or research, preparation for a presentation or other such experiences that promote continued learning.

The Board proposes to add language indicating that maintenance of current certification by the National Board of Certification in Occupational Therapy (NBCOT) will fulfill licensure continued competency requirements.

NBCOT certification is a requirement for initial licensure in Virginia, and NBCOT reports that 90% of occupational therapists renew certification every 3 years. Occupational therapists and occupational therapy assistants who have maintained NBCOT certification have likely used NBCOT professional development activities to count toward the 20

contact hours of continuing learning activities that have been required for license renewal. The proposal to accept NBCOT certification to fulfill licensure continued competency requirements will save time and other costs for certificate holders to the extent that their NBCOT activities were not already fulfilling the 20 contact hour requirement. Since NBCOT certification is considered sufficient to ensure competency, this proposed amendment should produce a net benefit.

The proposal to clarify that licensees must complete and retain the Continued Competency Activity and Assessment Form along with their supporting documentation of courses and activities will have no impact on requirements; nonetheless, it may be beneficial in that it may reduce potential confusion and associated time wasted in determining administrative requirements.

Amending the title of the regulation will not have a large impact. The chapter includes regulations for licensure of occupational therapy assistants as well as for occupational therapists. It also regulates the individual and supervisory responsibilities of practitioners and includes the standards of practice for the profession. Thus the proposed title is perhaps a better indicator of its contents.

Businesses and Entities Affected. There are 3,721 persons with a current license as an occupational therapist and 1,268 with a current license as an occupational therapy assistant. Only 2% work in private practices, either in a group or solo practice.¹ All would likely be small businesses.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. The proposal to allow occupational therapists and occupational therapy assistants to fulfill licensure continued competency requirements by maintenance of current certification by NBCOT may moderately reduce costs for some small private practices.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

¹Data source: Department of Health Professions

Agency's Response to Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendments (i) allow occupational therapists and occupational therapy assistants to fulfill licensure continued competency requirements by maintenance of current certification by the National Board of Certification in Occupational Therapy, (ii) clarify that licensees are not required to complete the Continued Competency Activity and Assessment Form to renew licensure biennially, and (iii) amend the title of the chapter to "Regulations Governing the Practice of Occupational Therapy."

CHAPTER 80

REGULATIONS GOVERNING THE LICENSURE OF OCCUPATIONAL THERAPISTS PRACTICE OF OCCUPATIONAL THERAPY

18VAC85-80-71. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a practitioner shall ~~complete the Continued Competency Activity and Assessment Form that is provided by the board and that shall indicate completion of~~ complete at least 20 contact hours of continuing learning activities as follows:

1. A minimum of 10 of the 20 hours shall be in Type 1 activities offered by a sponsor or organization recognized by the profession and may include in-service training, self-study courses, continuing education courses, specialty certification or professional workshops.
2. No more than 10 of the 20 hours may be Type 2 activities, which may include consultation with another therapist, independent reading or research, preparation for a presentation or other such experiences that promote continued learning.
3. The board recognizes the maintenance of current NBCOT certification as fulfilling the requirements of this subsection.

B. A practitioner shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain ~~in his records the completed form of~~ continuing competency courses and activities with all

supporting documentation for a period of six years following the renewal of an active license.

D. The board shall periodically conduct a random audit ~~of at least one to two percent~~ of its active licensees to determine compliance. The practitioners selected for the audit shall provide ~~the completed Continued Competency Activity and Assessment Form and~~ all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

VA.R. Doc. No. R16-4544; Filed May 20, 2016, 2:25 p.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Proposed Regulation

Title of Regulation: **22VAC30-20. Provision of Vocational Rehabilitation Services (amending 22VAC30-20-10 through 22VAC30-20-40, 22VAC30-20-60 through 22VAC30-20-181, 22VAC30-20-200; repealing 22VAC30-20-50).**

Statutory Authority: § 51.5-131 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 12, 2016.

Agency Contact: Vanessa S. Rakestraw, Ph.D., CRC, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7663, TTY (800) 464-9950, or email vanessa.rakestraw@dars.virginia.gov.

Basis: The Commissioner of the Department for Aging and Rehabilitative Services has authority to promulgate regulations pursuant to § 51.5-131 of the Code of Virginia.

Purpose: The commissioner, in response to former Governor McDonnell's Regulatory Reform Initiative, seeks to review and amend current regulations regarding the provision of vocational rehabilitation services to repeal unnecessary or obsolete regulations, remove unnecessary requirements in the regulations, and, in some instances, make the regulations consistent with federal vocational rehabilitation regulations. The amendments will protect the safety and welfare of

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citizens by clarifying the regulatory requirements for the public.

Substance: The proposed regulation repeals 22VAC30-20-50 on the evaluation of vocational rehabilitation potential because this section is redundant and unnecessary. Substantive changes made to this existing regulation include the elimination of maximum dollar limits the department can spend on specific services. The requirement that the department can only assist individuals with severe disabilities in obtaining a graduate degree has been removed. In order for the department to sponsor an academic program, the individual must maintain a C average or the academic grade required of the academic program. The proposed regulation changes the maximum amount the department can pay for books and supplies from \$400 to the amount determined by the educational institution. The amount that can be paid for private transportation has been changed from a fixed 12 cents per mile to an amount that can be established by the department. The maximum dollar amount the department can provide for home and vehicle modifications has been deleted. The proposed regulation stresses that income and resources of the family are to be considered in the financial participation test if the client is counted as a dependent on the most recent federal income tax. A table with a family income exclusion amount based on family size has been deleted. Instead a statement has been added explaining that the financial exclusion amount is based upon the federal poverty guidelines that are updated annually. 22VAC30-20-181 has been renamed "Review of determinations made by the department" and changed to add specific procedures to be followed along with specific deadlines.

Issues: The advantages to the public and the department are that the regulation will be easier for the public to understand and simpler for the department to implement. The proposal brings the regulation up to date with current practices in the state-federal vocational rehabilitation program. There are no disadvantages to the public, the department, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department for Aging and Rehabilitative Services (the department) proposes to update its regulation to reflect current practices.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The department proposes to: 1) delete the sections of the regulation that are redundant, 2) clarify that minimum grade requirement established by the academic program must be met for continued sponsorship in postsecondary schools, and 3) clarify and update language to reflect that the department follows the federal poverty guidelines in establishing the amount individuals will be

required to contribute toward their vocational rehabilitation programs.

According to the department, all of the proposed changes will merely update regulations to reflect current procedures followed in practice. Thus, no significant economic impact is expected from the proposed changes other than improving the clarity of the regulations.

Businesses and Entities Affected. The department served 28,889 consumers during the Fiscal Year 2012.

Localities Particularly Affected. The proposed regulation is not expected to affect any locality more than others.

Projected Impact on Employment. No significant impact on employment is expected.

Effects on the Use and Value of Private Property. No significant impact on the use and value of private property is expected.

Real Estate Development Costs. No significant impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. The proposed regulation is not anticipated to have costs and other effects on small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed regulation is not anticipated to affect small businesses.

Agency's Response to Economic Impact Analysis: The Department for Aging and Rehabilitative Services agrees that the information provided by the Department of Planning and Budget in the May 20, 2016, economic impact analysis of the proposed amendments to 22VAC30-20, Provision of Vocational Rehabilitation Services was correct at the time of completion.

Summary:

The proposed amendments (i) remove or change the maximum amounts that the Department for Aging and Rehabilitative Services (DARS) pays for certain services; (ii) require that an individual seeking assistance with a four-year academic program must first attend two years at a community college unless the program is not offered or the disability-related need cannot be met at a community college; (iii) clarify that the minimum grade requirement established by the academic program must be met for continued sponsorship in postsecondary schools; (iv) clarify that DARS follows the federal poverty guidelines in establishing the amount individuals are required to contribute to their vocational rehabilitation programs; (v) add specific procedures and specific guidelines to the

review of determinations by DARS; and (vi) remove unnecessary or redundant provisions.

22VAC30-20-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended.

"Applicant" means an individual who submits an application for vocational rehabilitation services.

"Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large-print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

"Assistive technology" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

1. The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and
6. Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is

necessary to the achievement of an employment outcome by an individual with a disability.

"Audiological examination" means the testing of the sense of hearing.

~~"Board" means the Board of Rehabilitative Services.~~

"Clear and convincing evidence" means that the designated state unit shall have a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The clear and convincing standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term "clear" means unequivocal. Given these requirements, a review of existing information generally would not provide clear and convincing evidence. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of clear and convincing evidence must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings. (S. Rep. No. 357, 102d Cong., 2d. Sess. 37-38 (1992))

"Client Assistance Program" means the program located within the disAbility Law Center of Virginia for the purpose of advising applicants or eligible individuals about all available services under the Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended, and to assist applicants and eligible individuals in their relationship with programs, projects, and facilities providing vocational rehabilitation services."

"Commissioner" means the Commissioner of the Department for Aging and Rehabilitative Services.

"Community rehabilitation program" means a program that directly provides or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

1. Medical, psychiatric, psychological, social, and vocational services that are provided under one management;
2. Testing, fitting, or training in the use of prosthetic and orthotic devices;
3. Recreational therapy;
4. Physical and occupational therapy;
5. Speech, language, and hearing therapy;
6. Psychiatric, psychological, and social services, including positive behavior management;

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7. Assessment for determining eligibility and vocational rehabilitation needs;
8. Rehabilitation technology;
9. Job development, placement, and retention services;
10. Evaluation or control of specific disabilities;
11. Orientation and mobility services for individuals who are blind;
12. Extended employment;
13. Psychosocial rehabilitation services;
14. Supported employment services and extended services;
15. Services to family members, if necessary, to enable the applicant or eligible individual to achieve an employment outcome;
16. Personal assistance services; or
17. Services similar to the services described in subdivisions 1 through 16 of this definition.

For the purposes of this definition, the word "program" means an agency, organization, or institution, or unit of an agency, organization, or institution, that directly provides or facilitates the provision of vocational rehabilitation services as one of its major functions.

"Comparable services and benefits" means services and benefits that are provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits; available to the individual at the time needed to ensure the individual's progress toward achieving the employment outcome in the individual's individualized plan for employment; and commensurate to the services that the individual would otherwise receive from the vocational rehabilitation agency. For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

"Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting, and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

"Department" means the Department for Aging and Rehabilitative Services. The department is considered the "designated state agency" or "state agency," meaning the sole state agency designated in accordance with 34 CFR 361.13(a) to administer or supervise local administration of the state plan for vocational rehabilitation services. The department also is considered the "designated state unit" or "state unit," meaning the state agency, vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the state agency as required under

34 CFR 361.13(b), or the state agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities.

~~"Designated state agency" or "state agency" means the sole state agency designated, in accordance with 34 CFR 361.13(a), to administer or supervise the local administration of the state plan for vocational rehabilitation services.~~

~~"Designated state unit" or "state unit" means either the state agency, vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the state agency as required under 34 CFR 361.13(b), or the state agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities.~~

"Eligible individual" means an applicant for vocational rehabilitation services who meets the eligibility requirements of ~~22VAC30-20-30 and~~ 22VAC30-20-40.

"Employment outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market; supported employment; or any other type of employment in an integrated setting including self-employment, telecommuting, or business ownership that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (34 CFR 361.5(b)(16))

"Evaluation of vocational rehabilitation potential" means, as appropriate, in each case (i) a preliminary diagnostic study to determine that an individual is eligible for vocational rehabilitation services; (ii) a thorough diagnostic study consisting of a comprehensive evaluation of pertinent factors bearing on the individual's impediment to employment and vocational rehabilitation potential, in order to determine which vocational rehabilitation services may be of benefit to the individual in terms of employability; (iii) ~~any other~~ the provision of goods or services necessary to determine the nature of the disability and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services in terms of an employment outcome; (iv) ~~referral referrals~~ referrals to other agencies or organizations for services, when appropriate; and (v) the provision of vocational rehabilitation services to an individual during an extended evaluation of rehabilitation potential for the purpose of determining whether the individual with a disability is capable of achieving an employment outcome.

"Extended employment" means work in a nonintegrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act (29 USC § 201 et seq.). (34 CFR 361.5(b)(20))

"Extended evaluation" means the provision of vocational rehabilitation services necessary for a determination of vocational rehabilitation potential.

"Extended services" as used in the definition of "supported employment" means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment and that are provided by a state agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under ~~this section~~, 34 CFR Part 363 after an individual with a most significant disability has made the transition from support provided by the ~~designated state unit~~ department.

"Extreme medical risk" means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

"Family member" or "member of the family" means an individual (i) who is either a relative or guardian of an applicant or eligible individual, or lives in the same household as an applicant or eligible individual; (ii) who has a substantial interest in the well-being of that individual; and (iii) whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

"~~Higher education/institutions of higher~~ education" means training or training services provided by universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing.

"Impartial hearing officer" means an individual who is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education); is not a member of the State Rehabilitation Council for the ~~designated state unit~~ department; has not been involved previously in the vocational rehabilitation of the applicant or eligible individual; has knowledge of the delivery of vocational rehabilitation services, the state plan, and the federal and state regulations governing the provision of services; has received training with respect to the performance of official duties; and has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual. An individual ~~may~~ is not ~~be~~ considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer. (34 CFR 361.5(b)(25))

"Individual who is blind" means a person who is blind within the meaning of ~~the~~ applicable state law.

"Individual with a disability," except as provided in 34 CFR 361.5(b)(29), means an individual (i) who has a physical or mental impairment; (ii) whose impairment constitutes or results in a substantial impediment to employment; and (iii) who can benefit in terms of an employment outcome from the

provision of vocational rehabilitation services. (34 CFR 361.5(b)(28))

~~"Individual with a disability," for purposes of 34 CFR 361.5(b)(14), 34 CFR 361.13(a), 34 CFR 361.13(b)(1), 34 CFR 361.17(a), (b), (c), and (j), 34 CFR 361.18(b), 34 CFR 361.19, 34 CFR 361.20, 34 CFR 361.23(b)(2), 34 CFR 361.29(a) and (d)(5) and 34 CFR 361.51(b), means an individual (i) who has a physical or mental impairment that substantially limits one or more major life activities; (ii) who has a record of such an impairment; or (iii) who is regarded as having such an impairment. (34 CFR 361.5(b)(29))~~

"Individual with a most significant disability" means an individual with a significant disability who meets the ~~designated state unit's~~ department's criteria for an individual with a most significant disability. (34 CFR 361.5(b)(30))

"Individual with a significant disability" means an individual with a disability (i) who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; (ii) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and (iii) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, ~~mental retardation~~ intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation. (34 CFR 361.5(b)(31))

"Individual's representative" means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative. (34 CFR 361.5(b)(32))

"Integrated setting," with respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals. "Integrated setting," with respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals, other than nondisabled individuals who are providing services to those applicants or

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eligible individuals, to the same extent that nondisabled individuals in comparable positions interact with other persons. (34 CFR 361.5(b)(33))

"Local workforce investment board" means a local workforce investment board established under ~~section~~ § 117 of the Workforce Investment Act of 1998. (34 CFR 361.5(b)(34))

"Maintenance" means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment. (34 CFR 361.5(b)(35))

"Mediation" means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies. Mediation under the program must be conducted in accordance with the requirements in 34 CFR 361.57(d) by a qualified impartial mediator. (34 CFR 361.5(b)(36))

~~"Mental disability" means (i) having a disability attributable to mental retardation, autism, or any other neurologically disabling condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions, including central nervous system disorders or significant discrepancies among mental functions of an individual.~~

"Nonprofit," with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1986. (34 CFR 361.5(b)(37))

"One-stop center" means a center designed to provide a full range of assistance to job seekers under one roof. Established under the Workforce Investment Act of 1998, the centers offer training, career counseling, job listings, and similar employment related services.

"Ongoing support services," as used in the definition of "supported employment," means services that are needed to support and maintain an individual with a most significant disability in supported employment; identified based on a determination by the ~~designated state unit~~ department of the individual's needs as specified in an individualized plan for employment; and furnished by the ~~designated state unit~~ department from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more

extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment. These services ~~must~~ shall include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on, at a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or if under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice-monthly meetings with the individual. These services ~~must~~ shall consist of any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in ~~this section~~ subsection A of 22VAC30-20-100; the provision of skilled job trainers who accompany the individual for intensive job skill training at the ~~work site~~ worksite; job development and ~~placement~~ training; social skills training; regular observation or supervision of the individual; follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors in order to reinforce and stabilize the job placement; facilitation of natural supports at the worksite; any other service identified in the scope of vocational rehabilitation services for individuals described in 22VAC30-20-120; or any service similar to the foregoing services. (34 CFR 361.5(b)(38))

~~"Otolological examination" means any examination conducted by a physician skilled in otology.~~

"Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

"Physical and mental restoration services" means corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment; diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws; dentistry; nursing services; necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services; drugs and supplies;

prosthetic, orthotic, or other assistive devices, including hearing aids; eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids provided by the department in accordance with the cooperative agreement established with the Department for the Blind and Vision Impaired and prescribed by personnel that are qualified in accordance with state licensure laws; podiatry; physical therapy; occupational therapy; speech or hearing therapy; mental health services; treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment; special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and other medical or medically related rehabilitation services.

"Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, ~~musculo-skeletal~~ musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic, and lymphatic, skin, and endocrine; or any mental or psychological disorders such as ~~mental retardation~~ intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. (34 CFR 361.5(b)(41))

"Post-employment services" means one or more of the services identified in 22VAC30-20-120 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests and informed choice. (34 CFR 361.5(b)(42))

"Prevocational training" means individual and group instruction or counseling, the controlled use of varied activities, and the application of special behavior modification techniques; ~~individuals~~. Individuals or patients are helped to: (i) develop physical and emotional tolerance for work demands and pressures, (ii) acquire personal-social behaviors which would make them acceptable employees and coworkers on the job, and (iii) develop the basic manual, academic, and communication skills needed to acquire basic job skills.

~~"Prosthetic and orthotic appliances" means any mechanical equipment that improves or substitutes for one or more of man's senses or for impaired mobility or motor coordination.~~

~~"Public safety officer" means an individual who performs duties directly related to the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities, and whose substantially limiting condition arose from a disability sustained in the line~~

~~of duty while performing as a public safety officer and the immediate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition.~~

"Qualified and impartial mediator" means an individual who is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a state office of mediators, or employee of an institution of higher education); is not a member of the State Rehabilitation Council for the ~~designated state unit~~ department; has not been involved previously in the vocational rehabilitation of the applicant or eligible individual; is knowledgeable of the vocational rehabilitation program and the applicable federal and state laws, regulations, and policies governing the provision of vocational rehabilitation services; has been trained in effective mediation techniques consistent with any state approved or recognized certification, licensing, registration, or other requirements; and has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings. An individual serving as a mediator is not considered to be an employee of the ~~designated state agency or designated state unit~~ department for the purposes of this definition solely because the individual is paid by the ~~designated state agency or designated state unit~~ department to serve as a mediator. (34 CFR 361.5(b)(43))

~~"Rehabilitation facility" means a facility which is operated for the primary purpose of providing vocational rehabilitation services to individuals with disabilities, and which provides singly or in combination one or more of the following services for individuals with disabilities: (i) vocational rehabilitation services, including under one management, medical, psychiatric, psychological, social, and vocational services; (ii) testing, fitting, or training in the use of prosthetic and orthotic devices; (iii) prevocational conditioning or recreational therapy; (iv) physical and occupational therapy; (v) speech and hearing therapy; (vi) psychological and social services; (vii) evaluation of rehabilitation potential; (viii) personal and work adjustment; (ix) vocational training with a view toward career advancement (in combination with other rehabilitation services); (x) evaluation or control of specific disabilities; (xi) orientation and mobility services and other adjustment services to individuals who are blind; and (xii) transitional or extended employment for those individuals with disabilities who cannot be readily absorbed in the competitive labor market.~~

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

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~~"Services to groups" means the provision of facilities and services which may be expected to contribute substantially to the vocational rehabilitation of a group of individuals, but which are not related directly to the individualized rehabilitation program of any one individual with a disability.~~

"State" means the Commonwealth of Virginia.

"State plan" means the state plan for vocational rehabilitation services ~~or the vocational rehabilitation services part of a consolidated rehabilitation plan~~ submitted under 34 CFR 361.10(c). (34 CFR 361.5(b)(51))

"State workforce investment board" means a state workforce investment board established under § 111 of the Workforce Investment Act of 1998. (34 CFR 361.5(b)(49))

"Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

"Supported employment" means (i) competitive employment in an integrated setting; or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities for whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and who, because of the nature of their disabilities, need intensive supported employment services from the ~~designated state unit department~~ and extended services after transition to perform this work or (ii) transitional employment for individuals with the most significant disabilities due to mental illness. (34 CFR 361.5(b)(53))

"Supported employment services" means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by the ~~designated state unit department~~ (i) for a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time ~~in order~~ to achieve the employment outcome identified in the individualized plan for employment; and (ii) following transition; as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment. (34 CFR 361.5(b)(54))

"Transition services" means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including ~~post-secondary~~ postsecondary education, vocational training, integrated employment (including

supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student's individualized plan for employment. (34 CFR 361.5(b)(55))

"Transitional employment," as used in the definition of "supported employment," means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most ~~severe~~ significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

"Transportation" means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems. (34 CFR 361.5(b)(57))

"Vocational rehabilitation potential" mean the ability of the individual with a disability to benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

"Vocational rehabilitation services" means those services listed in 22VAC30-20-120.

~~"Work adjustment training" means a treatment and training process utilizing individual and group work, or work related activities, to assist individuals in understanding the meaning, value and demands of work; to modify or develop attitudes, personal characteristics, work behavior, and to develop functional capacities, as required in order to assist individuals toward their optimum level of vocational development.~~

22VAC30-20-20. Processing referrals and applications.

A. Referrals. The ~~designated state unit department~~ must establish and implement standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services, including referrals of individuals made through ~~the One Stop service delivery systems established under § 121 of the Workforce Investment Act of 1998~~ a one-stop center. The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services. (34 CFR 361.41(a))

B. Applications.

1. Once an individual has submitted an application for vocational rehabilitation services, an eligibility

determination shall be made within 60 days, unless (i) exceptional and unforeseen circumstances beyond the control of the ~~designated state unit~~ department preclude making a determination within 60 days and the ~~designated state agency~~ department and the individual agree to a specific extension of time or (ii) an exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out ~~in accordance with 22VAC30-20-50~~ or, if appropriate, an extended evaluation is necessary. (34 CFR 361.41(b)(1))

2. An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate (i) has completed and signed an agency application form, a common intake application form in a ~~One-Stop one-stop~~ center requesting vocational rehabilitation services, or has otherwise requested services from the ~~designated state unit~~ department; (ii) has provided information to the ~~designated state unit~~ department that is necessary to initiate an assessment to determine eligibility and priority for services; and (iii) is available to complete the assessment process. (34 CFR 361.41(b)(2))

3. The ~~designated state unit~~ department shall ensure that its application forms are widely available throughout the state, particularly in the ~~One-Stop one-stop~~ centers established under § 121 of the Workforce Investment Act of 1998. (34 CFR 361.41(b)(3))

4. ~~A face-to-face interview with the applicant is required.~~

22VAC30-20-30. Assessment for determining eligibility and priority for services.

In order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the state is operating under an order of selection), the ~~designated state unit will~~ department shall conduct an assessment for determining eligibility and priority for services. The assessment ~~must shall~~ be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the following provisions:

1. Eligibility requirements are applied without regard to race, age, gender, color, or national origin;
2. No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability;
3. The eligibility requirements are applied without regard to the particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family, or the type of expected employment outcome, or the source of referral for vocational rehabilitation services; and
4. No duration of residence requirement is imposed that excludes from services any individual who is present in the state. (34 CFR 361.42(c))

22VAC30-20-40. Eligibility requirements.

A. Basic requirements. The ~~designated state unit's~~ department's determination of an applicant's eligibility for vocational rehabilitation services is shall be based only on the following requirements: (i) a determination by qualified personnel that the applicant has a physical or mental impairment; (ii) a determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; (iii) a presumption, in accordance with subsection B of this section, that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services; and (iv) a determination by a qualified vocational rehabilitation counselor employed by the ~~designated state unit~~ department that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

B. Presumption of benefit. The ~~designated state unit will~~ department shall presume that an applicant who meets the basic eligibility requirements in clauses (i) and (ii) of subsection A of this section can benefit in terms of an employment outcome unless ~~it~~ the department demonstrates, based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an employment from vocational rehabilitation services due to the severity of the applicant's disability.

C. Presumption of eligibility for Social Security beneficiaries. The ~~designated state unit must~~ department shall assure that, if an applicant has appropriate evidence, such as an award letter, that establishes the applicant's eligibility for Social Security benefits under Title II or Title XVI of the Social Security Act, the ~~designated state unit will~~ department shall presume that the applicant (i) meets the eligibility requirements in clauses (i) and (ii) of subsection A of this section and (ii) is an individual with a significant disability as defined in 22VAC30-20-10.

D. Achievement of an employment outcome. Any eligible individual, including an individual whose eligibility for vocational rehabilitation services is based on the individual being eligible for Social Security benefits under Title II or Title XVI of the Social Security Act, must intend to achieve an employment outcome that is consistent with the ~~applicant's~~ individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

1. The ~~state unit is~~ department shall be responsible for informing individuals, through its application process for vocational rehabilitation services, that individuals who receive services under the program must intend to achieve an employment outcome.

2. The applicant's completion of the application process for vocational rehabilitation services is shall be sufficient evidence of the individual's intent to achieve an

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employment outcome, and no additional demonstration on the part of the applicant is required for purposes of satisfying this section.

E. Interpretation of entitlement. Nothing in this section ~~is to~~ shall be construed to create an entitlement to any vocational rehabilitation service.

F. Review and assessment of data for eligibility determination. Except as provided in 22VAC30-20-60, the ~~designated state unit~~ department shall base its determination of each of the basic eligibility requirements in subsection A of this section on:

1. A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, information used by the Social Security Administration, and determinations made by officials of other agencies; and

2. To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including assistive technology devices and services and worksite assessments, that are necessary to determine whether an individual is eligible.

G. Trial work experience for individuals with significant disabilities. Prior to any determination that an individual with a disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability, ~~an exploration of the department shall explore~~ the individual's abilities, capabilities, and capacity to perform in a realistic work situation ~~is required~~ in accordance with 34 CFR 361.42 to determine whether or not there is clear and convincing evidence to support such a determination.

~~22VAC30-20-50. Evaluation of vocational rehabilitation potential. (Repealed.)~~

~~A. Required evaluations. The current general health of the individual shall be assessed, based, to the maximum extent possible, on available medical information. In all cases of mental or emotional disorders an examination shall be provided by a physician licensed to diagnose and treat such disorders or a psychologist licensed or certified in accordance with state laws and regulations. If eligibility cannot be determined from medical evidence of record, medical specialist examinations needed to determine eligibility shall be provided.~~

~~B. Hospitalization for diagnosis may be provided when all of the following conditions are met:~~

~~1. This service is required in order to determine eligibility for services or type of services needed; and~~

~~2. This service is recommended by a licensed medical doctor.~~

~~The maximum period of diagnostic hospitalization shall be three days.~~

22VAC30-20-60. Extended evaluation for individuals with significant disabilities.

A. Under limited circumstances, if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the ~~state unit~~ department is able to make an eligibility determination for vocational rehabilitation services, the ~~state unit must~~ department shall conduct an extended evaluation to make the determination that (i) there is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome or (ii) there is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability

B. During the extended evaluation period, which may not exceed 18 months, vocational rehabilitation services ~~must~~ shall be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

C. During the extended evaluation period, the ~~designated state unit must~~ department shall develop a written plan for providing services that are necessary to make the determinations in subsection A of this section. The ~~state unit~~ department may provide during this period only those services that are necessary to make these two determinations. (34 CFR 361.42)

D. The ~~state unit~~ department shall assess the individual's progress as frequently as necessary, but at least once every 90 days, during the extended evaluation period.

E. The ~~state unit~~ department shall terminate extended evaluation services at any point during the 18-month extended evaluation period if the ~~state unit~~ department determines that (i) there is sufficient evidence to conclude that the individual can benefit from vocational rehabilitation services in terms of an employment outcome or (ii) there is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome.

22VAC30-20-70. Certification of eligibility.

A. For vocational rehabilitation services₂, before or at the same time the applicant is accepted for services₂ the department shall certify that the applicant has met the basic eligibility requirements as specified in 22VAC30-20-40.

B. For extended evaluation₂, as a basis for providing an extended evaluation to determine vocational rehabilitation potential, there shall be certification that the applicant has met the requirements as specified in 22VAC30-20-60.

22VAC30-20-80. Procedures for ineligibility determination.

A. Certification of ineligibility. If the ~~state-unit~~ department determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized plan for employment is no longer eligible for services, ~~that state-unit must~~ the department shall:

1. Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative-;
2. Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for that determination, the requirements under this section and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of a ~~state-unit~~ department personnel determination in accordance with 22VAC30-20-181-;
3. Provide the individual with a description of services available under the Client Assistance Program, ~~Virginia Office of Protection and Advocacy~~, and information on how to contact that program-;
4. Refer the individual to other training or employment-related programs that are part of the ~~One-Stop service delivery system under the Workforce Investment Act. one-stop centers or, if the ineligibility determination is based on a finding that the individual is incapable of achieving an employment outcome as defined in 22VAC30-20-10, to local extended employment providers; and~~
5. Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative, any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. The review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the ~~Commonwealth~~ state, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

B. Case closure without eligibility determination. The ~~state-unit may~~ department shall not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and the ~~state-unit~~ department has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

22VAC30-20-90. Order of selection for services.

A. In the event that the full range of vocational rehabilitation services cannot be provided to all eligible individuals who

apply for services because of insufficient resources, an order of selection system may be implemented by the commissioner following consultation with the State Rehabilitation Council. The order of selection shall determine those persons to be provided services. It shall be the policy of the department to encourage referrals and applications of all persons with disabilities and, to the extent resources permit, provide services to all eligible persons.

The following order of selection is implemented when services cannot be provided to all eligible persons:

1. ~~Person~~ Persons eligible and presently receiving services under an individualized plan for employment-;
2. ~~Those persons~~ Persons referred and needing diagnostic services to determine eligibility-; and
3. Persons determined to be eligible for services, but not presently receiving services under an individualized plan for employment, shall be served according to the following order of priorities:
 - a. Priority I. An individual with a most significant disability in accordance with the definition in 22VAC30-20-10-;
 - b. Priority II. An individual with a significant disability that results in serious functional limitations in two functional capacities-;
 - c. Priority III. An individual with a significant disability that results in a serious functional limitation in one functional capacity-; and
 - d. Priority IV. Other persons determined to be disabled, in order of eligibility determination.

B. An order of selection ~~may~~ shall not be based on any other factors, including (i) any duration of residency requirement, provided the individual is present in the state; (ii) type of disability; (iii) age, gender, race, color, or national origin; (iv) source of referral; (v) type of expected employment outcome; (vi) the need for specific services or anticipated cost of services required by the individual; or (vii) the income level of an individual or an individual's family.

C. In administering the order of selection, the ~~designated state-unit must~~ department shall (i) implement the order of selection on a statewide basis; (ii) notify all eligible individuals of the priority categories in ~~a state's~~ the order of selection, their assignment to a particular category; and their right to appeal their category assignment; (iii) continue to provide all needed services to any eligible individual who has begun to receive services under an individualized plan for employment prior to the effective date of the order of selection, irrespective of the severity of the individual's disability; and (iv) ensure that its funding arrangements for providing services under the state plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the ~~designated state-unit must~~ department shall renegotiate these

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funding arrangements so that they are consistent with the order of selection.

D. Consultation with the State Rehabilitation Council ~~must~~ shall include (i) the need to establish an order of selection, including any reevaluation of the need; (ii) priority categories of the particular order of selection; (iii) criteria for determining individuals with the most significant disabilities; and (iv) administration of the order of selection.

22VAC30-20-95. Information and referral services.

A. The ~~designated state unit will~~ department shall implement an information and referral system adequate to ensure that individuals with disabilities, including eligible individuals who do not meet the ~~state unit's~~ department's order of selection criteria for receiving vocational rehabilitation services if the ~~agency~~ department is operating ~~or~~ under an order of selection, are provided accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) using appropriate modes of communication to assist them in preparing for, securing, retaining, or regaining employment.

B. The ~~state unit will~~ department shall refer individuals with disabilities to other appropriate federal and state programs, including other components of the statewide workforce investment system. In making these referrals, the ~~designated state unit must~~ department shall:

1. Refer the individuals to federal or state programs, including programs carried out by other components of the statewide workforce investment system, best suited to address the specific employment needs of an individual with a disability; and
2. Provide the individual who is being referred (i) a notice of the referral by the ~~designated state unit~~ department to the agency carrying out the program; (ii) information identifying a specific point of contact within the agency to which the individual is being referred; and (iii) information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

22VAC30-20-100. The individualized plan for employment procedures.

A. General requirements.

1. An individualized plan for employment meeting the requirements of this section shall be developed and implemented in a timely manner for each individual determined to be eligible for vocational rehabilitation services; or, if the ~~designated state unit~~ department is operating under an order of selection in accordance with 22VAC30-20-90, for each eligible individual to whom the ~~state unit~~ department is able to provide services. Services ~~will~~ shall be provided in accordance with the provisions of the individualized plan for employment.

2. The ~~state unit must~~ department shall conduct an assessment for determining vocational rehabilitation needs,

if appropriate, for each eligible individual, or, if the ~~state department~~ is operating under an order of selection, the department shall conduct an assessment for each eligible individual to whom the ~~state~~ department is able to provide services. The purpose of this assessment is to determine the employment outcome and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment.

a. To the extent possible, the employment outcome and the nature and scope of rehabilitation services to be included in the individualized plan for employment ~~must~~ shall be determined based on data from assessment of eligibility and priority of services under 22VAC30-20-30.

b. If additional data are necessary to determine the employment outcome and the nature and scope of services, the ~~state unit must~~ department shall conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment services, of the eligible individual, in the most integrated setting possible. In preparing the comprehensive assessment, the ~~state unit must~~ department shall use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the individualized plan for employment. This includes information (i) available from other programs and providers, ~~particular~~ particularly information used by the education system and the Social Security Administration; (ii) ~~information~~ provided by the individual and the individual's family; and (iii) ~~information~~ obtained under the assessment for determining the individual's eligibility and vocational needs.

3. The individualized plan for employment shall be a written document prepared on forms provided by the ~~state unit~~ department.

4. Vocational rehabilitation services shall be provided in accordance with the provisions of the individualized plan for employment. An eligible individual or, as appropriate, the individual's representative may develop all or part of the individualized plan for employment with or without assistance from the ~~state unit~~ department or other entity. The individualized plan for employment ~~must~~ shall be approved and signed by the qualified vocational rehabilitation counselor employed by the ~~designated state unit~~ department and the individual or, as appropriate, the individual's representative. The ~~state unit~~ department shall establish and implement standards for the prompt development of individualized plans for employment for the individuals identified in subdivision 1 of this subsection, including timelines that take into consideration the needs of the individual.

5. The ~~state unit~~ department shall promptly provide each individual or, as appropriate, the individual's representative a written copy of the individualized plan for employment and its amendments in the native language or appropriate mode of communication of the individual or, as appropriate, ~~of~~ the individual's representative.

6. The ~~state unit~~ department shall advise in writing each individual or, as appropriate, the individual's representative of all ~~state unit~~ department procedures and requirements affecting the development and review of an individualized plan for employment, including the availability of appropriate modes of communication.

7. The individualized plan for employment for a student with a disability who is receiving special education services must be coordinated with the ~~IEP~~ individualized education program for that individual in terms of goals, objectives, and services identified in the ~~IEP~~ individualized education program.

B. Individualized plan for employment review. The ~~state unit~~ department shall review the plan with the individual or, as appropriate, the individual's representative as often as necessary, but at least once each year to assess the individual's progress in achieving the identified employment outcome. The plan may be amended as necessary if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services. Amendments to the plan do not take effect until agreed to and signed by the individual or, as appropriate, the individual's representative and by a qualified vocational rehabilitation counselor employed by the ~~designated state unit~~ department.

~~C. Review of ineligibility determination. If the state unit determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized plan for employment is no longer eligible for services, the state unit shall:~~

- ~~1. Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;~~
- ~~2. Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for that determination, the requirements under this section, and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of a determination by the rehabilitation counselor or coordinator. The state unit shall provide the individual with a description of services available from the Client Assistance Program, Virginia Office of Protection and Advocacy, established under 34 CFR Part 370, and information on how to contact that program;~~

~~3. Refer the individual to other training or employment-related programs that are part of the One Stop delivery system under the Workforce Investment Act; and~~

~~4. Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative, any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. This review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the state, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal (34 CFR 361.43).~~

22VAC30-20-110. Individualized plan for employment content.

A. Regardless of the option in 22VAC30-20-100 chosen by the eligible individual for developing the individualized plan for employment, each plan for employment ~~must~~ shall include the following:

1. A description of the ~~specific~~ employment outcome, as defined in 22VAC30-20-10, that is chosen by the eligible individual and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice of the individual, and results in employment in an integrated setting;
2. A description of the ~~specific~~ vocational rehabilitation services provided under 22VAC30-20-120 that are needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices and services and personal assistance services, including training in the management of those services, and providing in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the eligible individual;
3. Timelines for the achievement of the employment outcome and for the initiation of services;
4. A description of the entity or entities chosen by the eligible individual or, as appropriate, the individual's representative that will provide the vocational rehabilitation services and the methods used to procure those services;
5. A description of the criteria that will be used to evaluate progress toward achievement of the employment outcome;
6. The terms and conditions of the individualized plan for employment, including, as appropriate, information describing the responsibilities of the ~~designated state unit~~ department, the responsibilities the eligible individual ~~will~~ shall assume in relation to achieving the employment outcome, the extent of the eligible individual's participation in paying for the cost of services, the responsibility of the individual with regard to applying for and securing comparable services and benefits as described

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in 22VAC30-20-170, and the responsibilities of other entities as the result of arrangements made pursuant to comparable services or benefits requirements in 22VAC30-20-170;

7. ~~The A statement of the~~ rights of the individual under this ~~part~~ chapter and the means by which the individual may express and seek remedy for any dissatisfaction, including the opportunity for a review of determinations made by ~~designated state unit~~ department personnel;

8. ~~The A statement of the~~ availability of the Client Assistance Program, ~~with the Virginia Office of Protection and Advocacy;~~

9. The basis on which the individual has been determined to have achieved an employment outcome;

10. A statement concerning the expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;

11. A description of the terms and conditions for the provision of any post-employment services; and

12. If appropriate, a statement of how post-employment services ~~will~~ shall be provided or arranged through other entities as the result of arrangements made pursuant to the comparable benefits and services requirement.

B. Supported employment. In addition to the requirements in subsection A of this section, the individualized plan for employment for an individual with a most significant disability for whom supported employment has been determined appropriate ~~must~~ shall also:

1. Specify the supported employment services to be provided by the ~~designated state unit~~ department;

2. Specify the expected extended services needed, which may include natural supports;

3. Identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the individualized plan for employment is developed, include a description of the basis for concluding that there is a reasonable expectation that those sources will become available;

4. Provide for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the individualized plan for employment by the time of transition to extended services;

5. Provide for the coordination of services provided under an individualized plan for employment with services provided under other individualized plans established under other federal or state programs;

6. To the extent that job skills training is provided, identify that the training ~~will~~ shall be provided on site; and

7. Include placement in an integrated setting for the maximum number of hours possible based on the unique

strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.

22VAC30-20-120. Scope of vocational rehabilitation services for individuals.

As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, the ~~designated state unit~~ must department ~~shall~~ ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

1. Assessment for determining eligibility and priority for services and assessment for determining vocational rehabilitation needs by qualified personnel including, if appropriate, an assessment by personnel skilled in rehabilitation technology in accordance with 22VAC30-20-10.

2. Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice.

3. Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system and to advise those individuals about the Client Assistance Program ~~under the Virginia Office of Protection and Advocacy.~~

4. Physical and mental restoration services, in accordance with the definition of 22VAC30-20-10, to the extent that financial support is not readily available from a source other than the ~~designated state unit~~ department (such as through health insurance or comparable services and benefits as defined in 22VAC30-20-10).

~~a. These services include but are not limited to:~~

~~(1) Convalescent care, nursing or rest home care when the services are directly related to the vocational rehabilitation objective for an individual who needs continued medical supervision after department-sponsored treatment for his condition. This service must be recommended by the proper medical practitioner before the service is authorized and is contingent upon the individual being able to reengage in the vocational rehabilitation program. This service may be provided for 30 days, and the commissioner or his designee may approve an additional 30 days of service.~~

~~(2) Dentistry.~~

~~(3) Drugs and supplies. When medication is to be continuous (e.g., treatment of diabetes or epilepsy), and while the individual is receiving vocational training, the department may purchase medication during the training period and for a period not to exceed 90 days after~~

achieving employment. When counseling, medication and placement are the only services provided, the department may pay for medication for a period not to exceed 90 days. Generic drugs shall be utilized when possible.

(4) Necessary hospitalization (either inpatient or outpatient care, in connection with surgery or treatment and clinic services). The department may pay for hospitalization for medical diagnosis, surgical or medical treatment when deemed necessary for the vocational rehabilitation of the individual and recommended by a licensed practitioner. Hospitalization shall be provided in hospitals, medically oriented treatment facilities, or continuing care facilities in Virginia or out of state, with which the department has a contract. Payment to hospitals, medically oriented treatment facilities, or continuing care facilities shall be made in accordance with the department fee schedules. The maximum period of hospitalization, excluding diagnostic, to be authorized based upon financial resources available to the department shall be 10 days. Extension of the maximum period of hospitalization shall be allowed when due to acute medical complications and emergencies associated with or arising out of the provision of physical or mental restoration services. Treatment of acute medical complications or emergencies which impact negatively on the individual's progress toward the individual's vocational goal shall be provided.

(5) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with state licensure laws. These services may be provided to an individual when their visual disability, as established by an ophthalmological or an optometric examination, is of such severity that their employment opportunities are considerably limited. Visual services shall be provided by the department in accordance with the cooperative agreement established with the Department for the Blind and Vision Impaired. Visual aids may also be provided to individuals who are unable to satisfactorily pursue their vocational rehabilitation program due to impaired vision.

(6) Nursing services.

(7) Physical restoration in a rehabilitation facility.

(8) Physical and occupational therapy when prescribed by a doctor of medicine.

(9) Prosthetic, orthotic, or other assistive devices, including hearing aids. The department may purchase an original appliance only upon the recommendation of the medical specialist. When an individual has a history of satisfactory appliance use and the general medical examination report indicates no pathological change, this

report may be sufficient medical basis for the replacement or repair of the appliance. The department shall purchase prosthetic or orthotic appliances from vendors approved in accordance with the department's vendor approval process.

(10) Mental health services or diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws shall be provided by a psychiatrist or psychologist. If the department purchases the services from either, they must be qualified in the area of psychotherapy and be licensed in accordance with the laws of the Commonwealth. The maximum number of sessions to be sponsored shall be 27. If the individual needs additional psychotherapy, the department will make an effort to assist the individual in securing it.

(11) Speech or hearing therapy. Speech therapy may be provided to individuals when treatment is recommended by a speech pathologist who is licensed in accordance with the laws of the Commonwealth. Hearing aid orientation and lip reading may be provided when recommended by a specialist in hearing disabilities.

(12) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or substantially modify a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment.

(13) Podiatry.

(14) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services that are inherent in the condition under treatment.

(15) Special services for the treatment of individuals with end stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies.

(16) Chiropractic services, after consultation with a doctor of medicine.

(17) Cardiac exercise therapy for individuals who have had a myocardial infarction or a coronary bypass not more than six months prior to the recommended exercise therapy. A maximum of 24 sessions may be authorized.

(18) Other medical or medically related rehabilitation services.

b. a. Eligibility requirements.

(1) Stable or slowly progressive. The physical or mental condition ~~must~~ shall be stable or slowly progressive. The condition ~~must~~ shall not be acute or transitory, or of such recent origin that the resulting functional limitations and the extent to which the limitations affect occupational performance cannot be identified.

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(2) Refusal of service. When an individual has a physical or mental disability with resulting limitations that constitute a ~~handicap barrier~~ to employment, and when in the opinion of licensed medical personnel these limitations can be removed by physical or mental restoration services without injury to the individual, ~~they~~ the individual shall not be eligible for any rehabilitation services, except counseling, guidance and placement if ~~they refuse~~ he refuses to accept the appropriate physical or mental restoration services. A second opinion may be provided at the individual's request. In the event of conflicting medical opinions, the department shall secure a third opinion and the decision shall be made on the two concurring opinions.

~~e.~~ b. Provision of physical and mental restoration services. These services ~~are~~ shall be provided only when:

- (1) Recommended by a licensed practitioner;
- (2) Services are not available from another source; and
- (3) They are provided in conjunction with counseling and guidance, and other services, as deemed appropriate.

The department shall not make case expenditures for acute or intermediate medical care except for medical complications and emergencies ~~which that~~ are associated with or arise out of the provision of ~~Vocational Rehabilitation (VR)~~ vocational rehabilitation services under an individualized plan for employment and ~~which that~~ are inherent in the condition under treatment.

~~d.~~ c. Services not sponsored by the department. The ~~board~~ department, in consultation with appropriate medical resources, shall determine those ~~physical~~ restoration services that shall ~~not~~ be provided by the department. The following ~~circumstances or conditions~~ procedures shall ~~not~~ be ~~considered~~ provided:

- (1) Experimental procedures ~~shall not be sponsored~~;
- (2) High risk procedures;
- (3) Procedures with limited vocational outcomes or procedures not related to the vocational outcome; and
- (4) Procedures with uncertain outcomes.

5. Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in institutions of higher education (universities, colleges, ~~community/junior~~ community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this section unless maximum efforts have been made by the ~~state unit~~ department and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

All training services provided shall be related to attainment of the vocational objective or provide for the determination of eligibility for vocational rehabilitation services.

Vocational training includes any organized form of instruction ~~which that~~ provides the knowledge and skills essential for performing the tasks involved in an occupation. Vocational training may be obtained in institutions such as colleges, universities, business schools, nursing schools, and trade and technical schools. It may also be obtained by on-the-job training, apprenticeship programs, tutorial training, or correspondence study.

~~a. Business schools and business colleges, trade and technical schools, and two year college terminal courses. The training institution selected shall be approved in accordance with the department's vendor approval process. Approved training institutions. Only training institutions approved in accordance with the department's vendor approval process shall be used.~~

b. College and university academic training.

(1) Academic requirements. The individual shall take sufficient academic credit hours based on the requirement of the college attended for classification as a full-time student, unless this is, in the opinion of the department, contraindicated by the individual's disability. Courses shall meet the institution's requirement towards the obtainment of the degree or certificate. Continuation of financial assistance by the department shall be dependent upon the individual maintaining a "C" ~~average calculated on an academic year~~ the grade average required by the institution for the particular course of study. When the institution has no grade requirement, continuation of financial assistance by the department shall be dependent upon the individual maintaining a "C" average calculated over the academic year. When the individual fails to maintain a ~~"C"~~ the required academic grade average, assistance may be discontinued. The department's assistance may be reinstated when the individual completes one semester or quarter with a the minimum of a "C" required grade average.

Each individual shall be advised that failure to provide grades to the department shall be grounds for termination of departmental financial assistance.

(2) Graduate degree program. The department shall assist ~~only eligible individuals with severe disabilities~~ in securing a graduate degree ~~and~~ only when it is judged essential to achieving an employment goal agreed to by the department and the individual.

(3) Virginia colleges and universities. Vocational training, including college or university training, shall be provided by the department in ~~any department approved institution~~ department-approved institutions located within the boundaries of the Commonwealth, unless such training is not available within the Commonwealth. Institutions in the areas of Washington, D.C.; Bristol-Johnson City-Kingsport, Tennessee; the city of Bluefield, West Virginia; and other cities where the services may be

provided more effectively and economically and shall be treated as if located in Virginia.

(4) Tuition and mandatory fees. The department may pay tuition for college and university training in an amount not in excess of the highest amount charged for tuition by a state-supported institution or the rate published in the catalog, whichever is less, except where out-of-state or private college is necessary, ~~published. Published~~ tuition costs in excess of the highest amount charged by a state-supported institution may be necessary and may be paid by the department if no state-supported institution is available that offers the degree program needed to achieve the established employment goal, if no state-supported program offers disability-related supports to enable the individual to achieve the established employment goal, or if an out-of-state or private program is more economical for the department.

~~Any individual enrolling into any college/university course or courses for the primary purpose of course or program certification and not for the purpose of obtaining a degree shall be exempt from the application of the annual maximum tuition rate.~~

(5) Scholarships and grants. Training services in institutions of higher education shall be paid for with departmental funds only after maximum efforts have been made by the individual to secure assistance in whole or in part from other sources; however, any individual eligible for vocational rehabilitation training services but not meeting the financial need test of the department may be provided an assistance grant annually in an amount not to exceed the equivalent of one quarter's tuition of a ~~full-time~~ full-time community college student.

c. Correspondence study. The correspondence study training may be authorized only when:

(1) The individual requires specific preliminary training in order to enter a training program or training cannot be arranged by any other method; and

(2) Satisfactory progress is maintained.

d. On-the-job training. The department may enter into agreements with employers in the private or public sector to provide on-the-job training services. The terms and conditions of each individual agreement shall be established by the department.

e. Part-time training. Part-time training may be utilized only when the severity of the individual's disability shall not allow the individual to pursue training on a full-time basis.

Part-time training shall be authorized only at department-approved facilities and schools.

f. Work adjustment training. Work adjustment training may be provided if needed for the individual to engage in subsequent vocational rehabilitation services as indicated

by the thorough diagnostic study assessment of medical, vocational, psychological, and other factors. This service may be provided only by the department or approved vendors.

g. Prevocational training. Prevocational training may be provided if needed for the individual to engage in subsequent vocational rehabilitation services as indicated by the thorough diagnostic study assessment of medical, vocational, psychological, and other factors. This service may be provided only by the department or approved vendors.

h. Tutorial training. Tutorial training may be provided if needed for the individual to achieve a vocational goal as indicated by the thorough diagnostic study assessment of medical, vocational, psychological, and other factors. This service may be provided only by the department or approved vendors.

i. Other higher education training concerns.

(1) Required textbooks and supplies. The maximum amount of ~~department~~ departmental financial assistance for required textbooks and supplies (pencils, paper, etc.) shall be ~~\$400 annually for a normal school year or \$500 if summer school is attended~~ not exceed the amount determined by the institution for books and supplies in the student's school budget.

(2) Required training materials. Training materials may be provided when required by the instructor.

6. Maintenance in accordance with the definition of that term in 22VAC30-20-10.

a. Clothes. Clothes ~~are~~ shall be provided when specifically required for participation in a training program or for placement in a specialized job area as determined by the department.

b. Room, board, and utilities. The maximum rate paid for room, board, and utilities shall be established annually by the ~~board~~ department.

~~e.~~ (1) Training cases. The maximum amount of ~~department~~ departmental financial assistance for room and board at a training institution (college, vocational school, rehabilitation center facility), when the institution is able to provide room and board, shall not exceed the published room and board rates charged by the institution, or the actual cost, whichever is less.

~~f.~~ (2) While living at home. Maintenance shall be provided for an individual living at home only when the individual's income supports the family unit of the individual, when it is more cost effective for the department, or when it is in the best interest of the individual's vocational rehabilitation program based on mutual agreement of the rehabilitation counselor and the individual.

7. Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the

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definition of that term in 22VAC30-20-10. Transportation may include relocation and moving expenses necessary for achieving a vocational rehabilitation objective.

a. Transportation costs. The department shall pay the most economical rate for accessible public transportation.

When public transportation is not available, or the individual, because of disability, cannot travel by public transportation, transportation may be provided at a rate ~~not to exceed \$0.12 a mile established by the department.~~

b. For and during training services. When the individual must live at the training location, the department may only pay for a one-way trip from the residence to the training location at the beginning of the training; and a one-way trip from the training location to the residence or job site at the conclusion of the training program. Transportation may be paid to and from the residence in case of emergency (severe illness; or death in family; acute business emergency or prolonged school closing such as Christmas holidays). Local bus fare also may be ~~furnished~~ also provided. When the individual's physical condition is such that travel by public conveyance is impossible, taxi fare may be allowed from place of residence to training site and return. When the individual lives at home and the training site requires daily transportation, the cost of such transportation may be paid.

8. Vocational rehabilitation services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome. Services to family members of the individual may be provided when such services may be expected to contribute substantially to the determination of vocational rehabilitation potential or to the rehabilitation of the individual. In order for the department to furnish these services, they shall not be available from any other source.

a. Family member is defined in 22VAC30-20-10.

b. Day care services for dependent children. The department may pay up to the amount paid per child, per day, by the local social services department in the locality in which the child is located. When more than one child is involved, rates for the additional children ~~should~~ may be lower. When satisfactory accommodations can be secured at a rate lower than that paid by the local social services department, the lower rate shall be paid by the department.

9. Interpreter services, including sign language and oral interpreter services; for individuals who are deaf or hard of hearing ~~and~~; tactile interpreting services for individuals who are deaf-blind; and reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.

a. Upon request of the individual or as needed, these services may be provided at any stage during the

rehabilitation process. Interpreting may be primarily in the form of sign language (manual method) or oral interpretation (oral method).

b. The department shall pay for interpreting services when these services contribute to the individual's vocational rehabilitation program.

c. The interpreter ~~must be, whenever possible, certified by the National Registry of the Deaf, Virginia Registry of the Deaf, or approved by the Virginia Department for the Deaf and Hard of Hearing~~ shall hold at least one of the credentials approved by the Virginia Department for the Deaf and Hard-of-Hearing pursuant to § 51.5-113 of the Code of Virginia.

d. When individuals with deafness are in a training program, the department shall arrange for note taking or reader services, unless the individual indicates such service is not needed or desired.

10. Rehabilitation technology, in accordance with the definition of that term in 22VAC30-20-10, including vehicular modification, telecommunications, sensory, and other technological aids and devices.

a. Telecommunications system. Services related to use of a telecommunications system shall meet established federal or state health and safety standards and be consistent with written state policies.

b. Sensory and other technological aids and devices. The department may provide electronic or mechanical pieces of equipment or hardware intended to improve or substitute for one or more of the human senses, or for impaired mobility, or motor coordination.

Services related to use of sensory and other technological aids and devices shall meet established federal or state health and safety standards and be consistent with state law and regulations.

(1) An otological evaluation may be required, and an audiological examination ~~is~~ shall be required before the department may purchase a hearing aid.

(2) The department shall purchase hearing aids only for those individuals identified as benefiting in terms of employability as a direct result of such aid.

~~(3) Cross and bicross aids may be purchased only when it is justifiable on the basis of the vocational objective.~~

~~(4) Eyeglasses and hearing aids may be purchased only when they are equal in performance in terms of volume and speech discrimination and if the cost is not higher than that of a comparable body aid or a behind the ear aid.~~

11. Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who

are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

12. Job search and placement assistance and job retention services, follow-up services, and follow-along services. Placement shall be in accordance with the mutually agreed upon vocational objective and is the responsibility of both the individual and the department, particularly the rehabilitation counselor.

13. Post-employment services, in accordance with the definition of that term in 22VAC30-20-10.

a. Selection criteria. ~~Any rehabilitated~~ All individuals whose vocational rehabilitation cases have been closed as achieving an employment outcome may be considered for post-employment services. The department may evaluate with each individual the need for such services.

b. All of the following criteria shall be met for ~~the selection of individuals~~ an individual to receive post-employment services:

- (1) The individual ~~has~~ shall have been determined to be ~~rehabilitated~~ have achieved an employment outcome;
- (2) The disabling medical condition shall be stable or slowly progressive;
- (3) Post-employment services ~~are~~ shall be necessary to assist the individual in maintaining employment; and
- (4) ~~Solution of the problem~~ The problem interfering with the individual maintaining employment does not require a complex or comprehensive rehabilitation effort, ~~i.e. that is,~~ a new and distinct handicapping disabling condition has not occurred which should be handled as a new case that requires a new application.

If needed services exceed any of the ~~mentioned~~ conditions in subdivisions 13 b (1) through 13 b (4) of this section, the department may take a new application.

14. Supported employment services, ~~in accordance with the definition of that term as defined in 22VAC30-20-10, to any individual with a most significant disability who:~~

a. An individual with a most significant disability shall be eligible for supported employment services if he meets all of the following criteria:

- ~~a.~~ (1) Has not worked, or has worked only intermittently, in competitive employment;
- ~~b.~~ (2) Has been determined on the basis of any evaluation of rehabilitation and career needs, including a consideration of whether supported employment is a possible vocational outcome, to meet the eligibility criteria ~~for the State Vocational Rehabilitation Services Program as established in federal regulations. 22VAC30-20-40; and~~
- ~~c.~~ (3) Has a need for ongoing support services in order to perform competitive work.

b. The following activities ~~are~~ shall be authorized under ~~this~~ the supported employment program:

~~a.~~ (1) Evaluation of rehabilitation and career needs of individuals with the most ~~severe~~ significant disabilities in terms of a supported employment outcome;

~~b.~~ (2) Development of and placement in jobs for individuals with the most ~~severe~~ significant disabilities; and

~~c.~~ (3) Provision of time-limited services needed to support individuals with the most ~~severe~~ significant disabilities in employment, including:

(1) (a) Intensive on-the-job skills training provided by skilled job trainers, coworkers, and other qualified individuals;

(2) (b) Ongoing support services needed to support and maintain an individual's supported employment placement. ~~These must that shall~~ include, at a minimum, twice monthly monitoring to assess the individual's employment stability. ~~Monitoring activities generally take place at the work site unless the individualized plan for employment provides for off site monitoring. If off site monitoring is determined to be appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month.~~

(3) ~~Follow up~~ (c) Extended services designed to reinforce and stabilize the job placement; and

(4) (d) Discrete post-employment services unavailable from the extended services provider that are necessary to maintain the job placement, including but not limited to job station redesign, repair and maintenance of assistive technology, and replacement of prosthetic and orthotic devices.

~~c.~~ c. Transitional employment services for individuals with chronic mental illness may be provided under the ~~State Supported Employment Program~~ supported employment program. Transitional employment means a series of temporary job placements in competitive work in an integrated work setting with ongoing support services. Ongoing support services ~~must~~ shall include continuing sequential job placements until job permanency is achieved.

~~e.~~ d. The ~~agency~~ department shall provide for the transition of an individual with the most ~~severe~~ significant disabilities to extended services no later than 18 months after placement in supported employment, unless a longer period to achieve job stabilization has been established in the individualized plan for employment; before an individual with a most significant disability makes the transition to extended services as defined in 22VAC30-20-10.

15. Occupational licenses, tools, equipment, initial stocks (including livestock), and supplies.

Regulations

a. Licenses. Licenses required for entrance into selected vocations may be provided. These may be occupational or business licenses as required by the local governing body, state board examinations required by the Department of Professional and Occupational Regulation, and motor vehicle operator's license.

b. Tools and equipment. Tools and equipment shall be provided for an individual when:

(1) They are required for a job or occupation that is best suited to the utilization of ~~their~~ the individual's abilities and skills;

(2) The employer does not ordinarily furnish these articles; and

(3) They are for the exclusive use of the individual.

Such articles shall be for the individual's own use in the performance of his work and must remain in his possession and under his control as long as he engages in the job or occupation for which they are provided.

If the individual alleges that tools and equipment are stolen, the individual shall file a stolen property report with the local police.

Computer equipment and software shall be provided ~~either~~ if required as indicated in ~~subdivision~~ subdivisions 15 b (1), 15 b (2), and 15 b (3) of this ~~subsection~~ section. ~~The department's financial participation in the cost of such equipment and software shall not exceed \$3,500.~~

c. Title retention and release. The department shall comply with state ~~law~~ laws and regulations on the retention of title and release of title of equipment to individuals.

d. Repossession of tools and equipment. The department shall repossess all occupational tools and equipment to which the department retains title when they are no longer being used for the purposes intended by the individual for whom they were purchased.

16. Transition services, in accordance with the definition of that term in 22VAC30-20-10.

17. Personal assistance services, in accordance with the definition of that term in 22VAC30-20-10.

18. Other goods and services determined necessary for the individual with a disability to achieve an employment outcome. These include, but are not limited to, such services as: peer counseling, independent living skills training, attendant care, and attendant training ~~if they can reasonably be expected to benefit an individual in terms of employability.~~

~~The department's financial participation in the cost of certain goods and services shall be limited as follows: home modifications, \$7,500; and vehicle modifications, \$7,500. The department shall not purchase or participate in the purchase of automotive vehicles.~~

19. Services to groups. The department may provide vocational rehabilitation services to groups of individuals with disabilities when the services may contribute substantially to the needs of the group; ~~although they the~~ services are not related directly to the individualized employment plan of any one person with a disability.

22VAC30-20-130. Individuals determined to have achieved an employment outcome.

An individual is determined to have achieved an employment outcome only if all of the following requirements ~~have been~~ are met:

1. The ~~provisions~~ provision of services under the individual's individualized plan for employment has contributed to the achievement of an employment outcome;

2. The employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

3. The employment outcome is in an integrated setting;

4. The individual has maintained the employment outcome for a period of at least 90 days; and

5. At the end of the ~~appropriate~~ applicable period under this section, the individual and the rehabilitation counselor or coordinator consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

22VAC30-20-140. Authorization of services.

Written authorization for services shall be made, either before or at the same time as the purchase of services. When an oral authorization is given in an emergency situation, there shall be prompt documentation and the authorization shall be confirmed in writing and forwarded to the provider of the services.

22VAC30-20-150. Written standards for facilities and providers of services.

The ~~designated state unit~~ department shall establish, maintain, make available to the public, and implement written minimum standards for the various types of facilities and providers of services used by the ~~state unit~~ department in providing vocational rehabilitation services, in accordance with the following requirements:

1. Accessibility of facilities. Any facility in which vocational rehabilitation services are provided must be accessible to individuals receiving services and must comply with the requirements of the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, and § 504 of the ~~Rehabilitation Act of 1973 Act~~, as amended, and regulations implementing these laws. (~~34 CFR 361.51~~)

2. Personnel standards.

a. Qualified personnel. Providers of vocational rehabilitation services shall use qualified personnel, in

accordance with any applicable national or state approved or recognized certification, licensing, or registration requirements or, in the absence of these requirements, other comparable requirements (including state personnel requirements) that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services.

b. Affirmative action. Providers of vocational rehabilitation services shall take affirmative action to employ and advance in employment qualified individuals with disabilities.

c. Special communication needs personnel. Providers of vocational rehabilitation services shall include among their personnel, or obtain the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability; and ensure that appropriate modes of communication for all applicants and eligible individuals are used.

3. Fraud, waste, and abuse. Providers of vocational rehabilitation services shall have adequate and appropriate policies and procedures to prevent fraud, waste, and abuse.

22VAC30-20-160. Participation of individuals in the cost of services based on financial need.

A. A financial ~~need~~ needs test is established because of the limited resources of the department.

B. A financial ~~need~~ needs test shall be utilized to determine the extent of participation by eligible individuals or individuals receiving services during an extended evaluation in the cost of vocational rehabilitation services.

1. The ~~state unit~~ department shall maintain written policies covering the determination of financial need.

2. The state plan must specify the types of vocational rehabilitation services for which the ~~unit~~ department has established a financial needs test. No financial needs test shall be applied and no financial participation shall be required as a condition for furnishing the following vocational rehabilitation services: assessment for determining eligibility and priority for services, except those nonassessment services that are provided during an extended evaluation for an individual with a significant disability; assessment for determining vocational rehabilitation needs; counseling, guidance, and referral services; interpreter and reader services; personal assistance services; placement services; on-the-job training; and unpaid work experience. Also excluded from financial participation shall be services necessary to assist in the diagnostic and evaluation process, such as transportation, maintenance, and interpreter service for the deaf. Services ~~which that~~ which require an ~~economic need~~ financial needs test are: physical and mental restoration; training other than on-the-job training (~~OJT~~); maintenance; transportation; services to family members;

telecommunications; recruitment and training services; post-employment; occupational licenses and other goods and services.

3. The policies ~~must~~ shall be applied uniformly to all individuals in similar circumstances; the policies may require different levels of need for different geographic regions in the state, but ~~must~~ shall be applied uniformly to all individuals within each geographic region; and the policies ~~must~~ shall ensure that the level of an individual's participation in the cost of vocational rehabilitation services is reasonable based on the individual's financial need, including consideration of any disability-related expenses paid by the individual, and not so high as to effectively deny the individual a necessary service.

C. Groups exempt from a financial needs test are:

1. Recipients of General Relief;
2. Recipients of Temporary Assistance for Needy Families (TANF) by the individual or family on which the individual is dependent; and
3. Individuals determined eligible for Social Security benefits under Titles II or XVI of the Social Security Act.

D. Income and resources of the family are to be used when the client is a part of the family unit. ~~The client is a part of the parent or legal guardian family unit upon occurrence of either: 1. Dependency of support evidenced on the last federal income tax return of the parent or legal guardian regardless of residency; or 2. When temporarily absent from the home due to illness, school, vacation, or military leave. The family unit is every person listed on the client's most recent federal income tax return.~~

E. The financial ~~need~~ needs test shall consider the following income:

1. Annual taxable income (gross income).
2. Annual nontaxable income such as social security benefits, retirement benefits, workers' compensation, and veterans' benefits.
3. Total cash assets, including checking and savings accounts, certificates, stocks, and bonds.

F. The financial need test shall provide for the following allowances and exclusions:

1. The gross income shall be adjusted ~~by the~~ for annual taxes, health insurance, and retirement savings by the applicable percentage indicated in the table below:

Gross Income	Allowance
Under \$10,000	15%
\$10,000 to \$14,999	20%
\$15,000 to \$24,999	25%
\$25,000 to \$34,999	30%
Over \$34,999	35%

Regulations

2. Income shall be excluded from consideration based upon family size using the table below:

Size of Family	Income Exclusion
1	\$10,608
2	\$13,143
3	\$15,678
4	\$18,213
5	\$20,748
6	\$23,283
7	\$25,818
8	\$28,353

~~For each additional dependent, add \$2,535. The table above is based upon the federal law income for a family of four. It shall be updated annually by the department federal poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 USC § 9902(2). The department shall use the federal poverty level for a family of four to determine the income exclusion for a family of one. The family income exclusion shall be increased by the amount established in the annual federal poverty guidelines for each additional dependent.~~

3. Excluded from income shall be estimated ~~client~~ cost specifically related to the ~~client's disability and disabilities of family unit members~~ not covered by comparable services and benefits.

4. Excluded from cash assets is \$5,000.

5. Individual retirement accounts shall be excluded from income considerations.

G. Determination of the annual client financial contribution results from an examination of: (i) the number of persons in the family unit; (ii) annual taxable income minus allowances; (iii) annual nontaxable income; (iv) cash assets minus exclusions; and (v) exceptional exclusions based on client cost specifically related to client's disability.

The financial resources to be considered shall be tabulated using the method noted ~~herein in this section~~. The positive balance (resources exceeding exclusions) shall be determined to be available for participation in the rehabilitation program.

22VAC30-20-170. Availability of comparable services and benefits.

A. Prior to providing any vocational rehabilitation services to an eligible individual or to members of the individual's family, except those services listed in subsection D of this section, the ~~state unit~~ department shall determine whether comparable services and benefits as defined in 22VAC30-20-10 exist under any other program and whether those services and benefits are available to the individual.

B. If comparable services or benefits exist under any other program and are available to the eligible individual at the time needed to achieve the rehabilitation objectives in the individual's individualized plan for employment, the ~~state unit~~ department shall use those comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation services.

C. If comparable services or benefits exist under any other program but are not available to the individual at the time needed to ~~achieve~~ ensure the ~~rehabilitation objectives~~ progress of the individual toward achieving the employment ~~outcome~~ in the individual's individualized plan for employment, the ~~state unit~~ department shall provide vocational rehabilitation services until those comparable services and benefits become available.

D. The following services ~~are~~ shall be exempt from a determination of the availability of comparable services and benefits under subsection A of this section: assessment for determining eligibility and priority for services; assessment for determining vocational rehabilitation needs; vocational rehabilitation counseling, guidance, and referral services; job-related services, including job search and placement services; job retention services; follow-up services; rehabilitation technology; and post-employment services consisting of those services listed in this subsection.

E. The requirements of subsection A of this section also ~~do~~ shall not apply if the determination of the availability of comparable services and benefits under any other program would delay the provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk based on medical evidence provided by an appropriate qualified medical professional; or an immediate job placement would be lost due to a delay in the provision of comparable services and benefits.

22VAC30-20-181. Review of ~~rehabilitation counselor or coordinator~~ determinations made by the department.

~~A. The designated state unit must establish and implement procedures, including standards of review under subsection D of this section, established by the Commissioner of the Department for Aging and Rehabilitative Services to ensure that any An applicant, or eligible individual, or, if appropriate, individual's representative who is dissatisfied with any determinations determination made by a rehabilitation counselor or coordinator concerning the furnishing or denial of department personnel that affects the provision of vocational rehabilitation services may request, or, if appropriate, may request through the individual's representative, a timely review of those determinations the determination. The procedures established by the Commissioner of the Department for Aging and Rehabilitative Services must be in accordance with this section.~~

B. Informal dispute resolution. The Department for Aging and Rehabilitative Services may establish an informal process

to resolve a request for review without conducting mediation or a formal hearing. However, the

1. A request for review shall be made within 60 days after the determination. The applicant, eligible individual, or, if appropriate, the individual's representative may request a meeting with the supervisor of the staff member who made the determination and request an informal administrative review conducted by the supervisor.

2. Within 10 working days of the request, the supervisor shall send a written decision and grounds to the applicant or eligible individual, with a copy to the individual's representative, if applicable, and it shall become part of the case record.

3. The informal dispute resolution process must shall not be used to deny or delay the right of an applicant or eligible individual to proceed directly to a hearing under subsection D of this section or mediation under subsection C of this section. The informal resolution or the mediation process or both must be conducted and concluded within the time period established under subdivision D 1 of this section for holding a formal hearing. If neither the informal resolution nor mediation is successful, a formal hearing must be conducted by the end of this same period, unless the parties agree to a specific extension of time.

C. Mediation.

1. The department shall establish mediation procedures that allow an applicant or eligible individual and the state unit to resolve disputes. The procedures shall provide that:

1. The mediation process is conducted by a qualified and impartial mediator as defined in 22VAC30-20-10 who must be selected from a list of qualified and impartial mediators maintained by the state;

2. Mediation be available, at a minimum, whenever an applicant, eligible individual or, as appropriate, the individual's representative requests an impartial due process hearing under this section;

3. Participation in the mediation process is voluntary on the part of the applicant or eligible individual, as appropriate, and on the part of the state unit;

4. The mediation process not be used to deny or delay the applicant or eligible individual's right to pursue resolution of the dispute through a formal hearing process in the time specified in subsection D of this section or any other rights provided under this part;

5. Either party or the mediator may elect to terminate mediation at any time and pursue resolution through a formal hearing if desired;

6. Mediation sessions are scheduled and conducted in a timely manner and held in a location and manner convenient to the parties in dispute;

7. Discussions that occur during mediation remain confidential and may not be used as evidence in any

subsequent due process hearing or civil proceeding and parties may be required to sign a confidentiality pledge prior to mediation;

8. Any agreement reached by the parties to the dispute will be described in a written mediation agreement that is developed by the parties with the assistance of the mediator, signed by both parties, with a copy given to both parties; and

9. The cost of the mediation process will be paid by the state, but the state is not required to pay for any costs related to the representation of an applicant or eligible individual.

a mediation process conducted by a qualified and impartial mediator as defined in 22VAC30-20-10, who shall be selected from a list of qualified and impartial mediators maintained by the department. Mediation shall be requested within 60 days after a determination or informal administrative review decision. The department shall include in the mediation process the guardian of an applicant or eligible individual who has been judged incompetent. Participation in the mediation process is voluntary on the part of the applicant or eligible individual and on the part of the department. Mediation may be requested while a hearing is pending but shall not be used to deny or delay the applicant or eligible individual's right to a hearing conducted and concluded within the time period established under subdivision D 1 of this section.

2. The mediator shall schedule and conduct the mediation sessions in a timely manner and in a location convenient to the parties in dispute. The mediator shall afford both parties an opportunity to be represented by counsel or other advocate and to submit evidence or other information. Discussions that occur during mediation remain confidential and shall not be used as evidence in any subsequent hearing or civil proceeding, and parties shall be required to sign a confidentiality pledge prior to mediation. Either party or the mediator may terminate mediation at any time, and the applicant, eligible individual, or the department may seek resolution through a hearing.

3. Any agreement reached by the parties in a mediation shall be described in a written mediation agreement. Both parties to the dispute shall have an opportunity to review the agreement with their representative, supervisor, or legal advisor before signing it. An agreement signed by both parties shall become part of the case record, with a copy given to the applicant or eligible individual and any representative.

4. The cost of the mediation process shall be paid by the department, but the department is not required to pay for any costs related to the representation of an applicant or eligible individual.

D. The department shall establish formal review procedures that provide that: Due process hearing.

Regulations

1. ~~A~~ The applicant, eligible individual, or, if appropriate, individual's representative may request a hearing within 60 days after the determination to be reviewed, meeting or informal administrative review decision under subsection B of this section, or mediation refusal or mediation termination date. Department personnel may request a hearing within 60 days after termination of the mediation process under subsection C of this section.

~~a. The hearing shall be scheduled and conducted by an a qualified and impartial hearing officer, as defined and selected in accordance with subsection E of this section, must be held according to subdivision 2 of this subsection.~~

~~b. The hearing officer shall conduct the hearing within 60 days of the department receiving an individual's request for review, unless informal resolution is achieved prior to before the 60th day, or the parties agree to a specific extension of time; 2. The department may not institute a suspension, reduction, or termination of services being provided under an individualized plan for employment pending a final determination of the formal hearing under this subdivision, informal resolution under subsection B of this section, or mediation under subsection C of this section unless the individual or, in an appropriate case, the individual's representative so requests or the agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative; 3. The individual or, if appropriate, the individual's representative must be afforded, or the hearing officer grants a postponement request for good cause that would result in a fair representation of the issues.~~

~~c. The hearing officer shall provide both parties to the dispute an opportunity to present additional evidence, information, and witnesses to the impartial hearing officer; to be represented by counsel or other appropriate advocate; and to examine all witnesses and other relevant sources of information, and evidence; 4. The impartial. All testimony shall be given under oath. Hearsay testimony and redundant evidence may be admitted at the discretion of the hearing officer. Because the hearing officer cannot issue subpoenas, the department shall be responsible for the appearance of current department personnel on the witness list of either party.~~

~~d. Within 30 days after the hearing, the hearing officer shall make issue a written decision with a full report of the findings and grounds for the decision to the applicant, eligible individual, individual's representative, and the department. The decision shall be based on the provisions of the approved state plan, the federal Rehabilitation Act of 1973 as amended (the Act), federal vocational rehabilitation regulations, and state~~

~~regulations and policies that are consistent with federal requirements and shall provide to the individual or, if appropriate, the individual's representative and to the commissioner a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing; 5. The hearing officer's decision is shall be final, except that a party may request an impartial administrative review under subdivision 6 of this subsection if the state has established procedures for review, and a party involved in a hearing may bring a civil action under subsection H G of this section;~~

~~6. The state may establish procedures to enable a party who is dissatisfied with the decision of the impartial hearing officer to seek an impartial administrative review of the decision consistent with 34 CFR 361.57;~~

~~7. Except for the time limitations established in subdivision 1 of this subsection, each state's review procedures may provide for reasonable time extensions for good cause shown at the request of a party or at the request of both parties.~~

~~E. Selection of impartial hearing officers.~~

~~2. The impartial hearing officer for a particular case must shall be selected (i) randomly by the department from among the pool of persons qualified to be an impartial hearing officer, as defined in 34 CFR 361.5(b)(22) and 29 USC § 722(b) and (d), who are identified jointly by the Department for Aging and Rehabilitative Services commissioner and those members of the State Rehabilitation Council designated in § 102(d)(2)(C) of the Act (29 USC § 722(b) and (d)) and (ii) on a random basis.~~

~~E. Administrative review of hearing officer decision.~~

~~1. If the state has established procedures for an administrative review, the request and statutory, regulatory, or policy grounds for the request shall be made in writing to the department within 20 days of the hearing decision date. The review shall be a paper review of the entire hearing record and shall be conducted by a designee of the governor's office who shall not delegate the review to any personnel of the department.~~

~~2. The reviewing official shall provide both parties an opportunity to submit additional written evidence and information relevant to the final decision concerning the matter under review. The reviewing official may not overturn or modify the hearing officer's decision, or any part of that decision, that supports the position of the applicant or eligible individual, unless the reviewing official concludes, based on clear and convincing evidence, that the hearing officer's decision is clearly erroneous on the basis of being contrary to the approved state plan, the Act, federal vocational rehabilitation regulations, and state regulations and policies that are consistent with federal requirements.~~

3. Within 30 days after the request, the reviewing official shall issue an independent decision and full report of the findings and the statutory, regulatory, or policy grounds for the decision to the applicant, eligible individual, individual's representative, and department. The decision of the reviewing official is final and shall be implemented pending review by the court if either party chooses under subsection G of this section to bring a civil action regarding the matter in dispute.

F. Informing affected individuals. The department shall inform, through appropriate modes of communication, all applicants and eligible individuals of: ~~1. Their right to review under this section~~ their right to request a review of a determination made by department personnel that affects provision of vocational rehabilitation services, including the names and addresses of individuals with whom ~~appeals mediation and hearing requests may be filed and how the mediator and hearing officer shall be selected; and~~ their right to proceed directly to a hearing; their right to an informal administrative review; their right to pursue mediation; and their right to contact the Client Assistance Program to assist during mediation and hearing processes. Notification shall be provided in writing at the time of application for vocational rehabilitation services; assignment to a priority category if the department is operating under an order of selection; individualized plan for employment development; and reduction, suspension, or termination of services.

~~2. The manner in which an impartial hearing officer will be selected consistent with the requirements of subsection E of this section.~~

G. Implementation of final decisions. If a party brings a civil action under subsection H of this section to challenge the final decision of a hearing officer under subsection D of this section or to challenge the final decision of a state reviewing official under subsection D of this section, the final decision of the hearing officer or state reviewing official must be implemented pending review by the court.

H. G. Civil action. Any party who disagrees with the findings or ~~decisions~~ decision of an impartial hearing officer under subdivision D 4 of this section if the state that has not established administrative review procedures under subdivision D 6 of this section, and any party who disagrees with the findings and decision under subdivision D 6 of this section, if the state has established an administrative review procedure, ~~has a subsection D of this section or an administrative review under subsection E of this section shall have the right to bring a civil action with respect to the matter in dispute. The action may be brought in any state court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. In any action brought under this section~~ subsection, the court receives the records related to the impartial due process hearing and the records related to the administrative review, if applicable; hears additional evidence

at the request of a party; and basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

22VAC30-20-200. Review of extended employment and other employment under special certificate provisions of the Fair Labor Standards Act.

A. For two years after ~~the~~ an individual's record of services is closed (and thereafter if requested by the individual or, if appropriate, the individual's representative), the ~~state-unit~~ department shall annually review and reevaluate the status of each individual determined by the ~~state-unit~~ department to have achieved an employment outcome in which the individual is compensated in accordance with § 14(c) of the Fair Labor Standards Act or whose record of services is closed while the individual is in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with 22VAC30-20-10 or ~~that~~ the individual made an informed choice to remain in extended employment. ~~This~~ The annual review ~~or~~ and reevaluation ~~must~~ shall include input from the individual or, ~~in an appropriate case if appropriate,~~ the individual's representative to determine the interests, priorities, and needs of the individual with respect to competitive employment.

B. The ~~state-unit~~ department shall make maximum effort, including the identification of vocational rehabilitation services, reasonable accommodations, and other support services, to enable the eligible individual to engage in competitive employment.

C. The ~~state-unit~~ department shall obtain the individual's signed acknowledgment of the individual, or, as appropriate, the individual's ~~representative's signed acknowledgement representative~~, that the annual review and reevaluations have been conducted.

V.A.R. Doc. No. R13-3609; Filed May 23, 2016, 3:02 p.m.



TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Final Regulation

Title of Regulation: **24VAC35-60. Ignition Interlock Program Regulations (amending 24VAC35-60-20, 24VAC35-60-40 through 24VAC35-60-110; adding 24VAC35-60-120, 24VAC35-60-130; repealing 24VAC35-60-10).**

Statutory Authority: §§ 18.2-270.1 and 18.2-270.2 of the Code of Virginia.

Effective Date: July 18, 2016.

Regulations

Agency Contact: Richard Foy, Field Services Specialist, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, FAX (804) 786-6286, or email rfoy@vasap.virginia.gov.

Summary:

The amendments (i) require all ignition interlocks to be equipped with cameras; (ii) require state directors and service technicians of all ignition interlock vendors to pass a written test regarding applicable state laws and regulations prior to being permitted to install ignition interlock devices; (iii) incorporate existing fees, with certain amendments, and establish new fees; (iv) allow the use of wet bath simulators in the calibration of ignition interlock devices; and (v) require sooner but less frequent rolling tests and increase the length of time for motorists to complete a rolling retest when prompted. A change since the proposed stage allows offenders an opportunity to be reimbursed for vehicle damages resulting from a malfunctioning ignition interlock device or improper technician workmanship.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

24VAC35-60-10. Purpose. (Repealed.)

~~The purpose of these regulations is to establish a set of standards for the Commonwealth of Virginia's ignition interlock program. Authority to issue these regulations is granted to the Executive Director of the Commission on Virginia Alcohol Safety Action Program (VASAP) or authorized designee by § 18.2-270.2 of the Code of Virginia.~~

24VAC35-60-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Alcohol" means ethyl alcohol, also called ethanol (C₂H₅OH).

"Applicant" means a service provider technician or state director who applies for a Virginia Ignition Interlock Certification Letter from the commission.

"ASAP" means a local alcohol safety action program.

"BAC" or "blood alcohol concentration" means the amount of alcohol in an offender's blood or breath, as determined by chemical analysis, ~~which shall be that~~ is measured by the number of grams of alcohol per 100 milliliters of blood, or 210 liters of breath.

"Breath test" means an analysis of the breath alcohol concentration of a deep lung breath sample.

"Calibration" means the process that ensures an accurate alcohol concentration reading is being obtained on the ignition interlock device.

"Commission" means the Commission on Virginia Alcohol Safety Action Program (~~VASAP~~) or its designee.

"Deep lung breath sample," also known as "alveolar breath sample," means an air sample that is the last portion of a prolonged, uninterrupted exhalation and that gives a quantitative measurement of alcohol concentration from which breath alcohol concentrations can be determined. "Alveolar" refers to the [~~aveoli~~ alveoli], ~~which that~~ are the smallest air passages in the lungs, surrounded by capillary blood vessels and through which an interchange of gases occurs during respiration.

"Device" means a breath alcohol ignition interlock device.

"Device certification" means the testing and approval process required by the Commission on Virginia Alcohol Safety Action Program (~~VASAP~~).

"DMV" means the Virginia Department of Motor Vehicles.

"Executive Finance Committee" means the advisory subcommittee of the commission composed of the Executive Director of the Commission on Virginia Alcohol Safety [Action] Program, two commission members, and such other person as the commission designates.

"Fail point" means the ~~point level~~ at which the breath alcohol level of 0.02% is met concentration, as established in § 18.2-270.1 of the Code of Virginia, is sufficient to prevent a motor vehicle equipped with an ignition interlock device from starting.

"Free restart" means the ability to start the engine again within a ~~preset~~ two-minute period of time without completion of another breath test; when the condition exists where a breath test is successfully completed and the motor vehicle is started, but then the engine stops for any reason [~~(including stalling)~~].

"Ignition interlock system" means a device that (i) connects a motor vehicle ignition system to an analyzer that measures an offender's blood alcohol concentration; (ii) prevents a motor vehicle ignition from starting if the offender's blood alcohol concentration ~~is at or above~~ reaches the fail point; and (iii) is equipped with the ability to perform a rolling retest and to electronically log the blood alcohol concentration during [~~ignition ignitions~~], attempted [~~ignition ignitions~~], and rolling [~~retest retests~~].

"Interlock event" means vehicle operator activity that is recorded by the ignition interlock to include, but not be limited to, vehicle starts and attempted starts, rolling retests, breath tests, lockouts, ignition shutoffs, power outages, and interlock tampering.

~~"Licensing" means the process of determining that a service center meets the requirements set by the Commission on VASAP.~~

"Lockout" means the ability of the ignition interlock device to prevent a motor vehicle's engine from starting.

"Manufacturer" means the actual maker of the ignition interlock device ~~who~~ that assembles the product and distributes it to service providers.

"Motor vehicle" means ~~every a motor vehicle as defined in §§ 18.2-266 and 46.2-100 of the Code of Virginia, that is self-propelled, or designed for self propulsion, to exclude bicycles, electric power assisted mobility devices, electric powered assisted bicycles, and mopeds.~~

"Offender" means the individual required by the court or the Department of Motor Vehicles to drive only motor vehicles that have certified ignition interlock devices installed.

"Permanent lockout" means a feature of the ignition interlock device ~~in which~~ that prevents a motor vehicle ~~will not start from starting~~ until the ignition interlock device is reset by a service provider.

"Retest" means an additional opportunity to provide a deep lung breath sample below the alcohol fail point.

"Rolling retest" means a test of the offender's blood alcohol concentration required at random intervals during operation of the motor vehicle, ~~which~~ that triggers the sounding of the horn and flashing of lights if (i) the test indicates that the offender has a blood alcohol concentration that ~~is at or above~~ reaches the fail point or (ii) the offender fails to take the test.

"Service center" means the physical location where the service provider installs, calibrates, and removes the ignition interlock device on the offender's vehicle.

"Service provider" means an authorized supplier and installer of the approved ignition interlock devices. In some cases, the service provider may also be a manufacturer of an ignition interlock device.

"State director" means a service provider employee who provides oversight of the service provider's ignition interlock operations in the Commonwealth of Virginia.

"Tampering" means an unlawful act or attempt to disable or circumvent the legal operation of the ignition interlock device to include providing samples other than the natural breath of the offender, starting the motor vehicle ~~[without using the ignition switch, via unconventional means] any other [an act intended to start the motor vehicle]~~ without first taking and passing a breath test, or physically tampering with the device to disable or otherwise disconnect the device from its power source.

"Technician" means a service provider employee who installs, calibrates, or removes interlock devices in the Commonwealth of Virginia.

"Temporary lockout" means a feature of the ignition interlock device that will not allow the motor vehicle to start for a preset time period after a breath test result indicates a BAC ~~at or above~~ that reaches the fail point.

"Vendor certification" means the process of determining that a vendor has been approved to provide ignition interlock services in the Commonwealth of Virginia.

"Violation" means an event, such as a breath test indicating a BAC ~~at or above~~ reaching the fail point upon initial startup; a refusal to provide a rolling retest deep lung breath sample; a rolling retest with a BAC ~~at or above~~ reaching the fail point; ~~altering, concealing, hiding, or attempting to hide one's identity from the ignition interlock system's camera while providing a breath sample; or tampering, which tampering,~~ that breaches the guidelines for use of the interlock device.

"Violation reset" means a feature of the ignition interlock device ~~in which~~ that activates a service reminder ~~is activated~~ due to a violation or failure to report for calibration within [35 30] days of the installation or previous calibration.

"Virginia Ignition Interlock Certification Exam" means an exam administered by the commission to service provider state directors and technicians that must be successfully completed and submitted as a component of an application for a "Virginia Ignition Interlock Certification Letter."

"Virginia Ignition Interlock Certification Letter" means a letter issued by the commission to a service provider technician or state director authorizing the technician or state director to perform ignition interlock services in the Commonwealth of Virginia.

24VAC35-60-40. Approval of manufacturers and service providers.

A. The commission shall issue a request ~~[for proposals] (RFPs) [(RFP)]~~ in compliance with the state Commonwealth of Virginia procurement procedures to contract with ignition interlock service providers for the services and commodities required for the implementation and maintenance of the Commonwealth's ignition interlock program. Contracts will be for ~~three years with an optional two year renewal~~ a length of time established by the commission.

B. Integrity of the ~~[Ignition Interlock Program ignition interlock program]~~ shall be upheld by restricting the delivery of interlock ~~client~~ service to the actual provider of the product (~~[i.e.,]~~ authorized service provider), thereby effectively preventing the extension of subcontracts to other persons or businesses ~~[who that]~~ lack long-term investment, long-term experience, or in-depth knowledge of product and service, potentially resulting in a higher likelihood of neglect of duty or illegal exchange of funds. Denial of subcontracting of the interlock service to the consumer is an integral part of protecting [offender confidentiality and] the chain of evidence for court testimony and evidentiary procedures.

C. ~~Each~~ A service provider seeking to contract with the commission shall submit:

1. ~~Evidence of a strong background~~ Submit evidence demonstrating successful experience in the development and maintenance of a statewide an ignition interlock service program ~~and evidence of operational programs in Virginia, other states, or other countries.~~ The service provider ~~must shall~~ be dedicated to the installation and maintenance of ignition interlock devices ~~and must supply.~~

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~~2. Supply and train staff and service center supervisors to assure ensure good customer service and compliance with all contract requirements. Personnel hired to install, calibrate, or inspect ignition interlock devices may not have ever been convicted of any felony or a crime substantially related to the qualifications, functions, and duties associated with the installation and inspection of the devices; or within a five year period prior to hiring, been convicted of a misdemeanor potentially punishable by confinement.~~

~~a. Personnel seeking to perform ignition interlock services or administrative duties in the Commonwealth of Virginia shall not necessarily be barred from employment due to a criminal record; however, a criminal record may be considered in conjunction with other information to determine the overall suitability of applicants for employment.~~

~~b. The authorized service provider must be able to ensure that technicians are trained and available to testify in court if required for noncompliance hearings. shall provide [, upon request of the commission or the court via a properly served subpoena.] expert or other required testimony in any civil, criminal, or administrative proceedings as to the method of manufacturing the device, ignition interlock functionality, and the testing protocol by which the device is calibrated and serviced.~~

~~c. The service provider shall provide a completed application for state certification to the commission to perform ignition interlock services for all technicians and state directors seeking to work in the Commonwealth of Virginia. The application shall be submitted at least 10 days prior to the employee performing any ignition interlock services in the Commonwealth of Virginia [with the exception of newly hired employees in training who shall be permitted to perform services while under the direct supervision of a certified technician for a period of 90 days prior to applying for state certification].~~

~~d. The service provider shall identify all key personnel who will be providing ignition interlock services for the Commonwealth of Virginia [with a means of identifying these personnel] and furnish the commission with credentials on these personnel.~~

~~e. The service provider shall notify the commission at least five business days in advance of a reduction in staffing levels of key personnel at the local or district offices [serving in] the Commonwealth of Virginia.~~

~~f. The service provider shall ensure that technicians and the state director are trained and available to testify in court if required by a court or Commonwealth's Attorney or upon a 10-business-day notice by the ASAP in that court's jurisdiction, regardless of whether a subpoena is issued.~~

~~2.—A 3. Submit a description of the service provider's present or planned provisions plan to be approved by the commission, for distribution of the device in all locations of the Commonwealth of Virginia including all locations in the state where the device may be installed, serviced, repaired, calibrated, inspected, and monitored ignition interlock services will be performed. Each facility At least one physical ignition interlock service facility shall be located within a 50 mile radius of every residence in the Commonwealth of Virginia unless otherwise authorized by the commission. [Ignition interlock service providers shall provide the commission with a list of all service center days and hours of operation and provide an updated list within 24 hours of any changes.] Interlock service facilities shall be approved inspected and certified by the Commission on VASAP commission prior to its use and meet the following criteria: the initial provision of services to offenders. Each interlock service facility shall be inspected and certified at least annually thereafter. Interlock service providers shall:~~

~~a. Must pay an annual review fee to the Commission on VASAP.~~

~~b. Must comply a. Comply with all local business license and zoning regulations, and with all federal, state, and local health, fire, and building code requirements. Prior to the jurisdictional compliance deadline, a copy of a valid business license or business license payment receipt shall be forwarded to the commission. The official valid business license and tax document are required to be posted in a conspicuous place at the service facility immediately upon receipt when applicable;~~

~~e. Must comply b. Comply with all local, state, and federal laws pertaining to the provision of physical access to persons with disabilities-;~~

~~d. Must maintain c. Maintain offender records in a manner that complies with federal confidentiality guidelines. All offender files, payment receipts, and other identifying information shall be located in locked filing cabinets in one centralized location in the Richmond, Virginia area. Electronic storage of client files shall be [permissible if approved by the commission and, if approved, shall be] encrypted and secured to prevent third party access;~~

~~d. Require and enforce maintenance of a drug-free workplace and have posted in a conspicuous place, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the service provider's workplace. The notice shall specify the actions that will be taken against employees for violations of the policy;~~

~~e. Replace an ignition interlock service facility within [30 90] days whenever the closing of an interlock~~

service facility results in noncompliance with the requirement to possess a facility within a 50-mile radius of every residence in the Commonwealth of Virginia. The service provider is also required to notify offenders of the closure date and the address of [~~the new an alternate~~] interlock service facility within 15 days of the closure date;

f. Ensure that technicians maintain a professional appearance and are attired in such a manner as to be readily identifiable as service provider employees;

g. Ensure that interlock service facilities are tidy and pose no hazards to public safety; and

h. Provide the commission a minimum of 20 days notice prior to the scheduled opening date of a new location. This requirement allows the commission reasonable time to schedule an inspection of the new facility prior to opening services to ASAP offenders.

~~In addition, all services must be available statewide within a 50 mile drive to the home location of all residents of the Commonwealth.~~

~~3. Documentation of insurance covering product liability~~ 4. Submit sufficient documentation to enable the verification of adequate insurance covering liability related to ignition interlock operations, services, and equipment, including coverage in Virginia, with a minimum policy limit of \$1 million per occurrence, and \$3 million general aggregate total. The service provider's liability insurance shall be considered primary above all other available insurance and shall so stipulate in the "other insurance" or other applicable section of the service provider's insurance contract. The service provider shall provide a signed statement from the manufacturer holding harmless the Commonwealth of Virginia, and the commission, and its members, employees, and agents from all claims, demands, and actions, as a result of damage or injury to persons or property that may arise, directly or indirectly, out of any an act or omission by the manufacturer or their its service provider relating to the installation, service, repair, use, and/or or removal of an ignition interlock device. Coverage shall extend to any action taken or not taken by ASAPs or the commission due to verified errors in reporting of interlock activity by the service provider;

~~4. Documentation~~ 5. Submit documentation that the service provider will provide a full-time state ignition interlock coordinator director who will work exclusively with the Virginia interlock program and reside in the Richmond, Virginia area program. Among other duties, the coordinator state ignition interlock director will be expected to (i) respond promptly to any problems in the field; (ii) upon request of the commission testify in court upon request, and before applicable courts, the General Assembly of Virginia, or the commission; (iii) assist and provide training to VASAP staff the commission, ASAP staffs, local and statewide, and other stakeholders as

requested by the commission; and (iv) be responsible for quality control reports and statistics, updates to all required documentation, and field services reporting and repairs. In the event of a state director vacancy, service providers shall submit to the commission the name of an interim state director within 10 days of the vacancy and the name of a permanent state director within [~~60~~ 90] days of the vacancy;

6. Not discriminate against an employee or applicant for employment due to race, religion, color, sex, national origin, age, disability, or other basis prohibited by state or federal law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the service provider. The service provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Furthermore, the service provider in all solicitations or advertisements for employees placed by or on behalf of the service provider shall state that the contractor is an equal opportunity employer. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this subdivision;

7. Not knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986 (Pub. L. No. 99-603; 100 Stat. 3359) during the performance of the contract for goods and services; and

8. Notify the commission in writing within 15 days of a disciplinary action taken by a state or other political entity in which the service provider conducts or has conducted ignition interlock business. This notification shall include the reason for the disciplinary action and other information as the commission may reasonably request. This requirement applies regardless of the existence of an appeal.

D. Provided that all vendor and device certification requirements are met, the commission shall may contract with those manufacturers or service providers, and may approve multiple makes and models of ignition interlock devices for use in the Commonwealth of Virginia.

24VAC35-60-50. Fees.

A. All potential service providers desiring to conduct business in the Commonwealth of Virginia's ignition interlock program shall submit a \$250 nonrefundable application fee to the commission.

B. The Commission on VASAP will establish by contract the following additional fees to shall be paid by the service provider- to the commission:

1. Annual A \$250 annual contract review fee to the Commission on VASAP;

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~~2. Annual~~ A \$75 annual review fee for each ignition interlock service center to the Commission on VASAP;

3. A \$250 retest fee each and every time a service provider employee is required to take a second or subsequent Virginia Ignition Interlock Certification Exam due to an unsuccessful attempt on the first exam; and

~~3. Monthly~~ 4. A \$10 monthly ignition interlock administrative fee to the Commission on VASAP for each offender with an ignition interlock installed until the device is removed for each offender. The fee shall be accompanied by an associated offender list, categorized by ASAP, supporting the payment amounts. The ASAP offender list and payment shall be submitted no later than the 10th day of the month following the month when the ignition interlock services were provided.

~~4. Monthly~~ C. A \$10 monthly ignition interlock administrative fee shall be paid by the service provider directly to the local servicing ASAP for each offender with an ignition interlock device installed until the device is removed offender. The fee shall be accompanied by an associated offender list, categorized by ASAP, supporting the payment amounts. The ASAP offender list and payment shall be submitted no later than the 10th day of the month following the month when the applicable ignition interlock services were provided.

D. Service providers may charge offenders for ignition interlock services at rates up to, but not to exceed, the following:

1. \$65 for a standard ignition interlock installation;

2. \$130 for the installation of an ignition interlock on a hybrid motor vehicle [~~or a~~] motor vehicle with a push button starter [, or other vehicle requiring more than four hours of installation labor time when approved by the commission];

3. \$75 for a change of vehicle ignition interlock installation;

4. \$0 for an ignition interlock removal;

5. [~~\$80~~ \$95] plus applicable taxes for monthly ignition interlock calibrations or monitoring, inclusive of the monthly administrative fees to be paid to the commission and servicing ASAP;

6. \$8.00 per month for optional insurance to cover theft [~~loss~~] or [accidental] damage to the ignition interlock and its components;

7. An amount of 10% over the actual replacement cost of the ignition interlock and its components when theft [~~loss~~] or [accidental] damage occurs and the offender has not purchased the optional insurance;

8. \$50 plus mileage calculated at the Commonwealth of Virginia mileage rate in effect at the time, not to exceed 100 miles, for service calls;

9. \$50 for violation resets, when the violation is determined to be due to the fault of the offender;

10. \$35 for missed appointments;

11. An amount permitted by the Code of Virginia at the time for returned checks;

12. \$50 for provision of a permanent lockout code, when the lockout is determined to be due to the fault of the offender; and

13. \$50 per hour, not to exceed four total hours, for repairs and reinstallation of the ignition interlock when the commission determines that the offender illegally tampered with the device.

E. In the event of changes to the Code of Virginia [or the Ignition Interlock Program Regulations (24VAC35-60)] mandating enhanced technological capabilities of ignition interlock devices used in the Commonwealth, the commission may increase offender installation and calibration fees up to a maximum of 25%.

~~E.~~ F. All service providers shall create and maintain an indigency fund for offenders who are eligible for a reduction in fees based upon a declaration of indigency by the court and approval by the commission. Service providers shall not deny service to any offender for whom there has been a declaration of indigency and approval by the commission.

24VAC35-60-60. Cancellation, suspension, and Suspension or revocation of manufacturers, service providers, and ignition interlock devices ignition interlock device or service facility certification.

A. The commission may indefinitely ~~cancel~~, suspend, or revoke certification of an ignition interlock device ~~and/or its manufacturer and service provider~~ or ignition interlock service facility, and the [~~executive finance committee~~ Executive Finance Committee], for a period not to exceed 30 days, may suspend or revoke certification of an ignition interlock device or ignition interlock service facility for the following reasons:

1. When there is a voluntary request by a manufacturer to cancel certification of a device;

2. When a device is discontinued by the manufacturer;

3. When the manufacturer's liability insurance is terminated or cancelled;

4. When the manufacturer or service provider attempts to conceal its true ownership;

5. When materially false or inaccurate information is provided relating to a device's performance standards;

6. When there are defects in design, materials, or workmanship causing repeated failures of a device;

7. When the manufacturer or service provider knowingly permits nonqualified service technicians to perform work;

8. When a manufacturer or service provider assists users with circumventing or tampering with a device;

9. When service or the submission of required reports is not provided in a timely manner.

10. When required fees are not paid to the commission or local programs.

11. When there is a pattern of substandard customer service.

12. When the manufacturer or service provider interferes with or obstructs a site review or investigation by the commission.

13. When there are any other violations of the provisions contained in the Code of Virginia, commission regulations, or the ignition interlock contract;

14. When a manufacturer or service provider solicits the employment of another manufacturer's or service provider's technician, facility manager, or state ignition interlock coordinator

15. When a manufacturer or service provider solicits business outside of the VASAP, or otherwise solicits individual ASAP branches through operational incentives, gratuities, or any other personal incentives.

16. When a manufacturer or service provider solicits business via direct influence or marketing to judicial, court, or DMV personnel.

9. When a service provider fails to fully correct an identified ignition interlock facility noncompliance issue within the [~~time frame~~ timeframe] required by the Code of Virginia, the provisions of this chapter, or a service provider contract;

10. When there is a pattern of identified interlock service facility noncompliance issues;

11. When a service provider impedes, interrupts, disrupts, or negatively impacts an investigation conducted by the commission involving customer service issues, vehicle damage, or other complaint brought forward by a third party; or

12. When there is an identified public safety or client confidentiality issue at an ignition interlock service facility.

B. If ~~such cancellation~~, a suspension, or revocation of an ignition interlock device or service facility certification occurs, the manufacturer or service provider may request ~~(within, within 15 days of notification)~~ notification, a hearing with the commission to contest the decision. Should the ~~cancellation, suspension, or a revocation of certification~~ be upheld, the manufacturer or service provider [whose device has been revoked] (i) shall ~~remain~~ be responsible for removal of all devices [from] customers' motor vehicles, [~~all vehicles in which interlocks are~~] installed and serviced by the service provider that [~~is~~ are] subject to the revocation, and (ii) will bear the costs associated with the required removal and installation of a new approved ~~device~~ devices. In addition, the manufacturer or service provider [whose device or facility is] subject to the revocation shall continue to

provide services for these ASAP offenders for a time to be determined by the commission, but no longer than 90 days.

C. [~~Service~~ When the certification of an ignition interlock device or ignition interlock service facility is suspended or revoked, service] providers or manufacturers [~~that are suspended~~] shall continue to provide services for ASAP offenders; however, no new ignition interlock installations shall be permitted during the period of suspension.

D. If a service provider terminates the contract or goes out of business, the manufacturer or service provider shall be responsible for removal of all devices [~~from all vehicles in which interlocks are~~] installed and serviced by the service provider that terminates the contract or goes out of business and shall bear the costs associated with the required removal and installation of new approved devices. In addition, the manufacturer or service provider that terminates the contract or goes out of business shall continue to provide services for these ASAP offenders for 90 days from the date of the service provider's notification to the commission that they will be terminating ignition interlock services in Virginia.

24VAC35-60-70. Ignition interlock device specifications.

A. All ignition interlock devices used pursuant to §§ 18.2-270.1 and 46.2-391.01 of the Code of Virginia ~~must~~ shall be approved by the commission. The commission shall maintain a list of approved ignition interlock devices.

B. ~~Each~~ A service provider seeking to contract with the commission shall submit:

1. The name and address of the ignition interlock device manufacturer;
2. The name and model number of the ignition interlock device; and
3. A detailed description of the device including drawings, schematics, wiring protocols, and instructions for its installation and operation.

C. The manufacturer or service provider shall provide literature promoting its device to the commission; and for distribution to the local ASAPs, ~~literature promoting its device.~~

D. The manufacturer or service provider shall provide certification from an independent laboratory that its ignition interlock device has been tested in accordance with the ~~most~~ current model specifications published in the Federal Register by the National Highway Traffic Safety Administration (~~57 FR 11772-11787 (April 7, 1992)~~), Administration. The manufacturer or service provider is required to provide a certified affidavit that the ignition interlock device model complies with all applicable state standards, including written documentation, current within five years, from either a certified testing laboratory or a National Highway Traffic Safety Administration testing lab and that the ignition interlock ~~device~~ model for which certification is being sought meets or exceeds ~~those specifications~~ the current National Highway Traffic Safety Administration's model

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specifications. Included with the certification report should be the name and location of the testing laboratory, the address and phone number of the testing laboratory, a description of the tests performed, copies of the data and results of the testing procedures, and the names and qualifications of the individuals performing the tests.

E. If a device is submitted for approval by a service provider other than the manufacturer, the submitting party shall submit a notarized affidavit from the manufacturer of the device certifying that the submitting party is an authorized manufacturer's representative.

F. ~~All~~ Except where otherwise required in this chapter, all ignition interlock devices ~~will be required to~~ shall meet the model specifications for Breath Alcohol Ignition Interlock Devices (BAIID) as set forth in the most ~~recent~~ current model specifications published in the Federal Register by the National Highway Traffic Safety Administration (NHTSA) ~~and operate reliably over the range of motor vehicle environments or motor vehicle manufacturing standards~~. At a minimum, the following specifications ~~will~~ shall be met:

1. The ignition interlock device shall work accurately and reliably in an unsupervised environment, at minimal inconvenience to others, and without impeding the safe operation of the motor vehicle.
2. The ignition interlock device shall be able to analyze a specimen of alveolar breath for alcohol concentration, correlate accurately with established measures of blood alcohol concentration, and be calibrated according to the manufacturer's specifications.
3. The ignition interlock device shall be alcohol specific, using an electrochemical fuel cell that reacts to and measures ethanol, minimizing positive results from ~~any~~ other substance substances.
4. The ignition interlock device shall indicate when a ~~sufficient sample of breath~~ 1.5 L breath sample has been collected and shall indicate this by audible or visual means. The commission may authorize service providers to adjust the breath volume requirement to as low as 1.0 L upon receipt of documentation from a licensed physician verifying the existence of an applicable medical condition. The physician's documentation shall be submitted [on a commission approved form. A medical waiver of the ignition interlock requirement shall only be approved upon authorization of the court of jurisdiction and in a format approved by] the commission.
5. The ignition interlock device shall detect and record a BAC that ~~is at or above~~ reaches the fail point for ~~each~~ ignition [~~ignitions, attempted~~] ignition [~~ignitions, and rolling~~] retest [~~retests all completed breath samples~~].
6. The results of the test shall be noted through the use of green, yellow, and red signals or similar pass/fail indicators. No digital blood alcohol concentration shall be indicated to the offender.

7. The ignition interlock device shall lock out an offender when a BAC ~~at or above~~ reaches the fail point ~~is detected~~.

8. The ignition interlock device shall have the ability to [~~prevent the normal operation of the motor vehicle by an offender who fails to retest~~ activate the vehicle's lights and horn when a required rolling retest is missed or failed].

9. The ignition interlock device shall have the ability to perform a permanent lockout if the offender fails to appear for a scheduled monitoring appointment [~~after the applicable five day grace period~~ within 30 days of the later of the installation date or most recent calibration date]. The service provider shall provide a code, smart key, or other similar unlock feature that has been approved by the commission to offenders whose interlock is in a permanent lockout status. The duration of the time period that the interlock is unlocked shall not be more than or less than three hours. The code shall only unlock the interlock device and shall not disable other interlock features. Interlock service providers shall not provide an ignition interlock code that disables the ignition interlock features to persons without first obtaining authorization from the commission.

10. The ignition interlock device shall automatically purge alcohol before allowing subsequent analyses.

11. The ignition interlock device shall issue a warning of an impending [permanent] lockout.

12. The ignition interlock device shall be capable of random retesting and timed retesting.

13. The ignition interlock device shall warn the offender of upcoming service appointments for at least [~~three~~ five] days prior to the appointment. Should the offender fail to appear, the device shall [~~lock out~~ lockout] on the [~~fifth day after the scheduled appointment~~ 31st day after the later of the installation date or previous calibration date], and the motor vehicle shall not be operable until the service provider has reset the device.

14. The internal memory of the ignition interlock device shall be capable of recording and storing a minimum of [~~500~~ 15,000] interlock events and shall enter a service reminder if the memory reaches 90% of capacity.

15. The ignition interlock device shall be designed and installed in ~~such a~~ manner as to minimize opportunities ~~to be tampered with, altered, bypassed, or circumvented for tampering, alteration, bypass, or circumvention~~. The ignition interlock device shall not spontaneously bypass the ignition system [~~or starter relay,~~] nor shall it be able to be made operational by ~~any~~ a mechanical means of providing air to simulate alveolar breath. ~~Any bogus Bogus~~ breath anti-circumvention features used to pass laboratory testing of the ignition interlock device shall be turned on. In addition, service providers shall connect the ignition interlock device to a constant and uninterrupted power

source to further prevent an opportunity to circumvent the system.

16. The ignition interlock device shall be capable of recording and providing evidence of ~~any~~ actual or attempted tampering, alteration, bypass, or circumvention.

17. The ignition interlock device ~~must shall~~ operate accurately and reliably at temperatures between ~~-20 and 70 degrees Celsius~~ -40°C and 85°C.

18. The ignition interlock device shall operate up to altitudes of 2.5 km above sea level.

19. The readings of the ignition interlock device shall not be affected by humidity, dust, electromagnetic interference, smoke, exhaust fumes, food substance, or normal automobile vibration [when used in accordance with the manufacturer's instructions].

20. The operation of the ignition interlock device shall not be affected by normal fluctuations of power source voltage.

21. The ignition interlock shall be installed with a fully functional camera that is equipped to record the date, time, and photo of all persons providing [accepted] breath samples to the ignition interlock device; however, this requirement shall not pertain to motorcycles and mopeds. In addition, service providers are required to present a reference photo of the offender to confirm the offender's identity.

G. All ignition interlock devices that have been approved by the commission shall have affixed a warning label with the following language: "Any person tampering with or attempting to circumvent this ignition interlock system shall be guilty of a Class 1 misdemeanor and, upon conviction, be subject to a fine or incarceration or both." The cost and supply of the warning labels to be affixed to the ignition interlock devices shall be borne by the manufacturer or service provider. The manufacturer or service provider shall submit to the commission a prototype of the warning label for approval.

H. For initial startup of the motor vehicle:

1. The ignition interlock device shall enable the ~~ignition starter~~ relay after the successful completion of a breath alcohol test.

2. The device shall allow an operator to take up to two minutes to elapse between the time the ignition is enabled and the start of the motor vehicle after the starter relay is enabled to start the engine.

3. The ignition interlock device shall ~~allow the motor vehicle to be restarted within two minutes of the engine being stopped without requiring an additional test permit a free restart.~~

4. If the initial test results in a lockout due to the offender's BAC level, the ignition interlock device shall not allow an additional attempt for five minutes.

5. If the offender's BAC ~~is at or above~~ still reaches the fail point on the ~~second~~ first retest, the machine shall [lock out ~~lockout~~] for an additional ~~15~~ 10 minutes and shall do so thereafter for ~~each~~ subsequent failed ~~retest~~ retests. A violation reset message shall instruct the offender to return the ignition interlock device to the service provider for servicing within five days.

6. If the ignition interlock device is not reset within five days, a permanent lockout [~~will~~ shall] occur.

I. A rolling retest feature is required for all ignition interlock devices. For rolling retests:

1. An ignition interlock device shall require a rolling retest within the first ~~10 to 20~~ five minutes after the start of the motor vehicle and randomly thereafter at least once every ~~20 45 to 40 60~~ minutes as long as the motor vehicle is in operation.

2. The ignition interlock device shall produce a visual and audible signal of the need to produce a breath sample for the rolling retest [and shall be modified as necessary to accommodate operators who are hearing impaired]. The offender shall have ~~six~~ 15 minutes ~~in which~~ to provide the required rolling retest breath sample.

3. A free restart shall not apply if the ignition interlock device was awaiting a rolling retest that was not delivered.

4. ~~Any~~ A deep lung breath sample at or above the fail point or ~~any~~ a failure to provide a rolling retest deep lung breath sample within the required time; shall activate the motor vehicle's horn and cause the motor vehicle's headlights, parking lights, ~~or~~ emergency lights, or other light source approved by the commission to flash until the engine is shut off by the offender or a passing breath test is provided.

5. Once the vehicle has been turned off, all prestart requirements shall become applicable.

6. The violations reset message shall instruct the offender to return the ignition interlock device to the service provider for servicing within five days.

7. If the ignition interlock device is not reset within five days, a permanent lockout will occur.

J. Additional technical specifications for the operation and installation of the ignition interlock device may be described in the contract between the commission and the service provider.

K. The vendor shall notify the commission in writing if the approval or certification of a device that is approved or has been submitted for approval for use in Virginia is or ever has been denied, withdrawn, suspended, or revoked in another state, whether the action occurred before or after approval in Virginia. This notification shall be made in a timely manner, not to exceed 15 days after the vendor has received notice of the denial, withdrawal, suspension, or revocation of approval or certification of the device, whether or not the action will or has been appealed.

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24VAC35-60-80. Ignition interlock device installation.

A. No offender who has a case pending in the court system shall have an interlock installed in Virginia unless enrolled in, and monitored by, the ASAP program in the area where the case originated. Offenders subject to a DMV ignition interlock requirement shall not have an interlock installed in Virginia unless first authorized by the ASAP. Prior to installation of the device, the vendor must receive written or electronic authorization from the ASAP. This section also applies to out-of-state offenders who have a Virginia ignition interlock requirement. This enables VASAP the commission to maintain consistency in policy and use of ignition interlock devices in the Commonwealth of Virginia and allows for a consistent pattern of instruction to the service provider.

B. The ignition interlock device ~~must shall~~ be installed by a commission-approved manufacturer or authorized service provider within 30 days of the date of the court order; if not, the service provider [~~will shall~~] notify the ASAP. Once the ignition interlock has been installed, the service provider [will shall] send an authorized installation report to the ASAP, via a method established by the commission, documenting that the ignition interlock device has been installed. Once verification of an authorized installation has been received by the ASAP, DMV [will shall] be notified that the offender has successfully installed the interlock device.

C. All agreements between the service provider and the offender shall be in the form of a contract and ~~be~~ signed by the service provider and the offender. Copies of the written contract shall be retained by the service provider with a copy given to the offender ~~and the local ASAP office.~~

D. Prior to installation of the ignition interlock device, offenders ~~must shall~~ provide to the service provider:

1. Photo identification. If no photo identification is available at the time of installation, other adequate proof of identification may be accepted to avoid delay of the installation. However, photo identification must be presented prior to the first calibration appointment;

~~[2. The name and policy number of their automobile insurance;]~~

~~3. 2.] The~~ A copy of the registration or title containing the vehicle identification number (VIN) of all motor vehicles owned or routinely driven by the offender; and a statement disclosing the names of all other operators of the motor vehicles owned or driven by the offender;

~~[4. 3.]~~ A notarized affidavit, approved by the commission, from the registered owner of the vehicle granting permission to install the device if the car is not registered to the offender. If the owner is present at installation, provides valid identification, and signs the consent to install form in the service provider technician's presence, notarization of the consent to install form is not required; and

~~[5. 4.]~~ Written authorization from the commission if the air volume requirement, blow pressure, or anti-circumvention features of the ignition interlock device are to be lowered or disabled in order to compensate for an offender's diminished lung capacity, when applicable.

E. Under no circumstances shall an offender, or anyone accompanying the offender be permitted to observe ~~the~~ installation of the ignition interlock device.

F. The service provider ~~must shall~~ inspect all motor vehicles prior to installation of the device to ensure that they are in acceptable mechanical and electrical condition. Under no circumstances shall staff of the authorized service provider install ~~any~~ a device until, and unless, the motor vehicle is approved following the inspection. A [commission-approved] pre-inspection checklist [of the vehicle documenting the vehicle's condition] at installation shall be completed and placed in the offender's file.

~~G. Each~~ The installation shall include ~~all of the~~ tamper-resistant features ~~required by the service provider such as~~ unique seals, epoxies, or resins at all openings and exposed ignition interlock electrical connections so as to make evident all attempts to circumvent or otherwise alter the normal functioning of the ignition interlock. At a minimum, the service provider shall ensure that the vehicle starter wire connected to the ignition interlock is secured with uniquely identifiable heat shrink tubing or its equivalent and that all connected wires are wrapped with uniquely labeled service provider tape.

H. An oral, written, or video orientation to the ignition interlock device [~~will shall~~] be developed and delivered by the service provider to the offender and other persons who may drive the motor vehicle, including information on the use and maintenance of the device as well as all service center locations, and procedures for regular and emergency servicing. A demonstration interlock will be available at ~~each~~ the installation site for use in the training of customers.

I. If, during the installation, the offender fails to pass the initial breath test, the installation ~~will shall~~ be halted and the ASAP notified.

J. The manufacturer ~~and/or~~ or service provider ~~must shall~~ maintain a toll-free 24-hour emergency phone service that may be used to request assistance in the event of failure of the ignition interlock device or motor vehicle problems related to operation of the ignition interlock device. The assistance provided by the authorized service provider shall include technical information and aid in obtaining towing or roadside service. The expense of towing and roadside service shall be borne by the offender unless it is determined by the [~~service center technician~~ commission] that the ignition interlock device failed through no fault of the ~~offender, in which offender.~~ If this is the case, the manufacturer or service provider [will shall] be responsible for applicable expenses. The ignition interlock device shall be made functional within

48 hours of the call for assistance or the ignition interlock device shall be replaced.

K. At the time of device installation, a service provider may charge an installation fee. The maximum permissible cost for installation shall be set by the ~~Commission on VASAP commission through contract~~, and service providers [~~will~~ shall] not be permitted to exceed the maximum fee established by the commission. [~~No installation fees shall be collected from the user until services have been provided.~~] A portion of these fees shall include costs for offender indigency funds. In addition to the maximum fee permitted, service providers may collect applicable taxes and charge for optional insurance to cover device [~~loss;~~] theft [~~;~~] or [~~accidental~~] damage. ~~No installation fees shall be collected from the user until such services have been provided.~~ Optional insurance shall be offered by the service provider, and a written copy of the insurance policy stating clearly the applicable coverages, coverage amounts, conditions, and exclusions shall be given to offenders who purchase the insurance. When the ignition interlock is installed on a motorcycle or moped, service providers may require offenders to provide a saddle bag or similar waterproof container in which the device components may be stored as a condition of eligibility for the optional insurance.

L. The manufacturer or the service provider must shall provide ~~indigent~~ service to those offenders who are eligible for a reduction in fees based upon a declaration of indigence by the court and approval by the commission.

M. No later than the first service appointment, the offender ~~must shall~~ provide to the service provider a statement from ~~every the~~ licensed ~~driver drivers~~ who will be driving the offender's motor vehicle acknowledging their understanding of the requirements of the use of the ignition interlock device.

24VAC35-60-90. Calibration and monitoring visit.

A. ~~The offender must present photo identification to the service provider for all required services.~~ Only calibration units (i) found on the current National Highway Traffic Safety Administration's Conforming Products List of Calibrating Units for Breath Alcohol Testers or (ii) approved by the commission shall be used by the service provider to calibrate ignition interlock devices.

B. The service provider ~~must shall~~:

1. Provide ~~service/monitoring~~ service and monitoring of the ignition interlock device [at least] every 30 days [; ~~the offender will be given a five day grace period to have the device inspected~~]. All ignition interlock calibrations shall occur at a service provider interlock service facility unless otherwise approved by the commission;
2. Calibrate the ignition interlock device at each service appointment using a dry gas or wet bath reference sample. The service provider shall ensure that dry gas and wet bath reference values are adjusted in a manner approved by the commission;

3. Calibrate the ignition interlock device for accuracy by using a wet bath simulator or dry gas alcohol standard with an alcohol reference value between .030 and .050 g/210L;

4. Expel a three-second purge from the wet bath simulator or dry gas standard prior to introducing the alcohol reference sample into the ignition interlock device;

5. Perform an accuracy check that will consist of two consecutive reference checks with the result of each individual check being within plus or minus 10% or 0.003, whichever is smaller, of the alcohol reference value introduced into the ignition interlock device. The time period between the first and second consecutive accuracy check shall not exceed five minutes;

6. [~~Use a mercury in glass thermometer or digital thermometer for House and use~~] wet bath simulators [in environmentally stable, temperature controlled settings. Wet bath simulators shall contain mercury-in-glass thermometers or digital thermometers]. The thermometers shall read 34°C, plus or minus 0.2°C, during analysis and be certified annually using a National Institute of Standards and Technology traceable digital reference thermometer. In addition, the service provider shall use alcohol reference solutions prepared and tested in a laboratory with reference values traceable to the National Institute of Standards and Technology. The 500 ml bottles containing simulator solution shall be tamper proof and labeled with the lot or batch number, value of the reference sample in g/210L, and date of preparation or expiration. Alcohol reference solutions must be used prior to expiration and within one year from the date of preparation. In addition, wet bath simulator solutions shall be replaced [every 30 days or] prior to every [~~16th~~ 30th] test [, whichever occurs first. A sticker shall be placed on the wet bath simulator indicating the date of the most recent simulator solution replacement. In addition, a written logbook or electronic database recording the date and result of each simulator test shall be maintained on site];

7. Store dry gas alcohol standard tanks in [~~an environment where the temperature range remains between 10°C and 40°C~~ a manner consistent with the gas manufacturer's specifications]. The dry gas tanks shall have a label attached that contains the components and concentration of the reference value of the gas, an expiration date that shall not be longer than three years from the date of preparation, and the lot or batch number. Dry gas alcohol standards must be certified to a known reference value and be traceable to the National Institute of Standards and Technology. The reference value shall be adjusted for changes in elevation and pressure. Interlock service [~~facilities using a dry gas standard shall possess an elevation chart used to determine the proper reference value for the elevation where the gas standard is being used and vendors shall possess~~] a certificate of analysis from

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the dry gas standard manufacturer. Dry gas tanks shall be secured in a manner as to prevent harm to the public;

~~3.~~ 8. Retrieve data from the ignition interlock device data log for the previous period and electronically submit it to the local ASAP within 24 hours of calibration;

~~4.~~ 9. Record the odometer reading of the motor vehicle in which the ignition interlock device is installed;

~~5.~~ 10. Check the ignition interlock device and wiring for signs of circumvention or tampering [~~7~~] and electronically report ~~to the local ASAP any violation~~ violations to ASAP within ~~24 hours of servicing.~~ the required [~~time frame~~ timeframe] established by the commission;

~~6.~~ 11. Collect the monthly monitoring fee from the offender. If an offender who has not been declared to be indigent by the court is three or more months delinquent in payments, the service provider may, in its discretion, refuse to provide calibration services, but shall not remove the ignition interlock device without authorization from the commission;

12. Verify that the offender has a photo identification prior to calibrating the ignition interlock device if photo identification was not already presented at the time of installation; and

13. Conform to other calibration requirements established by the commission, as applicable.

C. All malfunctions of the ignition interlock device [~~will shall~~] be repaired or the ignition interlock device replaced by the service provider within 48 hours at no additional expense to the offender. If it is shown that the malfunction is due to damage to the device as a result of mistreatment by the offender or improper use, [and the offender has not purchased optional insurance, then] the offender [~~will shall~~] be responsible for applicable repair fees.

D. A certified technician shall be available at the service center during specified hours to answer questions and to deal with ~~any~~ mechanical concerns that may arise with a motor vehicle as a result of the ignition interlock device.

E. The ignition interlock device shall record, at a minimum, the following data:

1. The time and date of ~~each~~ failed breath test tests;
2. The time and date of ~~each~~ passed breath test tests;
3. The breath alcohol level of ~~each test~~ all tests; ~~and~~
4. The time and date of ~~any attempt~~ attempts to tamper or circumvent the ignition interlock device;
5. A photo of [~~all persons submitting a each person delivering an accepted~~] breath test sample for analysis by the ignition interlock device; and
6. A reference photo of the offender.

F. At the time of device calibration, a service provider may charge a monthly monitoring fee. The maximum permissible cost for monitoring and calibration shall be set by the

~~Commission on VASAP~~ commission through ~~contract~~ the ignition interlock regulations, and service providers shall not be permitted to exceed the maximum fee established by the commission. A portion of these fees shall include costs for ~~VASAP~~ administrative support and offender indigency funds. In addition to the maximum fee permitted, service providers may collect applicable taxes and charge for optional insurance to cover device theft [~~or and accidental~~] damage. Fees for the first monthly monitoring and calibration visit will be collected from the user in advance at the time of installation and monthly thereafter ~~as such~~ when services are rendered.

24VAC35-60-100. Ignition interlock device removal.

A. Prior to removal of the ignition interlock device, the service provider must receive written or electronic authorization from the ASAP. This requirement also applies to offenders with a Virginia ignition interlock requirement who are receiving interlock services from a service provider in another state.

B. Offenders may not have their ignition interlock device removed or replaced by another manufacturer without written or electronic authorization from the ~~ASAP~~ commission. Whenever removal of an ignition interlock device [was is] approved by the commission for the purpose of changing service providers and the authorized removal [was is] a result of a determination that the initial service provider failed to provide a level of service meeting contract requirements, the ignition interlock regulations, or the Code of Virginia, the original service provider shall bear the costs associated with installation of the device by the new service provider.

~~C. If, at the time of removal, the service provider notices any failed tests that have not been backed up by a successful test within 10-15 minutes of the original test, the ASAP will be notified for approval before the removal is made.~~

~~D. C.~~ Once the interlock has been removed, the service provider [~~will shall~~] send an authorized removal report to the ASAP via ~~fax, email, or online database,~~ a method established by the commission documenting that the ignition interlock device has been removed [~~and that all fees have been paid~~]. Once verification of an authorized removal has been received by the ASAP, DMV [~~will shall~~] be notified that the offender has successfully completed the interlock requirements.

~~E. D.~~ Whenever an ignition interlock device is removed, all components of the motor vehicle altered by the installation or servicing of the ignition interlock device ~~must shall~~ be restored to their original, preinstallation condition and removed in ~~such~~ a manner so as not to impair the continued safe operation of the vehicle. All severed wires ~~must shall~~ be permanently reconnected ([~~e.g.~~] soldered) and properly insulated ~~with heat shrink tubing or its equivalent.~~ A [commission-approved,] post-inspection checklist of the vehicle shall be completed after removal of the device, documenting that the vehicle or vehicles did or did not suffer

damage due to interlock services provided by the service provider. A copy of the post-inspection checklist shall be placed in the offender's file.

~~F.~~ E. No fee shall be charged to the offender for removal of the ignition interlock device.

F. No offender or person accompanying the offender shall be permitted to observe the removal of the ignition interlock device.

24VAC35-60-110. Records and reporting.

A. The service provider shall be subject to announced or unannounced site reviews for the purpose of inspecting the facilities and offender records. ~~Access~~ Upon request, access to all service provider locations, records, and financial information shall be provided to ~~any member of the commission staff~~ for the purpose of verifying compliance with state law, commission regulations, and the service provider agreement.

B. In accordance with federal confidentiality guidelines, all personal and medical information provided to the service provider regarding offenders shall be kept confidential [~~maintained in individual offender files, and secured within a lockable filing cabinet. If the information is temporarily held~~] at the offender's service center [~~. This filing cabinet shall remain locked during, it shall be stored in a locked filing cabinet~~] ~~any period that [the periods] when [the service center is] unattended by a service provider employee.~~

C. ~~Within 24 hours of~~ After installing an interlock, the service provider ~~will~~ shall provide the ASAP with an installation report, within 24 hours, that includes:

1. The name, address, and telephone number of the offender;
2. The [~~owner, make, model, year, vehicle identification number, license plate number, and~~] registration information of the motor vehicle; and
3. The serial number of the [installed] ignition interlock device [~~installed and camera~~].

~~Within 24 hours after~~ After performing a ~~monitoring/calibration~~ monitoring and calibration check, the service provider shall submit to the ~~local~~ ASAP, within 24 hours, all data generated to include:

1. Name of the offender whose device was monitored-;
2. Name, address, and telephone number of the monitoring official-;
3. Date of ~~monitoring/calibration.~~ monitoring and calibration;
4. Motor vehicle make, model, year, identification number, and odometer- reading;
5. Number of miles driven during the monitoring period-;
6. Make, model, and serial number of the ignition interlock device [and camera]-;

7. ~~Any~~ A change out of the device (handset ~~and/or~~ or control box) and reason for the change out-;

8. ~~Any data~~ Data indicating that the offender has attempted to start or drive the motor vehicle with a positive BAC at or above the fail point-;

9. ~~Any attempts~~ Attempts to alter, tamper, circumvent, bypass, or otherwise remove the device-;

10. ~~Any noncompliance~~ Noncompliance with conditions of the ASAP or interlock program-;

11. ~~Any offender~~ Offender concerns-;

12. ~~All charges~~ Charges incurred for the monitoring visit-;

13. Date of next scheduled monitoring visit-;

14. A photo of [~~all persons~~ each person] who [~~have attempted to provide a~~ has delivered an accepted] breath test sample [~~or missed a retest~~] on the ignition interlock device; and

15. A reference photo of the offender.

E. In addition, the service provider ~~must~~ shall have available monthly reports detailing:

1. ~~All installations~~ Installations during the period covered-;
2. ~~All calibrations~~ Calibrations performed during the period, by date and offender name, detailing any unit replacements made during the monitoring period-;
3. ~~All datalogger~~ Datalogger information from ~~each~~ all ignition interlock ~~device.~~ devices;
4. ~~Any evidence~~ Evidence of misuse, abuse, or attempts to tamper with the ignition interlock device-;
5. ~~Any device~~ Device failure due to material defect or improper installation-; and
6. A summary of ~~all~~ complaints received and corrective action taken.

F. The service provider shall be responsible for purchasing and providing necessary computer hardware and software to convey all data and information requested by the commission if ~~such~~ the equipment is not already present at the commission office or ~~local~~ the ASAP.

G. ~~Reports~~ Accurate reports shall be submitted to the ~~local~~ ASAP in the format specified by the ~~Commission on VASAP~~ commission.

24VAC35-60-120. General service provider requirements.

Interlock service providers that are approved to perform ignition interlock services in the Commonwealth of Virginia shall:

1. Abide by all commission memorandums, directives, contract terms, and regulations pertaining to the statewide ignition interlock program unless prohibited by state law.
2. Resolve offender, court, DMV, ASAP, commission, and other stakeholder complaints as directed by the commission.

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3. Install all ASAP authorized ignition interlock installations within the time parameters set forth by the commission. In situations where an interlock service facility or facilities become inoperable due to a large scale weather event or some other verified unforeseen circumstances, the service provider shall contact the commission within 24 hours with an action plan to mitigate the impact to customer service.

4. Resolve ignition interlock service facility compliance issues as directed by the commission.

5. Obtain approval from the commission before disseminating any [offender] training or advertising materials used in association with the Virginia interlock program.

6. Make modifications to the service provider company website that is used to review monthly calibration reports, upon reasonable request by the commission. Reasonable requests include, but are not limited to, changes due to language that is confusing, misleading, offensive, or inaccurate; changes required due to updated technology; changes to the Code of Virginia or the ignition interlock regulations; changes in workload; or changes in product enhancements.

7. Assume full liability for action taken or not taken by an ASAP or the commission due to an inaccurate or misleading report, whether electronic or hard copy, provided by the service provider.

8. Be accountable for Virginia offenders with ignition interlock devices installed by its company in another state and [shall] ensure that all Virginia interlock processes, regulations, request for proposal terms, contract terms, and commission requirements are met unless prohibited by state law.

9. Notify the commission within 15 days of disciplinary action received from a state where the service provider conducts or has conducted ignition interlock business. This notification shall include the reason for the disciplinary action. This requirement applies regardless of the existence of an appeal.

10. Provide information technology assistance and training, [per upon] reasonable request, to the commission [when requested].

11. Report all changes to the ignition interlock device software or firmware, whether temporary or permanent, to the commission within 30 days of release in the Commonwealth of Virginia.

12. [Not modify or remove an interlock device that is the subject of an investigation by the commission. In the event of reported vehicle damage, alleged to be due to the service provider's ignition interlock device or workmanship:

a. Give immediate notice to the commission once becoming aware of the alleged damage;

b. Refrain from modifying or removing the ignition interlock device or its wiring until approved by the commission;

c. Exhibit the damaged property to the commission upon request;

d. Provide applicable records and documents to the commission upon request, and permit copies to be made.

The commission, in its discretion, reserves the right to hire a qualified, independent expert to examine the vehicle and provide a report that includes an opinion as to the proximate cause of the damage and a repair or replacement estimate. In the event that the damage is determined to be attributable to the service provider's ignition interlock device or workmanship, the ignition interlock service provider shall indemnify the offender for the costs as estimated by the independent expert. In addition, the service provider shall pay for the reasonable cost of the independent expert's report.]

24VAC35-60-130. Service provider technician certification.

A. Service provider state directors and technicians are required to possess a Virginia Ignition Interlock Certification Letter to perform ignition interlock services in the Commonwealth of Virginia. [Newly hired technicians, however, may perform ignition interlock services under the direct supervision of a certified technician for training purposes for up to 90 days prior to obtaining a Virginia Ignition Interlock Certification Letter.] In order to apply for a certification letter, service providers shall submit a completed application to the commission for approval of newly hired technicians and state directors. If approved by the commission, this application process may be waived for technicians and state directors providing interlock services in the Commonwealth of Virginia prior to June 30, [2015 2016]. The completed application [for applicants] shall include submission of:

1. A completed applicant form provided by the commission;

2. A complete local and national criminal history check;

3. A complete driver's record; and

4. Documentation issued by the commission of successful completion of the Virginia Ignition Interlock Certification Exam.

Failure to submit a completed application will result in disqualification from consideration for a Virginia Ignition Interlock Certification Letter by the commission to perform ignition interlock services in the Commonwealth of Virginia. The commission reserves the right to deny a certification letter to an interlock service provider technician or state director due to concerns identified in the application to include, but not be limited to, criminal history background and driver's transcript issues.

B. Applicants [~~will~~ shall] be required to complete a Virginia Ignition Interlock Certification Exam. Successful completion of the exam requires a score of 80% or higher. Applicants who fail to successfully complete the state certification exam on the first attempt [~~will~~ shall] be allowed a second opportunity to successfully complete the exam. Applicants who fail to successfully complete the state certification exam on the second attempt [~~will~~ shall] not be allowed to reapply to provide ignition interlock services for the Commonwealth of Virginia for six months from the date of the second failed exam. Service providers [~~will~~ shall] be required to pay an administrative fee, as provided in 24VAC35-60-50 B 3, to the commission for all second and subsequent attempts to successfully complete the state certification exam. Applicants who successfully pass the state certification exam will receive documentation of successful completion from the commission that shall be submitted with the application for a Virginia Ignition Interlock Certification Letter to perform ignition [~~interlock~~ interlock] services in the Commonwealth of Virginia.

C. The commission may revoke, suspend, or terminate a previously issued Virginia Ignition Interlock Certification Letter for a service provider technician or state director for any of the following reasons:

1. The technician or state director is convicted of a felony;
2. The technician or state director is convicted of a misdemeanor potentially punishable by confinement;
3. The technician or state director commits an unethical or dishonest act that negatively impacts the integrity of the ignition interlock program;
4. The technician or state director fails to demonstrate the ability to consistently comply with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or
5. The technician or state director fails to demonstrate possession of the knowledge required to perform ignition interlock services in the Commonwealth of Virginia.

A service provider technician or state director whose Virginia Ignition Interlock Certification Letter has been suspended or revoked may request, within 15 days of notification, a hearing with the commission to contest the decision. In the event that the decision to suspend or revoke the Virginia Ignition Interlock Certification Letter of a service provider's technician or state director is upheld, the technician or state director shall not perform interlock services in the Commonwealth of Virginia for the entire suspension period, to include any period of contestment, or in the case of a revocation or termination, on a permanent basis. The service provider is required to return the Virginia Ignition Interlock Certification Letter to the commission within 15 days of the date that the certification was suspended, revoked, or terminated, by the commission.

D. Once the completed application has been approved by the commission and all other qualifications have been met by the applicant, a Virginia Ignition Interlock Certification Letter to perform ignition interlock services in the Commonwealth of Virginia [~~will~~ shall] be issued to the applicant by the commission. The certification letter shall contain the effective date of the letter and a certification number specific to the applicant. The certification letter will be valid for a time period specified by the commission unless otherwise suspended, revoked, or terminated but for no longer than the service provider contract end date. In the event that an applicant is not approved for a Virginia Ignition Interlock Certification Letter to perform interlock services in the Commonwealth of Virginia, the commission will notify the service provider in writing within 10 days of the determination. The Virginia Ignition Interlock Certification Letter is subject to review by the commission at its discretion during the course of the certification period.

E. An application to renew a Virginia Ignition Interlock Certification Letter for an ignition interlock technician or state director shall be submitted 30 days prior to the expiration date printed on the current certification letter. A technician or state director who has had his state certification revoked or terminated shall be ineligible to reapply for a Virginia Ignition Interlock Certification Letter unless otherwise approved by the commission.

F. Service providers are required to surrender Virginia Ignition Interlock Certification Letters for technicians and state directors who are no longer employed with their company. The surrendered certification letter [~~is to~~ shall] be sent to the commission within 15 days of the date that the technician or state director is no longer employed with the service provider.

G. In addition to the successful completion of the Virginia Ignition Interlock Certification Exam required for application, the commission may order that a technician or state director performing ignition interlock services in the Commonwealth of Virginia review requirements and retake the state certification exam to demonstrate that the technician or state director possesses the knowledge required to perform ignition interlock services in the Commonwealth of Virginia.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (24VAC35-60)

[VASAP Breath Reduction Form \(rev. 9/2015\)](#)

[VASAP Internet Service Provider Applicant Form \(rev. 9/2015\)](#)

VA.R. Doc. No. R14-3946; Filed May 17, 2016, 8:19 p.m.

GENERAL NOTICES/ERRATA

AIR POLLUTION CONTROL BOARD

General Notice - Proposed State Implementation Plan Revision

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the federal Clean Air Act. The Commonwealth intends to submit the regulation to the EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulation of the board affected by this action is 9VAC5-30, Ambient Air Quality Standards (Rev. A16).

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: June 13, 2016, to July 13, 2016.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed at the end of this notice. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 (§ 2.2-4000 et seq. of the Code of Virginia) of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Code of Virginia because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: The proposed revision will consist of amendments to an existing regulation concerning ambient air quality standards. On October 26, 2015 (80 FR 65292), EPA revised the National Ambient Air Quality Standard (NAAQS) for ozone by adding an eight-hour standard at a level of 70 parts per billion (ppb). The existing eight-hour standard of 0.075 ppm was not revoked. 9VAC5-30 contains the ambient air quality standards for the specific criteria pollutant standards set out in 40 CFR Part 50. Therefore, this regulation

is the action effectively implementing the EPA requirements and must now be amended accordingly in order to properly implement new source permitting review and various ozone implementation and planning programs.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All materials received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website at <http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx>. The documents may also be obtained by contacting the DEQ representative listed at the end of this notice. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 8th Floor, 629 East Main Street, Richmond, Virginia, telephone (804) 698-4070,
- 2) Southwest Regional Office, 355 Deadmore Street, Abingdon, Virginia, telephone (276) 676-4800,
- 3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, Virginia, telephone (540) 562-6700,
- 4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, Virginia, telephone (434) 582-5120,
- 5) Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia, telephone (540) 574-7800,
- 6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia, telephone (804) 527-5020,
- 7) Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia, telephone (703) 583-3800, and
- 8) Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia, telephone (757) 518-2000.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

STATE CORPORATION COMMISSION

May 24, 2016

Administrative Letter 2016-04

To: All Insurers and Other Interested Parties

Re: Insurance-Related Legislation Enacted by the 2016 Virginia General Assembly

We have attached for your reference summaries of certain insurance-related statutes enacted or amended and re-enacted during the 2016 Session of the Virginia General Assembly. The effective date of these statutes is July 1, 2016, except as otherwise indicated in this letter. Each organization to which this letter is being sent should review the summaries carefully and see that notice of these laws is directed to the proper persons, including appointed representatives, to ensure that appropriate action is taken to effect compliance with these new legal requirements. Copies of individual bills referred to in this letter may be obtained at <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=161&typ=lnk&val=57> or via the links we have provided in the summary headings. You may enter the bill number (not the chapter number) on the Virginia General Assembly Home Page, and you will be linked to the Legislative Information System. You may also link from the Legislative Information System to any existing section of the Code of Virginia. All statutory references made in the letter are to Title 38.2 (Insurance) of the Code of Virginia unless otherwise noted. All references to the Commission refer to the State Corporation Commission.

Please note that this document is a summary of legislation. It is neither a legal review and interpretation nor a full description of the legislative amendments affecting insurance-related laws during the 2016 Session. Each person or organization is responsible for review of relevant statutes.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

Chapter 1 ([House Bill 58](#)) Effective 1/26/2016

§§ 38.2-3406.1, 38.2-3431, and 38.2-3551. Health benefit plans; large and small employers. Deletes provisions that changed the definition of a "large employer," for purposes of a group health plan or health insurance coverage, from an employer who employed an average of more than 50 employees to an employer who employed more than 100 employees during the preceding calendar year. The definition of "small employer" is correspondingly revised to include employers who employ an average of 50 or fewer employees.

Chapter 4 ([House Bill 31](#)) Effective 2/23/2016 and Chapter 71 ([Senate Bill 192](#)) Effective 3/1/2016

§§ 38.2-231, 38.2-2113, and 38.2-2208. Automobile, commercial liability, and homeowners insurance policies; notices. Restores certificate of mailing as a method insurers may use to demonstrate proof of mailing termination notices

using the United States Postal Service, provided that certificates of bulk mailing are not permissible.

Chapter 55 ([House Bill 304](#)) Effective 2/29/2016

§ 38.2-2619 and 38.2-2622. Home service contract providers. Authorizes the Commission to deny an initial license application for a home service contract provider based on its review of the financial statements and any reports, certificates, or other documents filed with the Commission. The measure also changes the license renewal cycle and renewal fee payment schedule for home service contract providers from a biennial process to an annual process beginning July 1, 2017; revises the application fee from \$1,000 to \$500. Other provisions (i) clarify that the Virginia reserve requirement for such companies is determined by taking the gross consideration received for all home service contracts, less the claims paid, and then multiplying the remainder by 40 percent (ii) replace a reference to "premiums" with "provider fees" because home service contracts are not insurance; and (iii) amends the provision dealing with filing of audited financial statements to allow for statements prepared in accordance with generally accepted accounting principles.

Chapter 193 ([Senate Bill 209](#))

§§ 38.2-405 and 38.2-403.1. State Corporation Commission; insurance assessments. Authorizes the Commission to recover omitted assessments pertaining to its regulation of insurers for the most recent three years. The measure also establishes a procedure for an aggrieved insurer to apply to the Commission for a correction of an assessment and for a refund.

Chapter 250 ([Senate Bill 210](#))

§§ 38.2-221.3, 38.2-514.1, and 38.2-1800. Automobile clubs. Repeals provisions relating to the licensure of automobile clubs by the Commission. Requirements are also deleted regarding the authority of insurance agents to negotiate automobile club contracts on behalf of licensed automobile clubs and the issuance of guaranteed arrest bond certificates by an automobile club or association.

Chapter 271 ([Senate Bill 562](#))

§ 38.2-3454.1. Health benefit plans; federal law changes. This measure authorizes a health carrier to sell, issue, offer for sale or renew any health benefit plan that would not otherwise be permitted to be sold, issued, or offered for sale, or required to be canceled, discontinued or terminated because the plan does not meet the requirements of the federal Patient Protection and Affordable Care Act to the extent the appropriate federal authority has suspended enforcement of the Act or the requirements of such Act are amended by any federal law.

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Chapter 274 ([Senate Bill 640](#))

§ 38.2-3122. Insurance policies and annuity contracts; exemption from creditors' claims. Provides certain exemptions to the prohibition on execution, attachment, garnishment or other legal process in favor of a creditor regarding the cash surrender value or proceeds of any life insurance policy or annuity contract, the withdrawal value of an optional settlement or deposit with a life insurance company or any other benefit from such a policy.

Chapter 277 ([House Bill 324](#)) Effective 9/1/2016

§ 38.2-1906. Insurance rates; authority to limit decreases. Authorizes an insurer subject to the provisions of Chapter 19 to file rate or supplementary rate information for renewal and certain other policies to limit any rate decrease that would otherwise be applicable to the policies, provided that the insurer is also limiting any rate increase that would otherwise be applicable. This provision does not apply to workers' compensation or employers' liability policies.

Chapter 285 ([House Bill 844](#))

§§ 38.2-1868.1, 38.2-1869, and 38.2-1870. Insurance agents; continuing education program. Allows insurance agents who have completed all continuing education course or exemption requirements by December 31 but have failed to demonstrate proof of compliance by failing to pay the filing fee, an additional period of time until the close of business on January 31, to complete the filing with the payment of a late filing penalty of \$100. The measure also (i) removes the restriction that the Insurance Continuing Education Board's waiver of requirements pertaining to the number of course credits required for good cause be based on emergency situations and (ii) deletes the condition that requests for waivers of course credit requirements be submitted no later than 90 calendar days prior to the end of the biennium for which the waiver is requested.

Chapter 286 ([House Bill 870](#)) and ([Senate Bill 193](#))

§ 38.2-510. Unfair claim settlement practices; appraisal of automobile repair costs. Allows the initial appraisal of the cost of repairing a motor vehicle loss to be based upon personal inspection or digital imagery of the damage. It further allows the initial appraisal of the damage to be final, and prevents the insurer from requiring the claimant to utilize imagery as a condition of appraising the damage.

Chapter 475 ([House Bill 820](#))

§§ 38.2-325, 38.2-4214, and 38.2-4319. Insurance notices; electronic delivery. Provides that any evidence of coverage or other forms required to be given to policyholders, subscribers, and enrollees that do not contain personally identifiable information may be delivered electronically or posted on the health carrier's publicly available website, provided that such forms are readily downloaded and printed.

Chapter 508 ([House Bill 851](#))

§ 38.2-325. Insurance notices; electronic delivery. Repeals a clause that would have sunset on December 31, 2016 that (i) makes the notification to an insurer of any change of the electronic address for the named insured the sole responsibility of the named insured and (ii) states that giving notice of change of the named insured's electronic address to the agent of record shall not be deemed to be notice to the insurer unless it is specifically identified as a change and receipt has been accepted by the agent of record.

Chapter 552 ([House Bill 393](#))

§§ 38.2-1820, 38.2-1825, 38.2-1826, 38.2-1838, 38.2-1841, 38.2-1845.2, 38.2-1857.2, 38.2-1865.1, and 38.2-1865.5. Insurance agencies; designated licensed producers. Requires that an insurance agency's designated licensed producer responsible for the agency's compliance with insurance laws and regulations be an employee, officer or director of the agency. Business entities acting as an insurance producer are required within 30 calendar days to report (i) the removal of the designated licensed producer responsible for the business entity's compliance with insurance laws, rules, and regulations and (ii) the name of the new designated licensed producer. The Commission is authorized to terminate an insurance agency's license for failing to maintain such a designated licensed producer.

Chapter 556 ([House Bill 16](#)) Effective 1/1/2017

§ 38.2-3407.17. Insurance; payment for services by dentists and oral surgeons. Requires that reimbursements payable or paid by a dental plan for covered services be reasonable and not provide nominal reimbursement in order to claim that services are covered services under the applicable dental plan. The measure applies to contracts between a dental plan and a dentist or oral surgeon for the provision of health care to patients that is entered into, amended, extended, or renewed on or after January 1, 2017.

Chapter 558 ([House Bill 307](#)) Effective 1/1/2017

§§ 38.2-1905, 38.2-2118, 38.2-2119, 38.2-2120, 38.2-2202, and 38.2-2210. Insurance notices. Clarifies and updates provisions regarding notices from insurance companies to applicants and policyholders. The measure amends the requirement that insurers give insureds notice when increasing the premium on their policies due to accidents to clarify that insurers are required to inform insureds that they have 60 days to seek a review by the Bureau of Insurance of the application of a surcharge. The notice requirements regarding uninsured motorist coverage (UM/UIM) are updated to allow the practice under which insurers give applicants the opportunity to request UM/UIM limits equal to their liability limits or to request lower UM/UIM limits, as long as the lower limits are at least \$25,000/\$50,000/\$20,000. Other changes clarify which notices are required to be given

on new business policies only rather than on new and renewal business policies.

Chapter 570 ([House Bill 87](#))

§ 30-343. Health Insurance Reform Commission. Specifies that if applicable federal rules require an agency of the Commonwealth to identify any state-mandated benefits that are in addition to the essential health benefits without identifying a specific agency that is responsible for making such identification, the Bureau of Insurance shall be the applicable agency.

Chapter 619 ([Senate Bill 204](#))

§§ 38.2-1825, 55-525.14, 55-525.16, 55-525.17, 55-525.24, 55-525.25, 55-525.26, and 55-525.30. Real estate settlement agents. Adds to provisions relating to real estate settlement agents a new term, "closing disclosure," defined as the combined mortgage loan disclosure statement of final loan terms and closing costs prescribed under the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 USC § 2601 et seq.), and Consumer Financial Protection Bureau Regulation X (12 CFR Part 1024), and Regulation Z (12 USC § 1026), to comply with changes made by the federal Consumer Financial Protection Bureau to the real estate closing process. The bill also makes the settlement agent's registration fee nonrefundable.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Bluestone Farm Solar, LLC Notice of Intent - Small Renewable Energy Project (Solar) Permit by Rule

Bluestone Farm Solar, LLC has notified the Department of Environmental Quality of its intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Mecklenburg County. The proposed Bluestone Farm will be a 49.9 megawatt alternating current photovoltaic solar facility on portions of two parcels totaling approximately 330 acres south of Spanish Grove Road outside of Chase City, Virginia. The project will be comprised of approximately 223,500 polycrystalline solar collectors and associated equipment. The notice of intent has been posted to the Regulatory Town Hall and will be published in the Virginia Register on June 13, 2016.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email mary.major@deq.virginia.gov.

Southampton Solar LLC Notice of Intent - Small Renewable Energy Project (Solar) Permit by Rule

Southampton Solar LLC, has provided notice to the Department of Environmental Quality of its intention to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Southampton County. The project will have a maximum capacity of 100

megawatts alternating current and will utilize traditional photovoltaic solar modules that rotate throughout the day to track the sun. The project is located in southern Southampton County, near the Boykins electrical substation in the general vicinity of Boykins and Newsoms, Virginia. The project will be sited across roughly 1,200 acres and across multiple parcels.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email mary.major@deq.virginia.gov.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on May 25, 2016, and May 26, 2016. The orders may be viewed at the Virginia Lottery, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, Virginia.

Director's Order Number Seventy (16)

"Raise the Bar Retailer Incentive Promotion - FY 17" Virginia Lottery Retailer Incentive Program Requirements (effective July 1, 2016)

Director's Order Number Seventy-One (16)

"Raise the Awareness Program" Virginia Lottery Retailer Incentive Program Requirements (effective July 1, 2016)

Director's Order Number Seventy-Two (16)

"7-Eleven Market Battles Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (effective July 1, 2016)

Director's Order Number Seventy-Three (16)

"September Scratcher Madness Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (effective September 1, 2016)

Director's Order Number Seventy-Four (16)

Virginia Lottery's Computer-Generated Game "Print 'n Play Blackjack Classic" Final Rules for Game Operation (effective July 10, 2016)

Director's Order Number Seventy-Five (16)

Virginia Lottery's Computer-Generated Game "Print 'n Play Bullseye Bingo" Final Rules for Game Operation (effective July 10, 2016)

Director's Order Number Seventy-Six (16)

Virginia Lottery's Computer-Generated Game "Print 'n Play Horoscope Crossword" Final Rules for Game Operation (effective July 10, 2016)

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Director's Order Number Seventy-Seven (16)

Virginia Lottery's Computer-Generated Game "Print 'n Play Money Bag Crossword" Final Rules for Game Operation (effective July 10, 2016)

Director's Order Number Seventy-Eight (16)

Virginia Lottery's Computer-Generated Game "Print 'n Play Rockin' Bingo" Final Rules for Game Operation (effective July 10, 2016)

Director's Order Number Seventy-Nine (16)

"Virginia Lottery July Bowling Challenge Retailer Incentive Promotion - Handy Mart" Virginia Lottery Retailer Incentive Program Requirements (effective July 1, 2016)

Director's Order Number Eighty (16)

"Virginia Lottery July Bowling Challenge Retailer Incentive Promotion - Multi-Chain" Virginia Lottery Retailer Incentive Program Requirements (effective July 1, 2016)

Director's Order Number Eighty-One (16)

\$30 Scratcher Point of Sale (POS) Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (effective September 13, 2016)

Director's Order Number Eighty-Two (16)

"Walmart Neighborhood Market Four Month Activation Drive Virginia Lottery Retailer Incentive Program Requirements" (effective July 1, 2016)

Director's Order Number Eighty-Three (16)

"Food City Stretch Your Scratch Goal Contest" Virginia Lottery Retailer Incentive Program Requirements (effective July 1, 2016)

Director's Order Number Eighty-Four (16)

"Pit Stop Stretch Your Scratch Goal Contest" Virginia Lottery Retailer Incentive Program Requirements (effective July 1, 2016)

Director's Order Number Eighty-Five (16)

"Shoppers Stretch Your Scratch Goal Contest" Virginia Lottery Retailer Incentive Program Requirements (effective July 1, 2016)

Director's Order Number Eighty-Six (16)

"Sheetz First Half FY 17 Plan" Virginia Lottery Retailer Incentive Program Requirements (effective September 1, 2016)

Director's Order Number Eighty-Seven (16)

Virginia Lottery's Scratch Game 1663 "\$500 Frenzy" Final Rules for Game Operation (effective May 23, 2016)

Director's Order Number Eighty-Eight (16)

Virginia Lottery's Scratch Game 1698 "Lucky Loot Tripler" Final Rules for Game Operation (effective May 23, 2016)

Director's Order Number Eighty-Nine (16)

Virginia Lottery's Scratch Game 1676 "Jewel 7's" Final Rules for Game Operation (effective May 23, 2016)

Director's Order Number Ninety (16)

Virginia Lottery's Scratch Game 1675 "Lucky Dog Doubler" Final Rules for Game Operation (effective May 23, 2016)

Director's Order Number Ninety-One (16)

Virginia Lottery's Computer-Generated Game "Cash 5" Final Rules for Game Operation (effective May 23, 2016)

Director's Order Number Ninety-Two (16)

Virginia Lottery's Scratch Game 1680 "Hog Mania" Final Rules for Game Operation (effective May 23, 2016)

Director's Order Number Ninety-Three (16)

Virginia Lottery's Scratch Game 1682 "Give Me \$100's" Final Rules for Game Operation (effective May 23, 2016)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intent to Change the Reimbursement Methodology for Pharmacy Services

Notice is hereby given that the Department of Medical Assistance Services (DMAS) intends to change the reimbursement methodology for pharmacy services pursuant to the department's authority under Title XIX of the Social Security Act. This notice is intended to satisfy the requirements of 42 CFR § 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). The changes contained in this public notice are occurring in response to the 2015 Acts of the Assembly, Item 301 QQ.

In order to comply with new requirements in a final federal rule entitled "Medicaid Program; Covered Outpatient Drugs" that was published in the Federal Register on February 1, 2016, DMAS proposes the following new payment methodology for pharmacy services effective July 1, 2016:

A. Reimbursement for covered legend and nonlegend drugs shall be the lowest of subdivisions 1 through 4 of this section:

1. The National Average Drug Acquisition Cost (NADAC) of the drug.
2. In cases where no NADAC is available, DMAS will reimburse at Wholesale Acquisition Cost (WAC) + 0%.
3. The Federal Upper Limit (FUL).
4. The provider's usual and customary (U&C) charge to the public, as identified by the claim charge.

B. 340B covered entities and Federally Qualified Health Centers (FQHCs) that fill Medicaid member prescriptions with drugs purchased at the prices authorized under § 340 B of the Public Health Services Act shall bill Medicaid their actual acquisition cost. DMAS shall not accept claims from "contracted pharmacy entities" for drugs purchased through a 340B program. Facilities purchasing drugs through the Federal Supply Scheduled or drug pricing program under 38 USC § 1826 or 42 USC § 1396-8, other than the 340B drug pricing program shall bill Medicaid their actual acquisition cost.

C. Payment for pharmacy services will be as described above; however, payment for covered outpatient legend and nonlegend drugs will include the allowed cost of the drug plus only one professional dispensing fee per month for each specific drug. Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements. The professional dispensing fee for all drugs is \$10.65. The professional dispensing fee shall be determined by a cost of dispensing survey conducted at least every five years.

D. There is no expected annual increase or decrease in expenditures. The change is expected to be budget-neutral.

A copy of this notice is available for public review from Donna Proffitt, Manager, Pharmacy Services, Division of Health Care Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Donna Proffitt at email donna.proffitt@dmass.virginia.gov and such comments are available for review at the same address.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmass.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Medical Assistance Services conducted a small business impact review of **12VAC30-150, Uninsured Medical Catastrophe Fund**, and determined that this regulation should be retained in its current form. The Department of Medical Assistance Services is publishing its report of findings dated May 25, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The regulations are not likely to create any costs or other effects on small businesses, and the regulations are not anticipated to have an adverse impact on small businesses.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical

Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmass.virginia.gov.

DEPARTMENT OF TAXATION

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Taxation is conducting a periodic review and small business impact review of **23VAC10-310, Tax on Wills and Administration**. The review of this regulation will be guided by the principles in Executive Order 17 (2014).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins June 13, 2016, and ends July 5, 2016.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Kristin Collins, Lead Tax Policy Analyst, Department of Taxation, 600 East Main Street, Richmond, VA 23261-7185, telephone (804) 371-2341, FAX (804) 371-2355, or email kristin.collins@tax.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

VIRGINIA INFORMATION TECHNOLOGIES AGENCY

Proposed IMSAC Guidance Documents on Trust Frameworks and Identity Proofing and Verification

Notice of action: The Virginia Information Technologies Agency (VITA) is announcing an opportunity for public comment on two proposed guidance documents that were developed by the Identity Management Standards Advisory Council (IMSAC) (§ 2.2-437 of the Code of Virginia). The Identity Management Standards Advisory Council was established by the Virginia General Assembly in 2015 and advises the Secretary of Technology on the adoption of

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identity management standards and the creation of guidance documents pursuant to § 2.2-436 of the Code of Virginia.

Regulations affected: There are no regulations affected or proposed by this action.

Purpose of notice: IMSAC is seeking comment on whether the two proposed guidance documents should be submitted as currently drafted, or if revisions should be made before the final posting. The guidance documents have been developed by VITA, acting on behalf of the Secretary of Technology, and at the direction of the IMSAC.

IMSAC recommends to the Secretary of Technology guidance documents relating to (i) nationally recognized technical and data standards regarding the verification and authentication of identity in digital and online transactions; (ii) the minimum specifications and standards that should be included in an identity trust framework, as defined in § 59.1-550 of the Code of Virginia, so as to warrant liability protection pursuant to the Electronic Identity Management Act (§ 59.1-550 et seq. of the Code of Virginia); and (iii) any other related data standards or specifications concerning reliance by third parties on identity credentials, as defined in § 59.1-550.

Purpose statement for [Identity Proofing & Verification Guidance Document](#):

The purpose of this document is to establish minimum specifications for identity proofing and verification to enable registration and electronic authentication events within a trust-based identity management system. The document assumes that the identity management system will be supported by a trust agreement, compliant with applicable law.¹

The document limits its focus to identity proofing and verification components of trust-based identity management systems. Minimum specifications for other components of an identity management system will be defined in separate IMSAC guidance documents in this series, pursuant to §§ 2.2-436 and 2.2-437 of the Code of Virginia.

The document defines minimum requirements, components, process flows, levels of assurance and privacy, and security provisions for identity proofing and verification. The document assumes that specific business, legal, and technical requirements for identity proofing and verification will be established in the trust agreement for each distinct identity management system, and that these requirements will be designed based on the specific level of assurance model supported by the system.

Purpose statement for [Trust Frameworks Guidance Document](#):

The purpose of this document is to establish minimum specifications for operational trust frameworks to enable and support a trust-based identity management system. The

document assumes that the identity management system's trust framework will be compliant with applicable law.¹

The document limits its focus to operational trust frameworks for identity management systems. Minimum specifications for other components of an identity management system will be defined in separate IMSAC guidance documents in this series, pursuant to §§ 2.2-436 and 2.2-437 of the Code of Virginia.

The document defines minimum requirements, components, and related provisions for operational trust frameworks. The document assumes that specific trust frameworks will address the business, legal, and technical requirements for each distinct identity management system, and that these requirements will be designed based on the specific level of assurance model supported by the system.

Public comment period: June 13, 2016, through July 14, 2016.

Public hearing: A public meeting will be held on June 30, 2016, at 11 a.m. The meeting will be held at the Commonwealth Enterprise Solutions Center, 11751 Meadowville Lane, Room 1222, Chester, VA 23836.

Public comment stage: The two guidance documents were developed by IMSAC and are being posted as general notices pursuant to § 2.2-437 C of the Code of Virginia. Proposed guidance documents and general opportunity for oral or written submittals as to those guidance documents shall be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations as a general notice following the processes and procedures set forth in subsection B of § 2.2-4031 of the Code of Virginia. IMSAC shall allow at least 30 days for the submission of written comments following the posting and publication and shall hold at least one meeting dedicated to the receipt of oral comment no less than 15 days after the posting and publication.

For the purpose of defining the timeframe for public participation and comment, VITA is defining "days" as "calendar days." IMSAC will receive public comment at its June 2016 meeting. For additional information in the definition of "days," please reference page 6 of 15 of VITA's Information Technology Resource Management (ITRM), Policies, Standards and Guidelines (PSGs) Briefs and Supporting Documents found at https://www.vita.virginia.gov/uploadedFiles/VITA_Main_Public/Library/PSGs/ITRMPSG_Brief_Supportdocs.pdf.

IMSAC will hold a meeting dedicated to public comment on June 30, 2016. Meeting details will be posted on the Commonwealth Calendar and the VITA website at <https://www.vita.virginia.gov/About/default.aspx?id=6442474171>.

Description of proposal: The proposed guidance documents are being posted for review by the general public with an opportunity for public comment.

To review documents: The proposed guidance documents and any supporting documents are available on the VITA website at

<https://www.vita.virginia.gov/About/default.aspx?id=6442474173> under "May 2, 2016 - Identity Management Standards Advisory Committee"; see "ITRM Guidance Document: Identity Proofing & Verification" and "ITRM Guidance Document: Trust Frameworks." The proposed guidance documents are also available with comments and proposed changes by IMSAC on the VITA website at <https://www.vita.virginia.gov/About/default.aspx?id=6442474173> under "May 2, 2016 - Identity Management Standards Advisory Committee; see "Committee working draft: Identity Proofing & Verification" and "Committee working draft: Trust Frameworks."

The documents may also be obtained by contacting the VITA representative listed at the end of this notice.

Federal information: No federal information.

How to comment: IMSAC accepts written comments by email and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by VITA by the last day of the comment period. All materials received are part of the public record.

Contact Information: Janice Akers, Virginia Information Technologies Agency, 11751 Meadowville Lane, Chester, VA 23836, telephone (804) 416-6083, or email janice.akers@vita.virginia.gov.

¹For the purpose of this guidance document, the term "applicable law" shall mean laws, statutes, regulations and rules of the jurisdiction in which each participants of a trust-based identity management system operates.

STATE WATER CONTROL BOARD

Proposed Consent Order for Town of Dayton (Dayton Water and Wastewater Treatment Plant)

An enforcement action has been proposed for the Town of Dayton for violations at Dayton Water and Wastewater Treatment Plant in Dayton, Virginia. The State Water Control Board proposes to issue a consent order to the Town of Dayton to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Karen Hensley will accept comments by email at karen.hensley@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box

3000, Harrisonburg, VA 22801, from June 13, 2016, to July 13, 2016.

Proposed Consent Order for Dominion Raceway Holdings, LLC

An enforcement action has been proposed for Dominion Raceway Holdings, LLC in Spotsylvania County, Virginia. The consent order describes a settlement to resolve violations of State Water Control Law and the applicable regulations associated with the development of the Dominion Raceway Project. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from June 14, 2016, through July 14, 2016.

Proposed Consent Special Order for James River Petroleum, Inc.

An enforcement action has been proposed for James River Petroleum, Inc. for alleged violations that occurred at its UST facility located at 16323 Governor Harrison Parkway in Brunswick County. The proposed consent special order requires corrective actions to resolve the noncompliance and payment of a civil charge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. David Robinett will accept comments by email at david.robinett@deq.virginia.gov, FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060-6295, from June 13, 2016, to July 14, 2016.

Notice of Release of the Final 2014 § 305(b)/303(d) Water Quality Assessment Integrated Report

The Virginia Department of Environmental Quality (DEQ) will release the Final 2014 § 305(b)/303(d) Water Quality Assessment Integrated Report on June 13, 2016.

The integrated report combines both the § 305(b) Water Quality Assessment and the § 303(d) Report on Impaired Waters. The draft report was available for public comment December 15, 2014, through January 30, 2015. Comments were received from the public and the U.S. Environmental Protection Agency (EPA). EPA approved the final report on May 19, 2016.

The final report, public comment-response document, and map images are available for download on the website at [http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityAssessments/2014305\(b\)303\(d\)IntegratedReport.aspx](http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityAssessments/2014305(b)303(d)IntegratedReport.aspx).

Copies are available at no charge on CD-ROM (limit one per person) by request via the webpage or via telephone at (804)

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698-4191. These CD-ROMs include the entire final report, all of its appendices, and a digital book of maps developed from the 2014 assessment. Due to the cost of printing, hard copies are only available by special request. Questions regarding the report can be directed to the contact listed below.

Contact Information: Sandra Mueller, Department of Environmental Quality, Office of Water Monitoring and Assessment, P.O. Box 1105, Richmond, VA 23218, by telephone (804) 698-4324, or via email sandra.mueller@deq.virginia.gov.

TMDL Implementation Plan for the North Fork and South Fork Roanoke Rivers, Bradshaw Creek, and Wilson Creek and Tributaries

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the total maximum daily load (TMDL) Implementation Plan (IP) for the North Fork and South Fork Roanoke Rivers, Bradshaw Creek, and Wilson Creek and tributaries. These streams were listed as impaired on the Virginia's § 303(d) TMDL Priority List and Report due to violations of the state's water quality standard for bacteria. The following is the name of the bacteria "impaired" stream and the length of the impaired segment: North Fork Roanoke River, 16.09 miles; Wilson Creek and unnamed tributary to Wilson Creek, 6.99 miles; Bradshaw Creek, 10.36 miles South Fork Roanoke River, 17.31 miles, and Goose Creek, 2.30 miles. These stream segments are located in Montgomery County, Roanoke County, and Floyd County. These streams have also been identified as a source of sediment contributing to a benthic impairment on the Roanoke River mainstem.

The TMDL studies for these stream impairments were completed in February 2006 and March 2004, and can be found in the Bacteria TMDLs for Wilson Creek, Ore Branch and Roanoke River Watersheds, Virginia report at <http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/roankrvr/uroanec.pdf> and the Benthic TMDL Development for the Roanoke River, Virginia report at <http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/roankrvr/uroanbc.pdf>.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and associated costs, benefits, and environmental impacts.

A public meeting will be held to discuss the draft implementation plan for the North Fork and South Fork Roanoke Rivers, Bradshaw Creek, and Wilson Creek and tributaries. At this meeting, the process by which an implementation plan was developed to restore water quality in the watershed will be discussed and citizens will learn how they can be part of the water quality improvement process.

The public meeting will be held at 6 p.m. on July 14, 2016, at the Meadowbrook Center, 267 Alleghany Spring Road, Shawsville, VA 24162. Parking is available on the Meadowbrook Library side of the center.

DEQ accepts written comments by email, fax, or postal mail. The 30-day public comment period on the information presented at the meeting and the draft plan will end on August 12, 2016. Questions or information requests should be addressed to Mary Dail with the Virginia Department of Environmental Quality. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments.

Contact Information: Mary Dail, Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6715, FAX (540) 562.6725, or email mary.dail@deq.virginia.gov.

Notice of Public Meeting for the Development of a TMDL Implementation Plan - Upper Goose Creek Watersheds: Goose Creek, Gap Run, Bolling Branch, Crooked Run, Goose Creek (unnamed tributary); Cromwells Run; Little River and Howsers Branch Fauquier and Loudon Counties, Virginia

The Virginia Department of Environmental Quality (DEQ) will host public meetings on a water quality study for portions of Goose Creek, Gap Run, Bolling Branch, Crooked Run, Cromwells Run, Little River and Howsers Branch on June 21, 2016.

The meeting will start at 6 p.m. The meeting will be held at Wakefield School, located at 4439 Old Tavern Road, The Plains, VA 20198.

The waters listed for this study were identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the E.coli bacteria criteria for recreational uses. The impairments are based on water quality monitoring data reports of sufficient exceedences of Virginia's water quality standard for bacteria.

At this meeting, total maximum daily load (TMDL) findings and the development of the implementation plan will be discussed and citizens will learn how they can be part of the public participation process. DEQ seeks information and involvement of local citizens in developing this plan. After a one-hour public meeting, stakeholders will break into working group sessions to discuss and provide input for the implementation plan.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop total maximum daily loads for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent water quality assessment reports. A TMDL is the total amount of a pollutant a water body can contain and still meet water

quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount. The TMDL report for Goose Creek, which was approved by EPA on May 1, 2003, and by the State Water Control Board on June 17, 2004, can be found at <http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/potrivr/goose.pdf>.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

The public comment period on materials presented at this meeting will extend from June 21, 2016, to July 21, 2016. For additional information or to submit comments, contact May Sligh.

Contact Information: May Sligh, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (804) 450-3802, or email may.sligh@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/connect/commonwealth-calendar>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

