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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-210; 9VAC25-660; 9VAC25-670; 9VAC25-680; and 9VAC25-690
<b>VAC Chapter title(s)</b>	Virginia Water Protection Permit Program Regulation; Virginia Water Protection General Permit for Impacts Less Than One-Half Acre; Virginia Water Protection 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; Virginia Water Protection General Permit for Linear Transportation Projects; and Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities
<b>Action title</b>	<b>VWPPP Regulation Amendments as a Result of 2020 General Assembly Actions</b>
<b>Final agency action date</b>	September 24, 2020
<b>Date this document prepared</b>	August 10, 2020

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

This proposed Final Exempt regulatory action contains amendments to the existing VWPPP Regulations resulting from actions of the 2020 General Assembly. HB1458 (Chapter 622 of the Virginia Acts of Assembly – 2020 Session) resulted in amendments to the regulations relating to “administrative withdrawal”. SB 616 (Chapter 958 of the Virginia Acts of Assembly - 2020 Session) resulted in amendments relating to an agency name change.

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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The regulatory amendments were mandated through action of the 2020 General Assembly, specifically HB 1458 and SB 616.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

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VWPPP – Virginia Water Protection Permit Program

### Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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The Virginia State Water Control Board adopted these amendments on September 24, 2020 as a final regulation and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision. These amendments revise 9VAC25-210; 9VAC25-660; 9VAC25-670; 9VAC25-680; and 9VAC25-690.

### Legal Basis

*Identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

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The Statutory Authority for these regulations includes: § 62,1-44.15 of the Code of Virginia and Section 401 of the Clean Water Act of 1977, as amended (33 U.S.C. §1341).

### Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

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The purpose of this regulatory action is to amend the VWPPP Regulations to incorporate changes mandated by the 2020 General Assembly through HB 1458 and SB 616.

**Substance**

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.*

The substance of the proposed amendments is to clarify the administrative withdrawal process for the Virginia Water Protection Permit Program Regulations and to amend the regulations to reflect the change of the name of the Virginia Department of Game and Inland Fisheries to the Virginia Department of Wildlife Resources as referenced in the regulations.

**Issues**

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

There are no disadvantages to the public or the Commonwealth associated with the proposed regulatory changes.

**Detail of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \*Please put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-210-10		Definitions	“Administratively withdrawn” means a decision by the board that permanently discontinues the review or processing of a VWP permit application <del>or request to modify a VWP permit.</del> – Clarification of administrative withdrawal concept.
9VAC25-210-80 D		Application for a VWP permit. (Incomplete application.)	Section divided into subsections to clarify the process and requirements for addressing “incomplete applications” and the administrative withdrawal of applications for an individual permit or general permit coverage.  D. Incomplete application.  <u>1. Where an application for an individual permit or general permit coverage is not accepted as complete by the board</u>

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			<p>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. 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 review but shall not require an additional notice or an additional permit application fee.</p> <p><u>2. An incomplete permit application for an individual permit or general permit coverage may be administratively withdrawn from processing by the board for failure to provide the required information after 60 days from the date of the latest written information request made by the board. The board shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an 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.</u></p> <p><u>3. 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. (NOTE:</u></p>

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			This last sentence has been slightly reworded and inserted as part of D2 above.)
9VAC25-210-230 A5		Denial of the VWP permit or variance request – Basis for denial	Name of State Agency revised to reflect legislative action:  A5. The Department of <del>Game and Inland Fisheries</del> <u>Wildlife Resources</u> indicates that natural or stockable trout waters would be permanently and negatively impacted by the proposed activity.
9VAC25-210-320 A		Preapplication procedures for new or expanded surface water withdrawals – Preapplication review panel	Name of State Agency revised to reflect legislative action:  ...DEQ shall notify the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Virginia Department of <del>Game and Inland Fisheries</del> <u>Wildlife Resources</u> , the ...
9VAC25-660-50 C		Notification – coordination requirements	Name of State Agency revised to reflect legislative action:  C. The board will determine whether the proposed activity requires coordination with the U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and the Virginia Department of <del>Game and Inland Fisheries</del> <u>Wildlife Resources</u> regarding the presence of federal or state threatened and endangered species...
9VAC25-660-60 D		Application for a VWP permit. (Incomplete application.)	Section divided into subsections to clarify the process and requirements for addressing “incomplete applications” and the administrative withdrawal of applications for general permit coverage.  D. Incomplete application.  <u>1.</u> Where an application <u>for general permit coverage</u> 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. Where the applicant becomes aware that

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			<p>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 review but shall not require an additional notice or an additional permit application fee.</p> <p><u>2. An incomplete permit application for general permit coverage may be administratively withdrawn from processing by the board for failure to provide the required information after 60 days from the date of the latest written information request made by the board. The board shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an 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.</u></p> <p><u>3. 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.</u> (NOTE: This last sentence has been slightly reworded and inserted as part of D2 above.)</p>
9VAC25-660-100 Part ! B		VWP general permit – Special Conditions – Overall conditions – Time of Year restrictions	<p>Name of State Agency revised to reflect legislative action:</p> <p>15. The permittee shall conduct his activities in accordance with tine-of-year restrictions recommended by the Virginia Department of <del>Game and Inland Fisheries</del> <u>Wildlife Resources</u>. The Virginia Marine Resources Commission or other interested and affected agencies...</p>

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9VAC25-670-50 C		Notification – coordination requirements	<p>Name of State Agency revised to reflect legislative action:</p> <p>C. The board will determine whether the proposed activity requires coordination with the U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and the Virginia Department of <del>Game and Inland Fisheries</del><u>Wildlife Resources</u> regarding the presence of federal or state threatened and endangered species...</p>
9VAC25-670-60 E		Application for a VWP permit. (Incomplete application.)	<p>Section divided into subsections to clarify the process and requirements for addressing “incomplete applications” and the administrative withdrawal of applications for general permit coverage.</p> <p>E. Incomplete application.</p> <p><u>1. Where an application for general permit coverage 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. 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 review but shall not require an additional notice or an additional permit application fee.</u></p> <p><u>2. An incomplete permit application for general permit coverage may be administratively withdrawn from processing by the board for failure to provide the required information after 60 days from the date of the latest written information request made by the board. The board shall provide (i) notice to the</u></p>



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			<p><u>applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an 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.</u></p> <p><u>3.</u> 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. <del>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.</del> (NOTE: This last sentence has been slightly reworded and inserted as part of E2 above.)</p>
9VAC25-670-100 Part I B		VWP general permit – Special Conditions – Overall conditions – Time of Year restrictions	<p>Name of State Agency revised to reflect legislative action:</p> <p>15. The permittee shall conduct his activities in accordance with time-of-year restrictions recommended by the Virginia Department of <del>Game and Inland Fisheries</del><u>Wildlife Resources</u>. The Virginia Marine Resources Commission or other interested and affected agencies...</p>
9VAC25-680-50 C		Notification – coordination requirements	<p>Name of State Agency revised to reflect legislative action:</p> <p>C. The board will determine whether the proposed activity requires coordination with the U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and the Virginia Department of <del>Game and Inland Fisheries</del><u>Wildlife Resources</u> regarding the presence of federal or state threatened and endangered species...</p>
9VAC25-680-60 E		Application for a VWP permit. (Incomplete application.)	Section divided into subsections to clarify the process and requirements for addressing “incomplete applications” and the administrative withdrawal of applications for general permit coverage.



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			<p>E. Incomplete application.</p> <p><u>1. Where an application for general permit coverage 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. 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 review but shall not require an additional notice or an additional permit application fee.</u></p> <p><u>2. An incomplete permit application for general permit coverage may be administratively withdrawn from processing by the board for failure to provide the required information after 60 days from the date of the latest written information request made by the board. The board shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an 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.</u></p> <p><u>3. 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</u></p>

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			<p>require submittal of an additional permit application fee. (NOTE: This last sentence has been slightly reworded and inserted as part of E2 above.)</p>
9VAC25-680-100 Part I B		VWP general permit – Special Conditions – Overall conditions – Time of Year restrictions	<p>Name of State Agency revised to reflect legislative action:</p> <p>15. The permittee shall conduct his activities in accordance with time-of-year restrictions recommended by the Virginia Department of <del>Game and Inland Fisheries</del> <u>Wildlife Resources</u>. The Virginia Marine Resources Commission or other interested and affected agencies...</p>
9VAC25-690-50 C		Notification – coordination requirements	<p>Name of State Agency revised to reflect legislative action:</p> <p>C. The board will determine whether the proposed activity requires coordination with the U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and the Virginia Department of <del>Game and Inland Fisheries</del> <u>Wildlife Resources</u> regarding the presence of federal or state threatened and endangered species...</p>
9VAC25-690-60 E		Application for a VWP permit. (Incomplete application.)	<p>Section divided into subsections to clarify the process and requirements for addressing “incomplete applications” and the administrative withdrawal of applications for general permit coverage.</p> <p>E. Incomplete application.</p> <p><u>1. Where an application for general permit coverage 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. 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</u></p>

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			<p>information. A revised application with new information shall be deemed a new application for purpose of review but shall not require an additional notice or an additional permit application fee.</p> <p><u>2. An incomplete permit application for general permit coverage may be administratively withdrawn from processing by the board for failure to provide the required information after 60 days from the date of the latest written information request made by the board. The board shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an 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.</u></p> <p><u>3. 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.</u> (NOTE: This last sentence has been slightly reworded and inserted as part of E2 above.)</p>
9VAC25-690-100 Part I B		VWP general permit – Special Conditions – Overall conditions – Time of Year restrictions	<p>Name of State Agency revised to reflect legislative action:</p> <p>15. The permittee shall conduct his activities in accordance with time-of-year restrictions recommended by the Virginia Department of <del>Game and Inland Fisheries</del> Wildlife Resources. The Virginia Marine Resources Commission or other interested and affected agencies...</p>

**Regulatory Flexibility Analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

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There are no alternative regulatory methods for incorporating the mandated amendments.

### **Family Impact**

*In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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There is no impact on the institution of the family or family stability.