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Exempt Action: Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-660
VAC Chapter title(s)	Virginia Water Protection General Permit for Impacts Less Than One-Half Acre
Action title	2026 Reissuance of General Permit - 9VAC25-660
Date this document prepared	May 30, 2025 (rev. 7/30/2025)

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the *Code of Virginia*). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 regulatory action is needed to reissue Chapter 660 - *Virginia Water Protection General Permit for Impacts Less Than One-Half Acre* that is expiring on August 1, 2026. The general permit is a streamlined permitting approach for regulating impacts to the Commonwealth's surface waters. The proposed action provides efficiency to the permit coverage process for activities having minor impacts to state surface waters, simplifies permit issuance procedures, and makes clarifying amendments for improved understanding of regulatory provisions and permit processes.

The purpose of this proposed regulatory action is to reissue this general permit – also referred to as WP1 - which expires on August 1, 2026, for another ten-year term and allow for amendments to provide clarity in provisions related to coverage expiration, transition, and

continuation; to correct citations and typographical errors; to update forms and reference documents; and to clarify administrative procedures.

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). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "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."

Subsection D of § 62.1-44.15:21 (Impacts to wetlands) of the *Code of Virginia* directs the State Water Control Board (Board) to develop general permits for specific activities. The *Virginia Water Protection General Permit for Impacts Less Than One-Half Acre*, 9VAC25-660, covers activities causing permanent and temporary impacts to less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed.

Per § 2.2-4017 (periodic review) and § 2.2-4007.1 (small business review) of the *Code of Virginia*, and Executive Order 19 (2022), DEQ conducts once every four years a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"DEQ" means the Department of Environmental Quality.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

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

"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.

"TAC" stands for Technical Advisory Committee.

"VDOT" means the Virginia Department of Transportation.

"VWP" stands for Virginia Water Protection.

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

"WP1" stands for Virginia Water Protection General Permit for Impacts Less Than One-Half Acre, 9VAC25-660.

“WP3” stands for Virginia Water Protection General Permit for Linear Transportation Projects, 9VAC25-680.

Legal Basis

Please 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.

The basis for this regulatory action is the State Water Control Law (Chapter 3.1 of Title 62.1 of the *Code of Virginia*) with specific provisions in law (Article 2.2., §§ 62.1-44.15:20 - 62.1-44.15:23.1, and Article 2.6, §§ 62.1-44.15:80 – 62.1-44.15:84) mandating certain actions and allowing discretionary authority over certain matters to the promulgating agency. Subsection D of § 62.1-44.15:21 (Impacts to wetlands) of the *Code of Virginia* directs the Board to develop general permits for such activities in wetlands as it deems appropriate, and that the general permits shall include such terms and conditions as the Board deems necessary to protect state waters and fish and wildlife resources from significant impairment. It further directs the Board to develop a general permit for activities causing wetland impacts of less than one-half acre.

Section 62.1-44.15(10) of the *Code of Virginia* sets forth the Board's authority for the adoption of regulations deemed necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth:

“(10) To adopt such regulations as it deems necessary to enforce the general soil erosion control and stormwater management program and water quality management program of the Board in all or part of the Commonwealth, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.”

In addition, periodic and small business impact reviews are provided for in § 2.2-4017 (periodic review) and § 2.2-4007.1 (small business review) of the *Code of Virginia*, and Executive Order 19 (2022).

Purpose

Please 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 is intended to solve.

The existing *Virginia Water Protection General Permit for Impacts Less Than One-Half Acre* (9VAC25-660 *et seq.*) is expiring on August 1, 2026. In conjunction with reissuance of this VWP general permit, the VWP Permit Program seeks to amend the existing VWP General Permit regulation as necessary to implement the general permit. If the existing VWP general permit is not reissued prior to expiration on August 1, 2026, no general permit coverage can be extended to applicants submitting new applications for regulated activities or to existing permittees

wishing to continue authorized activities beyond August 1, 2026, and these applicants would be required to wait for reissuance of the next applicable general permit or obtain a VWP individual permit instead.

Substance

Please 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 Board intends to amend the expiration and effective dates in the *Virginia Water Protection General Permit for Impacts Less Than One-Half Acre* for another ten-year term. The Board is proposing amendments related to transitioning between the expiring VWP general permit and the next consecutive VWP general permit. The potential amendments to the regulation include provisions related to application forms, form formats, coverage issuance, and continuation of activities. This amendment includes updates to citations, references, form names and dates, as well as corrections of typographical and grammatical errors.

Issues

Please 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.

The advantages to the public, permittees, and the agency of reissuing this general permit are that a Virginia Water Protection (VWP) General Permit will continue to be available to applicants submitting new applications for regulated activities or to existing permittees wishing to continue authorized activities beyond August 1, 2026. The continued availability of this general permit avoids the increased cost and more complicated application process for permittees associated with issuing an individual permit and makes permit administration more reasonable for DEQ. There are no known disadvantages to the public, agency, or regulated community.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no regulatory requirements that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material

impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

The Virginia Department of Transportation (VDOT) may be affected by the proposed regulatory changes. VDOT Forms are included in all four of the VWP general permits, even though they typically use WP3 the most. VDOT was represented on the Technical Advisory Committee (TAC).

Localities Particularly Affected:

There are no localities that bear a disproportionate material impact as the general permit is available and applies statewide.

Other Entities Particularly Affected:

No other entities are particularly affected by the proposed regulation.

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.

General permits provide the regulated community with a streamlined, less burdensome approach to obtain coverage for conducting a specific regulated activity. The continued availability of this general permit avoids the increased cost and more complicated application process for permittees associated with issuing an individual permit and makes permit administration more reasonable for DEQ. The general permit is available for use by the regulated community, including small businesses.

The reissuance of this VWP general permit accomplishes the objectives of applicable law and minimizes the application budget and permit implementation costs to affected small business owners. Without the general permit, a small business owner would be required to obtain an individual permit, which would increase the complexity of a permit application, implementation, and permit application and compliance costs.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Subsection D of § 62.1-44.15:21 (Impacts to wetlands) of the Code of Virginia directs the Board to develop general permits for such activities in wetlands as it deems appropriate, and that the general permits shall include such terms and conditions as the Board deems necessary to protect state waters and fish and wildlife resources from significant impairment; thus, the regulation continues to be needed to regulate these activities through a general permit.

No comments were received during the NOIRA comment period.

This regulation is clearly written and easily understandable and accomplishes the objectives of applicable law. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

The State Water Control Board last re-issued this general permit regulation in 2016 and has amended the regulation numerous times since the reissuance to maintain consistency with federal and state laws.

General permits provide the regulated community with a streamlined, less burdensome approach to obtain coverage for conducting a specific regulated activity. Without this general permit regulation, an individual permit would be required to conduct the regulated activity.

Public Comment Received

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

A public comment period was held from October 21, 2024, through November 20, 2024. No public comments were received.

Public Participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments on the proposal, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. The Board and DEQ are also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Brenda Winn, DEQ Office of Wetland and Stream Protection, 1111 East Main Street, Suite 1400, Richmond, VA 23219; 804-659-2575; or vwppublicnotices@deq.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar (<https://commonwealthcalendar.virginia.gov/>).

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Please include citations to the specific section(s) of the regulation that are changing.

In addition to the correction of spellings and citations and the replacement of the current effective and expiration dates with the new permit terms throughout the general permit regulation, the following changes are being proposed:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-660		Chapter Title.	Title revised to include "VWP" abbreviation for clarity and consistency.
9VAC25-660-25		Authorization for coverage under VWP general permit effective August 1, 2006.	Repealing Section 25 pertaining to transition of general permit coverage from 2006 to 2016. Section is obsolete and no longer relevant.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-660-27		VWP general permit coverage; transition; continuation.	<p>Title of Section revised to read: "VWP general permit and coverage; expiration; transition; continuation" to clarify requirements found in the section.</p> <p>Requirements identified in the subsections of this section were reorganized to: (1) clearly state the term of the general permit; (2) identify and carry through on the expectation for the need to reapply at the end of the permit term when a project has not been completed to help in the applicant or permittee's planning efforts and (3) include the existing Board administrative continuance provisions originally included in 9VAC25-660-35.</p>
9VAC25-660-30		Authorization to impact surface waters	Language added to this section provides for additional flexibility in the application and notification formats that are acceptable.
9VAC25-660-35		Administrative continuance	Repealing this section. The administrative continuance provisions have been moved to 9VAC25-660-27 C.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-660-100		VWP General Permit	<p>Replace references throughout the section to the outdated “Virginia Erosion and Sediment Control Handbook, Third Edition, 1992” with the “Virginia Erosion and Stormwater Management Regulation, 9VAC25-875.”</p> <p>Part I E – combine subdivisions 1 and 2 associated with removing handbook reference.</p> <p>Stormwater management requirements vary depending upon the activities being conducted. Referencing the 9VAC25-875 regulation avoids setting conflicting requirements between the VWP general permit and the stormwater management requirements that may apply to a permittee needing both authorizations.</p>
FORMS		Forms incorporated as part of the general permit regulation	Updating of forms to reference the current versions.
DOCUMENTS INCORPORATED BY REFERENCE.		Documents incorporated as part of the general permit regulation by reference	<p>Deletion of reference to obsolete “Virginia Erosion and Sediment Control Handbook, Third Edition, 1992”.</p> <p>Updating of reference to the Virginia Invasive Plant Species List to correct title; to reference the current version; and replace document link.</p> <p>Revising document link for Classification of Wetlands</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			and Deepwater Habitats of the United States, Cowardin, Lewis M. II, et al., United States Fish and Wildlife Service, December 1979, Reprinted 1992.

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.

This general permit applies to activities causing permanent and temporary impacts to less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed. It has been designed to minimize burden while accomplishing the objectives of applicable law and minimizes the application budget and permit implementation costs. This regulatory action does not address and will have no direct impact on 1) the authority and rights of parents, 2) economic self-sufficient, self-pride, or assumption of familial responsibilities, 3) marital commitments, or 4) disposable family income.