



## Changes to DEQ VWP General Permits Effective August 2, 2016

The Virginia Department of Environmental Quality (DEQ) has notified the public of their intent to reissue the Virginia Water Protection (VWP) General Permit which expired on August 1, 2016. The final updated VWP General Permits were published on June 13, 2016 in The Virginia Register of Regulations Volume: 32 Issue: 21. The 30 day comment period ended on July 13, 2016 and the permits become effective August 2, 2016.

The DEQ stated that this re-issuance allows for revisions to correct several administrative procedures; to clarify certain definitions; to revise application and permitting requirements to reflect current guidance and policies; to incorporate certain federal regulatory provisions relative to the program; to increase efficiency; and to make the general permit regulation more relevant and useful. The following four (4) DEQ General Permits are being reissued:

- WP1 - Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (9 VAC 25-660)
- WP2 - Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (9 VAC 25-670)
- WP3 - Virginia Water Protection General Permit for Linear Transportation Projects (9 VAC 25-680)
- WP4 - Virginia Water Protection General Permit for Impacts from Development Activities (9 VAC 25-690)

While there are no significant changes to each of the four (4) General Permits, there are modifications to the Virginia Water Protection Permit Regulation (9 VAC 25 - 210), including some changes to the application requirements. The most notable changes to the program are listed below:

### Application Requirements

VWP general permit authorizations granted through August 1, 2016 shall remain in effect until the expiration date of your specific permit as stated on the VWP authorization cover page.

All complete applications or notifications received by the board through August 1, 2016, shall be processed in accordance with the VWP general permit regulation in effect August 1, 2006, through August 1, 2016. Those applications being processed under the 2006 VWP regulations will expire on July 31, 2021.

Applicants in the process of securing General Permits need to be sure their impacts to wetlands and waters can be completed by July 31, 2021. If not, they should ask DEQ to continue their review under the new VWP regulations. Permits issued under these new VWP regulations will be valid until August 1, 2026.

New general permits issued on or after August 2, 2016, will expire on August 1, 2026.

### Mitigation

The mitigation requirements have changed in preferential order to correspond with the USACE **Mitigation Rule**. Mitigation banks are now the most preferred method of wetland compensation followed in descending order by in-lieu fee programs, permittee-responsible mitigation under a watershed approach, permittee-responsible mitigation through on-site and in-kind mitigation, permittee-responsible off-site/out-of-kind mitigation, restoration, enhancement, or preservation of upland buffers adjacent to streams when utilized in conjunction with previously mentioned mitigation; and preservation of stream channels and adjacent riparian buffers when used in conjunction with the first five types of mitigation.

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. 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.

### **Construction Monitoring**

The general permits now require 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.

In addition, 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 the permit. Observations shall be recorded on the inspection form provided by the DEQ. 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 DEQ staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

### **Special Conditions**

Bedrock encountered during construction must be identified and approved in advance of a design change where the countersinking of outfalls 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.

Please contact us at (757) 963-2008 to answer any questions you may have regarding these pending regulations.

To view the updated VWP General Permits, visit:

<http://www.townhall.virginia.gov/l/ViewBoard.cfm?BoardID=103>

**Kerr Environmental Services Corp. provides environmental consulting, water resources engineering, stream and wetland restoration, and shoreline stabilization.**

Questions or comments? Email Bob Kerr: [bkerr@kerrenv.com](mailto:bkerr@kerrenv.com) or Curtis Hickman: [chickman@kerrenv.com](mailto:chickman@kerrenv.com)

1008 Old Virginia Beach Road, Suite 200 · Virginia Beach, VA 23451  
Phone 757.963.2008 | Fax 757.963.8322