



## COMMONWEALTH of VIRGINIA

### DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 10009, Richmond, Virginia 23240

Fax (804) 698-4500 TDD (804) 698-4021

[www.deq.virginia.gov](http://www.deq.virginia.gov)

L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

(804) 698-4000  
1-800-592-5482

January 8, 2010

Mr. Thomas E. Payne, Chairman  
James River Water Authority  
Fluvanna County Office Building  
Main Street  
Palmyra, VA 22963

RE: VWP Individual Permit Number 04-0805  
James River Intake, Fluvanna County, Virginia  
Minor Modification for Change in Ownership

Dear Chairman Payne:

The Virginia Department of Environmental Quality (DEQ) received Fluvanna County's request on December 4, 2009 to transfer ownership of the above-referenced permit to the James River Water Authority. The request included a transfer of all responsibility, coverage, and liability effective November 1, 2009.

In accordance with your request, and pursuant to the VWP Permit Program Regulation 9VAC25-210-210 and the §401 of the Clean Water Act Amendments of 1977, and Public Law 95-217, DEQ approves your request for transfer of ownership. DEQ has determined that this request qualifies for a Minor Modification.

The permit expiration date on the Permit Cover Page has been changed from June 9, 2021 to June 8, 2021 to reflect 15 years from the date of issuance, the maximum permit term allowable by current law.

Please note that this letter is an official component of the permit and should be retained in your files.

Mr. Thomas Payne  
VWP Individual Permit Minor Modification No. 04-0805  
Page 2 of 2

If you have any questions, please contact me at (804) 698-4516 or  
[brenda.winn@deq.virginia.gov](mailto:brenda.winn@deq.virginia.gov).

Sincerely,



Brenda K. Winn  
VWP Water Withdrawal Project Manager

Enclosures: Minor Modification Permit Cover Page, Minor Modification Part I - Special  
Conditions and Attachment A, Part II - General Conditions

cc: Kurt J. Krueger, Esq., McGuire Woods  
Nora Iseli, U.S. Army Corps of Engineers



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

TDD (804) 698-4021

www.deq.virginia.gov

L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

(804) 698-4000  
1-800-592-5482

VWP Individual Permit Number: 04-0805

Effective Date: June 9, 2006

Minor Modification Date: January 8, 2010

Expiration Date: June 8, 2021

### VIRGINIA WATER PROTECTION PERMIT ISSUED AND MODIFIED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

Based upon an examination of the information submitted by the owner, and 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 State Water Control Board (board) has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, 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 surface waters, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

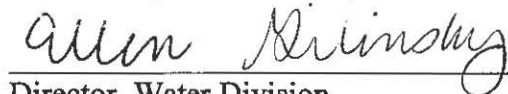
**Permittee:** James River Water Authority

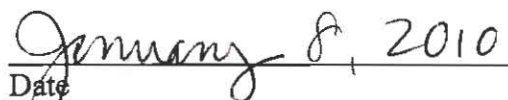
**Address:** Fluvanna County Office Building, Main Street, Palmyra, VA 22963

**Activity Location:** James River in Fluvanna County 2000 feet downstream of Route 15.

**Activity Description:** The construction and operation of a municipal water supply intake.

The permitted activity shall be in accordance with this Permit Cover Page, Part I - Special Conditions, Attachment A, and Part II - General Conditions.

  
\_\_\_\_\_  
Director, Water Division

  
\_\_\_\_\_  
Date

### **Authorized Activities and Permit Term**

#### *A. Authorized Activities*

This permit authorizes the following impacts as indicated in the application dated April 2, 2004, received by DEQ on April 9, 2004, and deemed complete by DEQ on December 15, 2005. The permit authorization and conditions are also based on additional submittals approved by DEQ.

1. The construction and operation of a municipal water supply intake.
2. Utility line crossings, if any, associated with piping the water from the intake to its connections with the East Coast Transport, Inc. pipeline in Fluvanna County.
3. The temporary use of mechanical equipment in surface waters when conducted according to the permit conditions C.12, C.13, and C.14.

#### *B. Permit Term*

This permit is valid for 15 years from the date of issuance. If water withdrawals continue after the end of the permit term, a new permit will be required.

### **Project Construction at Impact Site**

#### *C. Standard Project Conditions*

1. The activities authorized by this permit shall be executed in such a manner that any impacts to stream beneficial uses are minimized. As defined in § 62.1-10(b) of the Code, "beneficial use" means 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, commercial, and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.
2. No activity shall 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.

3. At crossings of streams, pipes and culverts less than 24 inches in diameter shall be countersunk a minimum of three inches, and pipes and culverts greater than 24 inches in diameter shall be countersunk a minimum of six inches to provide for the re-establishment of a natural stream bottom and to maintain a low flow channel. For multiple-celled culverts, only the bottoms of those cells situated below the limits of ordinary high water shall be countersunk. To the greatest extent practicable, other cells, pipes, or culverts shall be elevated to provide a natural distribution of flood flows. The requirement to countersink shall not apply to extensions or maintenance of existing culverts that are not countersunk, to floodplain culverts being placed above ordinary high water, to culverts being placed on bedrock, or to culverts required to be placed on slopes 5% or greater.
4. Flows downstream of the project area shall be maintained to protect all uses.
5. No activity shall cause more than minimal adverse effect on navigation, and no activity shall block more than half of the width of the stream at any given time.
6. The activity shall not impede the passage of normal or expected high flows, and any associated structure shall withstand expected high flows.
7. Activities shall be conducted in accordance with any Time-of-Year restriction(s) as recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission. The permittee shall retain a copy of the agency correspondence concerning the Time-of-Year restriction(s), or the lack thereof, for the duration of the construction phase of the project.
8. All excavation, dredging, or filling in surface waters shall be accomplished in a manner that minimizes bottom disturbance and turbidity.
9. All in-stream activities shall be conducted during low-flow conditions whenever practicable.
10. All construction, construction access, and demolition activities associated with this project shall be accomplished in a manner that minimizes construction materials or waste materials from entering surface waters, unless authorized by this permit. Wet, excess, or waste concrete shall be prohibited from entering surface waters.
11. All fill material placed in surface waters shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

12. Measures shall be employed at all times to prevent and contain spills of fuels, lubricants, or other pollutants into surface waters.
13. Machinery or heavy equipment in temporarily impacted wetlands shall be placed on mats or geotextile fabric, or other suitable means shall be implemented, to minimize soil disturbance to the maximum extent practical. Mats, fabrics, or other measures shall be removed as soon as the work is complete in the temporarily impacted wetland.
14. Heavy equipment is authorized for use within the stream channel during project construction or stream restoration activities when site conditions prohibit access from the streambank. The equipment shall be stationed on cobble bars and the activities conducted in the dry or during low flow conditions, whenever possible.
15. Temporary disturbances to wetlands, stream channels, and/or stream banks during project construction activities shall be avoided and minimized to the maximum extent practicable.
16. All temporarily impacted streams and stream banks shall be restored to their original elevations and contours within **30 calendar days** following the construction at that stream segment, and the banks shall be seeded or planted with the same vegetative cover type originally present along the banks, including supplemental erosion control grasses if necessary but not including invasive species identified on DCR's Invasive Alien Plant Species of Virginia list. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters through the **second year post-disturbance**.
17. All materials (including fill, construction debris, excavated materials, and woody materials, that are temporarily placed in wetlands, in stream channels, or on stream banks) shall be placed on mats or geotextile fabric, shall be immediately stabilized to prevent the material or leachate from entering surface waters, and shall be entirely removed within **30 calendar days** following completion of that construction activity. After removal, disturbed areas shall be returned to original contours, shall be stabilized, and shall be restored to the original vegetated state within **30 calendar days**. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters through the **second year post-disturbance**.
18. Temporary in-stream construction features such as cofferdams shall be made of non-erodible materials.

19. Virginia Water Quality Standards shall not be violated in any surface waters as a result of the project activities.
20. All required notifications and submittals shall be submitted to the DEQ office stated below, to the attention of the VWP permit manager, unless directed in writing by DEQ subsequent to the issuance of this permit: DEQ, Office of Wetlands and Water Protection, P.O. Box 10009, Richmond, VA 23240
21. All reports required by this permit and other information requested by DEQ shall be signed by the permittee or a person acting in the permittee's behalf, with the authority to bind the permittee. A person is a duly authorized representative only if *both* criteria below are met. If a representative authorization is no longer valid because of a change in responsibility for the overall operation of the facility, a new authorization shall be immediately submitted to DEQ.
  - a. The authorization is made in writing by the permittee.
  - 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.
22. All submittals 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 violations."
23. Any fish kills or spills of fuels or oils shall be reported to DEQ immediately upon discovery at (804) 527-5021. If DEQ cannot be reached, the spill shall be reported to the Virginia Department of Emergency Management (DEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802.
24. DEQ shall be notified in writing within **24 hours or as soon as possible on the next business day** when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to

remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.

25. The permittee shall notify the DEQ of any additional impacts to surface waters, including wetlands; of any modifications of the intake structure; and of any change to the type of surface water impacts associated with this project. Any additional impacts, modifications, or changes shall be subject to individual permit review and/or modification of this permit. Compensation may be required.

*D. Projects Involving Stream Modifications, Including Intake/Outfall Structures*

1. Any exposed slopes or streambanks shall be stabilized immediately upon completion of work in each impact area. Methods and materials for stabilization shall be in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction.
2. Redistribution of existing stream substrate for erosion control purposes is prohibited.
3. Material removed from the stream bottom shall not be deposited into surface waters unless otherwise authorized as fill material in this permit.
4. Riprap aprons shall be designed in accordance with Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction.
5. For streambank protection activities, structures and backfill shall be placed as close to the streambank as practical, while still avoiding and minimizing impacts to vegetated wetlands to the maximum extent practical. No material shall be placed in excess of the minimum necessary for erosion protection.
6. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills, breakwaters, dams, or weirs.

*E. Projects Involving Utilities*

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance in each area. Temporarily disturbed surface waters shall be restored in accordance with Part I. C.16, C.17, and C.18, unless otherwise authorized by this permit.



2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 calendar 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).

F. *Projects Involving Surface Water Withdrawals*

1. The maximum daily water withdrawal shall not exceed 5.7 million gallons.
2. The maximum annual water withdrawal shall not exceed 1.1 billion gallons.
3. The maximum annual withdrawal limit in condition F.2 shall be reduced by 54.75 million gallons if the Department of Corrections renews Virginia Water Protection Permit Number 95-0957 to withdraw water from Mechunk Creek. The maximum annual water withdrawal limit in condition F.2 shall be reduced by 460 million gallons if the County of Louisa constructs an alternative water supply system to provide water to the Zions Crossroads with water from Bowlers Mill Reservoir.
4. The permittee may not sell or provide water to East Coast Transport, Inc., to Central Virginia Water Storage Corp., to the Tenaska Virginia Partners power plant in Fluvanna near Cunningham or to the yet to be built Tenaska Virginia Partners II power plant in Buckingham. These facilities have their own water allocation under permit 01-1282 with different minimum instream flowby requirements.
5. To prevent the impingement and entrainment of fish eggs, larvae, and other aquatic life, the intake screens shall be so designed that screen openings are not larger than 1 millimeter in width and the screen face intake velocities are not greater than 0.25 feet per second.
6. **Prior to** impacting any surface waters as authorized by this permit, the applicant shall submit a water supply conservation plans that applies to the service areas being supplied by the water withdrawn under this permit. The plan shall include voluntary water conservation measures and mandatory water conservation measures.
7. In the event that the Governor or the Virginia Drought Coordinator declares a drought emergency in any *Drought Evaluation Region that contains Fluvanna or Louisa Counties*, the permittee shall implement the mandatory conservation measures, as detailed in Attachment A of this permit. The permittee shall be responsible for determining when drought emergencies are declared. DEQ may

require documentation that mandatory conservation measures were implemented during declared drought emergencies.

8. In addition to water conservation emergencies declared by the governor or his designee, between July 1<sup>st</sup> and October 31<sup>st</sup>, the permittee shall implement voluntary conservation when the 14-day rolling average of stream flow of the James River at Scottsville gage drops below 822 cfs; once the 14-day rolling average stream flow drops below 568 cfs, the permittee shall implement mandatory water conservation measures. Between November 1<sup>st</sup> and June 30<sup>th</sup>, the permittee shall implement voluntary conservation when the 14-day rolling average of stream flow of the James River at Scottsville gage drops below 1161 cfs; once the 14-day rolling average stream flow drops below 856 cfs, the permittee shall implement mandatory water conservation measures.
9. The permittee shall monitor withdrawals from the James River on a daily basis to confirm that the withdrawals are in compliance with special conditions of this permit.
10. Water withdrawal monitoring and reporting activities shall comply with this section, Part I.C, and Part II. All records and information that result from the monitoring and reporting activities required by this permit, including any records of maintenance activities to the withdrawal system, shall be retained for the life of the permit. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or as requested by the State Water Control Board.
11. Beginning in the first year after water withdrawals take place the permittee shall prepare an annual report demonstrating compliance with the water withdrawal and water conservation conditions of this permit. The report shall include for each day, the date, the time, (the streamflow reading shall be taken at approximately the same time each day using publicly available data), the flow of the James River at Scottsville, the 14 day rolling average of the flow of the James River at Scottsville and the amount of water withdrawn. The report shall sum and report the total amount of water withdrawn for the entire year. The report shall indicate what dates, if any, that voluntary and mandatory water conservation measures were in effect. The report is due to the address listed in condition C.20 by January 31<sup>st</sup> of the following year.

Within 90 days of permit issuance, the permittee shall provide to DEQ a monitoring plan that describes the following:

- a. What measures Fluvanna will put in place to estimate the streamflow of the James River at Scottsville in the event the James River at Scottsville gage is damaged, disable or discontinued.

- b. What correlation coefficients or equations and gages the permittee will use as a surrogate for the Scottsville gage.
- 
12. *For all permittees whose average daily withdrawal during any single month exceeds 10,000 gallons per day, the water withdrawals shall be reported to DEQ by **January 31st** of the next year, as required under State Water Control Board (SWCB) Water Withdrawal Reporting Regulation (9 VAC 25-200 et seq.). The annual monitoring report shall contain the following information: the permittee's name and address, the sources and locations of water withdrawal, the cumulative volume of water withdrawn each month of the calendar year, the maximum day withdrawal and the month in which it occurred, and the method of withdrawal measurement. For permittees subject to the Virginia Department of Health (VDH) Waterworks Regulations, the annual reports to DEQ may include, as an alternative, the source and location of water withdrawals, the type of use for the water withdrawn, and reference to the reports filed with VDH that contain the monthly withdrawal data.*

## **Attachment A- Water Conservation**

### **Mandatory Non-essential Water Use Restrictions**

The following non-essential water uses will be prohibited during periods of declared drought emergencies. Please note the exceptions that follow each prohibited use. These prohibitions and exceptions will apply to uses from all sources of water and will only be effective when the Governor of Virginia or the Virginia Drought coordinator declares a Drought Emergency. Water use restrictions shall not apply to the agricultural production of food or fiber, the maintenance of livestock including poultry, nor the commercial production of plant materials so long as best management practices are applied to assure the minimum amount of water is utilized.

#### **Unrestricted irrigation of lawns is prohibited.**

- Newly sodded and seeded areas may be irrigated to establish cover on bare ground at the minimum rate necessary for no more than a period of 60 days. . Irrigation rates may not exceed one inch of applied water in any 7-day period.
- Gardens, bedding plants, trees, shrubs and other landscape materials may be watered with hand held containers, hand held hoses equipped with an automatic shutoff device, sprinklers or other automated watering devices at the minimum rate necessary but in no case more frequently than twice per week. Irrigation should not occur during the heat of the day.
- All allowed lawn irrigation must be applied in a manner to assure that no runoff, puddling or excessive watering occurs.
- Irrigation systems may be tested after installation, routine maintenance or repair for no more than ten minutes per zone.

#### **Unrestricted irrigation of athletic fields is prohibited.**

- Athletic fields may be irrigated between the hours of 9:00 p.m. and 10:00 a.m. at a rate not to exceed one inch per application or more than a total of one inch in multiple applications during any ten-day period. All irrigation water must fall on playing surfaces with no outlying areas receiving irrigation water directly from irrigation heads.
- Localized dry areas that show signs of drought stress and wilt (curled leaves, foot-printing, purpling) may be syringed by the application of water for a cumulative time not to exceed fifteen minutes during any twenty four hour period. Syringing may be accomplished with an automated irrigation system or with a hand held hose equipped with an automatic shutoff device at the minimum rate necessary.
- Athletic fields may be irrigated between the hours of 9:00 p.m. and 10:00 a.m. during necessary overseeding, sprigging or resodding operations at the minimum rate necessary for a period that does not exceed 60 days. Irrigation rates during this restoration period may not exceed one inch of applied water in any seven-day period. Syringing is permitted during signs of drought stress and wilt (curled leaves, foot-printing, purpling).

- All allowed athletic field irrigation must be applied in a manner to assure that no runoff, puddling or excessive watering occurs.
- Irrigation is prohibited on athletic fields that are not scheduled for use within the next 120-day period.
- Water may be used for the daily maintenance of pitching mounds, home plate areas and base areas with the use of hand held containers or hand held hoses equipped with an automatic shutoff device at the minimum rate necessary.
- Skinned infield areas may utilize water to control dust and improve playing surface conditions utilizing hand held containers or hand held hoses equipped with an automatic shutoff device at the minimum rate necessary no earlier than two hours prior to official game time.

**Washing paved surfaces such as streets, roads, sidewalks, driveways, garages, parking areas, tennis courts, and patios is prohibited.**

- Driveways and roadways may be pre-washed in preparation for recoating and sealing.
- Tennis courts composed of clay or similar materials may be wetted by means of a hand-held hose equipped with an automatic shutoff device at the minimum rate necessary for maintenance. Automatic wetting systems may be used between the hours of 9:00 p.m. and 10:00 a.m. at the minimum rate necessary.
- Public eating and drinking areas may be washed using the minimum amount of water required to assure sanitation and public health.
- Water may be used at the minimum rate necessary to maintain effective dust control during the construction of highways and roads.

**Use of water for washing or cleaning of mobile equipment including automobiles, trucks, trailers and boats is prohibited.**

- Mobile equipment may be washed using hand held containers or hand held hoses equipped with automatic shutoff devices provided that no mobile equipment is washed more than once per calendar month and the minimum amount of water is utilized.
- Construction, emergency or public transportation vehicles may be washed as necessary to preserve the proper functioning and safe operation of the vehicle.
- Mobile equipment may be washed at car washes that utilize reclaimed water as part of the wash process or reduce water consumption by at least 10% when compared to a similar period when water use restrictions were not in effect.
- Automobile dealers may wash cars that are in inventory no more than once per week utilizing hand held containers and hoses equipped with automatic shutoff devices, automated equipment that utilizes reclaimed water as part of the wash process, or automated equipment where water consumption is reduced by at least 10% when compared to a similar period when water use restrictions were not in effect.

- Automobile rental agencies may wash cars no more than once per week utilizing hand held containers and hoses equipped with automatic shutoff devices, automated equipment that utilizes reclaimed water as part of the wash process, or automated equipment where water consumption is reduced by at least 10% when compared to a similar period when water use restrictions were not in effect.
- Marine engines may be flushed with water for a period that does not exceed 5 minutes after each use.

**Use of water for the operation of ornamental fountains, artificial waterfalls, misting machines, and reflecting pools is prohibited.**

- Fountains and other means of aeration necessary to support aquatic life are permitted.

**Use of water to fill and top off outdoor swimming pools is prohibited.**

- Newly built or repaired pools may be filled to protect their structural integrity.
- Outdoor pools operated by commercial ventures, community associations, recreation associations, and similar institutions open to the public may be refilled as long as:
  - Levels are maintained at mid-skimmer depth or lower,
  - Any visible leaks are immediately repaired,
  - Backwashing occurs only when necessary to assure proper filter operation,
  - Deck areas are washed no more than once per calendar month (except where chemical spills or other health hazards occur),
  - All water features (other than slides) that increase losses due to evaporation are eliminated, and
  - Slides are turned off when the pool is not in operation.
- Swimming pools operated by health care facilities used in relation to patient care and rehabilitation may be filled or topped off.
- Indoor pools may be filled or topped off.
- Residential swimming pools may be filled only to protect structural integrity, public welfare, safety and health and may not be filled to allow the continued operation of such pools.

**Water may be served in restaurants, clubs, or eating-places only at the request of customers.**

## **Part II – General Conditions**

### **A. Duty to Comply**

The permittee shall comply with all conditions of the VWP permit. Nothing in the VWP permit regulations shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and prohibitions. Any VWP permit violation is a violation of the law, and is grounds for enforcement action, VWP permit termination, revocation, 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 permit which may have a reasonable likelihood of adversely affecting human health or the environment.

### **D. VWP Permit Action**

1. A VWP permit may be modified, revoked and reissued, or terminated as set forth in 9 VAC 25-210 et seq.
2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9 VAC 25-210-185 (VWP Permit Extension).
3. VWP permits may be modified, revoked and reissued or terminated upon the request of the permittee or other person at the board's discretion, or upon board initiative to reflect the requirements of any changes in the statutes or regulations, or as a result of VWP permit noncompliance as indicated in the Duty to Comply subsection above, or for other reasons listed in 9 VAC 25-210-180 (Rules for Modification, Revocation and Reissuance, and Termination of VWP permits).

### **E. Inspection and Entry**

Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any 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.

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

### **G. 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 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:
  - 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.

#### **H. Transferability**

This VWP permit may be transferred to a new permittee only by modification to reflect the transfer, by revoking and reissuing the permit, or by automatic transfer. Automatic transfer to a new permittee shall occur 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 specific 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; and
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.

#### **I. Property rights**

The issuance of this 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.

#### **J. Reopener**

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.

#### **K. Compliance with State and Federal Law**

Compliance with this VWP permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP 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.

#### **L. Severability**

The provisions of this VWP permit are severable.

#### **M. Permit Modification**

A VWP permit may be modified, but not revoked and reissued except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP permit or are absent from it;
2. When new information becomes available about the operation or activity covered by the VWP permit which 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. 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. When changes occur which are subject to "reopener clauses" in the VWP permit; or
6. When the board determines that minimum instream flow levels resulting from the permittee's withdrawal of water are detrimental to the instream beneficial use and the withdrawal of 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.

#### **N. Permit Termination**

After notice and opportunity for a formal hearing pursuant to Procedural Rule No. 1 (9 VAC 25-230-100) a VWP permit can be terminated for cause. Causes for termination 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
6. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

#### **O. Civil and Criminal Liability**

Nothing in this VWP permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

#### **P. Oil and Hazardous Substance Liability**

Nothing in this VWP 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.

#### **Q. Unauthorized Discharge of Pollutants**

Except in compliance with this VWP 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, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses;
4. On or 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;
  - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.