



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

**VWP Individual Permit Number 10-1256**

**Effective Date: April 15, 2011**

**Expiration Date: April 14, 2026**

### **VIRGINIA WATER PROTECTION PERMIT ISSUED 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 et seq.) 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: Virginia Electric & Power Company dba Dominion Virginia Power

Address: 5000 Dominion Boulevard, Glen Allen, Virginia 23060

Activity Location: The North Anna Power Station (NAPS) site is located at 1022 Haley Drive in Louisa County, Virginia. Permitted impact activities authorized in this permit will occur in Louisa and King William Counties, Virginia.

Activity Description: The permittee proposes to construct a new nuclear unit (Unit 3) at the existing NAPS site to provide additional baseload electric service to meet growing demand. This permit authorizes the total impact of 6.36 acres of surface waters, consisting of 5.14 acres of permanent impacts and 1.22 acres of temporary impacts. Permanent impacts are to 4.15 acres of palustrine forested (PFO) wetland, 0.40 acre of palustrine emergent (PEM) wetland, 0.26 acre of open water and 0.33 acre (6,380 linear feet) of stream channel. Temporary impacts are to 0.06 acre of PEM wetland, 0.18 acre of tidal emergent wetland, 0.51 acre of open water, and 0.47 acre (308 linear feet) of stream channel. This permit also authorizes the dredging of 637 cubic yards of lake-bottom associated with the construction of the water intake structure for Unit 3. Compensation requirement of 8.96 credits for permanent wetland and open water impacts shall be provided through one or a combination of the following: purchase of wetland credits from an approved wetland mitigation bank located within the same U.S.G.S. Hydrologic Unit Code (HUC) or adjacent HUC within the same river watershed as the wetland and open water impacts and/or an in-lieu fee payment to the Virginia Aquatic Resources Trust Fund (VARTF). Compensation for permanent stream channel impacts shall be provided through the preservation of 11,775 linear feet of stream channels with riparian buffers 200 feet in width along both sides of the channel and the remaining stream compensation requirement of 5,624 shall be provided through one or a combination of the following: purchase of stream credits from an approved stream mitigation bank located within the same U.S.G.S. HUC or adjacent HUC within the same river watershed as the permitted stream channel impacts and/or an in-lieu fee payment to the VARTF.

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

  
Thomas A. Faha, Regional Director

  
Date

## Part I – Special Conditions

### A. Authorized Activities

1. This permit authorizes the total impact of 6.36 acres of surface waters, consisting of 5.14 acres of permanent impacts and 1.22 acres of temporary impacts. Permanent impacts are to 4.15 acres of palustrine forested (PFO) wetland, 0.40 acre of palustrine emergent (PEM) wetland, 0.26 acre of open water and 0.33 acre (6,380 linear feet) of stream channel. Temporary impacts are to 0.06 acre of PEM wetland, 0.18 acre of tidal emergent wetland, 0.51 acre of open water, and 0.47 acre (308 linear feet) of stream channel. These authorized surface water impacts are summarized by activity below:
  - a. Construction related activities to support Unit 3 are authorized to permanently impact 4.15 acres of PFO wetland, 0.40 acre of PEM wetland and 0.33 acre (6,380 linear feet) of stream channel. Permitted impacts shall be as depicted on the impacts map entitled “North Anna Nuclear Power Station Unit 3, Wetland and Stream Impacts, Grid Key Sheet” dated November 2010 and Grid Sheets 1 through 11 dated November 2010, submitted under “Attachment A” in the “Addendum 2, Response to Additional Regulatory Information Requests” dated November 2010 and received November 5, 2010.
  - b. The construction of a water intake structure for Unit 3 is authorized to permanently impact 0.26 acre of open water and temporarily impact 0.51 acre of open water. Of the permanent open water impacts, 0.24 acre of open water impact is associated with the mechanical dredging of 637 cubic yards of lake-bottom. Permitted impacts shall be as depicted on the impacts map entitled “North Anna Nuclear Power Station Unit 3, Wetland and Stream Impacts, Grid Key Sheet” dated November 2010 and Grid Sheet 12 dated November 2010, submitted under “Attachment A” in the “Addendum 2, Response to Additional Regulatory Information Requests” dated November 2010 and received November 5, 2010.
  - c. Activities associated with the Large Component Transport Route are authorized to temporarily impact 0.06 acre of PEM wetland, 0.18 acre of tidal emergent wetland and 0.47 acre (308 linear feet) of stream channel. Permitted impacts shall be as depicted on the grid sheets entitled “Large Component Transport Route Grid 13” dated December 2010 and “Figure 1. Grid 13 – Plan View” dated December 13, 2010, submitted under “Attachment B” in the “Addendum 3, Response to Additional Regulatory Information Requests” dated and received December 15, 2010.
2. This permit authorizes the mechanical dredging of 637 cubic yards of lake-bottom associated with the construction of the water intake structure for Unit 3.
3. Authorized activities shall be conducted as described in the Joint Permit Application dated July 2010, and received July 16, 2010, and supplemental materials, revisions and clarifications received through December 17, 2010.
4. 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 authorized by this permit associated with the construction of a new nuclear unit

(Unit 3) at the existing North Anna Power Station site. Any additional impacts to surface waters, modifications, or changes shall be subject to individual permit review and/or modification of this permit.

## **B. Permit Term**

1. This permit is valid for **fifteen (15) years** from the date of issuance. A new permit may be necessary for the continuance of the authorized activities or any permit requirement that has not been completed, including compensation provisions.
2. The permittee shall notify DEQ in writing at least 120 calendar days prior to the expiration of this permit if reissuance of this permit is required.

## **C. Standard Project Conditions for Permitted Activities**

1. The activities authorized by this permit shall be executed in such a manner that any impacts to stream beneficial uses are minimized. Beneficial uses are defined in § 62.1-10(b) and § 62.1-44.3 of the Code of Virginia.
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. Flows downstream of the project area shall be maintained to protect all uses. Hydrology to surface waters downstream of impact areas described as Impact Nos. 1, 2, 3, 5, 7, 8, 9, 11 shall be maintained. The impact areas referenced are depicted on Grid Sheets 1, 3, 4, 6, 9 and 10 dated November 2010, submitted under "Attachment A" in the "Addendum 2, Response to Additional Regulatory Information Requests" dated November 2010 and received November 5, 2010.
4. No authorized activity at the Walkerton Off-loading Site of the Large Component Transport Route shall cause more than minimal adverse effect on navigation, and no activity shall block more than half of the width of the stream channel at any given time.
5. The activity shall not impede the passage of normal or expected high flows, and any associated structure shall withstand expected high flows.
6. Continuous flow of perennial springs in the project area shall be maintained by the installation of spring boxes, French drains, or other similar structures.
7. The permittee shall comply with a time-of-year restriction on all instream work at the Walkerton Off-loading Site of the Large Component Transport Route from February 15 through June 30 of any year as recommended by the Virginia Department of Game and Inland Fisheries. The permittee shall retain a copy of the agency correspondence concerning the time-of-year restriction for the duration of the permit.
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 disturbed wetland areas shall be restored to preconstruction conditions within 60 calendar days of completing work in the areas, which shall include re-establishing pre-construction contours, and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested), except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.
17. All temporarily impacted streams and stream banks shall be restored to their original elevations and contours within 60 calendar days following the completion of construction activities 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.
18. 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 60 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.

19. Temporary in-stream construction features such as cofferdams shall be made of non-erodible materials.
20. Virginia Water Quality Standards shall not be violated in any surface waters as a result of the permitted activities.
21. All non-impacted surface waters that are within the project or right-of-way limits, and that are within fifty feet of any project activities, shall be clearly flagged or demarcated for the life of the construction activity within that area. The permittee shall notify all contractors and subcontractors that *no activities are to occur in non-impact surface waters*.
22. All required notifications and submittals shall include project name and permit number and 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: Department of Environmental Quality-Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia 22193.
23. 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.
24. 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."*
25. Any fish kills or spills of fuels or oils shall be reported to DEQ within 12 hours upon discovery at (703) 583-3800. 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.
26. DEQ shall be notified by electronic mail 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.

#### **D. Stream Modifications, Including Intake/Outfall Structures**

1. Redistribution of existing stream substrate for erosion control purposes is prohibited.
2. Material removed from the stream bottom shall not be deposited into surface waters unless otherwise authorized in this permit.
3. Riprap apron for all outfalls 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.
4. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills, breakwaters, dams, or weirs.

#### **E. Road Crossings**

1. Installation of pipes and road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions or other similar structures.
2. 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.
3. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure and recorded prior to construction and within one week after the completion of construction to ensure that the design elevations were met. This information shall be available for review by DEQ upon request.

#### **F. Stormwater Management Structures**

1. The outfall and overflow structures shall be constructed and maintained to prevent downstream sediment deposition, erosion, or scour that may be associated with normal flow and any expected storm flows. Construction shall include the use of an appropriately sized riprap outlet protection apron at the outfall site.

2. Maintenance excavation shall follow the approved maintenance plan, and shall not exceed the original contours of the facility as constructed.
3. Draining of a stormwater management facility shall be performed by a method that prevents downstream sediment deposition, erosion, or scour.

#### **G. Dredging Activities**

1. Dredging shall be accomplished under dry conditions via the method approved by DEQ in the Dredging Plan required by Part I.G.5.
2. Dredging shall be accomplished in a manner to minimize disturbance of the bottom and minimize turbidity levels in the water column.
3. Dredging and excavation shall be limited to the minimum necessary to conduct the permitted activities. The aerial extent of the dredged area shall not exceed 0.24 acre of open water.
4. The permittee shall submit to DEQ for review and approval a sampling plan of the material to be dredged to determine if the material is free of toxic contaminants. If materials are determined to contain toxic contaminants, the disposal of the dredged material shall occur in an approved disposal area. The sediment sampling plan shall include the following:
  - a. A minimum of 3 core samples, taken to the depth of dredge.
  - b. The method of analysis that will be conducted and the parameters to be evaluated. At a minimum, the permittee shall test for the following parameters: Arsenic (As), Barium (Ba), Cadmium (Cd), Chromium (Cr), Lead (Pb), Mercury (Hg), Selenium (Se), Silver (Ag), Zinc (Zn), Copper (Cu), and Polychlorinated Biphenyls (PCBs).
  - c. Sediment samples shall be tested at one foot intervals from each core sample.
  - d. Submittal of sediment sampling results in the Dredging Plan required by Part I.G.5.
5. A Dredging Plan shall be submitted and approved by DEQ prior to commencement of any dredging activities. The plan shall include the following, at a minimum:
  - a. The following information pertaining to dredging under dry conditions: the location of cofferdams; how the water will be pumped out of contained area; narrative of how dredging will proceed under the dry conditions; the location of any sediment control measures; a plan to remove the dams; and an action plan that can be implemented in the event the cofferdams fail.
  - b. Dredge material management plan for the designated upland disposal site.
  - c. A timeline of when dredging will commence and when any associated work will be completed.
  - d. The results and analysis of sediment testing required by Part I.G.4.

- e. Contingency procedures if sediment sampling determines the materials to be dredged contain toxic contaminants. These procedures should include coordination with DEQ.
- 6. There shall be no double handling of dredged material in surface waters.
- 7. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical (2:1) slope to reduce slumping of material into the dredged area, unless approval from DEQ authorizing alternative side slope cuts is received prior to initiating dredging activities.
- 8. All dredge material shall be transported via barges, or watertight trucks if transport on public roads is required, for disposal at an approved upland site, provided that all required permits for the facility are valid. If watertight trucks are not available, dredged material shall be dewatered (e.g., drained of all free water) prior to transport to the final disposal site on public roads.
- 9. Barges or trucks used for the transportation of dredged material shall be filled in such a manner as to prevent any overflow of dredged material.
- 10. During off-loading, dredge material shall not be handled directly over open water. The off-loading operation shall be conducted in a manner that prevents any discharge of liquids or solids to surface waters.
- 11. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into surface waters. Runoff from precipitation shall be diverted around the dewatering area.
- 12. Overtopping of the dredge spoil containment berms with dredge spoil disposal materials post completion shall be prohibited.
- 13. A post-dredging bathymetric survey shall be submitted to DEQ within 60 calendar days following completion of the dredging activity.

## **H. Construction Monitoring and Submittals (Impact Site)**

### **1. Pre-Construction Monitoring**

The permittee shall conduct photographic monitoring of pre-construction conditions in permitted permanent and temporary impact areas associated with the Unit 3 construction activities, Unit 3 water intake structure activities, and the Large Component Transport Route. Photographic monitoring shall be conducted by the following method:

Enumerated photo stations shall be established at each permitted impact area that shall be used for the duration of construction activities. The directional orientation of each photo station shall remain constant during all monitoring events. Photo stations shall be sufficient to represent permitted activities. Photo stations may be established via water craft or temporary floating structures. Each photograph taken shall be labeled with the permit number, the permitted impact area, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the



photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary.

## 2. Pre-Construction Submittals

- a. Authorized surface water impacts shall be located as detailed in Part I.A.1.a, b, and c. Any changes to the final construction plans that result in a change to the permitted activities and/or the dimensions of the permitted areas shall be submitted to DEQ immediately upon determination that changes are necessary. DEQ approval shall be required prior to implementing the changes.
- b. The permittee shall submit written notification at least ten calendar days prior to the initiation of activities in permitted areas associated with construction activities to support Unit 3 (including the construction of the water intake structure for Unit 3), prior to initiation of dredging activities associated with the intake structure for Unit 3, and prior to initiation of activities in permitted areas associated with the Large Component Transport Route. The notifications shall include a projected schedule for initiating and completing work at each permitted impact area.

## 3. Monitoring During Construction

- a. The permittee shall conduct photographic monitoring of construction activities to document that the permitted activities are in compliance with permit conditions and to document any events that are not in compliance with the construction-related permit conditions. The permittee shall use the same photo method and location that was used for pre-construction monitoring.
- b. Photographic monitoring during construction activities in each permitted impact area shall be required quarterly.
- c. For temporary disturbances to surface waters, the permittee shall conduct photographic monitoring after the temporary disturbance activity is complete to document that the area has been restored in compliance with these permit conditions.
- d. Construction photographic data shall be submitted with construction monitoring reports as detailed in Part I.H.4.a.

## 4. Construction Monitoring Reports

- a. Construction Monitoring Reports shall be submitted to DEQ quarterly. The reports shall be submitted 30 days after a three month monitoring period. The reports shall include the following, as appropriate:
  - (1) A written narrative stating whether or not work was performed during the monitoring period in each permitted impact area. If work was performed, the narrative shall include a description of the work performed, when the work was initiated, and the expected date of completion.

- (2) A summary of activities conducted to comply with the permit conditions, including items associated with meeting specific permit conditions and a description of erosion and sediment controls used to protect water quality and any maintenance performed on the controls.
  - (3) A written summary, including photographs, of non-compliance events or problems encountered, any corrective actions taken, and any subsequent notifications to DEQ.
  - (4) A summary of anticipated work to be completed during the next reporting period, and an estimated date of construction completion at all permitted impact areas.
  - (5) A labeled site map depicting all permitted impact areas and photo stations.
  - (6) Properly labeled photographs, including those documenting the completed restoration of temporarily disturbed surface waters.
  - (7) The first construction monitoring report shall also include the photographs taken at each permitted impact area prior to initiation of land disturbance or construction activities in that area and a description on the methods that will be employed to maintain hydrology to surface waters downstream of impact areas described as Impact Nos. 1, 2, 3, 5, 7, 8, 9 and 11. The impact areas referenced are depicted on Grid Sheets 1, 3, 4, 6, 9 and 10 dated November 2010, submitted under "Attachment A" in the "Addendum 2, Response to Additional Regulatory Information Requests" dated November 2010 and received November 5, 2010.
- b. If photographs were not required during a quarterly monitoring period because no activity occurred within permitted impact areas during that period, the permittee shall submit a letter in-lieu of a construction monitoring report that provides the following: statement that no activity occurred within permitted impact areas and a construction schedule that includes the projected date when activities in permitted areas are expected to resume and the expected date of completion.

## 5. Post-Construction Monitoring

The permittee shall conduct photographic monitoring of all permitted impact areas upon completion of construction and stabilization of the area. The permittee shall use the same photo method and location that was used for pre-construction monitoring.

## 6. Post-Construction Submittals

- a. Post-construction photographs of permitted impact areas shall be included in the final semiannual monitoring report.
- b. The permittee shall submit written notification within 30 calendar days after the completion of all activities in all permitted impact areas authorized under this permit.

**I. Compensatory Mitigation**

1. The permittee is responsible for meeting all of the components of the compensatory mitigation requirements associated with this permit. This responsibility can only be transferred if and when the permit is transferred to another party and then only to the new permit recipient.
2. Compensation requirements are authorized to be phased to accommodate construction schedule. Compensation requirements, as described in Part I.I.4 and 5, shall be completed in accordance with Part I.J, Part I.K and Part I.L. At no time shall the amount of initiated/taken surface water impacts exceed the amount of completed compensation.
3. The permittee shall submit the following information with each submittal of documentation required by Part I.J, Part I.K and Part I.L to demonstrate that compensation requirements for the next phase of permitted surface water impacts have been completed:
  - a. The amount of permitted surface water impacts initiated/taken to date and the amount of compensation provided to compensate for those permitted impacts.
  - b. The amount of permitted surface water impacts left to initiate/take and the amount of compensation requirements to compensate for those permitted impacts.
  - c. Proposed timeline to complete permitted surface water impacts and associated compensation requirements.
4. Compensation requirement of 8.96 credits for permanent wetland and open water impacts shall be provided through one or a combination of the following:
  - a. Purchase of wetland credits from an approved wetland mitigation bank located within the same U.S.G.S. Hydrologic Unit Code (HUC) or adjacent HUC within the same river watershed as the permitted wetland and open water impacts.
  - b. An in-lieu fee payment to the Virginia Aquatic Resources Trust Fund (VARTF).
5. Compensation for permanent stream channel impacts shall be provided through the following:
  - a. Preservation of 11,775 linear feet of stream channels with riparian buffers approximately 200 feet in width along either side of the channel in accordance with Figures 3 and 4 entitled "Stream Assessment Reaches 100 ft and 200 ft Riparian Buffer Preservation Areas" submitted under "Attachment D" in the "Addendum 1, Response to Additional Regulatory Information Requests" dated September 2010 and received September 28, 2010, or the most recent DEQ approved preservation map; and,
  - b. Remaining stream compensation requirement of 5,624 as determined by the Unified Stream Methodology shall be provided through one or a combination of the following:
    - a. Purchase of stream credits from an approved stream mitigation bank located within the same U.S.G.S. HUC or adjacent HUC within the same river watershed as the permitted

stream channel impacts.

- b. An in-lieu fee payment to the VARTF.
6. Restoration of temporary impacts to surface waters associated with the Large Component Transport Route at the offloading site near Walkerton Landing shall be conducted in accordance with the “North Anna Proposed Unit 3 Wetland and Submerged Aquatic Vegetation Restoration Plan for Impacts Associated with the Roll-Off Facility for the Large Component Transport Route, Walkerton Landing” dated September 2010 and received September 28, 2010, or the most recent DEQ approved plan.

#### **J. Approved In-Lieu Fee Fund General Conditions**

1. The permittee shall submit documentation of the receipt of VARTF contribution for the appropriate amount to DEQ ninety days prior to initiating activities within permitted stream channel and/or wetland impact areas for which the VARTF contribution is providing compensation.
2. All required notifications and submittals shall be submitted in accordance with Part I.C. 22, 23 and 24.

#### **K. Approved Mitigation Bank General Conditions**

1. The permittee shall submit documentation that an approved stream mitigation bank has debited the appropriate amount of stream credits from the mitigation bank ledger to DEQ ninety days prior to initiating activities within permitted stream channel impact areas for which the amount of stream credits is providing compensation.
2. The permittee shall submit documentation that an approved wetland mitigation bank has debited the appropriate amount of wetland credits from the mitigation bank ledger to DEQ ninety days prior to initiating activities within permitted wetland and open impact areas for which the amount of wetland credits is providing compensation.
3. All required notifications and submittals shall be submitted in accordance with Part I.C. 22, 23 and 24.

#### **L. On-Site Preservation Conditions**

1. The permittee shall submit to DEQ for review and approval within 120 days of permit issuance and prior to initiating activities within permitted stream channel impact areas for which the preservation provides compensation, the draft deed restriction language and final survey plat showing the boundary for protecting the compensation site as identified on Figures 3 and 4 entitled “Stream Assessment Reaches 100 ft and 200 ft Riparian Buffer Preservation Areas” submitted under “Attachment D” in the “Addendum 1, Response to Additional Regulatory Information Requests” dated September 2010 and received September 28, 2010, (preservation map) or the most recent DEQ approved map, including all surface waters and upland areas that are to be preserved in perpetuity within the compensation site boundary.

- a. The protective instrument shall be written so that no activity will be performed on the property in any area designated as a compensation site, with the exception of maintenance or corrective action measures authorized by DEQ. Unless otherwise authorized by DEQ, the restrictions apply to ditching, land clearing, or the discharge of dredge or fill material. The protective instrument restrictions shall contain the phrase "ditching, land clearing, or discharge of dredge or fill material" in the limitations placed on the use of these areas.
  - b. The final survey and plat shall be certified by a professional engineer or licensed land surveyor. The permittee is responsible for ensuring that the boundary survey shown on the plat is in accordance with the approved preservation map.
2. Proof of recordation shall be submitted to DEQ within sixty days of DEQ's approval of the draft documents.
3. All required notifications and submittals shall be submitted in accordance with Part I.C. 22, 23 and 24.

## **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).

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.

#### **R. Permit Extension**

Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit, shall submit written notification requesting an extension. The permittee must file the request prior to the expiration date of the VWP permit. Under no circumstances will the extension be granted for more than 15 years beyond the original effective date of the VWP permit. If the request for extension is denied, the VWP permit will still expire on its original date and, therefore, care should be taken to allow for sufficient time for the board to evaluate the extension request and to process a full VWP permit modification, if required.