COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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Director

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VWP Individual Permit Issuance Number 09-0892
Effective Date: [Date that Federal Energy Regulatory License is effective for the Claytor Hydroelectric Project, FERC Project P-739]
Expiration Date: [15 years after the effective date of this permit]

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) 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: Appalachian Power Company

Address: POB 2021, Roanoke, Virginia 24022-2121

Activity Location: Claytor Lake at the New River in Pulaski and Montgomery Counties, VA

Activity Description: The continued operation of the Claytor Hydroelectric Project at Claytor Lake dam on the New River in accordance with the conditions of this permit for the purposes of hydroelectric power generation.

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

_____ _____

Director, Water Division Date

A. *Authorized Activities*

This permit authorizes the diversion of surface water from the New River and Claytor Lake in accordance with all permit conditions contained herein, and specifically detailed in Part I.D for the purposes of hydroelectric power generation at the Appalachian Power Company Claytor Hydroelectric Project (hereafter "project"). The authorization is based on information contained in the application materials dated June 26, 2009, received by the Virginia Department of Environmental Quality (DEQ) on June 29, 2009, and deemed complete by DEQ on September 21, 2009; on additional correspondence from the applicant dated August 20, 2009, January 8, 2010, and April 15, 2010; and on coordination held from 2008 through 2010 as part of the permittee's application for a hydropower license from the Federal Energy Regulatory Commission (FERC).

B. *Permit Term*

This permit is valid for 15 years from the date of issuance. A new permit may be necessary for the continuance of the authorized activities, including water withdrawals, or any permit requirement that has not been completed. At least **120 calendar days** prior to the expiration of this permit, the permittee shall notify DEQ in writing of his or her intent to continue one or more of the authorized activities. A new permit application shall be required by DEQ at that time. DEQ, acting on behalf of the State Water Control Board (board), may issue a new permit or may issue a new permit with new or modified conditions. Any consideration given to issuance of a new permit shall be, at a minimum, contingent upon the completion of various studies and analyses required by this permit within its term and the submittal of the results of such studies and analyses to DEQ. The board may also deny the issuance of a permit at that time.

DEQ, on behalf of the board may reopen and modify this permit if after issuance the project operations are determined to have adverse impacts on fish and wildlife resources or to water quality. If applicable, any necessary major modifications to the permit shall include similar public participation procedures as those implemented during the issuance of the permit. Modifications shall not include extension of the permit term beyond 15 years.

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. Should independent research during the course of the permit term conclude that the individuals, populations, or habitat of the Eastern Hellbender salamander (*Crytobranchus*

alleganiensis), as documented in the New River or its tributaries, is being adversely affected for any reason; or should the legal status of the species change to threatened or endangered during the permit term, as determined under the United States or Virginia Endangered Species Acts, the permittee may be required to evaluate potential operational effects, or to cooperate with any cause-effect evaluation conducted by other interested parties, through coordination with an adaptive management committee or workgroup, including but not limited to the Virginia Department of Environmental Quality, the Virginia Department of Game and Inland Fisheries, and the United States Fish and Wildlife Service. The permittee may be required to provide mitigation to minimize any identified project-related impacts to fish and wildlife habitat.

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.

4. Measures shall be employed at all times to prevent and contain spills of fuels, lubricants, or other pollutants into surface waters.

5. Virginia Water Quality Standards shall not be violated in any surface waters as a result of the project activities.

D. *Instream Flow and Lake Level Conditions*

1. Lake levels and stream flows shall be measured in accordance with Part I.E of these permit conditions.

2. The facility shall operate in levelized flow mode from April 1st through November 30th. Levelized flow is defined as maintaining Claytor Lake elevations between 1845 feet National Geodetic Vertical Datum (NGVD) and 1846 feet NGVD. Operating under this mode includes bringing a unit or units into operation within 15 minutes (ramp up) and taking a unit or units out of operation within 30 minutes (ramp down), and may also include a "blackstart", where units are brought into operation within ten minutes when a loss of generating capacity or an outage of a key transmission facility occurs. Operating under this mode may also include the use of autocycling, where a generating unit operates for a portion of each hour to maintain required instream flows when inflow to the project is less than one unit flow. The rate of one unit flow varies between 2,000 cubic feet per second (cfs) and 2,500 cfs, depending on unit efficiency.

3. The facility shall be authorized to operate in peaking mode from December 1st through March 31st. Peaking is defined as maintaining Claytor Lake elevations between 1844 feet National Geodetic Vertical Datum (NGVD) and 1846 feet NGVD. Operating under this mode includes bringing a unit or units into operation within 15 minutes (ramp up) and taking a unit or units out of operation within 30 minutes (ramp down), and may also

include a "blackstart", where units are brought into operation within ten minutes when a loss of generating capacity or an outage of a key transmission facility occurs.

4. During times of higher than normal inflows to the project, the permittee shall be authorized to allow lake levels to rise above the elevations that define the operational modes in Part I.D.2 and I.D.3, provided that the applicable operational mode elevation is restored as soon as possible after the high inflow event.

5. During times where inflows are higher than the plant's capacity, or during times of emergency drawdowns for project maintenance purposes, the permittee shall be authorized to reduce the Claytor Lake elevation to 1841 feet NGVD to provide additional storage capacity and lessen impacts on downstream habitat. The permittee shall notify DEQ, the Virginia Department of Game and Inland Fisheries (DGIF), and interested stakeholders in accordance with the Water Management Plan approved by the Federal Energy Regulatory Commission (FERC).

6. To ensure that the authorized activities have a minimal effect, if any, on fish and wildlife resources within the reservoir, including the state-threatened pistolgrip mussel (*Tritogonia verrucosa*), the permittee shall discontinue the periodic reduction of lake levels (drawdown) for the purposes of shoreline cleanup, shoreline structure maintenance, or shoreline structure installation.

7. The permittee shall ensure that minimum instream flows (cubic feet per second), as detailed in Table 1, are released from the Claytor dam to the downstream New River. Other special recreational releases may be considered following a review by one or more of the advisory groups stated in Part I.E of this permit.

Table 1: Minimum Instream Flow (MIF) Requirements		
Month	**Average Hourly MIF Requirements**	**Authorized Modification to MIF Requirements**
April	750 cfs, or inflow, whichever is less	
May	750 cfs, or inflow, whichever is less	Squirt Boat Competition: recreational flows may be released upon sufficient inflow, where reservoir elevations are maintained between 1845 feet and 1846 feet NGVD
June	750 cfs, or inflow, whichever is less	
July	750 cfs, or inflow, whichever is less	
August	750 cfs, or inflow, whichever is less	When inflow rates are 800 to 1,000 cfs on Saturday or Sunday, the average hourly MIF shall be 1,000 cfs for a minimum of twelve hours per day, where reservoir elevations are maintained between 1845 feet and 1846 feet NGVD.
September	750 cfs, or inflow, whichever is less	When inflow rates are 800 to 1,000 cfs on Saturday or Sunday, the average hourly MIF shall be 1,000 cfs for a minimum of twelve hours per day, where reservoir elevations are maintained between 1845 feet and 1846 feet NGVD.
October	750 cfs, or inflow, whichever is less	When inflow rates are 800 to 1,000 cfs on Saturday or Sunday, the average hourly MIF shall be 1,000 cfs for a minimum of twelve hours per day, where reservoir elevations are maintained between 1845 feet and 1846 feet NGVD.
November	750 cfs , or inflow, whichever is less	
December	1,000 cfs, or inflow, whichever is less	
January	1,000 cfs, or inflow, whichever is less	
February	1,200 cfs, or inflow, whichever is less	
March	1,200 cfs, or inflow, whichever is less	

8. Variances to flows and lake elevations required by this permit may only be granted upon mutual agreement between the permittee and the Virginia Department of Environmental Quality (DEQ), in consultation with the Virginia Department of Game and Inland Fisheries (DGIF) and the Virginia Department of Conservation and Recreation (DCR), following appropriate public input as determined through coordination with DEQ.

E. *Monitoring, Notification, and Reporting*

Monitoring:

1. Elevations in Claytor Lake shall be measured in the forebay (reservoir) and tailrace (below dam) using water level transducers, staff gages located upstream and downstream that are calibrated with the transducers, and cameras located at that dam. Elevations shall be monitored at the permittee's Roanoke Operations Center in Virginia and at the American Electric Power System Control Center in Columbus, Ohio.

2. Releases of instream flows (discharges) from Claytor dam shall be based on the discharge curves developed for the existing generating units, as submitted to the board in the permittee's application. The permittee or its authorized agent(s) shall monitor discharges and adjust unit operations as needed to meet the required flows in Table 1 of this permit.

3. Flows into the project boundary (inflow) shall be determined through monitoring of the USGS gage New River at Allisonia (No. 03168000) and at the USGS gage New River near Galax (No.03164000) at the permittee's Roanoke Operations Center in Virginia. When using the gage at Galax to approximate inflow to the project, the flow at Galax shall be multiplied by the permittee-calculated, drainage area ratio factor of 1.75. When using the gage at Allisonia to approximate inflow to the project, the flow at Allisonia shall be multiplied by the permittee-calculated, drainage area ratio factor of 1.07.

4. The permittee shall implement the June 2009 Water Quality Monitoring Plan, as approved by the Federal Energy Regulatory Commission (FERC), except that DEQ shall require the following revisions:

   a. A minimum of five (5) dissolved oxygen and temperature monitoring locations shall be identified between the Claytor dam and the Route 11 bridge, located downstream of the project. The locations shall be approved by the Water Quality / Water Management Technical Review Committee (Technical Review Committee) provided for in the Water Quality Monitoring Plan. Monitoring equipment shall be deployed at each identified monitoring location.

   b. The study period shall be extended if a low flow event does not occur within the initial five-year period, or if depressed dissolved oxygen levels continue during the initial five-year period. The appropriate period for extending the study, and any proposed changes to the study methods, shall be determined in consultation with the Water Quality / Water Management Technical Review Committee (Technical Review Committee), as detailed in the Water Quality Monitoring Plan.

c. The permittee shall provide alternative mitigation should the results of the study conclude that the actions taken to date are not effective. Such alternative mitigation shall be developed in consultation with the Water Quality / Water Management Technical Review Committee (Technical Review Committee) within 120 days of concluding the study, and such alternative mitigation shall be approved by DEQ.

5. The permittee shall implement the June 2009 Freshwater Mussel Adaptive Monitoring Plan (mussel plan), as approved by the Federal Energy Regulatory Commission (FERC), except that DEQ shall require the following revisions:

a. The plan shall provide for an initial meeting of the Freshwater Mussel Technical Review Committee (TRC) prior to beginning any work identified in the mussel plan. The purpose of the meeting will be to review the planned activities and for participants to identify any potential changes to the plan in order to meet the plan's goals and objectives, or any potential impediments to conducting the plan activities, as described in the plan and in accordance with these permit conditions. The scope of any necessary changes or revisions shall pertain to the goals and objectives of the mussel plan over the term of this permit. The conclusions reached during this meeting shall be documented, and any necessary revisions to the mussel plan shall be submitted to DEQ and FERC within 60 days of the meeting. At a minimum, the mussel plan shall be revised to address the requirements of this permit in Part I.E.5.

b. Baseline mussel fauna data collection shall include, at a minimum, qualitative field surveys for mussel individuals and populations within the study area identified on the New River in the mussel plan. Baseline field survey locations shall be identified in consultation with the Freshwater Mussel Technical Review Committee (TRC) in order to meet the specific goals and objectives of the mussel plan. Baseline qualitative surveys shall be conducted immediately upstream of the project and downstream of the project to at least the Route 11 bridge crossing. The necessity of further field survey locations downstream of the Route 11 Bridge to the Route 460 Bridge shall be determined in consultation with the Freshwater Mussel Technical Review Committee (TRC). Existing data from research conducted in the subject areas shall be accepted as supplemental information to in-the-field survey results.

c. Long-term mussel fauna data collection shall include, at a minimum, quantitative field surveys at locations determined through consultation with the Freshwater Mussel Technical Review Committee (TRC), as deemed necessary and appropriate to meet the specific goals and objectives of the mussel plan.

d. The data collected during the term of the mussel plan shall be adapted as necessary in consultation with the TRC to directly assess how depressed dissolved oxygen and temperature may affect mussel fauna. To meet the specific goals and objectives of the plan, additional or alternative collection and analysis methods may be deemed necessary, such as but not limited to, mussel tissue sampling and analysis, extended or additional water quality parameter monitoring, and partnering with others who are

currently conducting or planning to conduct such studies, research, or analyses. The permittee may conduct such data collection through partnerships with other groups or organizations, or through other permittee studies, provided that those efforts address the goals and objectives of the mussel plan and assess potential effects on mussels from direct or indirect project operations. In addition to the direct data collection detailed in the mussel plan, information from a literature review shall be acceptable as supporting documentation to the studies and analyses required by this permit.

Notification:

6. Any fish kills or spills of fuels or oils shall be reported to DEQ Blue Ridge Regional Office-Roanoke immediately upon discovery at 540-562-6700. Additionally, any fish kills shall also be reported to the DEQ Central Office, Virginia Water Protection Permit Program at 804-698-4290. 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. Mitigation for aquatic impacts may be required.

7. The permittee shall notify DEQ of any additional impacts to surface waters, including wetlands; of any modifications to the discharge works; 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.

8. The permittee shall include DEQ in all advisory groups, such as but not limited to committees and workgroups, formed for the purposes of coordination of project activities with interested stakeholders regarding water management, water quality management, erosion and sediment management, fish and wildlife management, vegetation management, debris management, habitat management, shoreline management, recreation management, and adaptive management. The permittee shall give DEQ a minimum of one week's notice for any meetings or conference calls planned for the advisory groups.

Reporting:

9. The permittee shall submit to DEQ a lake level and flow monitoring contingency plan in the case of equipment and/or gage failure within 60 days of permit issuance. The plan shall include all protocols that will be implemented to ensure compliance with this permit.

10. The permittee shall submit to DEQ the revised Water Quality Monitoring Plan and Freshwater Mussel Adaptive Monitoring Plan, as required by Part I.E.4 and I.E.5, within 120 days of permit issuance. DEQ in consultation with appropriate advisory agencies shall review and comment on or approve the plans within 60 days of receipt.

11. The permittee shall submit to DEQ the results of all plan studies, demonstration projects, research, analyses, modeling, and stakeholder coordination efforts conducted for the authorized project activities. Unless specified otherwise in this permit or otherwise agreed upon through coordination efforts that involve DEQ, submittals shall be made in a timely manner after completing the subject activity, but in no case shall be submitted later than one year after completion of the activity.

12. The permittee shall prepare an annual monitoring report to demonstrate compliance with Part I.D of the permit Special Conditions. The report shall be submitted by **January 31st** of the year following data collection and mailed to the Virginia Department of Environmental Quality, Virginia Water Protection (VWP) Permit Program, P.O. Box 1105, Richmond, Virginia, 23218. Electronic submittal to the VWP permit manager shall be acceptable, provided the permittee confirms with the manager that the information was received. The annual monitoring report shall contain the following information at a minimum:

    a. the permittee's name and address;

    b. the VWP permit number (09-0892);

    c. the calendar date;

    d. the average daily inflow to the project (cfs) as measured at the USGS Allisonia and/or Galax gages;

    e. the average daily reservoir level (feet NGVD) as measured at the Roanoke Operations Center and/or the American Electric Power System Control Center;

    f. the required average hourly discharge (cfs) from the dam per Table 1;

    g. the actual average daily discharge (cfs) from the dam;

    h. any periods when the project operated under a DEQ- or FERC-issued variance; and

    i. any periods when the project operated in an emergency drawdown or a high-inflow drawdown mode.

13. All reports required by this permit and other information requested by DEQ shall be signed by the permittee, or a person acting on the permittee's behalf as a duly authorized representative with the authority to bind the permittee.

    A person is a duly authorized representative only if 1) the authorization is made in writing by the permittee; AND 2) the authorization specifies either the named individual or the named 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.

If a change of the duly authorized representative occurs, the permittee shall immediately notify DEQ in writing, providing the new named individual or named position and contact information for the new duly authorized representative.

14. All submittals to DEQ 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."

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.