**Open Water Exclusion Checklist**

In accordance with 9VAC25-210-60.6, impacts to open waters that do not have a detrimental effect on public health, animal life, or aquatic life or to the uses of such waters for domestic or industrial consumption, recreation, or other uses do not require a VWP permit. *This checklist does not apply to other VWP permit exclusions*, such as but not limited to farm ponds, certain mining activities, certain activities in BMPs and/or stormwater management facilities, or certain surface water withdrawals.

This checklist is intended to assist staff in determining whether open water impacts require permitting under the VWP Permit Program. Project activities should be considered on a case-by-case basis. *Please be advised that a U.S. Army Corps of Engineers permit may still be required to authorize work in open water resources.*

**What activities does the applicant propose to conduct in the open water feature?**

**What is the area (in square feet) of open water that will be affected by the activity?**

**Answering *Yes* to any of the questions below warrants specific consideration and may require permit regardless of the evaluation responses in Tables I, II, and/or III.**

| Parameter | Yes | No | N/A |
| --- | --- | --- | --- |
| Is the waterbody used to support a surface water withdrawal purpose, such as altering an existing public water supply, irrigation, more-than-passive recreation, power generation, or aquaculture? (If yes, to be forwarded to OWS). |  |  |  |
| Will there be detrimental effect on public health? |  |  |  |
| Is the waterbody hydrologically connected to a downstream resource subject to a TMDL? |  |  |  |
| Is the open water feature owned by multiple property owners? |  |  |  |
| Are there any threatened or endangered species or anadromous fish concerns with this waterbody?[[1]](#footnote-2) |  |  |  |
| Will the impact result in a detrimental effect on other designated uses (domestic or industrial consumption, recreation, or other uses)? |  |  |  |

1. **Open Water Fill**

**Answering *Yes* to any of the questions below may yield a permitted activity**

| Parameter | Yes | No | N/A |
| --- | --- | --- | --- |
| Does the open water have fringe wetlands, including seasonally emergent wetlands within mean high water (tidal) or ordinary high water (non-tidal) that will be impacted by the filling? (*Note: filling of the open water feature itself may be excluded from permitting on a case-by-case basis*.) |  |  |  |
| Does the open water have direct hydrologic connectivity to both upstream and downstream surface water resources, including wetlands, and will the fill cause adverse impacts to the hydrology of those resources? |  |  |  |

1. **Dredging Activities**

**Answering *Yes* to any of the questions below may yield a permitted activity**

| Parameter | Yes | No | N/A |
| --- | --- | --- | --- |
| Does the project involve dredging of more than 5,000 cubic yards in a nontidal water body in 12-month period?[[2]](#footnote-3) |  |  |  |
| Is the project proposing insufficient measures to reduce turbidity during dredging operations? |  |  |  |
| Is there a risk that dredging or return flow could negatively affect water quality, or otherwise cause a violation of an acute [Water Quality Standard](http://lis.virginia.gov/cgi-bin/legp604.exe?000+reg+9VAC25-260-140)?[[3]](#footnote-4) |  |  |  |
| Will the dredging activity deepen the open water to a depth exceeding 8 feet (and thus have potential water quality effects) without incorporating design features to mitigate potential water quality concerns?[[4]](#footnote-5) |  |  |  |

1. **Converting existing open water to a BMP**

**Answering *Yes* to any of the questions below may yield a permitted activity**

| Parameter | Yes | No | N/A |
| --- | --- | --- | --- |
| Will the conversion to a BMP negatively affect downstream flow (for headwater systems or in-line systems with inflow from intermittent/ephemeral stream channels)? |  |  |  |
| Will the dredging activity deepen the open water to a depth exceeding 8 feet (and thus have potential water quality effects) without incorporating design features to mitigate potential water quality concerns?[[5]](#footnote-6) |  |  |  |

1. *Project proponents* must coordinate with the Virginia Department of Wildlife Resources (VDWR) and the Virginia Department of Conservation and Recreation (VDCR) to determine if the project will have an adverse effect on fish or wildlife resources and comply with any recommended time of year restrictions. [↑](#footnote-ref-2)
2. This question is a guideline that may assist in establishing a maintenance baseline. Project specific factors, such as but not limited to dredging schedule, species, disposal locations, and testing results, may support different value(s) applied at DEQ’s discretion. [↑](#footnote-ref-3)
3. Dredged material removed from an open water with the intent of being placed into a wetland or stream does not qualify for this exclusion and is prohibited without a permit(s). Dredged material removed from an open water and then placed on uplands may require analytical testing. See additional information in Chapter 2, Section 2.2.6. [↑](#footnote-ref-4)
4. This is intended to capture concerns regarding thermal stratification of open water features at depths exceeding 8 feet. The deepening of an open water feature that will result in thermal stratification may have downstream water quality implications, especially in consideration of spring and fall turnover with regards to nutrient loadings and hypoxic/anoxic waters. [↑](#footnote-ref-5)
5. Ibid. [↑](#footnote-ref-6)