

**“UTILITY LINE ENCROACHMENTS BENEATH
OR OVER STATE-OWNED SUBAQUEOUS BEDS”
CHAPTER 4 VAC 20-1410-10 ET SEQ**

PREAMBLE

This chapter describes the qualifications, procedures, and manner of registration to qualify for a general permit for certain activities beneath or over state-owned subaqueous beds. The chapter is intended to increase efficiency in the review and approval of projects involving the installation of utility lines in a manner that does not require instream construction activities upon state-owned subaqueous beds.

This chapter is promulgated pursuant to the authority contained in §28.2-103 and §28.2-1204 of the Code of Virginia. The effective date of this chapter is November 1, 2023.

4VAC20-1410-10. Definitions.

The following words and terms when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

“Aerial utility line” means a utility line suspended above a waterway by attachment to structures located in the uplands or wetlands in such a manner as to prevent the utility line from coming into contact with the waterway.

“Bored” means the practice of installing a utility crossing under a stream using construction methodology that does not impact the waterway itself to include horizontal directional drilling, micro-tunneling, conventional bore, and guided conventional bore.

“Commission” means the Virginia Marine Resources Commission.

“Commissioner” means the Commissioner of the Virginia Marine Resources Commission or the commissioner’s designee.

“Frac-out plan” means a written policy by the applicant that describes how the construction crews will monitor for inadvertent releases of drilling lubricants in the soils and streams of the project area and how the applicant will contain and mitigate those spills.

“Joint Permit Application” means the documents used by the Virginia Marine Resources Commission, U.S. Army Corps of Engineers, Virginia Department of Environmental Quality, and local wetland boards to evaluate projects involving submerged beds, wetlands, and coastal primary sand dunes and beaches for permit review.

“Utility line” means a cable or pipeline that conducts an essential community service, including water, sewer, electricity, telecommunications, natural gas, or other petroleum products.

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4VAC20-1410-20. Applicability and procedures.

A. An application shall only qualify for a general permit under this chapter if the applicant meets all of the following criteria:

1. The work is for the installation of an aerial or bored crossing for a public or private utility line.
2. No instream work is proposed on state-owned subaqueous beds as part of the submitted Joint Permit Application.
3. The applicant has submitted a complete Joint Permit Application and any supplemental information deemed necessary by the commissioner.
4. The project will not impact navigation.

B. The commissioner shall oversee the administration of the provisions of this general permit.

C. The commissioner shall forward the application to the U.S. Army Corp of Engineers, the Virginia Department of Environmental Quality, and the local wetlands board or locality.

D. Once the commissioner determines the application is complete, completes a full evaluation, and determines that the project meets the specific permit criteria described in 4VAC20-1410-30, the commissioner shall issue the permit after all permit fees and royalties have been paid in accordance with §28.2-1206 of the Code of Virginia.

E. This general permit shall not relieve the applicant from the applicant's obligation to comply with any other federal, state, or local permitting requirements or laws governing the proposed activity.

4VAC20-1410-30. Permit conditions.

After the commissioner reviews the completed Joint Permit Application and determines that the applicant qualifies for a general permit under this chapter, the project shall be authorized to encroach under or over state-owned submerged bottomland subject to the following conditions:

1. The project authorized by this general permit shall be completed within five years of the issuance of the permit. Upon proper request by the permittee, the permit may be extended to allow for the completion of the project.
2. The permit grants no authority to the permittee to encroach on property rights, including riparian rights, of others.
3. The duly authorized agents of the commission shall have the right to inspect the work authorized by the permit and to evaluate compliance with the terms and conditions of the permit.

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4. The permittee shall comply with the water quality standards as established by the Virginia Department of Environmental Quality, Water Division and all other applicable laws, ordinances, and regulations affecting the conduct of the project. The granting of this permit shall not relieve the permittee of the responsibility of complying with any other applicable federal, state, or local law.
5. The permit may not be transferred without the written permission of the commissioner.
6. The permit shall not affect the right vouchsafed to the people of Virginia concerning navigation, fishing, fowling, and the catching of and taking of oysters and other shellfish except as is necessary for safe construction or maintenance of the project and any such impacts shall be minimized to the greatest extent practicable. The permittee shall notify the commissioner a week before beginning construction and before any maintenance activities that will impact navigation or other uses of the waterway.
7. The permittee shall to the greatest extent practicable, minimize adverse impacts of the project on adjacent properties and wetlands and upon the natural resources of the Commonwealth.
8. This permit may be revoked at any time by the commission upon the failure of the permittee to comply with the terms and conditions in this chapter or the Code of Virginia.
9. The issuance of this permit does not confer upon the permittee any interest or title to the beds of the waters.
10. All structures authorized by this permit that are not maintained in good repair shall be completely removed from over or under state-owned bottomland within three months after notification by the commission.
11. The permittee agrees to comply with all of the terms and conditions set forth in this permit and that the project will be accomplished within the boundaries as outlined in the plans in its Joint Permit Application.
12. This permit authorizes no claim to archaeological artifacts that may be encountered during the course of construction. If archaeological remains are encountered, the permittee agrees to notify the commission, which will in turn notify the Department of Historic Resources. The permittee further agrees to cooperate with agencies of the Commonwealth in the recovery of archaeological remains if deemed necessary.
13. The permittee agrees to indemnify and save harmless the Commonwealth of Virginia and any applicable locality from any liability arising from the establishment, operation, or maintenance of the project.
14. For any work that includes borings that utilizes a lubricating fluid under state-owned subaqueous beds, the permittee shall submit to the commission a frac-out plan by which the permittee agrees to abide.

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15. The permittee agrees to coordinate with the Virginia Department of Conservation and Recreation, Division of Natural Heritage Karst Protection Coordinator if karst features, such as additional undocumented sinkholes, caves, disappearing streams, and large springs, are encountered during the project to document and minimize adverse impacts.

16. This general permit shall be retained by the permittee for the life of the project as evidence of authorization.

This is to certify that the forgoing is a true and accurate copy of the chapter passed by the Marine Resources Commission, pursuant to authority vested in the Commission by §28.2-103 of the Code of Virginia, duly advertised according to statute, and recorded in the Commission’s minute book, at a meeting held in Hampton, Virginia, on October 24, 2023.

COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSISON

BY: *Jamie L. Green*
Jamie L. Green
Commissioner

Subscribed and sworn to before me this 3 day of November 2023.

Jill Panos Ramsey
Notary Public

