

*A PUBLIC GUIDE TO THE
WETLAND PERMITTING PROCESS IN VIRGINIA*



Office of Wetlands & Stream Protection

December 2012

SUMMARY

The Virginia Water Protection (VWP) permit program administers the regulation of water withdrawal projects, excavation, filling, or activities that affect the biological, chemical or physical properties of surface waters (including streams, lakes and wetlands). The Department of Environmental Quality's Office of Wetland and Stream Protection (OWSP) administers the Virginia Water Protection permit (VWPP) program. The OWSP implements state-wide policy for wetlands and streams and has jurisdiction over all surface waters (including wetlands) in the state of Virginia. The OSWP ensures compliance with state law, regulations, and permit requirements through regular inspections, compliance assistance and enforcement.

As part of a larger effort to protect water quality under the Department of Environmental Quality (DEQ) Water Division, we are tasked with protecting wetlands and streams to protect their beneficial uses. We strive to protect [state waters](#) and prevent and reduce water pollution in Virginia. We coordinate grant funded initiatives to explore future wetlands, stream and lake protection methodologies and policies. We partner closely with the U.S. Army Corps of Engineers and the Virginia Marine Resources Commission to achieve our goals. The VWP permit program serves as Virginia's Section [401 certification](#) program for federal Section 404 permits issued under the authority of the Clean Water Act.

Authority to enact Virginia Water Protection (VWP) permit regulations is given by [§ 62.1-44.15:20](#) of the Code of Virginia. The over-arching regulation for the permit program is the [Virginia Water Protection \(VWP\) Permit Program Regulation](#), 9 VAC 25-210.

Several general permit regulations have also been developed since 2000. Certain activities that are considered to have minimal impacts to human health and the environment may be covered under one of the four following VWP general permit regulations:

- VWP [General Permit WP1](#) for Impacts Less than One-Half of an Acre, 9 VAC 25-660
- VWP [General Permit WP2](#) for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Commission or the State Corporation Commission and Other Utility Line Activities, 9 VAC 25-670
- VWP [General Permit WP3](#) for Linear Transportation Projects, 9 VAC 25-680
- VWP [General Permit WP4](#) for Impacts from Development and Certain Mining Activities, 9 VAC 25-690

Generally, activities requiring a permit include dredging, filling, or discharging any pollutant into or adjacent to surface waters, or otherwise altering the physical, chemical or biological properties of surface waters, excavating in wetlands, or on or after October 1, 2001; or conducting the following activities in a wetland:

1. New activities to cause draining that significantly alter or degrade existing wetland acreage or functions.
2. Filling or dumping.
3. Permanent flooding or impounding.
4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

Withdrawal of surface water may require a permit or water use reporting. Application for a VWP permit is made through the Joint Permit Application process for concurrent federal and state project review.

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Disclaimer

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The permit applicant or agent is responsible for keeping up to date with changes in Federal and State permit regulations and requirements that may change some of the procedures outlined in this guide. Future revisions of this guide will be dependent upon available State funding and/or obtaining further grant awards.

SECTION 1 – INTRODUCTION

Organization and Use of the Guide

This guide is intended to assist the public with the better understanding of the Virginia Water Protection (VWP) Permit Program. The goals of the guide are to provide instructions on how to apply for VWP general permit authorizations and individual permits, explain the general processes for modifications and extensions to permits/permit authorizations, and generally explain the public notice and hearing process. This guide is not official DEQ Agency Guidance.

This guide is not intended to replace State Water Control Law or VWP regulations. All applicants should read and follow the pertinent, current regulations when applying for VWP permits. The VWP Permit regulation and VWP general permit regulations can be obtained from the Virginia Administrative Code web site at <http://leg1.state.va.us/000/reg/TOC09025.HTM#C0210> or by contacting DEQ (see Section 6 of this guide).

Wetlands

Wetlands are transitional areas on the landscape between dry land and open water or streams, and often exhibit characteristics of both terrestrial and aquatic habitats. State Water Control Law (§ 62.1-44.3) and VWP program regulations (9 VAC 25-210-10) define “State waters” as “*all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.*” Further, “wetlands” are defined as “*those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.*” The definition of “wetlands” in state law mirrors the definition in the federal Clean Water Act.

Historically, wetlands have been considered wastelands, mosquito breeding grounds, and uninhabitable areas that are unsuitable unless drained or filled. In recent times due to more research and education, wetlands are now recognized as playing a more important role in the watershed for water quality. Wetland functions can generally be grouped into three areas: (1) hydrologic functions such as flood control, flood storage, and groundwater recharge; (2) habitat functions such as breeding or nesting areas for fish and birds, critical habitat for migratory waterfowl, and habitat to a variety of plant and animal species; and (3) water quality functions such as removal of excess nutrients and toxic materials, reducing sedimentation, and trapping suspended sediments that produce turbidity in water.

History of the Virginia Water Protection Permit Program

The VWP permit program is administered by DEQ’s Office of Wetlands & Stream Protection, and derives its regulatory authority from both the Clean Water Act (§401) and State Water Control Law (§62.1-44.20 of the Code of Virginia), found at <http://water.epa.gov/lawsregs/guidance/wetlands/sec401.cfm> and <http://leg1.state.va.us/cgi->

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[bin/legp504.exe?000+cod+62.1-44.15C20](http://legp504.exe?000+cod+62.1-44.15C20), respectively. The VWPP regulations were first enacted in May 1992 to serve as the Commonwealth's nontidal wetlands program and § 401 Certification process.

Before July 1, 2000, applicants seeking a Clean Water Act § 404 permit (<http://water.epa.gov/lawsregs/guidance/wetlands/sec404.cfm>) from the U.S. Army Corps of Engineers (the Corps) for the discharge of dredged or fill materials in wetlands or waters of the United States were also required to submit an application to DEQ for a permit or waiver under § 401 Certification. In 2000, Virginia passed a Nontidal Wetlands Act that amended Title 62.1 of the Code of Virginia relating to wetlands. The Nontidal Wetlands Act establishes the Commonwealth's nontidal wetlands regulatory program to achieve "no net loss" of existing wetland acreage and function, and to develop voluntary and incentive based programs to achieve a net resource gain in wetlands. Amendments to the VWPP program, fully implemented in October 2001, provide additional state jurisdiction and require a state permit for the following activities in a wetland: excavation, filling or dumping, activities in a wetland that cause drainage or otherwise significantly alter or degrade existing wetland acreage or function, and permanent flooding or impounding.

Further, Virginia law also authorized regulatory oversight of wetland areas (e.g. isolated wetlands) and activities (e.g. Tulloch ditching) beyond the jurisdiction of the Federal wetland program. The independence of Virginia's wetland program from the Federal wetland program has been upheld in a ruling by the U.S. Court of Appeals for the Fourth Circuit. In its 2003 ruling, the appeals court held that "*in light of [the] Virginia [Nontidal Wetlands Resources] Act's clear statutory language, it is apparent that Virginia now regulates activities in wetlands beyond its federal mandate*" (*Treacy v. Newdunn Associates*).

These changes to State Water Control Law built upon the existing VWPP program while creating a nontidal wetlands program independent of § 401 Certification. Key aspects of the amended law that have been incorporated into the VWPP regulation include:

- ◆ Regulation of excavation in wetlands, effective July 1, 2000
- ◆ Regulation of filling or dumping, permanent flooding or impounding, or new activities that cause significant alteration or degradation of existing wetland acreage or function, effective October 1, 2001
- ◆ Increase in individual permit term from five years to the length of the project, not to exceed 15 years
- ◆ New individual permit review times, with a 15-calendar day window for DEQ application review to determine completeness and a 120-calendar day period in which to issue a permit, deny a permit, or decide to conduct a public hearing
- ◆ Consideration of cumulative impacts to State waters and fish and wildlife resources when issuing VWP permits
- ◆ Inclusion of permit conditions that address avoidance and minimization of wetland impacts to the maximum extent practicable

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- ◆ Specification of acceptable forms of compensatory mitigation, to include creation, restoration, purchase of credits from approved mitigation banks, preservation of wetland or upland buffers in combination with the above, and approved in-lieu fee funds
- ◆ Consideration that compensatory mitigation must be sufficient to achieve no net loss of existing wetland acreage and functions
- ◆ Inclusion of DEQ as a signatory agency in mitigation banking agreements

Additionally, the General Assembly directed DEQ to develop **general** permits for some activities having minimal impacts in order to expedite the permitting process in Virginia, while maintaining the same high environmental standards as the **individual** permitting process. By statute, each general permit must have specific thresholds for use, specific compensatory mitigation requirements, and a 45-calendar day review period once a **complete** application is received. The four VWP general permits are:

- ◆ VWP General Permit Number WP1 for Impacts Less Than One-Half Acre
- ◆ VWP General Permit Number WP2 for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities
- ◆ VWP General Permit Number WP3 for Linear Transportation Projects
- ◆ VWP General Permit Number WP4 for Impacts from Development and Certain Mining Activities

Amendments to the VWPP program in July 2007 provided clarifications of state jurisdiction of small water withdrawals, incorporated several provisions of the Local and Regional Water Supply Planning regulation, and addressed water supply permitting and surface water withdrawal concerns. Further amendments to the VWPP program in December 2008 provided exclusion of certain in-stream fills for water supply on agricultural properties.

State Program General Permit (SPGP)

Further reducing duplication of permitting between State and Federal agencies while ensuring minimal individual and cumulative consequences to wetland and stream resources, the Corps issued a State Program General Permit (SPGP), and suspended a few of the Nationwide Permits.

The State Program General Permit (SPGP-01) was granted to the Commonwealth of Virginia by the Norfolk District Corps of Engineers (Corps) for the discharge of dredged and/or fill material in nontidal wetlands and waters associated with residential, commercial, and institutional developments and linear transportation projects within the Commonwealth.

Corps general permits are authorizations issued on a nationwide or regional basis by the Army Corps of Engineers for categories of activities that have minimal environmental impacts. Programmatic general permits may be issued in situations where a state, regional, or local authority has a regulatory program in place that provides a similar level of review as the Corps.

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The SPGP-01 became effective on November 1, 2002, and included additional activities normally permitted by Corps' nationwide permits. The Corps issued modified SPGPs in June 2007 and June 2012. The Norfolk District Corps (Corps) revised and expanded the State Program General Permit (12-SPGP-01), which became effective on June 1, 2012.

The 12-SPGP-01 authorizes the discharge of dredged or fill material impacting up to one acre of nontidal wetlands and 2,000 linear feet of nontidal waters of the United States associated with certain residential, commercial, and institutional developments and up to 1/3 acre nontidal waters of the United States for linear transportation projects within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Corps.

A project must meet the wetland and stream impact thresholds and all other limitations and conditions of the SPGP to be used. The 12-SPGP-01 suspends the Corps' Nationwide 14 (nontidal portion only), Nationwide 29 (for multi-family developments only), and Nationwide 39 (in its entirety). *The Nationwide 29 permit is suspended for multiple unit residential developments and residential subdivisions. NWP 29 may still be used for a single residence and attendant features in the State of Virginia.* Memoranda of Agreement and Standard Operating Procedures have been developed to clarify program responsibilities for implementation of the 12-SPGP-01. Issues addressed in these documents include jurisdictional determinations and delineations, pre-application consultations, permit compliance and enforcement, federal agency coordination, historic resources screening procedures, and mitigation requirements.

More information about 12-SPGP-01 can be found at <http://www.deq.virginia.gov/Programs/Water/WetlandsStreams/PermitsFeesRegulations.aspx> or on the Corps Norfolk District Regulatory web site at <http://www.nao.usace.army.mil/Missions/Regulatory/RBregional.aspx>.

Central and Regional Offices

Office of Wetlands & Stream Protection staff is located in DEQ's Central Office and in six Regional Offices across the Commonwealth. Office addresses and phone numbers are provided in Section 6 of this guide. A map of the Regional Offices can also be obtained from <http://www.deq.virginia.gov/Locations.aspx>. In general, the regional offices issue the permits and inspect project sites; the Central Office maintains administration of the VWPP regulations, provides program guidance, and provides the Regional Office staff with technical assistance. Additionally, all Virginia Department of Transportation (VDOT) projects are currently managed and permitted out of the DEQ's Central Office, as are some private/public partnership transportation projects.

Projects involving, but not limited to, reservoirs; power plants; industrial impoundments or intakes; and interbasin transfers (multi-regional supply projects), as regulated under the VWPP program, are permitted by DEQ's Central Office staff. Staff from both the Office of Wetlands & Stream Protection and the Office of Surface & Ground Water Supply Planning work collaboratively on these permits. At this time, DEQ's regional VWPP staff work on permits for water withdrawal and water supply projects involving, but not limited to, golf course operations and dam construction, maintenance, or removal.

SECTION 2 - APPLYING FOR VWP PERMITS

Activities Requiring Permits

A key aspect of Virginia's nontidal wetlands program is ensuring that there is "no net loss" of wetland acreage and function through permitted impacts. The following activities in surface waters, including wetlands, will require a VWP permit:

- ◆ Excavation
- ◆ Drainage that significantly alters or degrades existing wetland acreage or function
- ◆ Filling or dumping
- ◆ Permanent flooding or impounding
- ◆ Activities that cause significant alteration or degradation of existing wetland acreage or functions
- ◆ Other activities that alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation or for other uses

In addition, the following activities in surface waters require a VWP permit:

- ◆ Surface water withdrawals
- ◆ Dredging that involves return flows (i.e. hydraulic)

If an applicant is in doubt about whether a certain activity requires a VWP permit or not, please refer to the VWPP regulations at

<http://www.deq.virginia.gov/Programs/Water/WetlandsStreams/PermitsFeesRegulations.aspx>.

Otherwise, you may call the DEQ regional office in your area, or the Office of Wetlands & Stream Protection in DEQ's Central Office (see Section 6 of this guide).

Important Notes Concerning the Need to Apply for a VWP Permit

- ◆ *If a proposed activity is covered by a Corps § 404 nationwide or regional permit (NWP or RP) that has already received § 401 Certification from DEQ, no VWP permit is required (see the DEQ web page or Table 1 located at the end of this section for the NWPs and RPs that have received Certification, or that have received conditional Certification).*
- ◆ *Corps' Nationwide Permits 14 (nontidal portion), 29 (for multi-family development), and 39 (in its entirety) have been suspended and will be authorized under a 12-SPGP-01.*
- ◆ *Note that other State and/or local government agencies, such as the Virginia Marine Resources Commission (VMRC), may still require a permit for the proposed activity.*

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Some activities are excluded from requiring any type of VWP permit due to provisions in law. A list of exclusions is given in 9 VAC 25-210-60 of the Virginia Administrative Code (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-210-60>). Specific exclusions applicable to the use of each VWP general permit are given in their respective regulations (see VWP general permits below).

Permit Application Form

The Joint Permit Application (JPA) is used for projects that may require permits from the Corps, DEQ, VMRC, and Local Wetlands Boards. An electronic JPA form can be obtained from http://www.deq.virginia.gov/Portals/0/DEQ/Water/WetlandsStreams/Revised_Standard_JPA_JULY2012_FillableForm.pdf or can be obtained by contacting Corps or DEQ offices. The application must be submitted by the applicant or their agent to the VMRC, which assigns a permit application number and in most instances, makes copies of the permit application for distribution to the pertinent agencies.

Important Notes Concerning the JPA

- ◆ *The JPA can act as a registration statement for application of coverage under one or more of the VWP general permits. In these instances, follow the instructions provided in the JPA.*
- ◆ *The JPA contains a section for applicant, agent, property owner, and contractor signatures. At least one copy of the JPA must contain **original** (not faxed or copied) signatures.*

Permit Processing

Once the appropriate DEQ office has received the application, the application will be reviewed by a DEQ permit writer and processed in one of the permit processing pathways described below (also see Figure 1 *Summary of Permit Processing Pathways* at the end of this section).

No Permit Required (NPR)

The most common reason that a proposed activity does not require a VWP individual or general permit is that the activity qualifies for a Corps general permit (for example, a nationwide or regional permit) for which DEQ has granted §401 Certification. The Corps has issued over forty nationwide permits and several regional permits that have received some form of §401 Certification. These are listed in Table 1 *Summary of USACE Permits and VWP Certifications & Conditions* at the end of this section.

If the activity is covered under a Corps NWP or RP **that has already received unconditional §401 Certification**, then the application is automatically covered under DEQ's VWP Permit Program, and no VWP permit or permit authorization need to be issued. The applicant may

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receive a “No Permit Required” Letter from DEQ staff. Note that other state and/or local agencies, such as VMRC, may still require a permit for the proposed activity.

Another situation which may result in an NPR is an impact to an Isolated Wetland of Minimal Ecological Value (IWOMEV). When an application involves an IWOMEV, the permit applicant must first request that the Corps verify whether or not the wetland(s) is/are isolated. Secondly, the applicant must prove that the wetland is of minimal ecological value by determining that it meets the definition of IWOMEV. If the project meets these requirements, then a No Permit Required letter is issued. Section 9 VAC 25-210-10 of the Virginia Administrative Code defines an IWOMEV as a wetland that is:

- ◆ Less than one-tenth acre in size (0.00 to 0.09 acre);
- ◆ Not located in a Federal Emergency Management Agency (FEMA) designated 100-year floodplain;
- ◆ Not identified by the Virginia Natural Heritage Program as a rare or State significant natural community;
- ◆ Not forested; **and**
- ◆ Does not contain listed Federal or State threatened or endangered species

Important Notes Concerning NPR

- ◆ *Changes may occur to the Corps nationwide permit program that is not reflected in Table 1. The permit applicant or agent is responsible for keeping up to date with changes to the Corps’s nationwide permit program and DEQ’s VWP Permit Program.*
- ◆ *If the proposed action qualifies as an NPR, and a fee was submitted at the time of application, then the entire fee will be returned to the applicant.*
- ◆ *Should a single and complete project impact both IWOMEVs and any other type of surface waters that would normally require a VWP general or individual permit, then compensatory mitigation is only required for those other surface waters, not for the IWOMEVs.*
- ◆ *Work in surface waters should not occur until the NPR letter is received by the applicant.*

VWP General Permits (Nontidal Areas Only)

The VWP general permits are used for permanent and temporary impacts occurring in **nontidal surface waters, including wetlands, only**. If a proposed activity incurs cumulative wetland and stream impacts less than the specified acreage and linear footage for a single and complete project, the activity may qualify for one of four VWP general permits.

The VWP **General Permit Number WP1** for “Impacts Less Than One-Half Acre” is not activity specific. This general permit can be used for various projects with impacts less than one-half acre of nontidal surface waters, including up to 300 linear feet of nontidal stream bed.

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The regulation for this permit can be found in 9 VAC 25-660-10 *et seq.* of the Virginia Administrative Code (<http://leg1.state.va.us/000/reg/TOC09025.HTM#C0660>).

The VWP **General Permit Number WP2** for “Facilities and Activities of Utilities” authorizes utility projects that impact up to one acre of nontidal surface waters, including up to 1,500 linear feet of nontidal stream bed. The regulation for this permit can be found in 9 VAC 25-670-10 *et seq.* of the Virginia Administrative Code (<http://leg1.state.va.us/000/reg/TOC09025.HTM#C0670>).

The VWP **General Permit Number WP3** for “Linear Transportation Projects” authorizes linear transportation projects that result in up to two acres of nontidal surface water impacts, including up to 1,500 linear feet of non-tidal stream bed. The regulation for this permit can be found in 9 VAC 25-680-10 *et seq.* of the Virginia Administrative Code (<http://leg1.state.va.us/000/reg/TOC09025.HTM#C0680>).

The VWP **General Permit Number WP4** for impacts from “Development and Certain Mining Activities” authorizes development projects that result in up to two acres of nontidal surface water impacts, including up to 1,500 linear feet of non-tidal stream bed. The regulation for this permit can be found in Section 9 VAC 25-690-10 *et seq.* of the Virginia Administrative Code (<http://leg1.state.va.us/000/reg/TOC09025.HTM#C0690>).

Table 2 *Summary of the VWP General Permits* in Section 3 provides more details on coverage under the four VWP general permits and the required mitigation. Information on the four VWP general permits may also be found at <http://www.deq.virginia.gov/Programs/Water/WetlandsStreams/PermitsFeesRegulations.aspx>.

Projects that formerly qualified for the Corps’ Nationwide Permits 14, 29, or 39 may be considered for coverage under the State Program General Permit (12-SPGP-01), a type of Corps general permit that assigns permitting responsibilities to DEQ for these qualifying projects. In order for a 12-SPGP-01 permit to be valid, applicants must obtain the following state approvals prior to commencement of work in waters of the United States.

- (1) VWP permit from the DEQ
- (2) VMRC permit, when required

Authorizations under 12-SPGP-01 also require that permittees ensure that their projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 *et seq.*). Authorizations under 12-SPGP-01 do not supersede state or local government authority or responsibilities pursuant to the Chesapeake Bay Preservation Act.

Prior to the submission of a permit application for any project potentially impacting surface waters, including those covered under the 12-SPGP-01, an applicant must first obtain a Corps confirmed delineation of all State and Federal waters and wetlands on the property. To obtain Corps confirmed delineations, the following information must be submitted to the Corps:

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1. The names and addresses of the project proponent and landowner;
2. An 8 ½" by 11" copy of an accurate topographic map or the appropriate portion of a USGS quadrangle sheet showing the property boundary, and a site survey/property plat;
3. A wetland delineation map (prepared in accordance with the Corps 1987 delineation manual and subsequent applicable guidance) including handwritten or typed wetland delineation data sheets for each "vegetative community" and the location of the data points and transect lines on a map along with a sufficient number of data points to document the proposed nontidal waters and wetland boundary;
4. Data points up and down slope of the location of the wetland or waters boundary;
5. The proposed nontidal wetland and waters boundaries must be flagged and numbered in the field; and
6. A distinction between the acreage of wetlands and the linear footage and square footage of waters (streams, etc.).

Each request to the Corps for a confirmed delineation will be assigned to a Corps project manager. At the time of the delineation site review, the Corps project manager will provide advice to the applicant on measures to avoid, minimize, and compensate for unavoidable impacts to State and Federal jurisdictional waters and wetlands. This avoidance, minimization, and compensation advice will be included in the Corps' delineation confirmation letter.

Important Notes Concerning the VWP General Permits

- ◆ *Because the VWP general permits are already written as regulations, an applicant for a VWP general permit will receive a **VWP general permit authorization** to proceed, if the proposed activity qualifies for that type of permit. The authorization documents that the proposed activity is covered by one of the established VWP general permits, and the permittee must abide by all of its conditions. The authorization may also include a statement concerning the qualification of the project under the 12-SPGP-01.*
- ◆ *A project may be elevated to a VWP individual permit, even when it meets the impact thresholds of a VWP general permit or those under the 12-SPGP-01, if the DEQ permit writer determines that the project will have greater than minimal impacts. Circumstances under which this may occur can be found in 9 VAC 25-210-130.B. of the Virginia Administrative Code (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-210-130>).*

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VWP Individual Permits (Nontidal and Tidal Areas)

A VWP individual permit is generally required when a proposed activity does not qualify for either an NPR or a VWP general permit. Projects requiring a VWP individual permit may include:

- ◆ New activities in a wetland to cause draining that significantly alter or degrade existing wetland acreage or functions
- ◆ New activities in a wetland that cause significant alteration or degradation of existing wetland acreage or functions
- ◆ Excavation in wetlands
- ◆ Water withdrawal projects, or projects having water withdrawal components (for example, dams)
- ◆ Dredging, filling, or dumping in surface waters, including wetlands
- ◆ Permanent flooding or impounding
- ◆ Proposed impacts that are greater than VWP general permit thresholds
- ◆ Threatened or endangered species issues that require outside-agency coordination
- ◆ Projects for which there is potential, significant impairment to state waters and fish and wildlife resources
- ◆ Projects located in areas, or involving activities, excluded under one or more VWP general permits

Figure 1 – Summary of Permit Processing Pathways

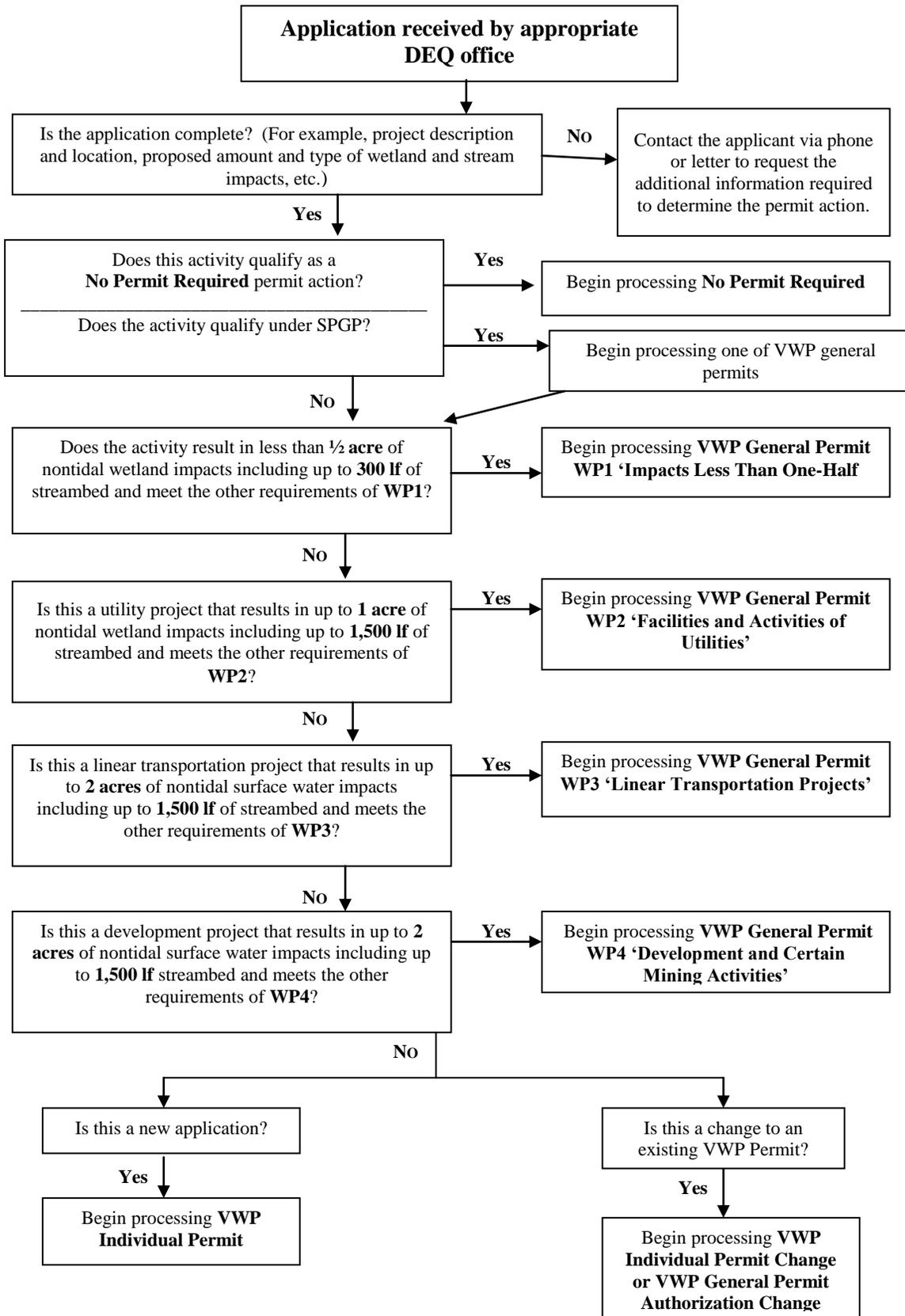


Table 1
USACE Permits and VWPP Certification/Conditions
 (Rev. 06/01/2012)

| USACE Nationwide or Regional Permit | Last Date of DEQ 401 Certification | DEQ VWP Permit Process | DEQ 401 Certification Conditions (list follows table) |
|--|---|-------------------------------|--|
| 1. Aids to Navigation | Mar-12 | NPR | N/A |
| 2. Structures in Artificial Canals | Mar-12 | NPR | N/A |
| 3. Maintenance | Mar-12 | NPR | N/A |
| 4. Fish and Wildlife Harvesting, Enhancement, & Attraction Activities | Mar-12 | NPR | N/A |
| 5. Scientific Measurement Devices | Mar-12 | NPR | N/A |
| 6. Survey Activities | Mar-12 | NPR | N/A |
| 7. Outfall Structures and Maintenance | Mar-12 | Conditional | 1,2 |
| 8. Oil and Gas Structures | Mar-12 | NPR | N/A |
| 9. Structures in Fleeting and Anchorage Areas | Mar-12 | NPR | N/A |
| 10. Mooring Buoys | Mar-12 | NPR | N/A |
| 11. Temporary Recreational Structures | Mar-12 | NPR | N/A |
| 12. Utility Line Activities | Mar-12 | Conditional | 1,3 |
| 13. Bank Stabilization | Mar-12 | NPR | N/A |
| 14. Linear Transport Crossings (Tidal Waters) | Mar-12 | Conditional | 1 |
| 14. REPLACED BY SPGP (Linear Transport Crossings - Nontidal Waters) | Expired Nov-02 | -- | -- |
| 15. U.S. Coast Guard Approved Bridges | Mar-12 | NPR | N/A |
| 16. Return Water from Upland Contained Disposal Areas | Mar-12 | Conditional | 19 |
| 17. Hydropower Projects | Cert. Denied Mar-12 | Permit Req'd | N/A |
| 18. Minor Discharges | Mar-12 | Conditional | 1,4,20 |
| 19. Minor Dredging | Mar-12 | Conditional | 1,5 |
| 20. Oil Spill Cleanup | Mar-12 | NPR | N/A |
| 21. Surface Coal Mining Activities | Mar-12 | Conditional | 1 |
| 22. Removal of Vessels | Mar-12 | NPR | N/A |
| 23. Approved Categorical Exclusions | Mar-12 | NPR | N/A |
| 24. Indian Tribe or State Administered Section 404 Programs | Mar-12 | N/A in VA | N/A |
| 25. Structural Discharges | Mar-12 | Conditional | 1,6 |
| 26. EXPIRED | Expired Jun-00 | -- | -- |

Table 1
USACE Permits and VWPP Certification/Conditions
 (Rev. 06/01/2012)

| USACE Nationwide or Regional Permit | Last Date of DEQ 401 Certification | DEQ VWP Permit Process | DEQ 401 Certification Conditions (list follows table) |
|---|---|-------------------------------|--|
| 27. Stream and Wetland Restoration Activities | Mar-12 | Conditional | 1,7,8,9,21 |
| 28. Modifications of Existing Marinas | Mar-12 | NPR | N/A |
| 29. Residential Developments | Mar-12 | Conditional | 1 |
| 30. Moist Soil Management for Wildlife | Mar-12 | NPR | N/A |
| 31. Maintenance of Existing Flood Control Facilities | Mar-12 | NPR | N/A |
| 32. Completed Enforcement Actions | Mar-12 | Conditional | 1,10 |
| 33. Temporary Construction, Access and Dewatering | Mar-12 | NPR | N/A |
| 34. Cranberry Production Activities | Mar-12 | NPR | N/A |
| 35. Maintenance Dredging of Existing Basins | Mar-12 | NPR | N/A |
| 36. Boat Ramps | Mar-12 | NPR | N/A |
| 37. Emergency Watershed Protection & Rehabilitation | Mar-12 | NPR | N/A |
| 38. Cleanup of Hazardous & Toxic Waste | Mar-12 | NPR | N/A |
| 39. REPLACED BY SPGP (Residential, Commercial and Institutional Development) | Expired Nov-02 | -- | -- |
| 40. Agricultural Activities | Mar-12 | Conditional | 1,2,11 |
| 41. Reshaping Drainage Ditches | Mar-12 | Conditional | 1,17 |
| 42. Recreational Facilities | Mar-12 | Conditional | 1,12 |
| 43. Storm water Management Facilities | Mar-12 | Conditional | 1,13 |
| 44. Mining Activities | Mar-12 | Conditional | 1,14 |
| 45. Repair of Uplands Damaged by Discrete Events | Mar-12 | NPR | N/A |
| 46. Discharges Into Ditches | Mar-12 | NPR | N/A |
| 47. Pipeline Safety Program Designated Time Sensitive Inspections & Repairs | Mar-12 | NPR | N/A |
| 48. Commercial Shellfish Aquaculture Activities | Mar-12 | Conditional | 1,15,3,4 |
| 49. Coal Re-mining Activities | Mar-12 | NPR | N/A |
| 50. Underground Coal Mining | Mar-12 | NPR | N/A |

Table 1
USACE Permits and VWPP Certification/Conditions
 (Rev. 06/01/2012)

| USACE Nationwide or Regional Permit | Last Date of DEQ 401 Certification | DEQ VWP Permit Process | DEQ 401 Certification Conditions (list follows table) |
|--|---|-------------------------------|--|
| Activities | | | |
| 51. Land Based Renewable Energy Generation Facilities | Mar-12 | Conditional | 1,4,17 |
| 52. Water Based Renewable Energy Generation Pilot Projects | Mar-12 | Conditional | 1,4,17 |
| ASP-18. DISCONTINUED (Abbreviated Standard Permit) | Discontinued Feb-02 | -- | -- |
| LOP-1. Letter of Permission for VDOT Projects | Cert. Denied | Permit Req'd | N/A |
| LOP-2. Letter of Permission for Certain Navigationally-related Recreational and Commercial Dredging Projects | Aug-10 | Conditional | 16 |
| RP-05. Construction of Small Impoundments | Oct-11 | NPR | N/A |
| RP-15. Maintenance of Certain Ditches | Aug-08 | NPR | N/A |
| RP-17. Private Piers and Mooring Piles | Aug-08 | NPR | N/A |
| RP-18. Private Piers not covered by RP-17 | Aug-08 | NPR | N/A |
| RP-19. Certain Activities covered by VMRC and/or Local Wetlands Boards | Sep-10 | NPR | N/A |
| RP-20. Development of State-owned and Operated Artificial Fin and Shellfish Reefs | Feb-12 | NPR | N/A |
| RP-22. For Certain Activities in Lake Gaston | Aug-08 | NPR | N/A |
| RP-24. For Certain Activities in Claytor & Smith Mtn. Lake | Aug-08 | NPR | N/A |
| RP-37. Expired (Replaced by NWP-37) | Expired Nov-10 | -- | -- |
| RP-40. Minor Maintenance Dredging in Nontidal Waters | Aug-08 | Conditional | 18 |

Abbreviations/Definitions for Table 1

VWPP = Virginia Water Protection Permit

VWP = Virginia Water Protection

NPR = No Permit Required from the VWPP Program

N/A = Not Applicable

Shading = Nationwide Permits suspended by the SPGP; activities for those types of activities are processed by DEQ with a VWP permit

Permit Req'd = Some type of VWPP action is required

Conditional = Section 401 Certification is only granted (e.g., no separate permit required from VWPP Program) if the noted conditions are met. Otherwise, some type of VWPP action is required, and the permittee must comply with the noted conditions.

DEQ Section 401 Conditions enumerated in Table 1

1. Compensatory mitigation, when including purchases of mitigation bank credits, must comply with Section 62.1-44.15:23 A through C of the Code of Virginia.
2. The structure or maintenance is not associated with intake structures.
3. The activities are not associated with intake structures or do not transport non-potable raw surface water.
4. The discharge does not include water withdrawals, such as the construction of an intake structure, weir or water diversion structure.
5. The dredging is not used to create a deep space for water withdrawal.
6. The discharge does not include structures such as pilings to construct a platform to mount a pump for water withdrawals.
7. When used to permit a wetland mitigation bank, compensation for any surface water impacts is debited from the bank credits.
8. Natural stream design shall be used for stream restoration projects.
9. Monitoring for success shall be conducted, including submittal of as-built plans, surveys, and photographs.
10. The impact does not exceed 2 acres of wetlands or 1500 linear feet of streambed and only past unauthorized impacts are addressed.
11. Does not include the location of concentrated animal feeding operations or waste storage facilities in surface waters.
12. The facility does not include an impoundment for irrigation, and compensation is required for wetland and/or stream loss due to direct impacts and permanent backflooding.
13. The management facility is not associated with a water withdrawal.
14. The activity is not for hydraulic dredging.

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15. The activity complies with the conditions of any VPDES permit issued for the facility.
16. The applicant must meet the following conditions: a) the containment area is adequately sized to prevent overtopping of any containment berm used for upland disposal of dredged material; b) the need is adequately addressed regarding a liner or impermeable material to prevent leaching of any identified contaminants into ground water; and c) the dredging will not exacerbate impairment of water body segments on the current effective Section 303(d) Total Maximum Daily Load (TMDL) priority list or water body segments with an approved TMDL; and the dredging is consistent with any waste load allocation, limit, or conditions imposed by an approved TMDL.
17. The impact does not exceed 2 acres of wetlands or 1500 linear feet of streambed.
18. The amount of dredged/excavated material cannot exceed 5,000 cubic yards (no limits on method of dredging/excavation, and no separate limits on the area of impact).
19. Provided that the associated dredging does not otherwise require issuance of an Individual or General Virginia Water Protection Permit from VDEQ
20. Provided that a Virginia Pollutant Discharge Elimination System (VPDES) permit is obtained prior to the placement of any alternative septic system discharging into Virginia Department of Health (VDH) designated shellfish waters.
21. Dam removal for those dams meeting the following limits: a) less than 25 feet in height with a maximum impoundment capacity of less than 15 acre-feet or b) less than six feet in height with a maximum impounding capacity less than 50 acre-feet, or c) dams operated primarily for agricultural purposes which are less than 25 feet in height or which create a maximum impoundment capacity smaller than 100 acre-feet.

SECTION 3 - VWP GENERAL PERMITS

Permit Processing Timeframes

The DEQ permit writer will conduct a completeness review of the application package and may request additional information from the applicant if the package is not adequate. A **VWP general permit authorization** is issued, issued with conditions, or denied within 45 calendar days of DEQ receiving a **complete** permit application. If the DEQ staff has not acted on a **complete** permit application after 45 calendar days, the VWP general permit authorization is automatically approved for the proposed activity.

Complete Applications

Each of the VWP general permit regulations specifies the information required for a JPA to be considered complete, and each of the regulations is slightly different. These informational requirements will not be listed in detail in this section; however, the VWP general permit regulations can be found at <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-210-130>.

Particular attention should be paid to the following key informational requirements:

- ◆ The applicant should submit a Corps wetland delineation confirmation, or evidence that the confirmation is in progress, in order for an application to be considered complete when the proposed activity impacts wetlands. The actual confirmation, whether it be via a Corps form or a letter, is required prior to issuance of the VWP general permit authorization and any associated SPGP.
- ◆ An applicant must first describe the measures taken during project design and development to avoid and minimize impacts to surface waters to the maximum extent practicable, as required by 9 VAC 25-210-115.C (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-210-115>). Then, the applicant must provide a **conceptual** compensatory mitigation plan as part of the application for those unavoidable impacts. Compensation options for the VWP general permits are summarized in Table 2 *Summary of the VWP General Permits* located in Section 2-17. A **final** compensatory mitigation and monitoring plan must be submitted and approved after the issuance of the VWP general permit authorization **but before any construction occurs in the permitted impact areas**. Therefore, the final plan should be submitted to DEQ at least 30 calendar days before work is to begin to allow review time by the DEQ permit staff. In instances where a Corps permit is also being issued, DEQ staff will coordinate the plan review to the extent practicable with Corps staff.

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Important Notes Concerning Complete Applications

- ◆ *Applicants wanting consideration under 12-SPGP-01 must follow the submittal requirements detailed in the Joint Permit Application.*
- ◆ *In addition to completing all of the informational requirements, the permit application fee for a **VWP general permit** must be received and deposited by DEQ Accounts Receivable in order for the application to be considered complete and in order for the permit processing time clock to start. **DO NOT send the permit application fee with your JPA. See the next subsection below for fee submittal information.***

Table 2 – Summary of the VWP General Permits

| Permit Number | Authorized Impacts | Notification Requirements | Required Compensation (>1/10 acre Sum of Permanent & Temporary Impacts) | Compensation Options | Compensation Ratios | Authorization Term |
|--------------------------|--|---|---|----------------------|--|--------------------|
| WP 1 (<1/2 Acre) | < 1/2 acre (0.00 - 0.49) non-tidal surface waters including up to 300 LF stream bed | Perm & Temp Impacts >1/10 acre (0.105+) - Full JPA Perm Impacts up to 1/10 acre (0.00-0.104) - Certain portions of JPA* | (1) | B, F | EM, SS, FO = 2:1; SB = use of USM | 3 yrs |
| WP 2 (Utilities) | up to one (0.00 - 1.00) acre non-tidal surface waters including up to 1,500 LF stream bed | Perm & Temp Impacts >1/10 acre (0.105+) - Full JPA Perm & Temp** Impacts up to 1/10 acre (0.00-0.104) - Certain portions of JPA* | (2) | B, F, C, R, P | EM = 1:1; SS = 1.5:1; FO = 2:1; SB = use of USM | 7 yrs |
| WP 3 (Transportation) | up to two (0.00 - 2.00) acres non-tidal surface waters including up to 1,500 LF stream bed | Perm & Temp Impacts >1/10 acre (0.105+) - Full JPA Perm Impacts up to 1/10 acre (0.00-0.104) - Certain portions of JPA* | (1) | B, F, C, R, P | EM = 1:1; SS = 1.5:1; FO = 2:1; SB = Use of USM | 7 yrs |
| WP 4 (Development) | up to two (0.00 - 2.00) acres non-tidal surface waters including up to 1,500 LF stream bed | Perm & Temp Impacts >1/10 acre (0.105+) - Full JPA Perm Impacts up to 1/10 acre (0.00-0.104) - Certain portions of JPA* | (1) | B, F, C, R, P | EM = 1:1; SS = 1.5:1; FO = 2:1; SB = use of USM | 5 yrs |

* Certain portions of the JPA will serve as the DEQ Registration Statement. See Instructions in JPA for details.

** Only temporary impacts from mechanized land clearing of forested wetlands.

(1) = All permanent impacts; temporary impacts restored to pre-construction conditions (Part I.C.11); additional compensation (B,F,C,R,P) for temporary impacts at project manager's discretion.

(2) = All permanent impacts; temporary FO impacts from mechanized clearing (other temporary impacts restored to pre-construction conditions [Part I.C.11.], no B,F,C,R,P); conversion impacts outside of 20 foot wide corridor (temporary impacts from mechanized clearing excluded within corridor).

B = Approved Compensation Bank, F = Approved In-Lieu Fee Fund, C= Creation, R = Restoration,

P = Preservation (wetland, stream, or upland buffers in combination with B, C, or R)

EM = Emergent, SS = Scrub/Shrub, FO = Forested,

SB= Stream Bed; USM= Unified Stream Methodology, LF = Linear Feet

VWP General Permit Application Fee

Permit application fee information may be obtained from <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-20-130> or by contacting DEQ. **As of January 2008** the following fees apply to VWP general permits:

- ◆ VWP General Permit, impacts less than 1/10 (≤ 0.09) acre: No Fee
- ◆ VWP General Permit, impacts between 1/10 and 1/2 ($0.10 < 0.50$) acre: \$600
- ◆ VWP General Permit, impacts greater than 1/2 (≥ 0.51) acre: \$1,200

Upon receipt of a JPA, a DEQ permit writer will contact the applicant concerning the proper permit application fee and will send the applicant a Permit Application Fee Form. The permit application fee and form should be submitted **separately from the JPA**. The permit application fee is made payable to **Treasurer of Virginia**. The **fee and fee form** should be submitted to the following address:

Virginia Department of Environmental Quality
Receipts Control
P.O. Box 1104
Richmond, Virginia 23218

Fee refunds are only issued under the circumstances outlined below:

- ◆ the general permit fee is determined to be less than the amount paid
- ◆ an incorrect fee amount is determined during the permit application review, including duplicate payments, a minor permit modification which requires no fee, or a general permit which has no required fee
- ◆ the application is withdrawn within 90 days of receipt AND prior to being deemed administratively complete

What the Applicant/Permittee Can Expect

Once the JPA is reviewed by the DEQ staff, the applicant will receive an Additional Information and Permit Application Fee Request Letter or a Notification of Complete Application Letter. The Additional Information and Permit Application Fee Request Letter is used by the DEQ staff to obtain additional information needed in order to determine whether the proposed activity qualifies for the type of permit sought and to remind the applicant to remit the permit application fee, if he/she has not done so already. The Notification of Complete Application Letter is sent to the applicant after the application has been deemed complete by regulatory definitions and the application fee has been deposited.

Both VWP individual and general permits have a 15-day regulatory timeframe for review of applications for completeness. However, a determination that an application is complete does not mean the permit will automatically be issued, only that the information submitted

was sufficient to process the application.

DEQ staff may request a visit to the proposed project site(s) in order to gather additional information or clarify information already received on the proposed project.

When there is a potential for a proposed or listed, Federal or State threatened and endangered (T&E) species, or for proposed or designated critical habitat, to exist at a project site, DEQ will consult with the Virginia Department of Game and Inland Fisheries (DGIF) and the Virginia Department of Conservation and Recreation (DCR) to determine if further investigation is necessary. The Virginia Department of Agriculture and Consumer Services (VDACS) is also consulted through DCR. Should these agencies indicate a need for further study, DEQ staff may request that the applicant withdraw the application until the T&E issue(s) is/are resolved, and thus, the processing time clock will be suspended. In lieu of the applicant withdrawing the application, DEQ staff may elevate the proposed activity to the VWP individual permit level, thus resetting the processing time clock to zero.

Since Parts I, II, and III of VWP general permits cannot be changed, outside agency comments or special conditions concerning T&E species or other aspects of the project may be incorporated as *Authorization Note(s)*, a section inserted after the *Activity Description* section on the VWP General Permit Authorization Cover Page. The applicant should pay close attention to the *Authorization Note(s)* section of the VWP general permit package when it is received.

Should the application for a VWP general permit be denied, the applicant will receive a letter explaining the reasons for the denial. A DEQ staff member may also contact the applicant by phone to discuss the reason for denial.

Processing VWP Permits with a 12-SPGP-01

As stated earlier in sections 1-3 and 2-4, the SPGP authorizes the DEQ to be the sole permitting authority for certain projects impacting nontidal wetlands or streams with qualifying threshold limits. Therefore, the end result of processing an application through the SPGP allows the processing and authorization of permits without Corps participation.

DEQ and Corps staff will coordinate on whether the proposed project qualifies under 12-SPGP-01. If the proposed project qualifies under 12-SPGP-01, and no outstanding threatened and endangered species, critical habitat, or historic resources issues exist, DEQ may proceed with issuing the appropriate permits and no further authorization will be required from the Corps, as long as the conditions of 12-SPGP-01 are met. See the Corps web site for details on the 12-SPGP-01 conditions (<http://www.nao.usace.army.mil/Missions/Regulatory.aspx>).

If the project does not qualify for the 12-SPGP-01 or there are unresolved resource issues, DEQ will continue with the VWP permit process (either general or individual permit). The applicant will receive notification from DEQ or the Corps that the project does not qualify under 12-SPGP-01 and the reasons for the determination. In these cases, a separate permit from the Corps will be required.

SECTION 4 - VWP INDIVIDUAL PERMITS

Permit Processing Timeframes

The **VWP individual permits** have a different processing timeframe than VWP general permits. Except for minimum in-stream flow and water withdrawal projects, a 15-calendar day review process is initiated upon receipt of an application to determine if the application is **complete** (see next subsection for informational requirements). After the 15th calendar day, a permit application is deemed complete by default unless the DEQ has requested additional information from the applicant. When such a request is made, the processing time clock is stopped until the requested information is submitted by the applicant. Several rounds of information requests may occur if the applicant does not provide all of the requested information the first time. In each instance, the processing clock is stopped until the requested information is received from the applicant. DEQ has 120 calendar days from the date that a **complete** application is received to issue the permit, issue the permit with conditions, deny the permit, or decide to conduct a public hearing. Should it be determined that additional information is needed for a complete application, or that a public hearing is warranted, the permit issuance timeframe may extend beyond 120 days. VWP individual permits are **not automatically issued** when the 120th day passes.

Complete Applications

According to Section 9 VAC 25-210-80 of the Virginia Administrative Code (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-210-80>), a complete VWP individual permit application consists of the following, at a minimum:

- ◆ Name and address of applicant (and property owner, if different)
- ◆ Name and address of authorized agent (if applicable)
- ◆ Name of the waterbody or receiving waters, as applicable, at the project site
- ◆ Name of the city or county where the project occurs
- ◆ Project purpose, need and description (a complete narrative description of the project, including the type of activity to be conducted, any physical alteration to surface waters, and all impacts, permanent and temporary, associated with the project; wetland impacts should be quantified according to their Cowardin classification or similar terminology)
- ◆ Amount of surface water impacts by type (for wetlands and open waters use square feet or acres; for streams use linear feet), both permanent and temporary
- ◆ Materials assessment (if dredged or fill material is involved, the applicant must provide evidence or certification that the material is free from toxic contaminants, or that the material, if not free of contaminants, will be placed in an approved disposal area; if applicable, the applicant may be required to conduct grain size and composition analyses, tests for specific parameters or chemical constituents, or elutriate tests on the dredge material)

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- ◆ Proposed construction schedule, including approximate project begin and end dates and approximate mile-stone dates if known (an estimate of the construction timeframe for the project will be used to determine the VWP permit term)
- ◆ Signed and dated signature page(s) (**original signatures** should be submitted to VMRC)
- ◆ Appendices from the JPA that apply to the project
- ◆ Latitude and longitude (to the nearest second) at the center of the project;
- ◆ United States Geological Survey Hydrologic Unit Code for the project and compensatory mitigation site(s);
- ◆ DEQ stream classification and stream drainage area;
- ◆ Functions and values assessment for wetlands impacts, and wetlands delineation information (if applicable);
- ◆ State- and Federally-listed, threatened and endangered species information;
- ◆ Mitigation plan, demonstrating avoidance and minimization to the maximum extent practicable and compensation for unavoidable impacts (see the VWP individual permit regulation, and the following *Compensatory Mitigation Plans* subsection for further details)
- ◆ Detailed project location map, for example, a United States Geological Survey topographic map (must include the latitude and longitude for the project; hydrologic unit code; and stream classification if applicable clearly identified on the map)
- ◆ Project plan view and cross-sectional sketches (all plan view sketches and cross-sectional sketches must include: north arrow; scale; existing structures; existing and proposed contours if available; limit of surface water areas; ebb and flood or direction of flow; impact limits; and location and dimension of all structures in impact areas)
- ◆ Application processing fee (the applicant will be notified by the DEQ permit writer as to the appropriate fee for the project in accordance with 9 VAC 25-20-10 *et seq.*)

When wetland impacts are involved, the applicant should submit to DEQ either a Corps wetland delineation confirmation; written correspondence from the Corps indicating their approval of the wetland boundaries; or evidence that the confirmation is in progress in order for an application to be considered complete. The actual confirmation is required prior to issuance of the VWP draft individual permit package. In some instances, a VWP individual permit will be issued for a water withdrawal project that impacts less than 1/10 acre of wetlands and/or surface waters. Since water withdrawal activities are not covered under 12-SPGP-01, a Corps-confirmed waters boundary map must be submitted with the application (or documentation that the confirmation is in progress).

Applications involving a surface water withdrawal or a Federal Energy Regulatory Commission (FERC) license or re-license shall **also** include:

- ◆ The drainage area, the average annual flow and the median monthly flows at the withdrawal point, and historical low flows if available

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- ◆ The average daily withdrawal, the maximum daily and instantaneous withdrawals and information on the variability of the demand by season
- ◆ Information on how the proposed withdrawal will impact flows in terms of flow reduction
- ◆ The consumptive use and the average daily return flow of the proposed project and the location of the return flow
- ◆ Information on the proposed use of and need for the surface water and information on how the demand for surface water was determined (for example, per capita use, population growth rates, new uses, changes to service areas, and if applicable, acreage irrigated and evapotranspiration effects)
- ◆ Information on flow-dependent beneficial uses at the proposed project location
- ◆ Information on the aquatic life at the proposed project location, including species and habitat requirements

Important Notes Concerning Complete Applications

- ◆ *Although the receipt of the permit application fee is technically required for a **VWP individual permit** application to be considered complete, the processing time clock will not be delayed as a result of the fee not being received and deposited at the same time that the application is received. This is because the fee for individual permits varies and cannot always be determined in the early days of a permit application review. However, the appropriate fee must be received and deposited prior to issuing a draft permit package to the applicant and publishing the public notice.*
- ◆ *The applicant should respond to DEQ's requests for additional information, or indicate that he/she is working to obtain the information, within 30 days. DEQ staff may suspend processing the permit application until all the required information is received.*

VWP Individual Permit Application Fees

Permit application fee information may be obtained from <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-20-110> or by contacting DEQ. Individual permit fees begin at \$2,400 (for up to 2.00 acres of impacts). Above 2.00 acres of impact, the fee is \$2,400 for the first 2.00 acres, plus \$220 for each 4,356 sq. ft. (1/10 acre) of incremental impact over 2.00 acres. The individual permit fee is capped at a \$60,000 maximum. Fees for individual water withdrawals range from \$10,000 to \$25,000 depending on the volume withdrawn, as measured in million gallons per day (MGD). Water supply reservoir permit fees range from \$25,000 to \$35,000. Permit fees are variable for individual permits due to the complexity of the project, the significance of impacts on aquatic habitat, and the possibility of public hearings.

Upon receipt of a JPA, a DEQ permit writer will contact the applicant concerning the proper permit application fee and will mail the applicant a Permit Application Fee Form. The permit application fee and form should be submitted **separately from the JPA**. The permit application

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fee is made payable to **Treasurer of Virginia**. The **fee and fee form** should be submitted to the following address:

Virginia Department of Environmental Quality
Receipts Control
P.O. Box 1104
Richmond, Virginia 23218

Fee refunds are only issued under the circumstances outlined below:

- ◆ an incorrect fee amount is determined during the permit application review, including duplicate payments, a minor permit modification which requires no fee, or a general permit which has no required fee
- ◆ the application is withdrawn within 90 days of receipt AND prior to being deemed administratively complete

What the Applicant/Permittee Can Expect

The applicant will receive an Additional Information and Permit Application Fee Request Letter or a Notification of Complete Application Letter once the JPA and attachments are reviewed by a DEQ permit writer. Should the application be complete except for the fee, the applicant will receive an additional information request letter that is modified to reflect this.

The DEQ permit writer may request a visit to the proposed project site(s) in order to gather additional information or clarify information already received on the proposed project.

Compensatory Mitigation Plans

Compensation options for a VWP individual permit are proposed by the applicant and are approved by DEQ after coordination with and receipt of comments from other State and Federal agencies.

Under the VWP individual permit regulation (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-210-116>), an applicant must provide a mitigation plan for unavoidable impacts to surface waters as part of the JPA. As mentioned in the previous subsection, this plan provides information concerning the measures taken to avoid impacts to the maximum extent practicable, the measures proposed to reduce the impacts to surface waters to the maximum extent practicable, and where impacts could not be avoided or minimized, the means by which compensation will be accomplished to achieve no net loss of wetland acreage and function. A **conceptual** compensatory mitigation plan is required in order for an application to be considered complete. The conceptual plan must include the following at a minimum:

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- ◆ The goals and objectives in terms of replacement of wetland or stream acreage and function
- ◆ A location map, including latitude and longitude (to the nearest second) at the center of the site
- ◆ A hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical year, a dry year, and a wet year
- ◆ Groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data
- ◆ Wetland delineation confirmation and data sheets and maps for existing wetland areas on the proposed site(s)
- ◆ A conceptual grading plan, showing existing and proposed grades (at a scale that provides adequate detail to determine if proposed grading makes sense)
- ◆ A conceptual planting scheme, including suggested plant species, zonation and acreage of each vegetation type proposed
- ◆ A proposed soil preparation and amendment plan addressing both topsoil and subsoil conditions
- ◆ A draft design of any water control structures

A **final** compensatory mitigation and monitoring plan must be submitted and approved **before any construction occurs in the permitted impact areas**. In instances where a Corps permit is also being issued on the project, DEQ staff will coordinate the plan review to the extent practicable with Corps staff.

Agency and Landowner Comments

In **nontidal** areas, DEQ is required to notify property owners located adjacent to the wetland or stream impact areas and within one-half mile downstream of each distinct impact site. In **tidal** areas, the distance is one-quarter mile upstream and one-quarter mile downstream of each impact site. Upon receipt of the notification, a landowner may contact DEQ concerning the proposed project.

Additionally, DEQ is required by law to contact various state agencies for comments on the proposed project. State agencies include the Virginia Departments of Health (VDH), DGIF, DCR, VDACS, and VMRC. Federal agencies may also be solicited for comments at the project manager's discretion. The Federal agencies that may be contacted include, but are not limited to, the Corps, the U.S. Environmental Protection Agency (EPA), the National Marine Fisheries Service (NMFS), and the U.S. Fish and Wildlife Service (USFWS). State and Federal agencies are allotted 45 calendar days to return any comments to DEQ staff. DEQ assumes that an agency does not wish to comment, if, after the 45-day period ends, no comments are received.

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Draft Permit Package

Once the above reviews are completed and the permit fee is received and deposited by the DEQ Accounting Office, a draft permit package will be sent to the applicant, which includes a Transmittal Letter, Part I - Draft Special Conditions, Part II - General Conditions, the Public Notice, and a Public Notice and Verification Form. **This package should be reviewed carefully so that the applicant understands what actions are/are not allowable under the permit.**

- ◆ The Draft Transmittal Letter will request that the applicant review the draft permit package and submit comments back to DEQ within 14 days. Any changes to the conditions of the permit, other than those received by public comment, must be made prior to publication of the Public Notice. The Public Notice must be published within 14 calendar days of receipt of the package by the applicant.
- ◆ The applicant is responsible for the publication and cost of the Public Notice in a newspaper of general circulation in the county, city, or town in which the impact is located. Publication of the Public Notice indicates that the applicant accepts the conditions listed in the draft VWP individual permit. The DEQ allows a 30-calendar day comment period following the date that the Public Notice appears in the paper, during which individuals may submit written comments. If the 30th day of the comment period occurs on a weekend or holiday, the next business day is considered the 30th day.
- ◆ DEQ requires that the applicant provide proof of publication. The applicant is responsible for instructing the publisher to provide DEQ with the actual copies of pages from the newspaper showing the notice and the date of the newspaper, or instruct the publisher to complete the Public Notice and Verification Form, attached to the Transmittal Letter. Failure to provide DEQ with a copy of the notice, or the verification form, prior to the close of the 30-day comment period stops the permit processing clock on the day that the comment period ends.

DEQ staff will review and summarize the comments received. Changes in the draft permit Part I - Special Conditions may be warranted due to the receipt of technically sound and relevant comments from the public.

Important Notes Concerning the Draft Permit Package

- ◆ *The applicant and/or agent should carefully review the draft permit package once it is received from DEQ. Concerns about any portion of the package (except the Part II – General Conditions) and subsequent changes or revisions that may be needed, **must** be coordinated during this review period. Once the Public Notice is published, changes cannot be made prior to issuing the final permit, unless they are a result of a public comment. Changes to final permits may only be made under certain circumstances outlined in Section 5 of this guide.*

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- ◆ *The Public Notice must be published within 14 calendar days of issuance of the draft VWP individual permit or the 120-calendar day processing clock will be suspended until the publication is made.*

Public Hearings

Should a request be made for a public hearing as a result of a Public Notice, the appropriate DEQ regional office will process a hearing need determination. The final decision to hold a public hearing must be made by the appropriate DEQ Regional Director within 30 calendar days after the close of the public comment period. Public hearings may be granted if the request is filed in a timely manner and the following conditions are met: 1) there is a significant public interest in the issuance, denial, modification or revocation of the permit in question; 2) there are substantial, disputed issues relevant to the issuance, denial, modification or revocation of the permit in question; **and** 3) the action requested is not on its face inconsistent with, or in violation of, the State Water Control Law, Federal law or any regulation promulgated thereunder. If the responses and requests do not meet the criteria for holding a hearing, the DEQ staff will issue a Notice of Denial of the Request for a Hearing Letter to the person making the hearing request. In the case where a hearing is authorized, the person making the hearing request will be notified, and the hearing will be scheduled within 60 calendar days of the notification.

The project manager arranges for a convenient date and location for the hearing and also arranges for a State Water Control Board (Board) member to preside over the hearing. Hearings are usually held in the evening so the working public may attend. A notice of the hearing shall be published once by DEQ in a newspaper of general circulation in the city or county where the proposed activity is located, at least 30 calendar days before the hearing date.

Final Permit Package

Once a public hearing has been held (if applicable) and the comment period is over, the request to issue a permit must go before the Board for a decision. If the request to issue a permit is granted, the DEQ staff will send the Final VWP Individual Permit Package (a Transmittal Letter, the Permit Cover Page, Part I - Special Conditions, and Part II - General Conditions) to the permittee via certified mail.

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Permit Denials

The circumstances under which a permit may be denied by the Board are given in Section 9 VAC 25-210-230 of the Virginia Administrative Code (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-210-230>) and include, but are not limited to:

- ◆ The project will result in violations of water quality standards or will impair the beneficial uses of State waters
- ◆ As a result of project implementation, shellfish waters would be condemned in accordance with 9 VAC 25-260-5 *et seq.*
- ◆ The project that the applicant proposed fails to adequately avoid and minimize impacts to State waters to the maximum extent practicable
- ◆ The proposed compensatory mitigation plan is insufficient or unsatisfactory for the proposed impacts and fails to achieve no net loss of existing acreage and function
- ◆ The Department of Game and Inland Fisheries indicates that natural or stockable trout waters would be permanently and negatively impacted by the proposed activity
- ◆ The proposed activity is prohibited by 9 VAC 25-210-50
- ◆ The effect of project impacts, together with other existing or proposed impacts to wetlands, will cause or contribute to a significant impairment of State waters or fish and wildlife resources
- ◆ Failure to submit the required permit fee

Should a permit denial be anticipated, the DEQ permit writer will first call the applicant and then send a Notification of Tentative Decision of Application Denial Letter explaining their intent to recommend denial of the request for a VWP individual permit. Following the applicant notification of DEQ's tentative decision to deny the VWP individual permit request, the applicant may choose to withdraw the application. If the applicant elects to proceed with the request, DEQ may deny the application and advise the applicant pursuant to 9 VAC 25-230-10 *et seq.* of the applicant's right to a public hearing to consider the denial.

DEQ's intent to deny the VWP individual permit request must be issued in the form of a Public Notice. The procedure for Public Notice of the denial of a VWP permit is identical to the issuance procedure except that DEQ pays for the Public Notice. Also, the Public Notice states that the Board does not intend to issue the permit to the applicant and gives the reason for denial. Should the Public Notice result in a request for a hearing, the public hearing procedures apply.

SECTION 5 - PERMIT CHANGES

The VWP individual permit and the VWP general permit authorization may be changed after issuance under certain circumstances. The VWP **general permit authorization** can undergo a Notice of Planned Change, Continuation of Coverage, or a Termination. The VWP **individual permit** can undergo a Minor or Major Modification, an Extension, a Re-Issuance, a Revocation and Re-Issuance, or a Termination. There is a fee for VWP individual permit modifications, depending on the nature of the proposed changes to the project.

The Board makes the final permit issuance decision in the following situations: VWP individual permits that involve public hearings; the termination of VWP individual permits and VWP general permit authorizations; and denial of VWP individual permits and VWP general permit authorizations.

General Permit Authorization - Notice of Planned Change

The permittee may request a Notice of Planned Change to the VWP general permit authorization to cover additional wetland and stream impacts under the criteria listed below:

- ◆ The request is submitted within 45 calendar days of the additional impact(s)
- ◆ The cumulative **increase** in acreage of wetland impacts is not greater than one-quarter (< 0.25) acre
- ◆ The cumulative **increase** in stream impacts is not greater than 50 (< 50.0) linear feet
- ◆ All additional impacts are fully compensated
- ◆ The final impact total cannot exceed the maximum impact limit (both total acreage and linear foot thresholds) authorized under the original VWP general permit

The request for a Notice of Planned Change must be in writing and include the following information:

- ◆ A detailed description of the proposed Notice of Planned Change, including the exact site location of required Notice of Planned Change (for example, the roadway station number, impact area name, etc.)
- ◆ Justification for the proposed Notice of Planned Change
- ◆ Detailed sketches of proposed activities and/or photographs documenting existing conditions that warrant the Notice of Planned Change
- ◆ Brief description of the proposed compensation for additional impacts

Additional impacts must be fully compensated. DEQ prefers that the proposed compensation for additional impacts be the same as for the permitted impacts. If the permittee demonstrates that the compensation approved for the original impacts is not feasible for the impacts requested

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under the Notice of Planned Change, the applicant can propose other options including the use of an approved in-lieu fee fund or approved compensation bank credits.

General Permit Authorization - Continuation of Coverage

A Continuation of Coverage may be required if any portion of the authorized impact activities or any permit requirement (for example, compensatory mitigation) has not been completed before the VWP general permit authorization expires.

The permittee must submit either a new or an updated JPA with applicable attachments prior to the expiration of their existing VWP general permit authorization to request an authorization of Continuation of Coverage. The applicant is responsible for submitting the request no less than 60 calendar days prior to the permit authorization expiration date, as stipulated in Part II, A.16 of the VWP general permit authorization. The Continuation of Coverage will only extend the expiration date of the VWP general permit authorization up to three years for authorizations under VWP General Permit Numbers WP1 and WP2 and up to five years for authorizations under VWP General Permit Numbers WP3 and WP4.

General Permit Authorization - Notice of Termination

In accordance with the VWP general permit regulations, the permittee must submit a notice of termination to DEQ within 30 days of completing permitted activities. The following information must be included:

- ◆ Name, mailing address and telephone number of the permittee;
- ◆ Name and location of the activity;
- ◆ The VWP permit authorization number; and
- ◆ The following certification:

“I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit.”

A VWP general permit authorization may be revoked (terminated) for any cause(s) set forth in 9 VAC 25-210-180 (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-210-180>), subject to the appropriate opportunity for a hearing. The causes given in this section of the Virginia Administrative Code are:

- ◆ Noncompliance by the permittee with any condition of the VWP permit
- ◆ The permittee’s failure in the application, or during the VWP permit issuance process, to fully disclose all relevant facts, or the permittee's misrepresentation of any relevant facts at

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any time

- ◆ The permittee's violation of a special or judicial order;
- ◆ 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
- ◆ A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit
- ◆ A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed

General Permit Authorization – Terms and Conditions under 12-SPGP-01

Should one of the above situations arise, the same procedures are followed by DEQ for a VWP general permit that is issued with 12-SPGP-01. DEQ will coordinate with a Corps project manager that the project impacts or project details have changed. The Corps may re-evaluate the proposed activity(ies) according to the 12-SPGP-01 terms and conditions. The SPGP contains 45 conditions that apply to all activities authorized under 12-SPGP-01. Work that does not meet one or more the terms and general conditions of 12-SPGP-01, including work that has been determined to be more than minimal in nature (at any impact level), will require consideration under a different type of Corps permit

(<http://www.nao.usace.army.mil/Portals/31/docs/regulatory/RPSPdocs/12-SPGP-01-Permit-FINAL%20.pdf>).

The Corps-Norfolk District may re-evaluate its decision on the SPGP determination, and thus authorization under the SPGP-01 permit, at any time the circumstances warrant. Circumstances that could require a re-evaluation include, but are not limited to, the following:

- ◆ The applicant fails to comply with the terms and conditions of this permit
- ◆ The information provided by the applicant/agent in support of the permit application proves to have been false, incomplete, or inaccurate
- ◆ Significant new information surfaces which the Corps-Norfolk District office did not consider in reaching the original decision

Such a re-evaluation may result in a determination that it is appropriate to use the Corps suspension, modification, and revocation procedures contained in 33 CFR 325.7

(<http://cfr.vlex.com/vid/325-modification-suspension-revocation-19766588>) or Corps enforcement procedures such as those contained in 33 CFR 326.4 and 326.5

(<http://www.gpo.gov/fdsys/pkg/CFR-2011-title33-vol3/xml/CFR-2011-title33-vol3-part326.xml>).

Unpermitted work or violation of permit conditions may result in the Corps implementing civil, criminal, or administrative penalties (<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title33/html/USCODE-2011-title33-chap26-subchapIII-sec1319.htm>).

Individual Permit Modifications

VWP individual permit modifications fall into one of two categories: major or minor. Either type of modification may be requested in a written letter signed by the permittee or his/her agent. Although not required, the DEQ permit writer may request a completed JPA or pertinent sections of the JPA if the Modification request involves significant changes. Each Modification request should include:

- ◆ A reference to the existing permit condition in question
- ◆ A detailed description of the proposed change, including the exact site location of the required modification (for example, the roadway station number, impact area name, etc.)
- ◆ Justification for the proposed change
- ◆ Detailed sketches of proposed activities and/or photographs documenting existing conditions that warrant the permit modification

Major Modifications

All changes that are not listed in the *Minor Modifications* subsection below are considered to be Major Modifications. Major Modifications require a public notice and a fee. The fee assessed for Major Modifications varies depending on the Category of the project. Fees for Modifications range from \$1,200 to \$12,500. Permit modification fee information may be obtained from <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-20-120>.

The process for major modifications is similar to a VWP individual permit because there is a review of the modification request; coordination with State and/or Federal resource agencies; in some cases notification to riparian land owners; preparation and review of Draft and Final Major Modification Permit Packages; submittal of a Public Notice; and the possibility of conducting a public hearing (see Section 4 of this guide).

Minor Modifications

Minor Modifications, which are not public noticed and do not require a fee, are reserved for the following specific changes:

- ◆ Correction of typographical errors
- ◆ Required monitoring and reporting by the permittee at a different frequency than required in the VWP individual permit, based on new information justifying the change in conditions
- ◆ Changing an interim compliance date in a schedule of compliance to no more than 180 calendar days from the original compliance date, provided it will not interfere with the

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final compliance date

- ◆ A change in ownership or operational control when the Board determines that no other change in the VWP individual permit is necessary, provided that a written agreement containing a specific date for transfer of VWP individual permit responsibility, coverage, and liability from the current to the new permittee has been submitted to the Board
- ◆ Changes to plans and specifications that do not result in an increase to permitted project impacts, but may involve a change in the location of the impacts
- ◆ Facility expansions/production increases where the Minor Modification will not cause significant change in the discharge of pollutants
- ◆ Deleting VWP permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated
- ◆ Additional, necessary wetland or stream impacts, subsequent to issuance of a VWP individual permit, provided that the cumulative increase in the acreage of wetland impacts is not greater than one-quarter acre and the cumulative increase in stream impacts is less than 50 linear feet, and provided that the additional impacts are fully mitigated at ratios not less than compensatory mitigation ratios for the original impacts

The applicant may receive a letter from the DEQ permit writer requesting additional information before a determination to grant the minor modification is made. The DEQ permit writer will prepare a Draft Minor Modification Package for internal agency review. The Final Minor Modification Package, including the Approval of Minor Modification Letter, the revised Permit Cover Page, and the permit replacement pages (if applicable), will be sent to the permittee via certified mail.

Selling a facility or property on which a permitted activity is being conducted also triggers a minor modification to the VWP individual permit. Proof of sale is acceptable documentation of the Change in Ownership. In this instance, the new owner must submit a written request for the minor modification and a statement that the new owner agrees to abide by the conditions and requirements in the existing permit. The request must include a written and signed agreement between the existing and proposed permittee.

An individual permit may be automatically transferred only if it has been modified to reflect the transfer or has been revoked and re-issued to a new permittee. Also, the following conditions must be met:

- ◆ The current permittee notifies the Board within 30 calendar days of the proposed transfer of the title to the facility or property
- ◆ The note to the Board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP individual permit responsibility, coverage, or liability, and/or that the seller will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity

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- ◆ The Board does not within the 30-calendar day time period notify the existing permittee and the proposed permittee of its intent to modify or revoke and re-issue the VWP individual permit

The new owner (permittee) will be sent an Approval of Minor Modification for Change in Ownership Letter, the revised Permit Cover Page, and a complete copy of Part I - Special Conditions and Part II - General Conditions via certified mail.

Denial of Individual Permit Modification Requests

Should the DEQ permit writer determine that a request for a modification to a VWP individual permit is not warranted, the permittee will receive a letter explaining the decision to deny the request. The permittee may appeal the denial by writing to the DEQ Director and requesting a formal hearing in front of the Board, or through the civil court system.

Individual Permit Extensions

According to Section 9 VAC 25-210-185 of the Virginia Administrative Code, an Extension to a VWP individual permit expiration date may be granted under the following circumstances, as long as no change in the authorized activity occurs:

- ◆ The originally authorized impacts will have not yet occurred by the time the permit expires
- ◆ The mitigation monitoring is on-going or needs to continue because the permit is in its last year, and the mitigation has not been successful
- ◆ In order to synchronize permit terminations with other agency permits, for example on maintenance dredging permits from the Corps and VMRC
- ◆ VDOT projects are delayed for budgetary reasons

An Extension of a VWP individual permit may not extend the effective date of the permit by more than 15 years. For example, if a permit issued in 2011 and expires in 2013, an Extension cannot be granted beyond 2026.

The permittee must submit a written request to DEQ for an Extension; however, no fee is required. Upon review of the request, the DEQ staff will either deny or grant the Extension. Should the request be denied, the permittee will receive a letter explaining the decision. Should the request be approved, the permittee will receive a letter confirming the change in permit expiration date and a new Permit Cover Page reflecting the new expiration date.

Re-Issuance of Individual Permits

A Re-Issuance is granted on a VWP individual permit to modify a permit in order to change a significant condition or conditions and establish a new permit term up to the maximum 15 years (Section 9VAC25-210-180). As long as the authorized activity does not involve increased impacts or withdrawal volumes, a Re-Issuance may be granted. In these instances, the permittee should either submit a letter to DEQ requesting a VWP individual permit Re-Issuance or submit a new JPA with applicable attachments directly to DEQ.

Another type of VWP individual permit re-issuance, the Revocation and Re-Issuance, is used when DEQ both modifies a VWP individual permit and extends its expiration date. The Revoke/Reissue does not require a new application and application fee. The Revocation and Reissuance action is not used after the original permit term has reached the half-way point (for example, when a 15-year permit has reached year 8). In these instances, the permittee must submit a new JPA with applicable attachments directly to DEQ along with a new fee.

For either type of Re-Issuance, the same procedures are involved as with obtaining a VWP individual permit, including the public involvement phase(s). The fee will be the same as it was for the original permit (if a new JPA submittal required for a Revoke/Reissue action), unless the permit fees have increased since the original permit was issued. The permittee will receive a new VWP individual permit and Permit Cover Page.

Termination of Individual Permits

VWP individual permits can be terminated for various reasons, such as when a permitted activity has been completed prior to the expiration date, or for the causes listed above in the General Permit Authorization - Notice of Termination subsection (Page 5-2). VWP individual permit Terminations can be requested and/or initiated by DEQ staff, the permittee, or an interested third party (9VAC25-210-180.G.). When the termination is contested by the permittee, *only the State Water Control Board can approve or deny the request to terminate an individual permit*. Two types of termination include Termination for Cause and Termination by Consent.

Termination for Cause

Reasons for termination for cause include noncompliance by the permittee with any permit condition; failure for permittee to disclose fully all relevant facts; permittee's violation of a special or judicial order; determination by the board that the permitted activity endangers human health or the environment; change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; and a determination that the permitted activity has ceased and that the compensatory mitigation has been successfully completed.

Should the request for Termination for Cause come from the public or DEQ staff, the permittee will be notified of the Termination request and of his/her right to a public hearing on the matter.

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The notice will include a Termination Agreement Form. Should the permittee agree with the Termination and not desire a public hearing, he/she returns the Termination Agreement to DEQ staff within 14 calendar days of receipt. Should the permittee disagree with the Termination, or should no agreement be reached between the permittee and the requestor, a Public Notice of Termination will be published and paid for by DEQ. The proper hearing will also be organized by DEQ.

The permittee, and/or the third-party requestor, will be notified by DEQ staff after the hearing as to the Board's decision to grant or deny the Termination. Denials of requests for Termination are not subject to Public Notice, comment, or public hearings.

Termination by Consent

A VWP permit can be terminated by consent, as initiated by the permittee, when all permitted activities have been completed or if the authorized impacts will not occur. The permittee has 30 days of project completion or project cancellation to submit a request for termination by consent. The director may accept this termination on behalf of the board.

A permittee that initiates a request to terminate their permit must submit a written request to DEQ that documents their situation. DEQ notifies the permittee of their right to a hearing through a Notice of Intent to Terminate Permit Letter, which includes a Termination Agreement Form for the permittee to sign and return to DEQ within 14 calendar days. If the permittee returns the signed form, their right to a hearing is waived.

SECTION 6 - ASSISTANCE

Contacts

Following is a list of DEQ personnel and the geographic areas covered by their office. These contacts may be of assistance when applying for VWP permits:

Virginia Department of Environmental Quality - **Central Office**
629 East Main Street, Richmond, VA 23219
P.O. Box 1105, Richmond, VA 23218

Melanie D. Davenport, Water Division Director
(804) 698-4038
melanie.davenport@deq.virginia.gov

David L. Davis, Office of Wetlands & Stream Protection Director
(804) 698-4105
dave.davis@deq.virginia.gov

Virginia Department of Environmental Quality - **Piedmont Regional Office**
4949-A Cox Road, Glen Allen, VA 23060
Allison Dunaway, Virginia Water Protection Permitting Manager
(804) 527-5086
allison.dunaway@deq.virginia.gov

Counties: Amelia, Brunswick, Charles City, Chesterfield, Dinwiddie, Essex, Gloucester, Goochland, Greensville, Hanover, Henrico, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northumberland, Powhatan, Prince George, Richmond, Surry, Sussex, Westmoreland

Cities: Colonial Heights, Emporia, Hopewell, Petersburg, Richmond

Virginia Department of Environmental Quality - **Southwest Regional Office**
355 Deadmore St., P.O. Box 1688, Abingdon, VA 24210
Allen Newman, Water Permitting & Planning Manager
(276) 676-4804
allen.newman@deq.virginia.gov

Counties: Bland, Buchanan, Carroll, Dickenson, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe

Cities: Bristol, Galax, Norton

Virginia Department of Environmental Quality - **Blue Ridge Regional Office (Roanoke Office)**
3019 Peters Creek Road, Roanoke, VA 24019
Kip Foster, Water Permitting Manager
(540) 562-6782
kip.foster@deq.virginia.gov

Counties: Alleghany, Bedford, Botetourt, Craig, Floyd, Franklin, Giles, Henry, Montgomery, Patrick, Pulaski, Roanoke

Cities: Bedford, Clifton Forge, Covington, Martinsville, Radford, Roanoke, Salem

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Virginia Department of Environmental Quality - **Blue Ridge Regional Office (Lynchburg Office)**

7705 Timberlake Road, Lynchburg, VA 24502

Kip Foster, Water Permitting Manager

(540) 562-6782

kip.foster@deq.virginia.gov

Counties: Amherst, Appomatox, Buckingham, Campbell, Charlotte, Cumberland, Halifax, Lunenburg, Mecklenburg, Nottoway, Prince Edward, Pittsylvania

Cities: Danville, Lynchburg

Virginia Department of Environmental Quality - **Valley Regional Office**

4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801

Brandon Kiracofe, Water Permitting Manager

(540) 574-7892

brandon.kiracofe@deq.virginia.gov

****Permit applications with projects in the following cities and counties are sent to the DEQ Northern Virginia Regional Office – see contact info below****

Counties: Albemarle, Augusta, Bath, Clarke, Fluvanna, Frederick, Greene, Highland, Nelson, Page, Rockbridge, Rockingham, Shenandoah, Warren

Cities: Buena Vista, Charlottesville, Harrisonburg, Lexington, Staunton, Waynesboro, Winchester

Virginia Department of Environmental Quality - **Northern Virginia Regional Office**

13901 Crown Court, Woodbridge, VA 22193

Trisha Beasley, Virginia Water Protection Permitting Manager

(703) 583-3940

trisha.beasley@deq.virginia.gov

Counties: Arlington, Caroline, Culpeper, Fairfax, Fauquier, King George, Loudoun, Madison, Orange, Prince Wm., Rappahannock, Spotsylvania, Stafford, Louisa

Cities: Alexandria, Falls Church, Fairfax, Fredericksburg, Manassas, Manassas Park

Virginia Department of Environmental Quality - **Tidewater Regional Office**

5636 Southern Blvd., Virginia Beach, VA 23462

Bert Parolari, Virginia Water Protection Permitting Manager

(757) 518-2166

bert.parolari@deq.virginia.gov

Counties: Accomack, Isle of Wight, James City, Northampton, Southampton, York

Cities: Chesapeake, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Poquoson, Suffolk, Virginia Beach, Williamsburg

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Web Sites

Below is a partial list of resources that may be useful when applying for VWP permits.

- ◆ The **VWP Permit Program regulation** and **VWP general permit regulations** can be obtained from the Virginia Administrative Code web site at:
<http://leg1.state.va.us/000/reg/TOC.HTM>
- ◆ The **Clean Water Act** (§ 401) and **State Water Control Law** (§§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia) can be found at:
http://water.epa.gov/lawsregs/guidance/cwa/waterquality_index.cfm and
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC6201000>, <http://lis.virginia.gov/cgi-bin/legp604.exe?000+cod+62.1-44.15C20>, respectively.
- ◆ Information pertaining to the **Virginia Water Protection Permit Program** can be found at: <http://www.deq.virginia.gov/Programs/Water/WetlandsStreams.aspx>
- ◆ A copy of the **Joint Permit Application** can be found at:
<http://www.deq.state.va.us/Programs/Water/WetlandsStreams/PermitsFeesRegulations.aspx>.
- ◆ Information on **§401 Certification of the Corps' nationwide permits** can be found at:
<http://www.deq.state.va.us/Programs/Water/WetlandsStreams/PermitsFeesRegulations.aspx>.
- ◆ **Permit application fee information** may be obtained from: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-20-110>. Fees were changed and became effective July 1, 2002.
- ◆ More information about 12-SPGP-01 can be found at:
<http://www.deq.virginia.gov/Programs/Water/WetlandsStreams/PermitsFeesRegulations.aspx>
or on the Corps Norfolk District Regulatory web site:
<http://www.nao.usace.army.mil/Missions/Regulatory/RBregional.aspx>.
- ◆ A map of **DEQ regional offices** and the counties included in each is located at:
<http://www.deq.state.va.us/Locations.aspx>
- ◆ A map showing the **Corps Field Offices** and which counties each covers can be found at:
<http://www.nao.usace.army.mil/Missions/Regulatory.aspx>
- ◆ The Virginia Department of Game and Inland Fisheries **Fish and Wildlife Data Information System** can be accessed at:
<http://vafwis.org/fwis/?Menu=Home.Visitor+Options>
- ◆ Obtain Hydrologic Unit Codes at National Watershed Boundary Dataset (NWBD)
<http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/water/watersheds/dataset/>,

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<http://water.usgs.gov/GIS/huc.html>, and <http://cfpub.epa.gov/surf/locate/index.cfm>, respectfully

An Important Note Concerning Names, Addresses, and Web Links

The name, address, and web links provided above are subject to change, and web links may become temporarily unavailable. The permit applicant or agent is responsible for contacting the correct agency/office for information, as needed.