

Contents

| | |
|--|---|
| CHAPTER 8: CHANGES TO INDIVIDUAL PERMITS..... | 1 |
| 8.1 Introduction | 1 |
| 8.2 Minor Modifications (9VAC25-210-180 E) | 1 |
| 8.2.1 Minor Modification Process..... | 4 |
| 8.2.2. Extension..... | 5 |
| 8.2.3 Disapproving a Minor Modification | 6 |
| 8.3 Major Modifications (9VAC25-210-180 B and 9VAC25-210-180 C)..... | 6 |
| 8.4 Reissuance (9VAC25-210-180)..... | 7 |
| 8.4.1 Avoidance and Minimization | 8 |
| 8.4.2 Extent of Surface Waters and Wetland Delineations | 8 |
| 8.4.3 Stream Compensation | 8 |

CHAPTER 8: CHANGES TO INDIVIDUAL PERMITS

8.1 Introduction

Oftentimes after issuance, changes are made to a project that necessitates a change to an individual permit. These changes can be made to the permit through a minor modification, major modification, or a revocation and reissuance, see 9VAC25-210-180.

VWP permits may be modified upon the request of the permittee or upon DEQ initiative when any of the following developments occur:

1. When new information becomes available about the project or activity covered by the VWP permit, including project additions or alterations, that was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;
2. When a change is made in the promulgated standards or regulations on which the VWP permit was based;
3. When changes occur that are subject to "reopener clauses" in the VWP permit; or
4. When developments applicable to surface water withdrawals as specified in 9VAC25-210-380 occur.

8.2 Minor Modifications (9VAC25-210-180 E)

Minor modifications to an existing VWP individual permit may be made upon request of the permittee, or upon DEQ initiative with permittee consent. Minor modifications may be requested for the reasons listed in 9VAC25-210-180 E:

1. Correct typographical errors.

2. Require monitoring and reporting by the permittee at a different frequency than required in the VWP permit, based on new information justifying the change in conditions.
3. Change a compliance date provided it will not result in a net loss of wetland acreage or of functions in all surface waters.
4. Allow for a change in permittee provided that a written agreement containing a specific date for transfer of VWP permit responsibility, authorization, and liability from the current to the new permittee has been submitted to the board (see Chapter 10). A VWP permit shall be transferred only if the VWP permit has been modified to reflect the transfer, has been revoked and reissued to the new permittee, or has been automatically transferred. Any individual VWP permit shall be automatically transferred to a new permittee if the current permittee:
 - a. Notifies the board of the proposed transfer of the permit and provides a written agreement between the current and proposed permittees containing the date of transfer of VWP permit responsibility, authorization, and liability to the new permittee; and
 - b. The board does not within 15 days notify the current and new permittees of its intent to modify the VWP permit.
5. Change project plans or uses that do not result in a change to permitted project impacts other than allowable by subdivisions 6 and 7 of this subsection.
6. Reduce wetland or stream impacts. Compensatory mitigation requirements may be modified in relation to the adjusted impacts, provided that the adjusted compensatory mitigation meets the initial compensatory mitigation goals. The Department of Environmental Quality shall not be responsible for ensuring refunds for mitigation bank credit purchases or in-lieu fee program credit purchases.
7. Authorize additional impacts to surface waters that are proposed prior to impacting the additional areas. Proposed additional impacts shall meet the following requirements:
 - a. The proposed additional impacts are located within the project boundary as depicted in the application for permit issuance, or are located in areas of directly related off-site work.
 - b. The permittee has provided sufficient documentation that the board may reasonably determine that the additional impacts will not impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species. The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.
 - c. The cumulative, additional permanent wetland or open water impacts for one or more minor modifications do not exceed one-quarter of an acre (10,890 square feet)].
 - d. The cumulative, additional permanent stream impacts for one or more minor modifications do not exceed 100 linear feet.
 - e. Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-210-80 B 1 g.
 - f. Compensatory mitigation for the proposed impacts, if required, meets the requirements of 9VAC25-210-80 B 1 m and 9VAC25-210-116. Prior to a minor modification approval, DEQ may require submission of a compensatory mitigation plan for the additional impacts.
 - g. Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the board that the area to be temporarily impacted will be restored to its preconstruction elevations and contours, with topsoil from the impact area where practicable, such that the previous acreage and functions are

restored. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

8. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program, or substitute all or a portion of the prior authorized permittee-responsible compensatory mitigation with a purchase of mitigation credits in accordance with 9VAC25-210-116 C from a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory mitigation requirement for which the compensatory mitigation is proposed to replace.
9. Allow for extension of the expiration date of the VWP permit. Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit other than as may be allowed under this section, shall submit written notification requesting an extension. The permittee must file the request 90 days prior to the expiration date of the VWP permit. VWP permit modifications shall not be used to extend the term of a VWP permit beyond 15 years from the date of original issuance.
10. Activities or development applicable to surface water withdrawals as specified in 9VAC25-210-380 B.

The following rules apply to minor modifications:

- ***Minor modifications may be made without further public involvement, with the exception of riparian landowner notices, when applicable.***
- ***Minor modifications do not require re-coordination with state and federal agencies,*** unless the modification proposes additional impacts to a project area that were not included in the original project area or the addition of which may change the nature of the agencies' review or the conclusions drawn. In such instances, the applicable inter-agency coordination shall be conducted so that agency input is sought for the additional impacts to those areas not previously considered.
- ***Minor modifications do not require a permit fee.***
- ***An increase in temporary impacts.*** Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the board that the area to be temporarily impacted will be restored to its preconstruction elevations and contours with topsoil from the impact area where practicable, such that the previous acreage and functions are restored. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

Staff should modify the permit and CEDs to reflect an increase in temporary impacts regardless of whether staff responded within 10 days.

The principal types of minor modifications are as follows:

- **Request for Change of Ownership** (9VAC25-210-180 E and 9VAC25-210-180 F 4) see Chapter 10.
- **Request for Change in Permit Conditions** – A permittee may request a change to the conditions of the permit, such as the construction monitoring requirements. If approved, these revisions will require modifying Part I Special Conditions of the permit. Staff should consider the public process of the original permit when considering the request. For example, if specific conditions were

added to the permit via negotiation with citizens and/or stakeholders then staff should consult with their supervisor prior to changing such conditions.

- **Request for Change in Permitted Impacts** – Any change in the permitted permanent impacts will require a modification to the permit. See Table 5 for minor modification impact thresholds.

Though minor modifications do not have regulatory processing deadlines, Staff should still treat them with the same priority as any other permit application or modification request – i.e., complete review and make additional information requests within 15 days of receipt, and process the minor modification to completion as soon as possible after receipt of a complete modification request, in consideration of other demands on workload.

When the permittee is proposing additional impacts beyond what was originally permitted, the permit writer must calculate the **net, cumulative increase in impacts** that have been authorized since the last action requiring a public comment period. If this increase is within the thresholds presented in Table 5 below, the change qualifies for a minor modification. See examples below for calculating the net, cumulative increase in impacts.

Table 1: Minor Modification Impacts Thresholds (See 9VAC25-210-180 E 7 c and 9VAC25-210-180 E 7 d)

| Resource | Area of Impact Increase |
|-------------------------|----------------------------------|
| Wetlands and Open Water | ≤ 0.25 Acre (10,890 Square Feet) |
| Streams | ≤ 100 Linear Feet |

Example 1:

The permit writer receives a permit modification request that increases impacts by 0.30 acre in one location, and decreases impacts by 0.15 acre in another location. The net increase in impacts is 0.15 acre. A previous minor modification authorized an additional 0.20 acre of impacts. Because public comments were not sought in the previous minor modification, the impact changes are considered cumulatively. The new request must therefore be processed as a major modification, because cumulative additional impacts will be greater than the 0.25 acre threshold.

Example 2:

The permit writer receives a permit modification request for 0.20 acre of additional impacts to wetlands. A previous major modification authorized 0.10 acre of additional wetland impacts. The new request for the additional 0.20 acre may be processed as a minor modification, because the public had the opportunity to comment on the previous major modification, and therefore the impacts between the two modifications are not cumulative.

8.2.1 Minor Modification Process

The process for processing a minor modification is as follows:

1. *Administrative Duties* – Initiate minor modification in CEDS; enter date modification request received.
2. *Review the minor modification request for completeness* – All relevant information will need to be provided for DEQ to assess the modification request – e.g. signed change of ownership request forms, project (modification) need, revised impact maps, efforts to avoid and minimize additional

impacts, and full mitigation of additional permanent impacts at ratios not less than the compensatory mitigation ratios of the original impacts.

3. *Local Government and Riparian/Adjacent Landowner Notification* –If the minor modification request proposes additional/new impacts, the local government entity in which the project is located and riparian landowners must be notified of the minor modification via written notification (email is appropriate for localities). Local governments are provided 30 days to comment on the proposed permit modifications. Adjacent land owners may also need to be notified if the proposed modification may affect their property or land use.
4. *Request additional information* – As necessary, additional information will need to be requested to allow Staff to adequately assess the modification request and determine if further interagency coordination is necessary.
5. *Interagency coordination* – As stated above, minor modifications typically do not require further coordination, unless additional impacts are being proposed to areas outside of the scope of original coordination. If such coordination is necessary, then the coordination procedures will be the same as for the issuance of the original VWP individual permit (see Section 5.7).
6. *Draft Permit Modification* – The permit writer will need to utilize the original permit documents, as issued, as the base from which to modify. Modify only those sections applicable. The minor modification issuance package will need to include a modification transmittal/approval letter which specifies which special conditions were modified and a modified cover page. Also, rather than including only the pages of special conditions that were modified, it will include an entire new set of special conditions with the modification date noted in the header of each page. Providing an entire new set of conditions helps avoid confusion on both sides and enables easier tracking of the permit.
7. *Minor Modification Fact Sheet* – A minor modification fact sheet may be needed. The fact sheet details the specific changes being made to the existing permit, and lists all relevant dates associated with the modification. Justification for approval or denial will need to be provided in the fact sheet.
8. *Modification Signature* – The minor modification’s transmittal letter and cover page will require signature in accordance with current signature delegation guidance and office procedures.
9. *Issuance* – Once the permit is signed, it is ready for issuance to the permittee, with the appropriate electronic copies to others.
10. *Administrative Duties* – Ensure all appropriate information has been entered in CEDS.

8.2.2. Extension

An extension of permit coverage is a form of a minor modification, and may be granted to an existing permit as long as the total permit term does not exceed 15 years from the permit’s effective date ([§ 62.1-44.15](#)). The term for which a permit is effective shall include the projected duration of the project, the length of required monitoring (including onsite mitigation), or any other project-related operations. Any permittee with an effective VWP may request the extension of the permitted activities via written notification at least 90 days prior to the expiration date of the VWP permit.

The original permit and extended permit terms shall not exceed a total of 15 years under any circumstances. If a permittee requires coverage beyond 15 years, a permit extension request cannot be granted, and the permittee will need to seek coverage under a new VWP permit.

The request for a permit extension cannot be granted in instances where the request was received too late to allow for processing prior to the permit’s expiration. In such a case, the permittee must be informed

of the reason for denial via written notification, and informed that they may seek coverage under a new VWP permit.

8.2.3 Disapproving a Minor Modification

In the event that Staff determines that a requested permit change does not qualify for a minor modification, appropriate justification will need to be provided to the permittee in writing (email is acceptable). Reasons may include inadequate avoidance and minimization of proposed additional impacts or too large of an increase in impacts. Follow regional procedures for appropriate signature authority for these notifications.

8.3 Major Modifications (9VAC25-210-180 B and 9VAC25-210-180 C)

If the net, cumulative increase in impacts currently requested and those impacts which have been authorized since the last action requiring a public comment period are greater than 0.25 acre or 100 linear feet, or a permittee proposes to change any condition of the permit to make it less stringent, a major modification to the individual permit is required. (For examples of how to calculate the net, cumulative increase in impacts, see Section 8.2, Examples 1 and 2.) Major modifications entail the same process as the original individual permit issuance process (see Section 5.2 and 9VAC25-210-180 C), but no new permit number is required, and there is a revised fee schedule (Table 6). An important distinction between a new issuance and major modification is that during the modification process only those impacts and conditions of the permit requested to be modified by the permittee can be reviewed or changed (9VAC25-210-180 D). Staff may suggest additional changes to the permit, but must obtain permittee permission prior to executing these changes.

The permit fee for a major modification is to be assessed as the base fee plus an additional fee for each 0.10 acre of new proposed impact in excess of 2 acres. The major modification fee is based solely on additional impacts and not the cumulative impacts of the permit.

Table 2: Major Modification Permit Fee (9VAC25-20-120 3)

| Permit Action | Base Fee (Impacts Up to 2 Acres) | Additional Fee (Assessed per 0.10 Acre of Additional Impact over 2 Acres, Including Wetlands, Open Waters, and Streams) | Maximum Permit Fee |
|----------------------|---|--|---------------------------|
| Modification | \$1,200 | \$110 | \$30,000 |

The following steps are required for a major modification:

1. *Administrative Duties* – Initiate major modification in CEDS; enter date modification request received.
2. *Review for Complete Major Modification Request* – 9VAC25-210-180 C contains a listing of the items to be submitted in a complete request. Major modification requests often include information similar to the original permit application; including revised impact summaries, impacts maps, avoidance and minimization analysis, and compensatory mitigation proposal.
3. *Major Modification Review* – The same level of review as was conducted for the original individual permit will be required, see Chapter 3; however, this review is limited to the scope of the major modification.
4. *Additional Information and Major Modification Fee Requests*

5. *State and Federal Agency Coordination* – Inter-agency review is limited to scope of the major modification.
6. *Riparian Land Owners Notification* – Only riparian land owners adjacent to or 0.5 mile downstream of proposed new impacts to non-tidal waters (0.25 mile upstream and downstream in tidal situations) need to be notified.
7. *Local Government Notification*
8. *Draft Major Modification* – Track changes are to be utilized so that the permittee may review the proposed permit modifications prior to the finalized draft permit package being sent for public issuance. Once approved, DEQ Staff will finalize the track changes and provide the permittee the draft permit for public noticing.
9. *Fact sheet Preparation* – The fact sheet details the specific changes being made to the existing permit, and lists all relevant dates associated with the modification. Justification for approval or denial will need to be provided in the fact sheet.
10. *Public Notice Process* – Public input is limited to the proposed changes to the permit.
11. *Public Notice Comments Review and Response* – The process is the same as that of the individual permit issuance.
12. *Public Hearing Process* (§ 62.1-44.15:02, 9VAC25-230 *et seq.*, and Oct 29, 2008 Procedures for Informal Public Hearings on Air and Water Permit Actions and Board Consideration) – The process is the same as that of the individual permit issuance.
13. *Major Modification Issuance / Denial* – The process is the same as that of the individual permit issuance.
14. *Administrative Duties* – Ensure all appropriate information has been entered in CEDS.

8.4 Reissuance (9VAC25-210-180)

A permittee may request, or DEQ may require, that an individual permit be revoked and the project be reissued a new VWP permit. The most common scenario for this type of permitting action is when the permit term is near the end of the maximum fifteen year term, and the permittee will require VWP permit coverage beyond the expiration date of the permit. In instances of reissuance, the existing permit must be terminated and a new VWP permit issued. This process is generally conducted concurrently, with termination of the existing permit, if not already expired, and issuance of the new permit occurring on the same date.

A permit reissuance is essentially the issuance of a new permit. All steps outlined in Chapter 5 must be followed, and the project must comply with current statutory, regulatory and policy requirements (9VAC25-210-110 F). In some cases, however, staff must consider the unique circumstances that are associated with these projects when evaluating avoidance and minimization, compensation and certain other project characteristics.

As an example, individual permits issued for large residential, commercial, or industrial developments may expire prior to completion of all the originally permitted impacts or compensation. These projects are generally large parcels or conglomerates of parcels with long term development plans involving selling-off and/or developing individual development bays.

A new JPA and new permit number is required, and the permittee must comply with the regulatory requirements, guidance and policies that are effective at the time of application. The application, however, would only cover the remaining impacts, compensation, and/or monitoring activities. Typically discussion will be required about avoidance and minimization, validity of prior delineations, extent of stream channel impact, and compensation.

8.4.1 Avoidance and Minimization

Developments permitted prior to 2006 were evaluated based on the economy, local government regulations, and stormwater requirements in place at that time. In many cases, the types of marketable housing and commercial units, and stormwater treatment methods have changed significantly. In addition, the VWP Permit Program has developed new policies discouraging the location of avoided wetlands within residential lots of a certain size. There may be cases where avoidance and minimization potential is limited because portions of the project have been built. For example, if the roads are completely developed to service building pads staff cannot reasonably ask them to relocate the building pads, etc. If the original plans included an in-line stormwater management pond to service a development that has not commenced construction, then it would be appropriate for staff to ask that the applicant/permittee evaluate other options for stormwater management to determine if that impact could be practicably avoided. Or, if the remaining portions of a development have not been sold and/or commenced development, then the original development was speculative and may not have “hard” design requirements such as those that occur on a road widening project or runway project.

8.4.2 Extent of Surface Waters and Wetland Delineations

A new wetland delineation may or may not be required depending on whether there is still a valid USACE permit. Typically, Corps delineation confirmations are valid for the life of the Corps permit. Each project will have to be considered on a case basis.

Quantification of stream channel impacts has significantly changed. A permit issued during 2000-2006 may not have mapped all the stream channels, or may have quantified them by acreage instead of linear feet. In accordance with the current regulations, the application for the remaining impacts must clearly identify the linear footage of all stream channels and the area of stream bed in the square footage (which is used for fee calculation purposes), as well as assess stream channel impacts via the USM.

8.4.3 Stream Compensation

A permit issued during 2000-2006 may not require stream compensation in accordance with current regulations and policies. Stream compensation for remaining impacts must be consistent with current regulations and policies. However, in some cases the permittee may have completed all the previously required stream compensation, and staff should attempt to provide the applicant with some form of credit for the stream compensation provided previously. These situations should be discussed with the Regional Manager.