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## CHAPTER 5: VWP PERMIT PROGRAM INDIVIDUAL PERMITS

### 5.1 Individual Permit Quick Reference Guide

Official Program Guidance:

Table 1: Individual Permit Deadlines

Element	Timeline
<b>Review of Individual Permit Application and Additional Information Requests</b>	15 Days (9VAC25-210-80 D)
<b>Applicant Response to Additional Info Requests</b>	30 Days
<b>Individual Permit Issuance</b>	120 Days* (§ 62.1-44.15:21 E) *From date of receipt of a complete permit application
<b>State Agency Comment Period</b>	45 Days (§62.1-44.15:20 C)
<b>Publication of Public Notice by the Applicant</b>	14 days after the applicant's receipt of a draft VWP permit (9VAC25-210-140 A)
<b>Public Notice Period</b>	30 Days* (9VAC25-210-140 B) * The comment period begins the day after the public notice is published <i>If the 30<sup>th</sup> day of the comment period occurs on a weekend or holiday, the next <b>business</b> day is considered the 30<sup>th</sup> day.</i>
<b>Public Hearing Review Period and Director's Decision</b>	30 Days (§62.1-44.15:02 C) <i>From the close of the public comment period in the event a public hearing has been requested by one or more commenter</i>
<b>Public Comment Review Period and Final Action by the Board</b>	90 Days (§62.1-44.15:02 N) <i>From the close of the public comment period to make final permit decision</i>

### 5.2 Stepwise Individual Permit Review Process

Application review is further detailed in Chapter 3. Appendix A of Chapter 3 describes review, review timelines, informational requirements, public notice procedures, and other details for special permitting situations for VDOT, solid waste facility, surface water withdrawal, and certain natural gas projects.

#### **Step 1: Administrative Duties**

- Complete CEDS Core Entry (See CEDS Manual for details).
- Make a copy of each IP template from the Chapter 5 Templates folder and save to the applicable project file on your office server.

### **Step 2: Review for Complete Application**

- Go through checklist 9VAC25-210-80 B and C.
- Carefully assess project purpose and need, avoidance and minimization (including off-site alternatives), proposed compensation, as well as potential secondary impacts.
- If applicable, identify items needed to complete the permit application.
- Schedule and conduct a site visit of the proposed project location, as necessary. Ensure properly completed Site Access Form has been submitted (See Section 3.1.5 and Chapter 3, Appendix A).

### **Step 3: Determining the Permit Application Fee**

- Determine the fee owed by the applicant.

### **Step 4: Additional Information Requests**

- Request additional information identified during the application review process that is needed to complete the permit application or provide DEQ with necessary information to assist in the Agency's review of the application, including the permit fee. Staff may request additional information as identified in 9VAC25-210-80 B, if the information is necessary to facilitate review of the proposed project or issue a permit. It is important to identify, to the best of your ability, all subject areas that will require additional information or clarification. To the maximum extent practicable, subsequent information requests should not introduce entirely new topics for which information is needed.
- Typically the applicant is provided 30 days from the date of the add info request to provide the additional information. Additional time may be provided if requested by the applicant.
- Review the additional information to ensure the submission fulfills the additional information request. If the permit writer determines that further information is still outstanding, additional information request(s) will be required until all requested material is provided to DEQ.
- The 120 day processing deadline does not begin until all information required by 9VAC25-210-80 B has been received.

### **Step 5: Local Government and Riparian Land Owner Notifications**

- Notify County/Local Government Administrators as detailed in Sections 5.5 and 5.6 below.
- Notify riparian land owners *adjacent to* proposed impact area(s), and:
  - within one-half mile *downstream* of each impact site for **nontidal**, or
  - within 0.25 mile *upstream* and 0.25 mile *downstream* of each impact site for **tidal**.
- Obtain the list of affected riparian land owners:
  - If available, utilize locality's GIS tools, or contact the locality's Commissioner of Revenue for large requests.
  - For those cities or counties that do not have GIS tools, request the names and addresses of riparian landowners from the locality's Commissioner of Revenue.
  - Note: If a list is provided by the applicant, it can be used as a starting point but should be verified per the options above in order to reduce the risk of missing or omitting an owner(s).
- In areas where there are no riparian land owners, staff may choose to notify adjacent property owners based on the project specific proposal or location.

## **Step 6: State and Federal Agency Coordination**

- State Coordination:
  - Request comments from VDH, DCR, DGIF and VMRC, giving 45 day comment window. No species screening is required prior to coordination.
  - Additional coordination with USFWS, VDACS, or NOAA may be necessary, but only if recommended by one of the above state agencies and only if regarding a state listed threatened or endangered species.
  - The state agencies have 45 days from receipt of the coordination request to review the proposed project and provide a response. If necessary, Federal agencies are given the same period to review and comment.
  - If comments are received or permit conditions proposed by state or federal agencies, it will be necessary to coordinate with the applicant and the reviewing agency to resolve any potential issues and if necessary agree upon permit conditions. Thoroughly document any final decisions in the Fact Sheet (e.g., rationale for such conditions if imposed).
- Recommend coordinating with USACE on projects where one or both agencies are asserting jurisdiction.
- For individual permits with SPGP coordination requirements, refer to the most recent SPGP Standard Operating Procedures (Section 106 coordination, Section 7 coordination, Section 408 coordination).

## **Step 7: Draft Permit**

- Once the application is complete and state agency coordination is complete, DEQ makes a tentative permit decision, whether to issue or deny the permit. If the tentative decision is to issue the permit, a draft individual permit package should be prepared.
- A draft permit may not be sent to the applicant until the required permit application fee has been deposited.
- The finalized draft permit should be peer reviewed and must be reviewed and approved by the regional program manager prior to release of the draft permit package to the applicant.
- This package must be prepared and sent to the applicant in sufficient time to allow for 14-day permittee review of the draft permit package, the required 30-day public comment period, preparation of the final permit package, and resolution of issues raised during the public comment period, including holding a public hearing if necessary. The draft permit should be provided to the applicant within 45 days of a complete application; however, there is no automatic issuance if the 120-day permit issuance deadline is missed.
- The draft permit package is to be sent to the applicant for review, including the draft public notice, which is prepared by the permit writer using templates provided by the Office of Public Affairs on DEQNet.
- With publication of the public notice, the applicant accepts the draft permit.
- If the applicant has comments, the permit writer is to work with the applicant to address these comments until the both parties agree the permit is ready for public noticing. The regional program manager must review changes to the draft permit.
- If the public notice is not published within 14 days of the date of the draft permit transmittal letter, the 120 day clock is suspended until the date of proof of public notice is received.

## **Step 8: Public Notice Process**

- The applicant is responsible for publishing the public notice in a newspaper of general circulation<sup>1</sup> in the area of the proposed activity.
- The applicant is to submit to DEQ a copy of the public notice verification form.
- The permit writer will provide a copy of the PN to DEQ Central Office for posting on DEQ's website.
- The permit writer will send a copy of the draft permit and public notice to the necessary public officials of the locality(ies) that the proposed project is within. This is typically the Mayor and City Manager for cities and the Board of Supervisors and County Administrator for counties.
- The public comment period must be a full 30 days after the date of publication. If the 30<sup>th</sup> day of the comment period occurs on a weekend or holiday, the next **business** day is considered the 30<sup>th</sup> day. The public comment period closes at the close of business on the 30<sup>th</sup> day.
- The permit writer should file incoming comments as they are received, and ideally create a centralized means of tracking such comments.

### **Step 9: Public Notice Comments Review and Response**

- If a public hearing is requested, a decision to hold a public hearing must be made within 30 days of the close of the public comment period.
- If no public hearing is requested, comments on the draft permit will be reviewed and the permit decision made within 90 days of the close of the comment period, and preferably before the 120 day deadline.
- The permit writer will need to review each comment with respect to the proposed permit, and determine if the comments relate to subjects under the jurisdiction of the VWP Permit Program.
- Each commenter shall be provided a response if warranted by the nature of the comment. The response will need to address each of the commenter's concerns and clarify staff's position on the issuance of the draft permit.
- If enough objectionable comments are received, the draft permit may warrant a public hearing in order to listen to and address concerns of the public.

### **Step 10: Public Hearing<sup>2</sup> Process**

- If 25 or more comments are received requesting a public hearing, a public hearing is required.
- Consideration of comments within the scope of the VWP Permit Program.
- Consideration of comments that bring up important regulatory challenges to issuance of the permit.

### **Step 11: Permit Issuance**

- Once the public comment process has been concluded, and there are no comments, or any comments received were satisfactorily addressed (and there were no requests for a hearing, or any hearing requests were rescinded or denied), the draft permit is ready for issuance. If a public hearing is required, the permit issuance process differs (see Section 5.12).
- The draft permit package will need to be finalized, dated, and signed by both the regional program manager and regional director or his/her designee.
- After signing, the permit is to be sent to the applicant with a copy to the agent by email if agreeable to the permittee.

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<sup>1</sup> Criteria for Newspapers of General Circulation. Code of Virginia § 8.01-324.

<sup>2</sup> Public hearing used in this chapter refers to the Informal fact finding proceedings in the Administrative Process Act (Chapter 40 of § 2.2-4000 et seq. of the Code of Virginia).

## **Step 12: Permit Denial**

- If in the review of a permit, a permit will require denial, refer to Section 5.11.

### 5.3 Individual Permit Applicability (9VAC25-210)

Individual permits are issued for proposed activities in both *nontidal and tidal* waters within the Commonwealth. The VWP Permit Program Regulation details the prohibitions and requirements (9VAC25-210-50) and exclusions (9VAC25-210-60) to using VWP individual permits.

VWP individual permits are typically required when a proposed regulated activity does not qualify for a VWP general permit, or as indicated in Chapter 3 Appendix A. Proposed *nontidal* impacts that are greater than VWP general permit thresholds or that fall into categorical exceptions from coverage under the VWP general permits, including the taking of threatened or endangered species, will require individual permits.

A project may be elevated to a VWP individual permit, even when it meets the impact thresholds of a VWP general permit, if Staff determines that the project will have greater than minimal impacts or has complex issues related to development, avoidance, compensation, or natural resources. Circumstances under which this may occur can be found in 9VAC25-210-130 B (see also Section 1.5.4).

### 5.4 Joint Permit Application Review (9VAC25-210-80 B)

The requirements for a complete application for a VWP Individual Permit (IP) are provided in 9VAC25-210-80 B. Refer to Section 3.1 when reviewing a joint permit application (JPA) for completeness and for further directions concerning additional information requests.

Items such as project purpose and need, avoidance and minimization of impacts to surface waters, the amount of surface water impacts, and the proposed compensatory mitigation and will require thorough review. The applicant must clearly demonstrate that the proposed development plan is the least environmentally damaging practicable alternative (LEDPA), and must document site plan alternatives to this effect. The possibility of secondary impacts due to changes in hydrology, fragmentation of remnant surface waters, and other development-related disturbances will need to be thoroughly considered by the permit writer during the review of the permit application.

While 9VAC25-210-80 B may list all the informational requirements of a complete application, other sections of the SWCL, regulations, and DEQ Guidance outline specific requirements of a VWP Permit; therefore, Staff is responsible for reviewing the application in accordance with all applicable regulations and Agency guidance and policy.

#### 5.4.1 Determining the Application Fee (9VAC25-20)

To determine the application fee due for a particular individual permit, Staff will need to determine the total acreage of impacts (permanent and temporary) proposed to all surface waters, including wetlands, open water, and stream channels. Refer to Section 3.8 of this manual for further directions concerning the application fee.

#### 5.4.2 Avoidance and Minimization (9VAC25-210-115 C 1)

VWP Permit Program regulations incorporate, by reference, the mitigation sequencing guidelines from the Clean Water Act, also known as the Section 404(b)(1) guidelines (9VAC25-210-116 C 1). These implementing guidelines for the Clean Water Act (40 CFR 230.10) state that the burden of proof for demonstrating compliance with the Section 404(b)(1) guidelines is the responsibility of the applicant, not

the permitting entity. Applicants must (1) establish that avoidance of impacts to state waters, including wetlands is not practicable; (2) demonstrate that all practicable efforts to minimize unavoidable impacts to state waters, including wetlands, have been taken in project design and construction plan; and (3) provide a plan for compensation for all unavoidable impacts. As part of the permit evaluation process used to authorize a particular project proposing to impact surface waters, the VWP Permit Program regulations incorporate the concept of avoidance and minimization from the *Guidelines for Specification of Disposal Sites for Dredged or Fill Material*, [40 CFR Part 230](#), also known as the Section 404(b)(1) guidelines (9VAC25-210-80 B 1 g).

Refer to Section 3.3 of this manual for further directions concerning avoidance and minimization.

#### 5.4.3 Compensation (9VAC25-210-80 B 1 m)

In accordance with 9VAC25-210-80 B 1 m, all permanent impacts to surface waters require compensatory mitigation without exception. Such proposals shall follow the Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources dated April 10, 2008 (33 CFR 325 and 332; 40 CFR 230). Refer to Section 3.5 of this manual for further directions concerning compensatory mitigation.

#### 5.4.4 Site Visit

A site visit is typically conducted for all new individual permit applications so that Staff may familiarize themselves with the site and investigate areas of concern identified during the initial permit application review process. Refer to Section 3.7 of this manual for further directions concerning site visits.

### 5.5 Local Government Notification

Notification to local officials should occur either concurrently with the application review process or once the application is complete. If the project exists along a county border, or a local municipality within a county, the permit writer will need to notify each affected locality. Generally, the names and addresses of the local officials can be obtained from local government web sites.

As per §62.1-44.15:4 of the Code of Virginia, the local official notification letter should include the name of the applicant, the project location, a description of the proposed activities and impacts, and a brief explanation of the Public Notice process.

### 5.6 Riparian Land Owners Notification

#### 5.6.1 Notification Requirements

As per [§ 62.1-44.15:4](#) of the Code of Virginia, riparian landowners that are located adjacent to *nontidal* wetland or stream impact areas, and within one-half mile *downstream* of each distinct impact area, are notified about the proposed project. The distance becomes 0.25 mile *upstream* and 0.25 mile *downstream* of each impact site in *tidal* areas. However, for very wide surface waters, if two miles or more separate the proposed point of impact from the *nontidal or tidal* riparian property, there is no requirement to notify the riparian owners located on the shore opposite of the impact location.

Riparian property owner is defined as an owner of land which borders on a body of water or watercourse (i.e., a body of water flowing in a reasonably definite channel with bed and banks in which water naturally flows).

There may be some cases where the need to notify riparian owners is less certain. Examples and appropriate actions are as follows:

- Impacts to a stream channel that is piped for some portion of the ½ mile downstream
  - Make a good faith effort to notify the riparian landowners as best they can be identified.
- Impacts to a wetland adjacent and contiguous to stream channel but the permitted impact area is not the stream channel.
  - Notify landowners for a ½ mile along the stream.
- Impacts to a wetland system that continues off-site but does not contain a defined channel.
  - Notify “downstream” landowners for ½ mile that have properties bordering the wetland system.
- Impacts to an isolated wetland.
  - Riparian owner notifications are not required because the definition of isolated would preclude a “downstream” area.
- When the distances noted above may cross county, city, or even state boundaries.
  - Make a good faith effort to notify riparian landowners in all localities.

Consult your regional program manager with any project specific questions.

Notification of adjacent property owners that are not riparian property owners are not required in accordance with [§ 62.1-44.15:4](#).

### 5.6.2 Notification Procedures

Notification to riparian land owners should occur either concurrently with the application review process or as soon as the application is complete. Riparian landowner information is typically obtained from the county or city Commissioner of Revenue or tax assessor.

Some cities and counties have migrated tax parcel and owner information to web-based GIS tool. For those cities or counties that do not have such tools, Staff will have to request the names and addresses of riparian landowner. Contact information for the commissioners of revenue or tax assessors can be obtained from county/city government web sites, or from the list maintained in the VWP Library on DEQNet.

The request letter should include a map highlighting the pertinent land holdings based on the criteria outlined in the Notification Requirements section above. Provide the best possible map available, such as county road map. Oftentimes, county tax maps do not include rivers and streams as landmarks. A USGS topographic map may also be included as an additional resource for the county staff. A sample Request for Landowner Information Letter is provided at the end of this section.

After receiving the list of riparian landowners from the commissioner or assessor, send each riparian landowner a notification letter. The letter should identify the name of the applicant, the project location, a description of the proposed activities and impacts, and a brief explanation of the Public Notice process.

If contacted by a landowner, address their questions and provide them with any requested information. The request and Staff’s response may be subject to the Freedom of Information Act procedures (see <http://www.deq.virginia.gov/info/foia.html>). Staff may also offer to send a copy of the Public Notice to the landowner, once the draft is approved by the applicant and the notice is published.

## 5.7 State and Federal Agency Coordination

### 5.7.1 Coordination with State Agencies

Table 2: State Agency Contacts

Agency	Contact	Email/Web	Notes
DCR-All DCR	Robbie Rhur	<a href="mailto:nhreview@dcr.virginia.gov">nhreview@dcr.virginia.gov</a>	Individual permits may be coordinated with Robbie Rhur, the department project review coordinator
VMRC	VMRC Environmental Engineer in the appropriate territory. Also CC Beth Howell and Tony Watkinson	<a href="https://mrc.virginia.gov/mrc-permits.shtm">https://mrc.virginia.gov/mrc-permits.shtm</a> <a href="mailto:Beth.Howell@mrc.virginia.gov">Beth.Howell@mrc.virginia.gov</a> <a href="mailto:Tony.Watkinson@mrc.virginia.gov">Tony.Watkinson@mrc.virginia.gov</a>	
VDH-ODW	Jeremy Hull; or applicable VDH Regional Office Director  For applicable projects, staff should also notify Office of Shellfish Sanitation.	<a href="mailto:Jeremy.Hull@vdh.virginia.gov">Jeremy.Hull@vdh.virginia.gov</a>  Or VDH Regional Office Director	If the project is surface water withdrawal related, provide a full copy of the JPA.
DGIF	Amy Ewing	<a href="mailto:ESSProjects@dgif.virginia.gov">ESSProjects@dgif.virginia.gov</a>	Amy Ewing will review and reply to coordination requests made via the ESS Projects email.
Maryland Department of the Environment			For VWP Permits sought by Virginia users of the Potomac River, the Maryland Department of Environment must be furnished copies of the applications and as an "interested and affected agency" must be consulted in the same manner as are Virginia agencies.

For VWP individual permits, coordination with state agencies should occur as soon as possible after the application has been received. This coordination is often conducted concurrently with the riparian land owner and local government notifications. State agencies are provided 45 days from the date of the request to provide comments. Unlike the general permit process, state coordination for an individual permit is always required, but does not require pre-screening via agency resource databases. The comments received from commenting agencies must receive full consideration prior to any proposed VWP individual permit action, including the public notice of the draft permit.

DEQ is legally mandated to ensure that the permitted activities will not result in a take of state listed threatened and endangered species, or designated critical habitat. Although certain agencies may provide additional information regarding migratory birds, natural area preserves, Stream Conservation Units

(SCUs), stormwater or other issues, DEQ considers those comments only as they are relevant to listed threatened or endangered species. Other comments may be provided to the applicant for their information, but no response from the applicant is required. Comments regarding listed threatened or endangered species issues must be resolved before issuance of a VWP permit.

When a state agency recommends contacting a federal agency regarding a threatened or endangered species, DEQ staff should coordinate with the federal agency as requested. Comments or recommendations made by a federal agency regarding a threatened or endangered species should be addressed by the applicant and/or incorporated as a condition of the permit. Comments or recommendations made by a state agency to coordinate on other, non-listed species, such as the bald eagle, do not require coordination, but should be passed on to the applicant. Coordination should occur within 45 days from the date of the request to provide comments (per 62.1-44.38.1). Staff is encouraged to coordinate closely with the USACE should the agency also be asserting jurisdiction over the proposed project. Comments received by the various agencies should be documented in the permit file. Any comments requesting surveys for the presence of, or suitable habitat for, threatened or endangered species within the project boundaries, or other types of comments, such as time-of-year restrictions (TOYR), should be considered and conveyed to the applicant, and may be incorporated into the individual permit conditions.

Staff can solicit comments via e-mail and provide the Joint Permit Application materials (when applicable) using VITAShare. Table 2 lists the state agencies and contacts that Staff is required to coordinate with for comments.

In cases where VWP permits are being sought by Virginia users of the Potomac and other interstate waters, the applicable state or governmental agency with jurisdiction over the affected waters shall be provided copies of the application for full coordination, as dependent on the location of the project and the affected entity. For further details regarding the Potomac and Maryland state waters, see GM 02-2016.

#### 5.7.2 Coordination with Federal Agencies

If the Corps is issuing an individual permit, then Staff should coordinate closely with USACE throughout the permit process. If recommended by a state agency during the coordination process, coordination with other federal agencies may be warranted.

If a SPGP is being processed simultaneously with the VWP individual permit, federal agency coordination will be required for the SPGP. If soliciting comments from agencies for both a VWP individual permit and for SPGP, be sure to notify the agency that the application is a proposed dual permit action. See the SPGP SOP for coordination procedures.

The goal of coordination with the Corps is to align the conditions in the VWP individual permit and any Corps-issued permit and to avoid contradiction, provided that the conditions meet state laws and regulations. As a general rule of thumb, *do not copy the Corps on other agencies' comments*, as per the Corps' request. See the VWP Library on DEQNet for the Corps regional contacts.

While DEQ is legally mandated to protect *state* listed threatened and endangered (T&E) species, or designated critical habitat when making permit decisions, the USFWS should be consulted when any activity may result in an adverse impact to a federally listed T&E species, as identified by DGIF. T&E species

issues must be resolved before issuance of a VWP individual permit. Coordination with the USFWS should be emailed to the Service's Virginia Field Office: [virginiafieldoffice@fws.gov](mailto:virginiafieldoffice@fws.gov).

## 5.8 Draft Permit

The permit may be drafted as early as reasonable in the process. It is recommended that Staff begin drafting the fact sheet early in the process to assist with documentation of the application process. After all coordination is completed with the commenting agencies, and staff has concluded the proposed impacts have been avoided and minimized to the maximum extent practicable and the compensation plan is acceptable, Staff should finish compiling the draft individual permit package for the applicant's review.

The Draft Permit Package consists of the following items, as detailed in the sections below:

- Issuance Fact Sheet
- Permit Cover Page
- Part I - Special Conditions
- Part II - General Conditions
- Public Notice and Public Notice Verification Form
- Draft Permit/Public Notice Transmittal Letter

### 5.8.1 Individual Permit Fact Sheet

The Fact Sheet provides a written record of the application review process, as well as the basis for the Agency's permit decision. The Fact Sheet documents that all statutory and regulatory requirements of the program were met. Accordingly, it includes details regarding the proposed project; the application review process; regulatory agency and public notification and comments; description of mitigation (i.e., how impacts to existing beneficial uses were avoided and minimized; how unavoidable impacts were compensated); the rationale for the conditions included in the VWP individual permit; any additional, useful or pertinent information; and the staff recommendation for the permit decision.

### 5.8.2 Permit Cover Page

The Permit Cover Page includes the permit effective and expiration dates, permittee legal name and corporate address, activity location, a brief description of the authorized activities, impact quantities and compensation. The Permit Cover Page should be marked "*Draft*" at this point in the process and remain unsigned. See Chapter 3 Section 3.1.5 for instructions in ensuring that the permittee's legal name and corporate address, as registered with Virginia's State Corporation Commission, is utilized.

### 5.8.3 Part I – Special Conditions

The Part I - Special Conditions are project-specific conditions, based primarily on the proposed activity, the impacted waters, and agency comments. These conditions are included in the permit to protect existing beneficial uses; prevent significant impacts to state waters or fish and wildlife resources; ensure authorized impacts to surface waters are performed in a manner that minimizes adverse impacts to the maximum extent practicable; and ensure adequate compensation is provided for all unavoidable impacts.

The sections entitled Authorized Activities; Permit Term; Standard Project Conditions; Project Construction Monitoring and Submittals (Impact Sites); and Compensatory Mitigation are the major categories that should be in every VWP individual permit. Within each of these major categories are subcategories of conditions. Every section of conditions, or every condition in a section, may not apply to the proposed activities, and therefore, some conditions may need to be altered to reflect project-specific

needs, or may be deleted. Part I should only include the conditions that are pertinent to the project, or that could conceivably come up during the project (e.g., do not include dredging special conditions if there is no dredge work being proposed and little if any chance of dredging activities to occur). Additionally, Staff may find it necessary to "create" specific conditions to address site specific conditions or concerns.

These conditions should be marked "Draft" until such time that the Final Permit Package is developed.

#### 5.8.4 Part II – General Conditions

The Part II - General Conditions are included in *all* VWP individual permits in accordance with VWP Permit Program regulation. Because the conditions are stated in the VWP Permit Program regulation 9VAC25-210 *et seq.*, *do not revise the General Conditions.*

#### 5.8.5 Public Notice and Public Notice Verification Form

The Public Notice provides a summary of the proposed permit impacts and compensation activities. The public notice template should not be changed beyond entering the project specific information in the applicable sections. In the VWP Permit Program *publication of the notice for the draft permit is the responsibility of the applicant.* The notice must be published in a newspaper of general circulation in general vicinity of the project (see Code of Virginia, § 8.01-324, <http://law.lis.virginia.gov/vacode/title8.01/chapter8/section8.01-324/>). If in doubt regarding the qualifications of the newspaper, contact the publisher directly and ask whether the publication is authorized to publish legal notices in accordance with Virginia law.

DEQ requires proof of publication, which may be documented on the Public Notice Verification Form, or provided in a certification from the newspaper. Either way, a copy of the actual notice from the paper should be in the permit file. *A photocopy without a sworn verification form is not acceptable.*

More details are provided in the 'Public Notice Process' section.

#### 5.8.6 Draft Permit/Public Notice Transmittal Letter

The Transmittal Letter includes directions to the applicant concerning the review of the draft permit and publication requirements.

#### 5.8.7 Review of Draft Permit Package

The completed Draft Permit Package, consisting of the Fact Sheet, Permit Cover Page, Part I - Special Conditions, Part II - General Conditions, Public Notice, Public Notice Verification Form, and Transmittal Letter, should be peer reviewed by a VWP permit writer, then forwarded to the VWP Permit Program Manager or his/her delegate for review and approval, prior to being released to the applicant.

Once the Draft Permit Package has been reviewed within DEQ and the appropriate changes have been made, ensure that the permit application fee has been received and deposited. *The Draft Permit Package cannot be sent to the applicant prior to DEQ receiving these items.* If DEQ has confirmation the fee has been deposited, send the Draft Permit Package with the Transmittal Letter to the applicant via email.

The Transmittal Letter requests that the applicant review and comment on the Draft Permit within 14 calendar days. During this period, the applicant may request a meeting to discuss the proposed permit conditions or may elect to withdraw the application and thereby end permit processing. If the applicant desires significant changes to the draft permit special conditions, especially to those based on agency

comments, discuss the desired changes with your supervisor and the applicable agency(ies) prior to committing to any changes.

If the applicant does not respond with comments, and does not publish the notice within 14 calendar days, the permit processing clock is stopped on the 15th calendar day after the date the Draft Permit Package is mailed to the applicant, and is not resumed until after the date of publication (see 9VAC25-210-140 A). If this occurs, document so in the Fact Sheet.

## 5.9 Public Notice Process (9VAC25-210-140 and 9VAC25-210-160)

### 5.9.1 Public Notice Notification

At the same time that the draft package is mailed to the applicant, send a Locality Notification of Public Notice Letter and a copy of the Public Notice to the Chief Administrative Officer of the County or City/Town (i.e., County Administrator or City Mayor/ Town Manager), the County Board of Supervisors or City Council, and the Regional Planning District Commission (use the template Public Notice Locality Notification Letters). Contact names can be found on the appropriate county/city/town web sites and the appropriate Regional Planning District Commissions.

E-mail a copy of the Public Notice page to the current web author in the DEQ-Central Office who has the responsibility to post VWP public notices to the program web page. Typically, this is done at the same time that the draft VWP individual permit package is sent to the applicant. The web author will post the public notice on the program web site.

### 5.9.2 Public Notice Verification

The applicant must provide DEQ with proof that the public notice was published (Sworn Verification Statement or a similar signed document from the newspaper), and the proof must be submitted before the close of the 30-day public comment period.

Contact the applicant/agent if the verification statement or similar documentation from the newspaper is not received.

### 5.9.3 Thirty-Day Public Comment Period

The 30-calendar day comment period begins the day after the draft permit Public Notice is published in the newspaper, and continues until the close of business on the 30<sup>th</sup> day. As an example, if the Public Notice is published in Wednesday's newspaper, Thursday will be the first day of the 30-calendar day comment period. If the 30<sup>th</sup> day of the comment period occurs on a weekend or State or Federal holiday, the next **business** day is considered the 30<sup>th</sup> day.

During the comment period, individuals must submit written comments via mail, fax, or e-mail. Comments may not be provided orally. Typically, public comments submitted after the public comment period ends are not considered in the official permit record for informal proceedings such as a draft permit action. However, exceptions may be made on a case-by-case basis by the VWP Permit Program manager in the region processing the permit. This is not necessarily the case with formal proceedings. The SWCB also has the authority to include late comments in the permit record.

### 5.9.4 Public Comment Review and Response

Public comment review by staff, as well as the Director's decision whether to approve or deny a public hearing, must be completed within **30 days** of the end of the comment period if there was a request for

a hearing. However, if there is no request for a hearing, the DEQ must act within **90 days** of the close of the comment period. Based on a review of relevant public comments, changes in the draft permit Part I - Special Conditions may be warranted. Changes may be made to the permit conditions that correct typographical errors or are in response to comments that are within the purview of the VWP Permit Program. Changes made to the special conditions as a result of public comments should be discussed with the applicant and all applicable parties.

Copies of all public comments must be maintained in the permit file. At the end of the Public Notice period, prepare a summary of all comments and whether or not they have resulted in a change to permit conditions. This summary should be included as part of the Fact Sheet. *All commenters should be provided with a copy of the summary.*

#### 5.9.5 Public Hearing

Should a request for a public hearing on the proposed permit action be submitted to DEQ, follow § 62.1-44.15:02 of the Code of Virginia to conduct the hearing and prepare the required documentation. In this case, *the draft permit goes before the SWCB for a permit determination.*

#### 5.10 Permit Issuance

The final permit is prepared and issued after the close of the comment period when no public hearing is held, or after a decision to issue has been made by the SWCB (in the case of a public hearing).

The Individual Permit Package includes the final Issuance Fact Sheet, a final Transmittal Letter, the final Permit Cover Page (with the issuance and expiration dates filled in), the final Part I - Special Conditions, and Part II - General Conditions. A sample final Transmittal Letter is attached to the end of this chapter. *Be certain to remove the "Draft" label from all final permit documents.*

Staff should forward the final Individual Permit Package to the Regional VWP Permit Manager or his/her delegate for final review. Once the documents have been signed and dated, send the signed final Individual Permit Package, including the fact sheet to the permittee via email. Remember to include the Construction Status Update Form and the Monthly Inspection Checklist as attachments as they are required to be used in the permit special conditions.

If the USACE or VMRC *has jurisdiction*, copy the final Transmittal Letter and the final permit to the appropriate contacts. Also, in cases where there were negotiations with concerned citizens or stakeholders, then it may be appropriate to send a copy of the final permit to those parties.

If Staff chooses to save an electronic copy of the Final Permit Package on a DEQ office server, do so under the permit number.

Once the VWP individual permit has been issued, Staff must complete the following steps as soon as possible:

- complete all CEDS information and ensure that the file is transferred from "application" to "active" status and that any due dates are entered (refer to "VWP New CEDS Guide-Permits 5-12-16" on DEQNet <http://deqnet/programs/water/ceds.asp>);
- ensure that all pertinent information is included and organized in the permit file;
- file hardcopy documents appropriately;
- prepare the permit file for upload to DEQ's Enterprise Content Management system;

- add the permit record to the Facilities or regional tracking form (if applicable);
- add the project boundary to GIS or confirm existing GIS entry is accurate, including applicable metadata; and
- begin compliance monitoring.

## 5.11 Process for Denial of an Individual Permit Application (§ 62.1-44.15:21 E and 9VAC25-210-230)

The administrative and technical review of an application may result in a situation where the issuance of a permit is not supported by law and regulation. If staff attempts to negotiate acceptable modifications to the proposed project fail, it may necessitate a recommendation to the SWCB to deny the applicant's permit request. The first step in any denial process should always be a thorough discussion of the facts of the case with Regional and Central Office management. One should only begin the formal denial process after concurrence from Agency management is obtained. The sections below detail the reasons for a denial recommendation and the associated procedures that are required as part of the overall process.

### 5.11.1 Bases for Denial

Denials may be warranted when one or more of the situations outlined in 9VAC25-210-230 exist, or for other reasons deemed appropriate by VWP Permit Program managers; however, *denials are not processed for the applicant's failure to provide a complete application*. Some of the more likely reasons for denial include:

- The project will result in violations of water quality standards or will impair the beneficial uses of state waters.
- 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 and fails to achieve no net loss of existing wetland acreage and function and no net loss of functions in all surface waters.
- 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 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.

### 5.11.2 Notification to Applicant

The first formal step in the process is a requirement that the applicant be notified, in writing, that a "preliminary decision to tentatively deny" the permit is being made by the board. Prepare the Notice of Preliminary Decision to Tentatively Deny letter, which includes:

- the reason for the recommendation, based on the VWP Permit Program regulation;
- a statement that the applicant has the option of withdrawing his/her application, in which case no permit will be issued; and
- a statement that the applicant has the option of proceeding with the project application as proposed, in which case VWP staff will make a recommendation for denial to the SWCB.

This notification letter should be signed by the Regional Director or his/her delegate and sent to the applicant via certified mail.

After receiving the above notice, the applicant should notify the board in writing that they choose to either withdraw the application or proceed as originally proposed. If the applicant's decision is to withdraw the application, staff will no longer proceed with the denial process. If the applicant elects to proceed with the project application as proposed, staff should continue with the denial process.

### 5.11.3 Public Notice to Deny Permit

When an applicant chooses to proceed with the project application as proposed, or has not responded to the preliminary decision to tentatively deny, staff should prepare a Public Notice of the Board's intent to deny the VWP individual permit. The Public Notice should generally follow the form of a public notice for issuance except that it should clearly state the Board's intention to deny the permit and the applicable reason(s) for denial. The notice should be published in a newspaper having circulation in the project area, and should be copied to Priscilla Royal and Cindy Berndt at DEQ-Central Office. *Note: DEQ pays for the publishing costs associated with a Public Notice of Intent to Deny Permit. Consult with your office's accounting department to process the payment for the advertisement.*

If a public hearing is requested as a result of the Public Notice of Intent to Deny Permit, follow the public hearing procedures discussed below and coordinate with Cindy Berndt, Division of Policy at DEQ-Central Office.

Alternatively, if no requests for a public hearing are received as a result of the public notice of the proposed denial, the applicant should be offered, in writing, an Informal Fact Finding (IFF) proceeding as described in § 2.2-4019 of the Code of Virginia. If no IFF is requested by the applicant, the permit would normally be denied by the board. However, if the applicant does request an IFF, special procedures beyond the scope of this manual apply and should be thoroughly coordinated with agency management.

### 5.12 Public Hearing Process (9VAC25-210-160 and 9VAC25-210-170)

The following procedures are for when a request for a public (informal) hearing is received during the public comment period.

Public hearing requested during public comment period:

- The Director has 30 calendar days following the close of the public comment period to make a final decision on whether or not to hold a public hearing. (Within this timeframe, Staff may hold a public meeting to attempt to resolve any issues prior to making final decision to hold hearing).
  - Note: If the draft permit is revised such that it removes the basis for the dispute, then Staff should ask the hearing requestor to withdraw the request for a hearing. If the hearing request is withdrawn, then DEQ will issue the permit. If the request is not withdrawn, Staff will consider recommending to the RD denial of the hearing.
- Factors in the decision: Significant public interest (min. 25 individual requests for a hearing); substantial and disputed issues are relevant to the permit action; action requested is not on its face inconsistent with, or in violation of, the Water Control Law, federal law or any regulation promulgated thereunder; hearing is required by statute.
- An authorization package to grant or deny the public hearing request must be submitted to the Chief Deputy, Deputy Director and Regulatory Affairs Officer within 21 calendar days of the close of the public comment period of the draft permit, in order to meet the 30 day deadline.
- All written comments and requests for a public hearing received during the public notice comment period must be considered, and a determination for the necessity for a public hearing made in accordance with § 62.1-44.15:02 of the Code of Virginia. DEQ Staff will need to determine

if the requests for public hearing satisfy the conditions set forth in Procedural Rule No. 1, and if so warranted forward on the permit application, the permit file, and all written comments to the SWCB for a final hearing determination. Should Staff conclude that requests for a public hearing do not meet the conditions of Procedural Rule No. 1, written notification and justification of this determination must be provided to all commenters who requested a public hearing.

If decision is to deny a public hearing:

- Notice of Denial of the Request for Hearing letter is signed by the Regional Director and sent to the Requestor(s).

If the decision is to hold a public hearing:

- The specific public hearing process is outlined in § 62.1-44.15:02 of the Code of Virginia, and should an application warrant a public hearing, Staff will need to consult this document and work with their program manager in order to conduct the hearing in accordance with the regulations.
- A letter, signed by the Regional Director, is mailed notifying the Requestor(s) of the decision to hold a public hearing.
- The Director (or designated staff) shall schedule the hearing at a time between 45 and 75 days after mailing of the notice of the decision to grant a public hearing.
- Staff contacts a SWCB member to serve as the Hearing Officer.
- Staff arranges for date and location to hold the hearing.
- A hearing public notice must be published by DEQ at least 30 calendar days before the hearing date.
- A copy of the public notice shall be sent to persons and localities notified of the application, those persons who requested the public hearing and/or to those agencies who received notice of the first public notice.
- Hold the public hearing.
- After the hearing, the public or other interested parties have 15 (min.) to 30 (max.) calendar days in which to submit comments to DEQ for the SWCB’s consideration.
- The final decision whether to issue or deny the permit is made by the SWCB at the next SWCB meeting, which is held quarterly.

If the SWCB determines that a public hearing is warranted, the public must be notified of the hearing at least 30 days in advance of the public hearing. The notice of public hearing is to be published in a newspaper of general circulation within the county or city where the proposed permitted activity is to occur. The notice of the public hearing is to be provided to local government and any other entity or individual who received a copy of the notice of the VWP permit application, and to all individuals or entities having commented in response to the original draft permit public notice. The specifics of the notice are contained in 9VAC25-210-170 C.

### 5.13 Individual Permit Checklist

Table 3: VWP Individual Permit Checklist

Action	Reference	Complete
Joint Permit Application Review	Chapter 3	
Additional Information Review and Requests	Chapter 3	

Action	Reference	Complete
Local Government Notification <b>Error! Bookmark not defined.</b>	Chapter 5	
Identifying and Quantifying Impacts	Chapter 3	
Avoidance and Minimization	Chapter 3	
Compensation	Chapter 3	
State and Federal Agency Coordination	Chapter 3	
Site Visit	Chapter 3	
Determining the Application Fee	Chapter 3	
Riparian Land Owners Notification	Chapter 5	
Draft Individual Permit Fact Sheet	Chapter 5	
Draft Permit Cover Page	Chapter 5	
Draft Part I - Special Conditions	Chapter 5	
Draft Part II - General Conditions	Chapter 5	
Public Notice and Public Notice Verification Form	Chapter 5	
Public Notice Transmittal Letter	Chapter 5	
Review of Draft Permit Package	Chapter 5	
Public Notice Notification	9VAC25-210-140	
Public Notice Verification	Chapter 5	
30 Day Public Comment Period	9VAC25-210-140	
Public Comment Review and Response	9VAC25-210-160	
Public Hearing	9VAC25-210-160 and 170	
Permit Finalization and Issuance	Chapter 5	
Denial of an Individual Permit Application	9VAC25-210-230	
Denial Notification to Applicant	9VAC25-210-230	
Public Notice to Deny Permit	9VAC25-210-230, Section 62.1-44.15:21 E	