

A GUIDE TO THE
Virginia Water Protection Permit Process



Photograph by W. Kedzierski, 2001

Prepared by:
The Virginia Department of Environmental Quality

June 2003

TABLE OF CONTENTS

SECTION 1 - INTRODUCTION

SECTION 2 - APPLYING FOR VIRGINIA WATER PROTECTION PERMITS

SECTION 3 - VWP GENERAL PERMITS

SECTION 4 - VWP INDIVIDUAL PERMITS

SECTION 5 - PERMIT CHANGES

SECTION 6 - ASSISTANCE

Acknowledgement

This guide was developed by the Virginia Department of Environmental Quality under a U.S. Environmental Protection Agency-Region III, Wetland Program Development Grant (No. CD-98338001).

Disclaimer

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 orient the public to the Virginia Water Protection (VWP) Permit Program. The goals 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 the VWP regulations. All applicants should read and follow the pertinent, current regulations 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> or by contacting DEQ (see Assistance Section of this guide).

History of the Virginia Water Protection Permit Program

The VWP Permit Program derives its regulatory authority from both 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), found at <http://www.epa.gov/region5/defs/html/cwa.htm> and <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC6201000>, respectively. The VWP permit regulations were first enacted in May 1992 to serve as the Commonwealth's nontidal wetlands program and § 401 Certification process.

Prior to July 1, 2000, applicants seeking a § 404 permit from the U.S. Army Corps of Engineers (Corps) for water withdrawals or discharge of fill in wetlands or waters of the United States were also required to submit an application to the DEQ for a permit or waiver under § 401 Certification. The Virginia General Assembly amended § 62.1-44.15 et seq. of the Code of Virginia in July 2000 to establish and implement policies and programs to further protect and enhance Virginia's wetland resources.

The changes mandated by the General Assembly built upon the existing VWP Permit Program while creating a nontidal wetlands program independent of § 401 Certification. Key aspects of the amended law that have been incorporated into the VWP permit regulation include:

- ◆ Regulation of excavation in wetlands, as of 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, as of October 1, 2001
- ◆ Increase in individual permit term from five years to the length of the project, not to exceed 15 years

A Guide to the Virginia Water Protection Permit Process

- ◆ 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
- ◆ Specification of acceptable forms of 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 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 Activities

Lastly, in an effort to further reduce duplication of permitting between State and Federal agencies while ensuring minimal individual and cumulative consequences, the Norfolk District Corps issued a State Program General Permit (SPGP-01) and suspended the **Nationwide Permit 39** and **Nationwide Permit 14 (nontidal portions only)**. The SPGP became effective on November 1, 2002, and may include additional activities normally permitted by Corps' nationwide permits in the future. More information about SPGP-01 can be found at <http://www.deq.state.va.us/wetlands> or on the Corps Norfolk District Regulatory web site <http://www.nao.usace.army.mil/Regulatory/Regulatory.html>.

Central and Regional Offices

VWP Permit Program staff are located in the DEQ Central Office and in DEQ's seven regional offices. Office addresses and phone numbers are provided in the Assistance Section of this guide. A map of the regional offices can also be obtained from <http://www.deq.state.va.us>. In general, the regional offices issue VWP permits and inspect project sites, and the central office maintains the VWP permit regulations and provides program guidance. However, all water

A Guide to the Virginia Water Protection Permit Process

withdrawal projects and Virginia Department of Transportation (VDOT) projects are currently managed and permitted out of the DEQ Central Office.

SECTION 2 - APPLYING FOR VWP PERMITS

Activities Requiring Permits

The following activities in a wetland will require a VWP permit:

- ◆ Excavation
- ◆ Activities in a wetland to cause draining 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

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

- ◆ Water withdrawals
- ◆ Dredging that involves return flows (i.e. hydraulic)
- ◆ Discharge of fill

If an applicant is in doubt concerning whether or not a certain activity requires a VWP permit, please refer to the VWP regulations at <http://www.deq.state.va.us/wetlands/>. Otherwise, you may call either the DEQ regional office for the area in which the proposed project is located, or call the VWP Program Manager in DEQ's Central Office.

Important Notes Concerning the Need to Apply

- ◆ *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 <http://www.deq.state.va.us/wetlands/wetlands.html> 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). Nationwide Permits 39 and 14 were conditionally certified by DEQ prior to implementation of SPGP-01. Now the activities qualifying for these nationwide permits fall under the SPGP-01 and may be issued a VWP permit by DEQ.*
- ◆ *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.*

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.nao.usace.army.mil/Regulatory/Regulatory.html> or can be obtained by contacting Corps or DEQ offices. The application must be submitted by the applicant or his/her 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 project manager and processed in one of the permit processing pathways described below (see also 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 Requirements* 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 needs to be issued. The applicant will 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 are 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 No Permit Required 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 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 125 linear feet of perennial stream channel and up to 1,500 linear feet of non-perennial stream channel. The regulation for this permit can be found in **Section 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 500 linear feet of perennial stream channel and up to 1,500 linear feet of non-perennial stream channel. The regulation for this permit can be found in **Section 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 500 linear feet of perennial stream channel, and up to 1,500 linear feet of non-perennial stream channel. The regulation for this permit can be found in **Section 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 Activities' authorizes development projects that result in up to two acres of nontidal surface water impacts, including up to 500 linear feet of perennial stream channel, and up to 1,500 linear feet of non-perennial stream channel. 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>).

A Guide to the Virginia Water Protection Permit Process

Table 2 *Summary of the USACE Permits and VWP Requirements* at the end of this section 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.state.va.us/wetlands/>.

Projects that formerly qualified for Corps Nationwide Permit 39 and the nontidal portions of Nationwide Permit 14 may be considered for coverage under the State Program General Permit (SPGP-01), a Corps general permit that assigns permitting responsibilities to DEQ for these qualifying projects. The applicant in these instances may be issued one of the DEQ VWP general permits and be covered under the Corps SPGP-01 for the qualifying activity.

The authorized activities allowed under SPGP-01 are the discharge of dredged and/or fill material in nontidal waters of the United States associated with residential, commercial and institutional developments (**Activity 1**) and linear transportation projects (**Activity 2**) within the geographical limits of the Commonwealth of Virginia that are under the regulatory jurisdiction of the Corps Norfolk District that have minimal individual and cumulative impacts, and that meet the terms and conditions outlined within the SPGP-01. The use of SPGP-01 shall be restricted to those projects that have first avoided and minimized impacts to waters of the United States, including wetlands, to the maximum extent practicable.

Each of the two types of activities are further subdivided into categories. Prior to the submission of a permit application for any **Residential, Commercial or Institutional Development** project (**Activity 1, Category B or C**) covered under the SPGP-01, an applicant must first obtain a Corps confirmed delineation of all State and Federal waters and wetlands on the property either at the time of the field review or at a later date (except for sites where the Corps has previously confirmed a delineation). **Activity 1, Category A projects and Activity 2, Category A projects do not require the delineation confirmation.** However, the Corps confirmation is still required for projects other than those that qualify under SPGP-01 (formerly those activities qualifying for NWP 39 and the nontidal portions of NWP 14), for projects being reviewed for VWP individual permits.

To obtain a Corps confirmed delineation, the following information must be submitted to the Corps:

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.).

A Guide to the Virginia Water Protection Permit Process

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 and the results of the database searches 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 under 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 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 SPGP-01, if the DEQ permit staff determines that the project will have greater than minimal impacts. Circumstances under which this may occur can be found in Section 9 VAC 25-210-130.B. of the Virginia Administrative Code for the case of VWP general permits. In the case of SPGP-01, the Corps may issue their own individual permit.*

VWP Individual Permits (Nontidal and Tidal Areas)

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

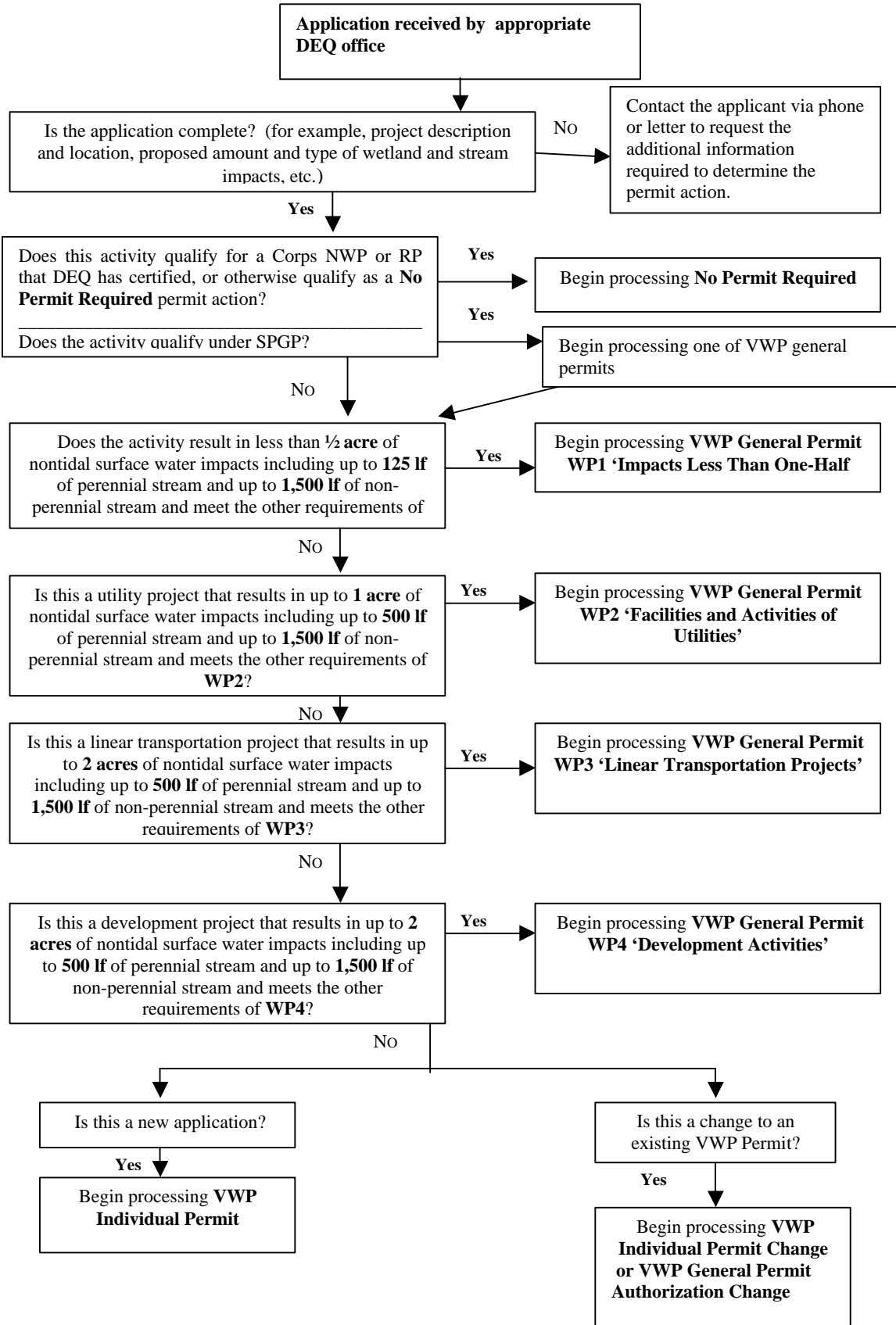
- ◆ New activities in a wetland to cause draining that significantly alter or degrade existing wetland acreage or functions
- ◆ New activities in a wetland that cause significant alteration or degradation of existing wetland acreage or functions
- ◆ Excavation in wetlands
- ◆ Water withdrawal projects, or projects having water withdrawal components (for example, dams)
- ◆ Dredging, filling, or dumping in surface waters
- ◆ 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

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. Specific

A Guide to the Virginia Water Protection Permit Process

exclusions applicable to the use of each **VWP general permit** are given in their respective regulations.

Figure 1 – Summary of Permit Processing Pathways



A Guide to the Virginia Water Protection Permit Process

Table 1
Summary of USACE Permits and VWP Requirements

Nationwide or Regional Permit	Last Date of Issuance, Re-issuance or Modification	VWP Permit Processing Pathway	Date of 401 Certification	401 Certification Conditions
1. Aids to Navigation	Mar-02	NPR	Mar-02	
2. Structures in Artificial Canals	Mar-02	NPR	Mar-02	
3. Maintenance	Mar-02	NPR	Mar-02	
4. Fish and Wildlife Activities	Mar-02	NPR	Mar-02	
5. Scientific Measurement Devices	Mar-02	NPR	Mar-02	
6. Survey Activities	Mar-02	NPR	Mar-02	
7. Outfall Structures and Maintenance	Mar-02	Conditional*	Mar-02	1,2,4,8,9
8. Oil and Gas Structures	Mar-02	NPR	Mar-02	
9. Structures in Fleet and Anchor Areas	Mar-02	NPR	Mar-02	
10. Mooring Buoys	Mar-02	NPR	Mar-02	
11. Temporary Recreation Structures	Mar-02	NPR	Mar-02	
12. Utility Line Activities	Mar-02	Conditional*	Mar-02	1,2,4,8,9
13. Bank Stabilization	Mar-02	Conditional*	Mar-02	1,2,4,8,9
14. Linear Transport Crossings (Tidal)	Mar-02	Conditional*	Mar-02	1,2,4,8,9
14. Linear Transport Crossings (Nontidal)	Mar-02	Conditional*	Mar-02	1,2,4,8,9
SUSPENDED				
15. U.S. Coast Guard Approved Bridges	Mar-02	NPR	Mar-02	
16. Return Water - Upland Contained Disposal Areas	Mar-02	Permit Req'd	Mar-02	
17. Hydropower Projects	Mar-02	Permit Req'd	Mar-02	
18. Minor Discharges	Mar-02	Conditional*	Mar-02	1,2,4,8,9
19. Minor Dredging <25 Cubic Yards	Mar-02	Conditional*	Mar-02	1,2,4,5,8,9
20. Oil Spill Cleanup	Mar-02	NPR	Mar-02	
21. Surface Coal Mining Activities	Mar-02	Conditional*	Mar-02	1,2,4,8,9
22. Removal of Vessels	Mar-02	NPR	Mar-02	
23. Approved Categorical Exclusions	Mar-02	NPR	Mar-02	
24. State Administered Section 404 Programs	Mar-02	N/A in VA	Mar-02	
25. Structural Discharges	Mar-02	Conditional*	Mar-02	1,2,4,8,9
26. EXPIRED - not re-issued	--	--	Exp. Jun-00	--
27. Stream and Wetland Restoration Activities	Mar-02	Conditional*	Mar-02	1,2,4,7,8,9
28. Existing Marina Modifications	Mar-02	NPR	Mar-02	
29. Single-Family Housing	Mar-02	NPR	Mar-02	
30. Moist Soil Management for Wildlife	Mar-02	NPR	Mar-02	
31. Maintenance of Existing Flood Control Projects	Mar-02	NPR	Mar-02	
32. Completed Enforcement Actions	Mar-02	NPR	Mar-02	

A Guide to the Virginia Water Protection Permit Process

33. Temporary Construction, Access & Dewatering	Mar-02	NPR	Mar-02	
34. Cranberry Production Activities	Mar-02	NPR	Mar-02	
35. Maintenance Dredging of Existing Basins	Mar-02	NPR	Mar-02	
36. Boat Ramps	Mar-02	NPR	Mar-02	
37. Emergency Watershed Protection and Rehabilitation	Mar-02	NPR	Mar-02	
38. Hazardous and Toxic Waste Cleanup	Mar-02	NPR	Mar-02	
39. Residential, Commercial and Institutional Development SUSPENDED	Mar-02	Conditional*	Mar-02	1,2,3,4,8,9
40. Agricultural Activities	Mar-02	Conditional*	Mar-02	6
41. Reshaping Existing Drainage Ditch	Mar-02	NPR	Mar-02	
42. Recreational Facilities	Mar-02	Conditional*	Mar-02	1,2,3,4,8,9
43. Stormwater Management Facilities	Mar-02	Conditional*	Mar-02	1,2,4,8,9
44. Mining Activities	Mar-02	Conditional*	Mar-02	1,2,4,5,8,9
ASP-18. Abbreviated Standard Permit	Discontinued. Feb-02	N/A	N/A	
LOP-1. Letter of Permission for VDOT Projects	Aug-98	Permit Req'd	Cert. Denied	
LOP-2. Letter of Permission for Certain Navigational Projects	Jan-02	Conditional*	Mar-02	10
RP-15. Maintenance of Certain Ditches	Aug-98	NPR	Aug-98	
RP-17. Private Piers and Mooring Piles	Aug-98	NPR	Aug-98	
RP-19. State Program Regional Permit	Jan-02	Conditional*	Mar-02	10
RP-22. For Certain Activities in Lake Gaston	Aug-98	NPR	Aug-98	
RP-24. For Certain Activities in Claytor & Smith Mtn. Lake	Aug-98	NPR	Aug-98	
RP-40. Minor Maintenance Dredging in Non-tidal Waters	Aug-98	NPR	Aug-98	

Table 1 Abbreviations/Definitions

VWPP = Virginia Water Protection Permit

NPR = No (VWP) Permit Required

N/A = Not Applicable

Permit Req'd = Some VWPP action is required

Conditional* = If a proposed activity falls under any of the conditions listed below, the activity does not have Section 401 certification until a VWP individual or general permit is issued.

Table 1 Conditions

An individual Section 401 Water Quality Certification is needed:

1. When compensatory mitigation is in the form of the purchase of mitigation bank credits and the bank is not located within the same hydrologic unit or an adjacent unit within the same river watershed as the impacted site, as defined by the Hydrologic Unit Map of the U.S. (USGS, 1980), unless it meets the conditions listed in Section 62.1-44.15:5e of the Code of Virginia for transportation or locality projects.
2. When compensatory mitigation involves only the preservation of wetlands and/or wetland or upland vegetation buffers without accompanying creation or restoration of wetlands or the purchase of mitigation bank credits, or does not meet the goal of no net loss of wetland acreage and function.
3. When proposed construction of irrigation impoundments is located on perennial streams. May include impoundments for golf course irrigation, snowmaking operations.
4. When there is/are any proposed water withdrawal activity(ies). May include construction and/or protection of intake structures, transporting non-potable water, construction of weir or water diversion structure, installation of pilings for any type platform/holding structure mounted with water withdrawal pumps.
5. Proposed hydraulic dredging, or dredging a deep space/hole for water withdrawal.
6. When any concentrated animal feeding operation or waste storage facility is proposed in surface waters.
7. When used to permit a wetland mitigation bank, compensation for surface water impacts is debited from the mitigation bank credits.
8. When stormwater management facilities are located in perennial streams or oxygen- or temperature-impaired waters.
9. When impacts to perennial streams are in excess of 500 linear feet, and for impacts to intermittent streams in excess of 1,500 linear feet.
10. When used in tidal waters, no individual 401 Certification required; when used with non-tidal waters, individual 401 Certification required.

Table 2 – Summary of the VWP General Permits

Permit Number	Authorized Impacts	Notification Requirements	Required Compensation (>1/10 acre Sum of Perm & Temp Impacts)	Required Compensation (>1/10 acre Sum of Permanent & Temp* Impacts)	Compensation Options	Compensation Ratios	Authorizator Term
WP 1 (<1/2 Acre)	< 1/2 acre (0.00 - 0.49) non-tidal surface waters including up to 125 LF perennial stream channel and 1,500 LF non-perennial stream channel	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	N/A	B, F	EM, SS, FO = 2:1; SC = 1:1	3 yrs
WP 2 (Utilities)	up to one (0.00 - 1.00) acre non-tidal surface waters including up to 500 LF perennial stream channel and 1,500 LF non-perennial stream channel	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*	N/A	2	B, F, C, R, P	EM = 1:1; SS = 1.5:1; FO = 2:1; SC = 1:1	3 yrs
WP 3 (Transportation)	up to two (0.00 - 2.00) acres non-tidal surface waters including up to 500 LF perennial stream channel and 1,500 LF non-perennial stream channel	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	N/A	B, F, C, R, P	EM = 1:1; SS = 1.5:1; FO = 2:1; SC = 1:1	5 yrs
WP 4 (Development)	up to two (0.00 - 2.00) acres non-tidal surface waters including up to 500 LF perennial stream channel and 1,500 LF non-perennial stream channel	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	N/A	B, F, C, R, P	EM = 1:1; SS = 1.5:1; FO = 2:1; SC = 1:1	5 yrs

LF = Linear Feet

* 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 permit writer'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 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, SC = Stream Channel

SECTION 3 - VWP GENERAL PERMITS

Permit Processing Timeframes

The DEQ project manager 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 either 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 in order 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://www.deq.state.va.us/wetlands/> or <http://leg1.state.va.us/000/reg/TOC09025.HTM>.

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 one exception is under SPGP-01 where projects impacting up to 1/10 acre of waters or no more than 300 linear feet of stream do not require the confirmation (Activity 1 and 2, Category A). The actual confirmation, whether it be via a Corps form or a letter, is required prior to issuance of the VWP general permit authorization.
- ◆ 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.A. 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 at the end of Section 2. 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.

Important Notes Concerning Complete Applications

- ◆ *Applicants wanting consideration under 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*

A Guide to the Virginia Water Protection Permit Process

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.**

- ◆ A Corps wetland delineation confirmation is not required for projects that qualify for SPGP-01 and impact up to 1/10 acre of wetlands or no more than 300 linear feet of stream bed.

VWP General Permit Application Fee

Permit application fee information may be obtained from <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+9VAC25-20-110> or by contacting DEQ. **As of July 1, 2002** the following fees apply to VWP general permits:

- ◆ VWP General Permit, impacts less than ½ acre: \$600
- ◆ VWP General Permit, impacts greater than ½ acre: \$1,200

Upon receipt of a JPA, a DEQ project manager 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
POB 10150
Richmond, Virginia 23240

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. **Unlike with VWP individual permits, there is no 15-day regulatory timeframe for review of applications for VWP general permits; however, DEQ**

attempts to review these applications within 15 calendar days.

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, consultation will occur 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 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. Thus, 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 Permits Under SPGP-01

Typically, the end result of processing an application under SPGP-01 is the issuance of a VWP general permit. Occasionally, a VWP individual permit and/or a Corps individual permit will result, usually due to issues with natural or historic resources.

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

If the project does not qualify, 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 SPGP-01 and the reasons for the determination.

A Guide to the Virginia Water Protection Permit Process

Compensatory mitigation may be required by both agencies, or by one agency but not the other, as in the case of up to 1/10 acre impacts. No work in jurisdictional areas can begin without the applicable review and acceptance of any required mitigation plan(s).

SECTION 4 - VWP INDIVIDUAL PERMITS

Permit Processing Timeframes

The **VWP individual permits** have a different processing timeframe than VWP general permits. Except for minimum instream 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 either 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, 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)
- ◆ 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)

A Guide to the Virginia Water Protection Permit Process

- ◆ 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 manager 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 SPGP-01, a Corps-confirmed waters boundary map must be submitted with the application (or documentation that the confirmation is in the works).

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
- ◆ 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)

A Guide to the Virginia Water Protection Permit Process

- ◆ 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 in order 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. **As of July 1, 2002** the following fees apply to VWP individual permits:

- ◆ VWP Individual Permit Category I: \$9,000
- ◆ VWP Individual Permit Category II: \$6,300
- ◆ VWP Individual Permit Category III: \$2,400

Upon receipt of a JPA, a DEQ permit manager 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 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
POB 10150
Richmond, Virginia 23240

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 project manager. 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 project manager 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 (9VAC25-210-80.B.1.k(4)), 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, 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:

- ◆ 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

A Guide to the Virginia Water Protection Permit Process

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, Game and Inland Fisheries, Conservation and Recreation, and Agriculture and Consumer Services, and the Virginia Marine Resources Commission. 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, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service. 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 after the 45-day period ends.

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

A Guide to the Virginia Water Protection Permit Process

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.*
- ◆ *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 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,

A Guide to the Virginia Water Protection Permit Process

the Permit Cover Page, Part I - Special Conditions, and Part II - General Conditions) to the permittee via certified mail.

Permit Denials

The circumstances under which a permit may be denied by the State Water Control Board are given in Section 9 VAC 25-210-230 of the Virginia Administrative Code 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 project manager 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 State Water Control Board (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 stipulations 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 acre
- ◆ The cumulative **increase** in stream impacts is not greater than 50 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 mitigated. 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 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.

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 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, 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 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 – Changes Under SPGP-01

Should one of the above situations arise, the same procedures are followed by DEQ for a VWP general permit that is issued under SPGP-01. However, the Corps project manager should be notified *by the applicant* that the project impacts or project details have changed. The Corps may re-evaluate the proposed activity(ies) according to the SPGP-01 conditions. The following is a summary of the SPGP-01 General Condition Number 28:

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 or Corps enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced Corps enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by the Corps-Norfolk District office, and if you fail to comply with such directive, the Corps-Norfolk District office may in certain situations accomplish the corrective measures by contract or otherwise, and bill you for the cost. Unpermitted work or violation of permit conditions may result in the Corps implementing civil, criminal or administrative penalties (33 U.S.C. 1319 c, d, and g).

Individual Permit Modifications

VWP individual permit Modifications can be 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 project manager may request a completed JPA or completed pertinent sections of the JPA if the Modification request involves major changes. Each Modification request should include:

- ◆ A reference to the existing permit condition in question
- ◆ A detailed description of the proposed Modification including the exact site location of the required Modification (for example, the roadway station number, impact area name, etc.)
- ◆ Justification for the proposed Modification

A Guide to the Virginia Water Protection Permit Process

- ◆ Detailed sketches of proposed activities and/or photographs documenting existing conditions that warrant the 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. As of July 1, 2002, fees for Modifications are:

- ◆ VWP Category I: \$4,500
- ◆ VWP Category II: \$3,150
- ◆ VWP Category III: \$1,200

The process for Major Modifications is similar to that of obtaining a VWP individual permit in that there is a review of the Modification request; coordination with State and/or Federal regulatory agencies, and 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 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

A Guide to the Virginia Water Protection Permit Process

The applicant may receive a letter from the DEQ project manager requesting additional information before a determination to grant the Minor Modification is made. The DEQ project manager 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, and the following conditions are 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
- ◆ 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 project manager determine that a request for a Modification to a VWP individual permit is not warranted, the permittee will receive a letter explaining the their 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:

A Guide to the Virginia Water Protection Permit Process

- ◆ 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 2001 expires in 2003, an Extension cannot be granted beyond 2016.

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 only when the permitted activity extends beyond the permit expiration date, such as with water withdrawals or maintenance dredging. 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. In these instances, the permittee should must submit a new JPA with applicable attachments directly to DEQ.

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 only difference is that riparian landowners near the project do not need to be notified. The fee will be the same as it was for the original permit, 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). Although Terminations can be initiated by DEQ staff, the permittee, or an interested third party, only the Board can grant a Termination.

A Guide to the Virginia Water Protection Permit Process

Should the request for Termination 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. 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.

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 10009, Richmond, VA 23240
Ellen Gilinsky, Virginia Water Protection Permit Program Manager
(804) 698-4000
egilinsky@deq.state.va.us

Virginia Department of Environmental Quality - **Piedmont Regional Office**
4949-A Cox Road, Glen Allen, VA 23060
Curt Linderman, Water Permits Manager
(804) 527-5020
cjlinderma@deq.state.va.us

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
(276) 676-4800
Allen Newman, Water Permits Manager
ajnewman@deq.state.va.us

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

Virginia Department of Environmental Quality - **West Central Regional Office**
3019 Peters Creek Road, Roanoke, VA 24019
(540) 562-6700
Kip Foster, Water Permits Manager
kdfoster@deq.state.va.us

Counties: Alleghany, Bedford, Botetourt, Craig, Floyd, Franklin, Giles, Henry, Montgomery, Patrick, Pulaski, Roanoke
Cities: Bedford, Clifton Forge, Covington, Martinsville, Radford, Roanoke, Salem

A Guide to the Virginia Water Protection Permit Process

Virginia Department of Environmental Quality - **South Central Regional Office**

7705 Timberlake Road, Lynchburg, VA 24502

(434) 582-5120

Robert Goode, Water Permits Manager

rpgoode@deq.state.va.us

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

(540) 574-7800

Keith Fowler, Planning and Permit Support Manager

bkfowler@deq.state.va.us

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

(703) 583-3800

Joan Crowther, Environmental Manager

jccrowther@deq.state.va.us

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

(757) 518-2000

Bert Parolari, Virginia Water Protection Program Manager

bwparolari@deq.state.va.us

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

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

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>

A Guide to the Virginia Water Protection Permit Process

- ◆ 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://www.epa.gov/region5/defs/html/cwa.htm> and
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC6201000>, respectively.
- ◆ Information pertaining to the **Virginia Water Protection Permit Program** can be found at:
<http://www.deq.state.va.us/wetlands/>
- ◆ A copy of the **Joint Permit Application** can be found at:
<http://www.nao.usace.army.mil/Regulatory/Regulatory.html>
- ◆ Information on **§401 Certification of the Corps' nationwide permits** can be found at:
<http://www.deq.state.va.us/wetlands/>
- ◆ **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.
- ◆ A map of **DEQ regional offices** and the counties included in each is located at:
<http://www.deq.state.va.us/>
- ◆ A map showing the **Corps Field Offices** and which counties each covers can be found at:
<http://www.nao.usace.army.mil/Regulatory/varegions.htm>
- ◆ The Virginia Department of Game and Inland Fisheries **Fish and Wildlife Data Information System** can be accessed at: <http://vafwis.org/perl/vafwis.pl/vafwis>
- ◆ USGS Hydrologic Unit Codes (or Cataloging Units) can be found at:
<http://cfpub.epa.gov/surf/locate/index.cfm>

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.