

1 INTRODUCTION

1.1 Regulatory Authority

The Virginia Water Protection (VWP) Permit Program derives regulatory authority from both the Clean Water Act (§ 401) and the State Water Control Law (SWCL), which can be read in more detail at:

<http://www.epa.gov/region5/water/cwa.htm> and
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC62010000003000010000000>.

The VWP Permit Program is designed to protect surface waters, which include waterbodies and wetlands. In accordance with this definition, DEQ has authority over most activities impacting *tidal and nontidal* open water, marshes, mudflats, springs, creeks, streams, rivers, swamps, bogs, ponds, lakes, reservoirs, and the various types of associated wetlands (including marine, riverine, palustrine, estuarine, lacustrine, and isolated). The Commonwealth's authority is independent of other federal and state authorities to protect water resources.

The overriding regulation for the VWP Permit Program is the Virginia Water Protection Permit Program Regulation 9 VAC 25-210-10 et seq., which may be viewed at: <http://leg1.state.va.us/000/reg/TOC09025.HTM#C0210>. The regulation details what activities are required to obtain a permit and what activities are not.

The State Water Control Law in the Code of Virginia also provided for the development of several VWP General Permit Regulations, as noted below, that authorize certain activities having minimal adverse impacts to human health and the environment. These regulations were last revised on January 26, 2005, and may be accessed on the Virginia General Assembly Legislative Information System web page at:

<http://leg1.state.va.us/000/reg/TOC09025.HTM>

- ▶ 9 VAC 25-660-10 et seq., VWP General Permit WP1 Impacts Less Than One-Half Acre
- ▶ 9 VAC 25-670-10 et seq., VWP General Permit WP2 Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Commission or the State Corporation Commission and Other Utility Line Activities
- ▶ 9 VAC 25-680-10 et seq., VWP General Permit WP3 Linear Transportation Projects
- ▶ 9 VAC 25-690-10 et seq., VWP General Permit WP4 Impacts from Development and Certain Mining Activities

1.2 Central Office and Regional Office Program Responsibilities

VWP Permit Program staff is located in the DEQ Central Office and in seven regional offices: Northern, Piedmont, Southwest, Tidewater, South Central, West Central, and Valley. A map of regional office locations and jurisdictions is available at: <http://www.deq.virginia.gov/regions/homepage.html>. Generally, the regional offices process and manage VWP permits for most types of projects, and provide technical support to DEQ Enforcement Staff, while the Central Office maintains the VWP permit regulations and provides program guidance. However, certain activities, such as new water supply reservoirs, withdrawals for hydroelectric projects, Virginia Department of Transportation (VDOT) projects, and some county or private sector roads, are currently processed and managed out of the Central Office. The Central Office staff also directly coordinates with the U.S. Army Corps of Engineers (USACE or “Corps”), Norfolk District, and the U.S. Environmental Protection Agency (EPA) on regulatory, procedural, technical, and administrative aspects of the wetlands program due to the statewide applicability. Regional office staff should attempt to coordinate project-specific issues with the applicable federal agency staff. However, where issues of wetland policy or regulatory interpretations are involved, the Regional VWP Permit Program Manager should consult with the VWP Permit Program Manager at Central Office, and then he/she will contact the appropriate federal agency, Virginia Office of the Attorney General, or other DEQ management.

1.3 Purpose, Organization, and Use of the VWP Permit Manual

This manual is intended to orient DEQ staff to the VWP Permit Program and to establish procedures which ensure that VWP permit actions are executed in a consistent and legally enforceable manner. Changes to the procedures established in this manual may be necessary on a periodic basis. Changing the text of this manual is the responsibility of DEQ central office staff.

The various ways in which VWP permits are issued are detailed in Sections 2 through 6, 8, and 10. Sections 7 and 9 deal with making changes to permit authorizations or permits once they are issued.

Section 11 provides guidance on permit inspection and compliance procedures. As these aspects will differ from project to project, the guidance in this section outlines the broad issues associated with these post-permitting activities. Coordination of specific inspection and compliance issues with other DEQ division staff is recommended, and in some circumstances, coordination may be required.

The manual contains VWP permit-specific sample letters to be used as *guidelines* for correspondence. The text in *bold font* and [] indicate information that may need to be modified to meet specific project needs. Instructions for completing this information will be indicated by *[italicized words within brackets]*. Obviously, you will delete the instructions, and any non-pertinent information, from your final letter. Also, you may

need to further modify existing correspondence, or create new correspondence, when the guides do not fit the specific needs.

Checklists are provided in the several manual sections and/or appendices to help permit writers track the tasks required to process permits and permit modifications, or review documents required by the permit, such as a compensation plan.

The appendices include supplemental information to the manual sections, such as the laws and regulations pertinent to the VWP Permit Program. Also, the VWPP Library on DEQNet provides additional program information, including regulatory, policy, and technical resources related to the VWP Permit Program. A separate manual is currently being created to instruct VWP staff on entering permit data into the permit tracking database used by DEQ, the Comprehensive Environmental Data System (CEDS).

This entire VWP Permit Manual is located on DEQNet at:

[http://deqnet/docs/default.asp?path=../main/water/Water_permit/VWP Permits Program](http://deqnet/docs/default.asp?path=../main/water/Water_permit/VWP_Permits_Program).

Be sure to refer to the most recent version of the manual often, as changes will be posted to DEQNet periodically.

1.4 Disclaimer

This document provides procedural guidance to DEQ Virginia Water Protection Permit staff for the review of permit applications, issuing permits or permit authorizations, and conducting other program-related activities. It does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying the State Water Control Law and the most current implementation regulations, and by considering all project and compensatory mitigation site conditions and facts.

2 INITIAL REVIEW OF THE JOINT PERMIT APPLICATION (JPA)

This section addresses the ways in which application can be made for a Virginia Water Protection (VWP) permit and the procedures for initial application review. A brief description of the most common permit processing options is provided. Subsequent sections will provide more detail on these options, such as No Permit Required (NPR), VWP general permit authorizations that do not typically require compensatory mitigation, VWP individual permits, modifications of general permit authorizations and individual permits, and the Corps-administered State Program General Permit (SPGP).

For the transition period between the former general permit regulations and those that became effective on August 1, 2006, the procedures for processing applications under certain circumstances are discussed in DEQ Guidance Memorandum Number 06-2014 available on the internal web site (DEQNet) or the public DEQ web site.

Throughout the permit application review and permit processing time periods, VWP staff should be in the habit of date-stamping all documents and correspondence received, if this is not done already by DEQ administrative staff. Also, e-mails may be printed and filed when appropriate for project documentation. All telephone conversations, site visits, and meetings should be documented in the permit project file. Updating the Comprehensive Environmental Data System (CEDS) as each task is completed will help you keep up with permitting details, and using Events Table in CEDS will assist you in tracking processing deadlines.

2.1 Forms of Application

Formerly, applicants were required to submit certain information as application for a VWP permit, and thus, there were two application forms for use by the public: Registration Statements for VWP general permits and the Joint Permit Application (JPA) for VWP individual permits. Since the VWP general permit regulations were replaced by revised versions on January 26, 2005, application for a VWP general permit authorization is now made through the JPA process, instead of through a Registration Statement form. The VWP Permit Program Regulation 9 VAC 25-210-10 et seq. is currently under review and will likely be revised in 2007 to reflect this change.

Two versions of the JPA form currently exist, the Standard JPA and the Tidewater JPA. Paper copies are available from any US Army Corps of Engineers (Corps) or Virginia Marine Resources Commission (VMRC) office. Downloadable, electronic copies are available on the Corps-Norfolk District web page:

<http://www.nao.usace.army.mil/Regulatory/JPA.html>.

These downloadable versions of the JPA may be completed electronically and saved to a computer, but a printed copy must be made for submittal. Alternatively, the public can complete and submit the forms electronically using the on-line system, which was

developed by DEQ, the Corps, and VMRC in conjunction with a private contractor in April 2005. Links to the on-line system can be found on the above-noted Corps web page.

While the most recent versions of the Standard and Tidewater JPA are dated October 2004, older versions of the JPA may continue to be used until replaced by subsequent printings. Direct the public to the Corps' web page noted above, or provide them with the contact information for a Corps or VMRC office to obtain the most recent versions of the JPA forms.

The Virginia Department of Transportation (VDOT) may apply for VWP permits using the Inter-Agency Coordination Meeting (IACM) process, which includes a special version of the JPA referred to as the IACM-JPA. VDOT permit applications are only processed by the DEQ-Central Office VWP staff, and thus, details are not included in this manual.

The JPA process begins with the submittal of the JPA form to VMRC, whether in a paper or electronic format. VMRC will then keep one copy for its review and permit considerations and will distribute the appropriate number of copies, including all attachments, to DEQ, the Corps, and if applicable, a local wetlands board. Distribution may be through regular mail or electronic mail (each DEQ office has a dedicated eJPA mailbox in Outlook). Each agency reviews the application separately, but does so in a similar time frame. With one exception, VMRC will assign a permit application number to each application prior to distribution to other agencies, regardless of the amount or type of the impacts. The exception is for projects involving impacts to isolated wetlands of minimal ecological value (IWOMEV); these permit application numbers will be assigned by the *DEQ-Central Office VWP Program*.

The standard convention for permit application numbers is the year followed by a sequential, four-digit number, such as 05-0123. When entering permit records into CEDS, this is the convention to be used for individual permits; however, for general permits, add the prefix corresponding to the type of general permit, such as WP1-05-0123.

2.2 Preliminary Processing of Applications

- 1 Determine if the application has been received by the appropriate DEQ office.

All VDOT projects; major road projects conducted by localities or private individuals (such as Chesterfield and Henrico Counties, or some counties in Northern Virginia, who construct and maintain their own secondary roads); new reservoirs; and water withdrawal projects for hydroelectric power generation are typically processed in DEQ's central office. Applications for modification of an existing impoundment; modification of a water withdrawal activity that was previously exempt from a VWP permit; minor water withdrawal impacts (e.g., golf courses); and all other activities

will likely be processed by regional office staff. Exceptions may occur on a case-by-case basis. See DEQ Guidance Memorandum Number 04-2004 for more detail on the division of labor for minimum instream flow and water withdrawal projects.

Applications for proposed projects are assigned to a regional office based on the geographic location of the project. VMRC is aware of DEQ's territories, but occasionally may send an application to the wrong office by mistake. If the application is received by the incorrect DEQ office, forward the application as soon as possible to the correct DEQ office via interoffice mail or email. As a courtesy, attempt to email the VWP Permit Program manager in that office.

A map of the counties located in each regional office's territory is located in the VWPP Library on DEQNet or on the DEQ web site at:
<http://www.deq.virginia.gov/regions/homepage.html>.

- 2.** Date-stamp all applications when received, even if an application will be forwarded to another DEQ office. Emailed JPAs will contain the date received automatically.
- 3.** If an application is received *from VMRC*, but does not contain a permit application number, contact Beth Howell at VMRC to request a number (757-247-2252 or beth.howell@mrc.virginia.gov). If an application is received by hand directly at a DEQ office, attempt to determine if the project impacts isolated wetlands only before contacting VMRC. If so, obtain a permit application number from Central Office VWP Permit Program instead. Otherwise, applications received directly from the applicant may be considered to be a courtesy copy. The processing clock does not start until the permit number is received by VMRC.
- 4.** Check to ensure that a signed Certification Statement accompanies the JPA, usually included on the JPA signature page. The signature page may be submitted either as a paper copy, by facsimile, or as an electronic file; as long as a signature is visible, the VWP Permit Program will accept the submittal and will meet the requirements of the VWP Permit Program regulation.
- 5.** Complete a preliminary review of the application *to determine if DEQ has authority over the proposed activity* and which processing option best corresponds to the proposed activity (see below).
- 6.** If a permit is required, begin a comprehensive review of the application, *adhering to established regulatory time frames*, as detailed in Section 3, or if the activities involve a *new or existing landfill*, be sure to implement the early coordination procedures with the DEQ Waste Division at Central Office, as detailed in DEQ Water Guidance Memorandum Number 05-2012. The overall permit application review steps vary depending on the type of VWP permit option and are detailed in subsequent sections.

2.3 Permit Processing Options

2.3.1 *No Permit Required (NPR)*

The VWP permit program regulation, and the VWP general permit regulations, provides a general sense of what activities may require permits and what activities the general and individual permits will not authorize. Other state and federal agencies that regulate similar activities as DEQ may take the lead in permitting responsibilities, as detailed in regulatory agreements made between those agencies and DEQ, or as provided for in the Code of Virginia. However, in most cases, DEQ does not have to waive its authority to issue a separate permit or permit authorization. Section 4 goes into more detail on making NPR determinations and processing applications accordingly.

2.3.2 *VWP General Permit Authorizations for Impacts to Nontidal Surface Waters*

The authorization to use a VWP general permit for a proposed activity is contained within Section 100 of the corresponding VWP general permit regulation and includes all conditions for coverage to be granted. The only portion of the VWP general permit authorization that you must complete is the first page, referred to as the Authorization Cover Page. The cover page contains the permittee name, address, and the dates that the authorization is effective and expires. The cover page will also contain Authorization Notes, as discussed in Section 5. The permittee will receive the VWP general permit authorization package, which typically includes a transmittal letter, the customized Authorization Cover Page, and a copy of the VWP general permit conditions (Parts I, II, and III of Section 100). The permit authorization allows the permittee to conduct the proposed activities, provided that the activities are conducted in accordance with the applicable VWP general permit regulation.

Each VWP general permit contains specific acreage and linear foot thresholds of impacts that a proposed activity(ies) cannot exceed. These thresholds include both temporary and permanent impacts to *nontidal* surface waters only.

The four existing VWP general permits are listed below.

- ▶ WP1 for Impacts Less Than One-Half of an Acre
- ▶ WP2 for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Commission or the State Corporation Commission and Other Utility Line Activities
- ▶ WP3 for Linear Transportation Projects

- ▶ WP4 for Impacts from Development and Certain Mining Activities

2.3.3 VWP General Permit Authorizations That Do Not Typically Require Compensatory Mitigation

Any one of the four VWP general permit authorizations may be issued to an applicant proposing minimal wetland, open water, or stream impacts, where compensatory mitigation is not required, and thus, the conditions contained in Section 100, Part II of the general permit authorization do not apply. “Minimal” is considered to be *permanent* wetland or open water impacts totaling up to 1/10 acre, or *permanent* stream channel impacts totaling up to 300 linear feet, that do not affect a protected natural resource, such as a threatened and endangered species, or that do not result in more than minimal impacts to water quality.

In these cases, the applicant is only required to submit certain information (certain parts of the JPA) and is not required to submit a permit application fee. Additionally, compensatory mitigation is not typically required for these minimal impacts, and thus, the resulting VWP general permit authorization, if issued, does not include the Part II conditions. However, the permittee is still responsible for abiding by the conditions in Parts I and III of Section 100 of the applicable general permit authorization.

When the impacts are below the 1/10 acre and 300 linear feet limits, but resources or water quality is adversely affected, a VWP individual permit may be required instead. You may advise the applicant to change the proposed activities in order to avoid affecting the resource or water quality, thus allowing DEQ the option of issuing the abbreviated VWP general permit authorization.

For these projects, the VWP general permit authorization consists of a Notice to Proceed Authorization Letter and a copy of the conditions in Parts I and III of Section 100 of the applicable general permit authorization. See Section 6 for more details on processing this type of authorization.

2.3.4 VWP Individual Permits

VWP individual permits are typically required when a proposed, regulated activity cannot be authorized under a VWP general permit regulation. Projects requiring a VWP individual permit may include:

- ▶ proposed *nontidal* impacts that are greater than VWP general permit use thresholds or that fall into categories excluded from one or more of the VWP general permits
- ▶ threatened or endangered species issues that require outside-agency coordination

- ▶ water withdrawal or minimum instream flow projects having more than minimal impacts, or projects having water withdrawal components (dams, intake structures), in both *tidal and nontidal* waters
- ▶ projects for which there are significant water quality, aquatic environment, or in-stream flow concerns in both *tidal and nontidal* waters
- ▶ impacts to tidal waters

The VWP individual permit conditions are customized each time to address the specific impacts of the project. Refer to the VWP Permit Program Regulation 9 VAC 25-210-10 et seq. and Section 8 of this manual for detailed information concerning VWP individual permits.

2.3.5 Changes to Existing VWP General Permit Authorizations and Individual Permits

Each VWP general permit regulation addresses the circumstances under which a general permit authorization may be changed. Part IV of the VWP Permit Program Regulation 9 VAC 25-210-10 et seq. addresses the specific situations in which a VWP individual permit may be modified.

In general, VWP *general* permit changes may take the form of a Notice of Planned Change (similar to a VWP individual permit Modification), a Continuation of Coverage (similar to a VWP individual permit Extension), a Transfer to another person, or a Termination.

VWP *individual* permits changes consist of either a Modification (Major or Minor), a Transfer, an Extension, a Revocation and Reissuance, or a Termination. Minor Modifications, which are not public noticed, are reserved for specific changes as explained in Section 9. All other modifications except Transfers are considered to be Major Modifications and require a public notice.

More information regarding the specific permit change processes for VWP general permit authorizations and individual permits is provided in Sections 7 and 9, respectively.

2.3.6 State Program General Permit (SPGP-01)

This permit program <http://www.nao.usace.army.mil/Regulatory/spgp/SPGP2003.htm> (or <http://www.nao.usace.army.mil/redesign/technical%20services/Regulatory%20branch/RBregional.asp>) is administered by the Corps and offers an opportunity for a streamlined, federal and state permitting process for applicants in Virginia. The Corps SPGP-01 applies to:

- ▶ Development projects involving fill in jurisdictional, *nontidal* waters, which may include up to 1 acre of wetlands and 2,000 linear feet of stream channel; and
- ▶ Transportation projects involving fill in up to 1/3 of an acre jurisdictional, *nontidal* waters. The Corps has suspended Nationwide Permit (NWP) 39 and the nontidal portion of NWP 14, instead utilizing the SPGP-01 to permit these activities. This allows DEQ and the Corps to be more efficient and reduce duplication in permitting process. However, the Corps has retained the lead permitting authority over fill activities in *tidal* waters that would typically fall under its Nationwide Permit 14.

More detailed information on the SPGP can be found on the Corps' web pages above and in Section 10 of this manual.

3 COMPREHENSIVE REVIEW OF THE JOINT PERMIT APPLICATION (JPA)

If the proposed project is a permissible activity, the next step is to review the JPA to determine if it is a complete application. The requirements for a complete application vary and are detailed in the VWP Program Regulation and in each VWP general permit regulation. For purposes of this manual, “days” are counted as *calendar days*, not business days.

The completeness review is intended to gather the necessary information in order to review the project proposal and negotiate any obstacles, *not* to finalize the permit conditions or any necessary compensatory mitigation plans. The sections below will detail the review procedure and informational requirements for each type of VWP permit.

Also, if the proposed activity involves a new or existing landfill, the completeness review period will be used to coordinate with the DEQ Waste Division at Central Office (see DEQ Water Guidance Memorandum Number 05-2012). If the *initial* review determined that no VWP permit is required, skip to Section 4 to complete the JPA processing.

3.1 VWP General Permits

3.1.1 *Review for a Complete Application*

The requirements for a complete application for coverage under a VWP general permit authorization are found in Sections 50 and 60 of each VWP general permit regulation.

VWP Permit Application Review Checklists have been developed to assist with the JPA review for completeness, but the checklists are not intended to replace the requirements detailed in the regulations. Sample checklists are included in this section.

For projects being considered for a VWP general permit authorization, the period of time allotted by statute for an application completeness review is **15 days** from the date the application was received at the correct DEQ office. The application should also be the official copy processed through the Joint Application Process, evidenced by a permit application number assigned by the Virginia Marine Resources Commission (VMRC) (except for projects involving impacts to isolated wetlands of minimal ecological value noted in Section 2). DEQ may receive unofficial courtesy copies of an application as well. You may begin processing the courtesy copy at your discretion, but the 15-day review period will not commence until VMRC-processed application including a permit application number, or just the VMRC-assigned permit application number, is received by the correct DEQ office, whether that be by fax, regular mail, or email. If you do not receive a VMRC-assigned permit application number within one week of the receiving the courtesy copy, then contact VMRC for the number and use the date of communication with VMRC as the ‘date received’. Also, in accordance with the permit fee regulation (9 VAC 25-20-60), review of the application may begin without receipt of

the permit application fee; however, no authorization may be issued prior to receipt of the fee. Additionally, the processing clock will not start because the fee is required for a complete application. As noted in Section 5, the authorization cannot be automatically issued if the application is not complete.

Delays in starting the review of an application does not postpone the 15-day review period. For example, if the application does not get reviewed until three days after receipt, but all the required information was provided, then the complete date will be the receipt date stamped on the application. This date marks the beginning of both the 15-day review period and the 45-day period in which to process a permit action (see next subsection of this section). However, these periods may be suspended: when the required information is not received; when a required permit application fee is not received; when the required permit application fee is not correct; when the submitted permit application fee is returned by the bank for insufficient funds; or when the applicant becomes aware that he/she omitted one or more relevant facts from an application, or submitted incorrect information in an application. More information on what to do for *incomplete* applications follows in Section 3.3.

Review of the JPA may continue beyond the 15-day review period, and you may request more information from the applicant at that time to clarify information or obtain more details, but that information request should not be considered a suspension of the review or permit processing periods if the application had been deemed complete.

Based on VWP program policy, the application complete date is the last date on which necessary information is received in order to process an application, and is also the date which starts the permit processing clock. This date will typically correspond to one of the following, whichever occurs last: 1) Receipt of confirmation that the permit application fee has been deposited by DEQ, when such fee is required; 2) the date of the last correspondence that is relevant to the complete application requirements, as per the regulation; or 3) the date of a documented telephone conversation or field visit that is relevant to the complete application requirements, as per the regulation.

- ♪ Applications for 1) projects involving a farming operation engaged in production for market, and 2) maintenance dredging for federal navigation channels or other Corps-sponsored dredging projects, are not required to submit a permit application fee, and therefore, a permit application fee should not be requested as part of a complete application. See the complete list of exemptions at 9 VAC 25-20-50.

The applicant's proposed activities must meet the VWP general permit regulatory requirements, official program guidance, and guidelines from the VWPP Program Manager. Technical review of the application should address the project impacts as they relate to the potential impairment of state water quality and/or cumulative impacts to water quality and fish and wildlife resources. Some points to keep in mind during the review are:

- ? Have the impacts to surface waters been completely identified and properly classified (e.g., emergent wetlands, stream bed, or open water)? Is the application being submitted for *tidal* impacts (tidal impacts would not qualify for a VWP general permit)? Are project impacts within the acreage and linear foot thresholds for the appropriate VWP General Permit? Do impacts result from a single and complete project as defined in the general permit regulations?
- ? Have the impacts been avoided and minimized (the first steps of mitigation) to the maximum extent practicable? Are there less environmentally damaging, practicable alternatives? *See manual appendices for guidance on avoidance, minimization, and compensatory mitigation.*
- ? Are the impacts to water quality and instream beneficial uses permanent or temporary?
- ? Will the impacts violate any numeric water quality standard, the anti-degradation standard, or the general standard?
- ? Will the impacts cause or contribute to a significant impairment of state waters or fish and wildlife resources? Use sources such as the functional assessment and agency comments to assist you in making this determination.
- ? Is an individual permit warranted instead? For example, are phases or separate parts of a project being proposed that are connected or part of a larger project?

Review of the JPA should verify that the signature page from the JPA has been completed properly, including the applicant's signature. If he/she has an agent representing them, such as an engineer or a consulting firm, that agent must sign in the appropriate area of the signature page. If the applicant or agent has a company under contract at the time of application to complete the proposed work, that company or representative must sign in the appropriate area of the signature page also. Faxed copies or electronic submittals of the signature page are acceptable, as long as the applicable signatures are present.

While the JPA forms request information on threatened and endangered (T&E) species, this information is not required for the purposes of a complete application under the general permit regulations at this time. Even when such information is submitted with the JPA, DEQ staff should conduct a screening for potential resource impacts through resource-agency tools within the 15-day review period. Information on how to conduct this screening and coordination for general permits is provided in Section 5.

An important component of the JPA is the Conceptual Compensatory Mitigation Plan. As per Section 60 B of each VWP general permit regulation, this *general* plan for

compensation must be provided with the JPA in order for the application to be considered complete. An exception is for projects that will incur minimal impacts (less than 1/10 acre of wetlands/open water or less than 300 linear feet of stream), as discussed in Section 6.

The purpose of the conceptual compensatory mitigation plan is to outline what the applicant *intends to do to compensate for unavoidable impacts to surface waters*, not to give detailed information on water budgets, construction plans, etc., which are required details of the final compensatory mitigation plan to be completed later in the permit process.

- ♪ The hydrologic analysis required for a conceptual compensatory mitigation plan consists of discussion of all water inputs and outputs (sources of water import and sources of water export). Extensive data collection in the field is not required for this plan.
- ♪ When use of an in-lieu fee fund or mitigation bank is proposed as a mitigation option in the conceptual compensatory mitigation plan, Section 60 B of each VWP general permit regulation requires either: 1) a statement from the fund administrator that serves as proof of willingness to accept a contribution to the fund (in the case of in-lieu fee funds), or 2) certification from the bank owner on the availability of credits (in the case of mitigation banks). DEQ must first approve the proposed use of an in-lieu fee fund or mitigation bank for compensation, or as part of a compensation package, *prior to* the applicant obtaining the proof of willingness or certification statement. If DEQ approves the use of the fund as meeting the project's required mitigation, then proof of willingness for in-lieu fee funds in most cases can and will be the fund voucher (cost estimate); the certification from a bank owner may simply be stated in on letterhead. For example, the Aquatic Resources Trust Fund Estimate Form will contain a statement from the fund administrator (Corps) that a contribution will be accepted, as well as the total cost estimate and how it was calculated. For this particular trust fund, a copy of the Estimate Form will be given to the DEQ permit manager by the current fund manager.

Note that, in the applicable cases, a statement of proof of willingness or certification statement is required as part of the conceptual plan, which in turn is required for a complete application. The date of the original cost estimate or certification letter is used for purposes of determining a complete application. Therefore, if the estimate or availability of credits later changes (such as after the application is deemed complete), no delay in permit processing should occur *unless* the applicant/permittee refuses to pursue the use of the in-lieu fee fund or bank. In these cases, the applicant will need to immediately submit an alternative compensation option, or he/she may withdrawal the original application and resubmit a new application in order for DEQ to consider a different compensation option. In either case, the revised information is considered to be a new application (but will not require an additional permit application fee), and the 45-day permit processing clock on the original application will stop. Or, if an authorization has already been issued, the permittee will need to submit a request for a Notice of Planned Change, or submit a new application for a new permit authorization (will require a new permit application fee).

Later in the permit process, additional documentation is required that shows proof of the contribution (contribution receipt), or in the case of a mitigation bank situation, proof of credit purchase (purchase receipt). The proof of contribution or purchase does not need to be received by DEQ prior to issuing a general permit authorization; however, it must be received prior to the permittee taking the authorized impacts in surface waters (work in upland areas may occur without the proof of contribution).

The conceptual plan should be reviewed to ensure that: 1) the basic information has been provided; 2) the proposed compensation for unavoidable impacts provides for a ‘no net loss’ of wetland acreage and function, and/or stream water quality benefits and function; and 3) the preferred order of restoration, then creation, then mitigation banking, and then in-lieu fee fund was considered, as per the VWP permit regulations and any applicable program guidance. Use the following sources to aid in the review of the plan:

- ▶ Section 70 of each VWP general permit regulation
- ▶ Manual Appendix C on Mitigation Review
- ▶ the USEPA’s self-guided training module at <http://www.epa.gov/watertrain/wetlands/text.html>
- ▶ DEQNet\VWPP Library contains the most recent lists of available banks and funds, and information on mitigation in general

The details of the compensation package may be clarified, revised, negotiated, and resubmitted until a final plan is achieved, which is submitted *after* the VWP general permit has been authorized for use, but *prior* to any construction activities in permitted impact areas. DEQ must review the final plan within 30 days of receipt. If work in permitted impact areas occurs prior to DEQ approval of the final compensation plan, the permittee will be in violation of the VWP general permit authorization and will be subject to enforcement action. More details on the final compensatory mitigation plan review process are provided in Appendix C.

The revisions to the VWP General Permit Regulations that became effective August 1, 2006 include some provisions specifically related to notification and what must be included in a complete application. Section 50 A 2 b was revised to include the requirement for documentation that verifies the quantity and type of impacts when the proposed project is impacting less than 1/10 acre wetlands or open water, or less than 300 linear feet of stream bed. Section 50 A 2 c requires that all portions of the JPA be submitted when impacts are less than 1/10 acre wetlands or open water, or less than 300 linear feet of stream bed, but they occur in a deed-restricted area. Further provisions were added to Section 50 for VDOT-administered projects, which are detailed in Sections 50 A 1, 50 A 2 a, and 50 A 2 c. Please note that the VDOT provisions do not apply to other types of linear transportation projects, such as subdivision and county-administered roads. Associated with the Section 50 provisions is Section 60 B 20, which was added

for the disclosure identifying all wetlands, open water, streams, and associated upland buffers within the proposed project or compensation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (protected areas).

3.1.2 Permit Processing Period

After a complete application is received, statute allots a **45-day** permit action processing period. The permit action is to either 1) approve the use of a VWP general permit, 2) approve its use with conditions, or 3) deny its use. If a permit action is not processed by the 45th day *after a complete application*, the VWP general permit authorization is automatically granted.

After the application is deemed complete, DEQ notifies the applicant via the completeness review letter. A sample Notice of Complete Application Letter is included to the end of this section. If alternative fee documentation was provided by the applicant, continue to process the application, but it will not be deemed complete until the permit application fee is received. Also, if the proposed activities involve a new or existing landfill, copy the application and your completeness review letter to the DEQ Waste Permitting Office Director and the Regional Waste Program Manager (see Guidance Memorandum Number 05-2012). Section 5 provides more details on processing VWP general permit authorizations from this point forward.

3.2 VWP Individual Permits

3.2.1 Review for a Complete Application

For most applications that qualify for a VWP individual permit, the period allotted by statute for a completeness review is **15 days** from the date the application was received at the correct DEQ office. However, applications for “water resources projects” have slightly different review and processing requirements, as contained in § 62.1-44.15:5.01 of the State Water Control Law. Water resources projects include the construction or modification of large reservoirs and inter-basin transfer projects, not so much the smaller dam replacement or maintenance projects, or the withdrawals associated with golf course operations. The remainder of this section will focus on non-water resources project applications.

VWP Permit Application Review Checklists have been developed to assist with the JPA review for completeness, but the checklists are not intended to replace the requirements detailed in the regulations. Sample checklists are included in this section.

The application should be the official copy processed through the Joint Application Process, evidenced by a permit application number assigned by the Virginia Marine Resources Commission (VMRC) (except for projects involving impacts to isolated wetlands of minimal ecological value noted in Section 2). DEQ may receive unofficial

courtesy copies of an application as well. You may begin processing the courtesy copy at your discretion, but the 15-day review period will not commence until VMRC-processed application including a permit application number, or just the VMRC-assigned permit application number, is received by the correct DEQ office, whether that be by fax, regular mail, or email. If you do not receive a VMRC-assigned permit application number within one week of the receiving the courtesy copy, then contact VMRC for the number and use the date of communication with VMRC as the 'date received'. Also, in accordance with the permit fee regulation (9 VAC 25-20-60), review of the application may begin without receipt of the permit application fee; however, no permit may be issued prior to receipt of the fee.

Delays in starting the review of an application does not postpone the 15-day review period. For example, if the application does not get reviewed until three days after receipt, but all the required information was provided, then the complete date will be the receipt date stamped on the application. This date marks the beginning of both the 15-day review period and the 120-day period in which to process a permit action (see next subsection of this section). However, these periods may be suspended: when the required information is not received; when a required permit application fee is not received; when the required permit application fee is not correct; when the submitted permit application fee is returned by the bank for insufficient funds; or when the applicant becomes aware that he/she omitted one or more relevant facts from an application, or submitted incorrect information in an application. More information on what to do for *incomplete* applications follows in Section 3.3.

Review of the JPA may continue beyond the 15-day review period, and you may request more information from the applicant at that time to clarify information or obtain more details, but that information request should not be considered a suspension of the review or permit processing periods if the application had been deemed complete.

Based on VWP program policy, the application complete date is the last date on which necessary information is received in order to process an application, and is also the date which starts the permit processing clock. This date will typically correspond to one of the following, whichever occurs last: 1) Receipt of confirmation that the permit application fee has been deposited by DEQ, when such a fee is required; 2) the date of the last correspondence that is relevant to the complete application requirements, as per the regulation; or 3) the date of a documented telephone conversation or field visit that is relevant to the complete application requirements, as per the regulation.

- ♫ Applications for 1) projects involving a farming operation engaged in production for market, and 2) maintenance dredging for federal navigation channels or other Corps-sponsored dredging projects, are not required to submit a permit application fee, and therefore, a permit application fee should not be requested as part of a complete application. See the complete list of exemptions at 9 VAC 25-20-50.

The applicant's proposed activities must meet the VWP Permit Program regulatory requirements, official program guidance, and guidelines from the VWPP Program

Manager. Technical review of the application should address the project impacts as they relate to the potential impairment of state water quality and/or cumulative impacts to water quality and fish and wildlife resources. Some points to keep in mind during the review are:

- ? Have the impacts to surface waters been completely identified and properly classified (e.g., emergent wetlands, stream bed or open water)?
- ? Have the impacts been avoided and minimized to the maximum extent practicable (first steps of compensatory mitigation)? Are there less environmentally damaging alternatives that are also practicable? *See manual appendices for guidance on avoidance, minimization, and compensatory mitigation.*
- ? Are the impacts to water quality and instream beneficial uses permanent or temporary?
- ? Will the impacts violate any numeric water quality standard, the anti-degradation standard, or the general standard?
- ? Will the impacts cause or contribute to a significant impairment of state waters or fish and wildlife resources? Use sources such as the functional assessment and agency comments to make assist you in making this determination.

Review of the JPA should verify that the signature page from the JPA has been completed properly, including the applicant's signature. If he/she has an agent representing them, such as an engineer or a consulting firm, that agent must sign in the appropriate area of the signature page. If the applicant or agent has a company under contract at the time of application to complete the proposed work, that company or representative must sign in the appropriate area of the signature page also. Faxed copies or electronic submittals of the signature page are acceptable, as long as the applicable signatures are present.

Unlike with the general permit applications, an application for an individual permit is required to include information on threatened and endangered species (T&E). However, you must verify any information on T&E species using the on-line or paper resource-agency tools and established coordination protocols within the 15-day review period, as detailed in Section 8.

An important component of the JPA is the Conceptual Compensatory Mitigation Plan. This *general* plan for compensation must be provided with the JPA in order for the application to be considered complete. An exception is for projects that will incur minimal impacts (less than 1/10 acre of wetlands/open water or less than 300 linear feet of stream), as discussed in Section 6.

The purpose of the conceptual compensatory mitigation plan is to outline what the applicant *intends to do to compensate for unavoidable impacts to surface waters*, not to give detailed information on water budgets, construction plans, etc., which are required details of the final compensatory mitigation plan to be completed later in the permit process.

- ♪ The hydrologic analysis required for a conceptual compensatory mitigation plan consists of discussion of all water inputs and outputs (sources of water import and sources of water export). Extensive data collection in the field is not required for this plan.
- ♪ When use of an in-lieu fee fund or mitigation bank is proposed as a mitigation option in the conceptual compensatory mitigation plan, Section 80 B 1 k (4) (e) of the VWP Program Regulation requires either: 1) a statement from the fund administrator that serves as proof of willingness to accept a contribution to the fund (in the case of in-lieu fee funds), or 2) certification from the bank owner on the availability of credits (in the case of mitigation banks). DEQ must first approve the proposed use of an in-lieu fee fund or mitigation bank for compensation, or as part of a compensation package, *prior to* the applicant obtaining the proof of willingness or certification statement. If DEQ approves the use of the fund as meeting the project's required mitigation, then proof of willingness for in-lieu fee funds in most cases can and will be the fund voucher (cost estimate); the certification from a bank owner may simply be stated in on letterhead. For example, the Aquatic Resources Trust Fund Estimate Form will contain a statement from the fund administrator (Corps) that a contribution will be accepted, as well as the total cost estimate and how it was calculated. For this trust fund, a copy of the Estimate Form will be given to the DEQ permit manager by the current fund manager.

Note that, in the applicable cases, a statement of proof of willingness or certification statement is required as part of the conceptual plan, which in turn is required for a complete application. The date of the original cost estimate or certification letter is used for purposes of determining a complete application. Therefore, if the estimate or availability of credits later changes (such as after the application is deemed complete), no delay in permit processing should occur *unless* the applicant/permittee refuses to pursue the use of the in-lieu fee fund or bank. In these cases, the applicant will need to immediately submit an alternative compensation option, or he/she may withdrawal the original application and resubmit a new application in order for DEQ to consider a different compensation option. In either case, the revised information is considered to be a new application (but will not require an additional permit application fee), and the 120-day permit processing clock on the original application will stop. Or, if a permit has already been issued, the permittee will need to submit a request for permit Modification, or submit a new application for a new permit (will require a new permit application fee).

Later in the permit process, additional documentation is required that shows proof of the contribution (contribution receipt), or in the case of a mitigation bank situation, proof of credit purchase (purchase receipt). The proof of contribution or purchase does not need to be received by DEQ prior to issuing an individual permit; however,

it must be received prior to the permittee taking the authorized impacts in surface waters (work in upland areas may occur without the proof of contribution).

The conceptual plan should be reviewed to ensure that: 1) the basic information has been provided; 2) the proposed compensation for unavoidable impacts provides for a 'no net loss' of wetland acreage and function, and/or stream water quality benefits and function; and 3) the preferred order of restoration, then creation, then mitigation banking, and then in-lieu fee fund was considered, as per the VWP permit regulations and any applicable program guidance. Use the following sources to aid in the review of the plan:

- ▶ Sections 80 and 115 of the VWP Permit Program regulation
- ▶ Manual Appendix C on Mitigation Review
- ▶ the USEPA's self-guided training module at <http://www.epa.gov/watertrain/wetlands/text.html>
- ▶ DEQNet\VWPP Library contains the most recent lists of available banks and funds, and general reference materials on mitigation

The details of the compensation package may be clarified, revised, negotiated, and resubmitted until a final plan is achieved, which is required to be submitted *after* the VWP individual permit has been issued, but *prior* to any construction activities in permitted impact areas. The DEQ permit manager should review the final plan within 30 days of receipt. If work in permitted impact areas occurs prior to DEQ approval of the final compensation plan, the permittee will be in violation of their permit and will be subject to enforcement action. More details on the final compensatory mitigation plan review process are provided in Appendix C.

3.2.2 Permit Processing Period

After a complete application is received, statute allots a **120-day** permit action processing period. The permit action is to either 1) issue a VWP individual permit, 2) issue the permit with conditions, 3) deny the permit, or 4) or decide to conduct a public meeting or hearing. When the action is to hold a public meeting or hearing, that meeting or hearing must occur within 60 days of making the preliminary permit action. Then the final permit action must occur within 90 days of the meeting or hearing. Unlike with the VWP general permits, a VWP individual permit is *not* automatically granted after 120 days have passed.

In order to allow time for the applicant to review the draft permit, the publication of the public notice, the 30-day comment period, and the final issuance, permit staff should attempt to issue a draft individual permit within 60 days of a complete application.

After the application is deemed complete, DEQ notifies the applicant via the completeness review letter. A sample Notice of Complete Application Letter is included to the end of this section. If the proposed activities involve a new or existing landfill, copy the application and your completeness review letter to the DEQ Waste Permitting Office Director and the Regional Waste Program Manager. Section 8 provides more details on processing VWP individual permits from this point forward.

3.3 Incomplete Applications and Review Suspension (GPs and IPs)

When an application is determined to be incomplete, a letter is sent to the applicant requesting the missing information. The Additional Information and Permit Application Fee Request (Add Info) letter includes an itemized list of the needed information to make the application complete, and in those cases where a permit application fee is required but not yet submitted, the Permit Application Fee Form. The Add Info letter must be sent within **15 days** of receiving the application. Two sample Add Info letters are attached to the end of this section, one for general permit projects and one for individual permit projects.

Several Add Info requests may be necessary to achieve a complete application. By VWP Program policy, each review of information received from the applicant should occur within **15 days**.

If the applicant fails to respond in some manner within 30 days of the Add Info letter date, contact the applicant via telephone or e-mail, and notify your supervisor. If no resolution is achieved, send a Notice of Application Suspension Letter via certified mail (see sample attached to this section). The Suspension Letter officially notifies the applicant that DEQ is stopping the permit application review process until such time that all the requested information is received (as required by the applicable regulation).

After 180 days from receiving the original permit application, the incomplete application can be administratively withdrawn by DEQ on behalf of the State Water Control Board. For general permit applications, this provision became effective on August 1, 2006 (see Section 60 E of each regulation). A sample letter is provided in this section for use in notifying the applicant.

Sections 5 and/or 8 provide more information on processing a permit or permit authorization withdrawal or denial.

3.4 Permit Application Fees and Refunds

The permit application fees for VWP general permits and individual permits are based upon the type of project and the amount of *permanent and temporary* impacts. Refer to the Permit Fee Regulation 9 VAC 25-20 et seq. for current fee amounts, or check the DEQ web site for updates: <http://www.deq.virginia.gov/wetlands/permitfees.html>. Note that the fee categories are based on the type of permit received, type of activity, and the

surface water impacts acreage. The categories of VWP individual permit projects are detailed in the Permit Fee Regulation, which can be accessed from the Virginia General Assembly Legislative Information System at <http://leg1.state.va.us/000/srr.htm>.

However, permit application fees are *not required* from the following types of projects:

- ▶ Farming operations, including aquaculture, that are engaged in production for market.
- ▶ Maintenance dredging for federal navigation channels, or other dredging projects sponsored by the Corps.
- ▶ Projects where *permanent* impacts total less than 1/10 acre wetlands or open water, or less than 300 linear feet of stream channel, including those situations when the impacts are located in a deed-restricted area.

Each fee category has a maximum dollar amount that can be charged, regardless of the total impact amounts. Also, several project categories require permit application fees consisting of a base fee and an incremental fee that is dependent upon the amount of impacts (a supplemental fee applies to *each 1/10 acre increment of impacts* over the base acreage impacts). For program purposes, these fee categories are referred to as 'base plus' fees. The 'base plus' fees for issuance are:

- ▶ Issuance, VWP Individual / Surface Water Impacts (which includes wetlands, streams, and/or open water)
- ▶ Issuance, VWP Individual / Nonmetallic Mineral Mining
- ▶ Issuance, VWP General / Greater Than one acre (43,560 sq.ft.) to two acres (87,120 sq.ft.) of Surface Water Impacts (which includes wetlands, streams, and/or open water)

An example may be the issuance of an individual permit for a project impacting 2.5 acres of wetlands, open water, and streams. This project would require a permit application fee totaling the base fee of \$2,400, plus the supplemental fee of \$1,100 (five 1/10 acre increments of \$220 each), which totals \$3,500.

When a 'base plus' fee category is selected in CEDS on the General Information data entry screen, and a total acreage amount is entered, and the total permit application fee is automatically calculated.

Modifications of VWP individual permits are also subject to the 'base plus' fee categories, as follows:

- ▶ Modification, VWP Individual / Surface Water Impacts (Wetlands, Streams, and/or Open Water)
- ▶ Modification, VWP Individual / Nonmetallic Mineral Mining

Fees for modifications are calculated on the total amount of impacts involved with the *modification*, not on the combination of the original permitted impacts and the modification impacts. Therefore, each modification is assessed a base fee, plus an additional fee calculated from the amount of impacts associated with the *modification*.

An increase in only the proposed *permanent* impacts, when this occurs *during the permit review process* but prior to issuing a VWP individual permit or VWP general permit authorization, will require an additional permit application fee. Increases in temporary impacts do not require an additional fee. An increase in only the proposed *permanent* impacts *after issuance of a permit or authorization* will require a Modification or a Notice of Planned Change to the permit or authorization, which may or may not require an additional fee. For example, a modification application fee may be required for an individual permit when increases are considered to be major, but no fee is required for a major modification made at the Board's initiative, and a new permit application fee may be required for a general permit authorization when the increase is above the allowable limits for a Notice of Planned Change, and thus by default, the increase in impacts requires an individual permit.

Refunds may only be generated under certain circumstances, as detailed in Guidance Memorandum Number 06-2011 (see DEQNet). See more on refunds in the applicable subsection below.

3.4.1 Fee Form

DEQ officially requests the appropriate permit or modification application fee using the Permit Application Fee Form (fee form), which may be attached to the Add Info letter if necessary. The fee form can be obtained from the DEQ web page <http://www.deq.virginia.gov/watersupply/pdf/feeform04.pdf> or internally from DEQNet.

The following sections of the form should be completed before sending it to the applicant: Type of Permit Applied For, Type of Action, Amount of Fee Submitted, Existing Permit Number (if applicable), and the DEQ Office to Which Application Submitted. Also, ***the permit writer's name and phone number should be added at the bottom of the fee form so that questions can be directed accordingly.***

The applicant is responsible for completing the remaining information and submitting the fee form and payment, made payable to the "Treasurer of Virginia", to:

2006 Virginia Water Protection Permit Manual

Department of Environmental Quality
Receipts Control
POB 1104
Richmond, VA 23218

Should an applicant return the fee form and/or payment to you rather than to DEQ Receipts Control, attempt to complete the fee form and give the form and the check to the office manager for the proper logging and mailing procedures. If a payment is received at Central Office, the check should be hand delivered to DEQ Receipts Control on the same day of receipt.

Once the fee has been deposited, the DEQ Office of Financial Management-Accounts Receivable (OFM-AR) will complete the "For DEQ Use Only" section of the fee form and will send your office a copy of the fee form, a copy of the check, and a copy of the Receipt Transmittal Log (RTL). If you do not receive proof of deposit within a reasonable period of time, contact OFM-AR to verify the official date of deposit. If you find that the fee has been credited to the *incorrect* office (cost center), please send a copy of the documentation received, noting the correct information, to OFM-AR. OFM-AR will take the proper steps to update and send the revised copy to the appropriate office.

- ♪ OFM-AR updates RTL information on a daily basis on DEQNet, and may be useful if you know the date of deposit. To access, go to http://deqnet/docs/default.asp?path=../main/admin/admin_finance/ar_dailydcs. Go to the RTL date of interest. Scroll to the 0914 State Water Control Board Permit Program page for the RTL information. The daily information is only on DEQNet on a monthly basis. *Approximately two weeks after the month closes, the daily RTL's listed will be updated to the "monthly fund report" directory within the same path noted above.*

3.4.2 Inter-Agency Transfer (IAT)

Another method of payment is the Inter-Agency Transfer (IAT). State agencies *may* process an IAT by submitting a completed fee form and an IAT form to the DEQ Receipts Control office. If you receive these forms, contact OFM-AR, or have the agency directly contact OFM-AR, to ensure the proper handling of the fund transfer. If the agency contacts you regarding the proper DEQ coding to use for the IAT, refer to Attachment A of Guidance Memorandum Number 06-2011 (Water Permit Fee Program Procedures).

OFM-AR should provide you with proof of transfer/deposit with a reasonable amount of time, or you can check DEQNet to get a printed copy of the RTL, if you know the date of transfer/deposit. Again, if you do not receive proof within a reasonable period of time, contact OFM-AR to verify the official date of transfer/deposit.

If a check has been returned to OFM-AR due to insufficient funds, stop payment, etc., the OFM-AR staff will contact the appropriate DEQ office involved. You will be

responsible for generating a deficiency letter in these cases. A sample deficiency letter is attached to this section. A copy of the letter should be sent to OFM-AR.

3.4.3 Refunds

DEQ Guidance Memorandum Number 06-2011 outlines the situations in which a refund of the permit application fee is appropriate. Generally, refunds should only be initiated when the general permit determination changes to an NPR determination, or when a mistake is made in determining the appropriate fee. It is the Regional VWP Manager's decision to approve or deny a refund request by an applicant who has avoided and minimized impacts in order to change the required fee when VWP staff has spent time reviewing the application. Refunds may also be processed if the application is withdrawn within 90 days of receipt *and* has not been deemed administratively complete.

Refund requests may only be initiated for permit fees received within the fiscal year. Permit fee refund requests for fees received in June must be made within 90 days of receipt.

In those cases where a refund is appropriate, the refund is initiated by completing a Permit Fee Refund Request Form, then submitting the form and a copy of all applicable payment information to the OFM-AR manager at Central Office. The refund request form is included as Attachment B to Guidance Memorandum Number 06-2011 and can be obtained internally from DEQNet at:

http://deqnet/docs/water/Guidance_Memoranda/2006_Guidance_Memos/GM06-2011.Water_Permits_Fee_Program_Procedures.pdf

When completing the form, check the appropriate reason for requesting the refund, such as '*an incorrect fee amount was determined during the permit application review*'. Attach a copy of the permit application fee form, which shows the payment amount and date of deposit. Submit the request form and attachments to the Office of Wetlands and Water Protection for approval.

The request will be reviewed and approved or denied by OFM-AR staff. Denied requests will be returned to the requesting office.

When a general permit determination is elevated to an individual permit determination, such as when there are significant threatened and endangered species issues, the general permit application fee may be applied toward the cost of the individual permit application fee. DEQ Receipts Control will need a copy of the already-completed VWP general permit fee form, a check for the cost difference, and a brief explanation of the circumstances.

3.5 Site Visits

A site visit is often necessary during the permit application review or permit processing periods to verify or clarify information provided by the applicant. When conducting site visits, document the existing site conditions with notes and photographs pertinent to the proposed impact or compensation areas, adjacent waterbodies, and/or any potential areas of concern. *The following guidelines will assist DEQ in maintaining a complete and accurate permit file:*

- ▶ Photographs should be clearly labeled with the permit application number, impact site name or number, date and time, name of the person taking the photograph, directional view, and a brief description of the subject matter.
- ▶ Site observation notes should be written in ink and made in a bound field book that has consecutively numbered pages. The site name, permit application number, and the date should be listed on all pages used during each site visit. Each individual observation should list the time that the observation was made and a description of the observation. The name, title, address, and telephone number of anyone interviewed during the site visit should be listed in the field book. Approximate locations of any photographs, their directional views, and their descriptions should also be listed in the field book. Upon returning to the office, copy the appropriate field book pages to the permit file.
- ▶ The use of Global Positioning System (GPS) units is encouraged when documenting the location of the project, project impacts, areas of concern, other site features, and/or photographed subjects. For consistency, and to aid DEQ grant reporting requirements, be sure to program the unit settings to *degrees/minutes/seconds, Map Datum WGS84, and true north* when using GPS units.

Application Review Checklists for VWP General Permit Authorizations

The following checklists are to be used as *guides* to review a JPA for completeness and to develop any necessary Additional Information and Permit Application Fee Request (Add Info) letters. *Refer to the VWP Permit Program regulation and Sections 50 and 60 of each VWP general permit regulation for details of required information for complete applications.*

Project Information

- ☐ Applicant name, mailing address, telephone number, and fax number (if applicable)
- ☐ If applicable, authorized agent name, mailing address, telephone number, and fax number and electronic mail address (if applicable)
- ☐ If applicable, existing VWP permit number
- ☐ Project name and a complete narrative description of the project, including project purpose and need, and scope of work in state waters (both temporary and permanent)
- ☐ Project location information including the city/county, name of waterbody(ies) or receiving stream, hydrologic unit code, and project latitude and longitude (to the nearest second)
- ☐ Project location map (for example, USGS 7.5-Minute Series Topographic Map), including the project boundary; should be of sufficient detail that the site could be easily located for inspection
- ☐ Detailed, plan view drawings, and cross-sectional or profile drawings as appropriate

Full-size or half-size plan sheets for the project: north arrow, scale, existing structures, existing and proposed contours (if available), limits of surface water areas, direction of flow, ordinary high water mark, impact limits, location and dimensions of all proposed structures in impact areas (fill riprap/outlet protection/channel tie-ins, dredging, excavation); cross-sectional or profile sketches may be required to detail impact areas

- ☐ **WP 3, WP 4 only:** Dredged material plan, including plan and cross-section view drawings of the disposal or dewatering area, the dimensions and design of the proposed berm and spillway, and the capacity of the proposed disposal or dewatering site

- ☐ Surface waters impact information (wetlands, streams, or open water) for permanent and temporary impacts, including a description of the impact, the extent of the impact (area of wetland in square feet and acres; area of stream, length of stream, and average width); the location (latitude and longitude at the center of the impact, or at the center of each impact for linear projects) and the type of surface water impact (open water; wetlands according to the Cowardin classification or similar terminology; or perennial and nonperennial for streams)
- ☐ **WP2, WP3, WP4 only:** Functional values assessment for wetland impacts over one acre, which consists of a summary of field observations of the existing wetland functions and values and an assessment of the impact that the project will have on these functions and values; the following parameters and functions should be directly addressed: surrounding land uses and cover types; nutrient, sediment, and pollutant trapping; flood control and flood storage capacity; erosion control and shoreline stabilization; groundwater recharge and discharge; aquatic and wildlife habitat; and unique or critical habitats
- ☐ Description of the specific on-site measures considered and taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable (e.g., conduct activities in the dry, spanning bridges, bottomless culverts, coffer dams, alignment of crossings)
- ☐ Conceptual compensatory mitigation plan for unavoidable impacts, if applicable (a separate checklist for a conceptual mitigation plan follows)
- ☐ Delineation map showing the geographic area of delineated wetlands, the location of streams, open water, and the approximate limits of Chesapeake Bay Resource Protection Areas (RPAs); includes a copy of the wetland delineation data sheets; wetland types noted according to their Cowardin classification or similar terminology; and copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary (if not available at the time of application, as soon as it becomes available during the VWP permit review)
- ☐ FEMA flood insurance rate map or FEMA-approved local floodplain map for the project site
- ☐ Permit Application Fee, if required (see 9 VAC 25-20 for complete list of exemptions); since the permit application fee for VWP permit authorizations is based on acres only, impacts that include linear feet of stream bed must be converted to an acreage in order to calculate the permit application fee)
- ☐ A written disclosure identifying all wetlands, open water, streams, and associated upland buffers within the proposed project or compensation areas that are under a

deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (protected areas), including the nature of the prohibited activities within the protected areas

☐ Certification Statement (located on signature page from JPA)

Disclaimer: This document provides procedural guidance to DEQ VWP permit staff for the review of VWP permit applications. It does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying the State Water Control Law and the implementation regulations on the basis of the site specific facts when permits are issued.

Conceptual Compensatory Mitigation Plan

Sections 30, 60, 70, and 80 of each VWP general permit regulation should be used as a reference in reviewing the *Conceptual* Compensatory Mitigation Plan.

This checklist, based on the requirements of Section 60, does not include the Final Compensatory Mitigation Plan requirements, as those are not required for a complete application.

Generally, the sequence of preferred compensation options shall be restoration, then creation, then mitigation banking, and then in-lieu fee fund (except for WP1). Also, on-site, in-kind compensatory mitigation, when available, shall be deemed the most ecologically preferable form of compensation for project impacts, in most cases. However, off-site or out-of-kind compensation opportunities that prove to be more ecologically preferable to practicable on-site or in-kind compensation may be considered. When the applicant can demonstrate satisfactorily that an off-site or out-of-kind compensatory mitigation proposal is ecologically preferable, then such proposal may be deemed appropriate for compensation of project impacts.

WP1:

- ☐ Fund: Description of the intended compensation for unavoidable impacts, including written documentation of the willingness of the entity to accept the donation and how the amount of the contribution was calculated
- ☐ Bank: The name of the proposed mitigation bank, the bank sites' hydrologic unit code (HUC), the number of credits proposed to be purchased or used, and certification from the bank owner of the availability of credits

WP2, WP3, WP4:

Off-site Wetlands and Stream Compensation (Bank, In-Lieu Fee Fund Only)

- ☐ Discussion of why off-site compensation is ecologically preferable to on-site compensation, including following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, surface water functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructability, and cost
- ☐ Fund: Description of the intended compensation for unavoidable impacts, including written documentation of the willingness of the entity to accept the donation and how the amount of the contribution was calculated

- ☐ Bank: The name of the proposed mitigation bank, the bank sites' hydrologic unit code (HUC), the number of credits proposed to be purchased or used, and certification from the bank owner of the availability of credits

Off-site Wetlands Compensation (Creation, Enhancement, Restoration, Preservation, Bank, In-Lieu Fee Fund)

- ☐ Discussion of why off-site compensation is ecologically preferable to on-site compensation, including following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, surface water functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructability, and cost
 - ☐ Goals and objectives in terms of replacement *wetland* acreage and function
 - ☐ Location map including latitude and longitude (to the nearest second) at center of compensation site
 - ☐ Description of surrounding land use
 - ☐ Hydrologic analysis, including draft water budget based on expected monthly inputs and outputs that will project water level elevations for a typical, wet, and dry year
 - ☐ Groundwater elevation data, if available, or proposed location of groundwater monitoring wells
 - ☐ Map of existing surface water areas on site, if applicable, including a copy of the Corps delineation confirmation for any existing wetlands
 - ☐ Conceptual grading plan (with existing and proposed elevations)
 - ☐ Conceptual planting schemes, including suggested species list and zonation of each vegetation type proposed
- Request acreage of each vegetation type proposed if not provided by the applicant.
- ☐ Description of existing soils, including general information on topsoil and subsoil conditions, permeability, and need for soil amendments

- ☐ Fund: Description of the intended compensation for unavoidable impacts, including written documentation of the willingness of the entity to accept the donation and how the amount of the contribution was calculated
- ☐ Bank: The name of the proposed mitigation bank, the bank sites' hydrologic unit code (HUC), the number of credits proposed to be purchased or used, and certification from the bank owner of the availability of credits

Off-site Stream Compensation (Restoration, Enhancement, Preservation, Bank, In-Lieu Fee Fund)

- ☐ Discussion of why off-site compensation is ecologically preferable to on-site compensation, including following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, surface water functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructability, and cost
- ☐ Goals and objectives in terms of water quality benefits and replacing *stream* functions
- ☐ Detailed location map, including latitude and longitude (to the nearest second)
- ☐ Location of proposed stream segment restoration, including plan view and cross-section sketches
- ☐ Stream deficiencies to be addressed
- ☐ Proposed restoration measures, including channel measurements, proposed design flows and types of instream structures
- ☐ Reference stream data, if available
- ☐ Fund: Description of the intended compensation for unavoidable impacts, including written documentation of the willingness of the entity to accept the donation and how the amount of the contribution was calculated
- ☐ Bank: The name of the proposed mitigation bank, the bank sites' hydrologic unit code (HUC), the number of credits proposed to be purchased or used, and certification from the bank owner of the availability of credits

On-site Wetland Compensation (Creation, Restoration, Enhancement, Preservation)

- ☐ Goals and objectives in terms of replacement *wetland* acreage and function

- ☐ Location map including latitude and longitude (to the nearest second) at center of compensation site
- ☐ Description of surrounding land use
- ☐ Hydrologic analysis, including draft water budget based on expected monthly inputs and outputs that will project water level elevations for a typical, wet, and dry year
- ☐ Groundwater elevation data, if available, or proposed location of groundwater monitoring wells
- ☐ Map of existing surface water areas on site, if applicable, including a copy of the Corps delineation confirmation for any existing wetlands
- ☐ Conceptual grading plan (with existing and proposed elevations)
- ☐ Conceptual planting schemes, including suggested species list and zonation of each vegetation type proposed

Request acreage of each vegetation type proposed if not provided by the applicant.

- ☐ Description of existing soils, including general information on topsoil and subsoil conditions, permeability, and need for soil amendments

On-site Stream Compensation (Restoration, Enhancement, Preservation)

- ☐ Goals and objectives in terms of water quality benefits and replacing *stream* functions
- ☐ Detailed location map, including latitude and longitude (to the nearest second)
- ☐ Location of proposed stream segment restoration, including plan view and cross-section sketches
- ☐ Stream deficiencies to be addressed
- ☐ Proposed restoration measures, including channel measurements, proposed design flows and types of instream structures
- ☐ Reference stream data, if available

- ☐ Completed stream impact assessment methodology approved by the board

Disclaimer: This document provides procedural guidance to DEQ VWP permit staff for the review of VWP permit applications. It does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying the State Water Control Law and the implementation regulations on the basis of the site specific facts when permits are issued.

Application Review Checklists for VWP Individual Permits

The following checklists are to be used as *guides* to review a JPA for “completeness” and to develop any necessary Additional Information and Permit Application Fee Request (Add Info) letters. *Refer to the VWP Permit Program regulation for details of required information for complete applications.*

Project Information

All Projects

- ☐ Applicant name and mailing address
- ☐ Authorized agent name and address, if applicable
- ☐ Property owner name and mailing address, if different from applicant
- ☐ Project purpose, need, and description, including type of activities, physical alterations to surface waters, impact information (both temporary and permanent) for wetlands, streams, and open water in square feet, acres, or linear feet

Wetland impacts should be quantified according to their Cowardin classification or similar terminology

Impact information includes the exact location (e.g., Station Number 185+20 to 188+10), size or area (linear feet, and/or dimensions, and/or acreage), and DEQ Classification from the Water Quality Standards. For streams, impact information includes the drainage area, the pool/riffle/flat ratio, and substrate type. For wetlands, impact information includes the type (e.g., palustrine forested) and impact description and dimensions (e.g., placement of fill in 200' by 225' area for installation of 30" diameter by 200' long concrete pipe).

- ☐ Materials assessment results showing dredge/fill material free of toxic contaminants
- ☐ Proposed construction schedule
- ☐ Certification Statement (signature page from JPA)
- ☐ Project latitude and longitude (to the nearest second) at the center of the project
- ☐ Hydrologic unit code (HUC) for project and compensation sites
- ☐ DEQ stream classification (see Water Quality Standards)

☐ Stream drainage area

☐ Wetland functions and values assessment for wetland impacts over one acre, if applicable

This includes information on beneficial uses, fish and wildlife resources, and habitat at proposed project location. Functional values may include water quality, floodflow desynchronization, nutrient import or export, stormwater retention or detention, groundwater recharge or discharge, fish and wildlife habitat, recreation, education, and aesthetics. Beneficial uses may include the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, cultural and aesthetic values, domestic (including public water supply), agricultural, electric power generation, and commercial and industrial uses.

☐ Functions and values assessment for surface water impacts due to water withdrawal activities

This includes information on beneficial uses, fish and wildlife resources, and habitat at proposed project location. Functional values may include water quality, floodflow desynchronization, nutrient import or export, stormwater retention or detention, groundwater recharge or discharge, fish and wildlife habitat, recreation, education, and aesthetics. Beneficial uses may include the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, cultural and aesthetic values, domestic (including public water supply), agricultural, electric power generation, and commercial and industrial uses.

☐ Wetlands delineation information

An aerial photo, scaled map, or delineation report that clearly shows the property boundaries, nonimpacted wetland and waterway boundaries, approximate limits of RPAs (if applicable), and surface water and wetland impacts at the site, including latitude and longitude (to the nearest second) of the center of the impact area

A copy of the wetland delineation data sheets

A copy of the Corps delineation confirmation or evidence of confirmation in progress (also required for Conceptual Compensation Plan, if existing wetlands are present at compensation site)

Wetland impacts should be quantified according to their Cowardin classification or similar terminology

- ☐ State- and federally-listed threatened and endangered species information, including correspondence or documentation from federal or state resource agencies addressing potential impacts to listed species

- ☐ Conceptual Mitigation plan

Demonstration of avoidance and minimization, including a narrative description detailing the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable

Compensation for unavoidable impacts; a separate checklist for a conceptual mitigation plan follows.

- ☐ Detailed project location map, including the latitude and longitude for the project, hydrologic unit code (HUC), and stream classification, if applicable
- ☐ Full-size or half-size plan sheets for the project: limits of all surface waters, north arrow, scale, existing structures, existing contours, proposed contours (if available), limits of surface water areas, ebb and flood or direction of flow, impact limits, location and dimensions of all proposed structures in impact areas (fill riprap/outlet protection/channel tie-ins, dredging, excavation)
- ☐ Permit Application Fee, if required (see 9 VAC 25-20 for complete list of exemptions)

Water Withdrawal, FERC Hydropower Licensing, and Impoundment Projects

- ☐ Justification for proposed water withdrawal needs
- ☐ Drainage area, average annual flow, median monthly stream flows (cubic feet per second), and if available, historical flows at the water intake or dam site, including description of stream flow gauges, the type of calculations used
- ☐ Maximum instantaneous withdrawal and maximum daily withdrawal at the water intake or dam site, including variability of the demand by season
- ☐ Information on how the proposed withdrawal will impact flows in terms of flow reduction
- ☐ Amount of water lost to consumptive use, the average daily return flow of the proposed project, and the location of the return flow

- ☐ Description of the method used to calculate the amount of water withdrawn (include relevant assumptions)
- ☐ Proposed use and need of the surface water and information describing how the demand was determined
- ☐ Description of the existing beneficial uses of the surface waterbody affected by the water withdrawal, including both in-stream and off-stream uses
- ☐ Information on the known aquatic life impacted by proposed withdrawal, including species and habitat requirements
- ☐ Plan view drawings of location of impoundment(s) including impacts to State waters
- ☐ Justification for the need, size, and location of the proposed impoundment(s)
- ☐ A comprehensive analysis of instream flow conditions during a typical year and a dry year

Conceptual Compensatory Mitigation Plan

Sections 80 and 115 of the VWP program regulation should be used as a reference in reviewing the *Conceptual* Compensatory Mitigation Plan.

This checklist, based on the requirements of Section 80, does not include the Final Compensatory Mitigation Plan requirements, as those are not required for a complete application.

Generally, the sequence of preferred compensation options shall be restoration, then creation, then mitigation banking, and then in-lieu fee fund. Also, on-site, in-kind compensatory mitigation, when available, shall be deemed the most ecologically preferable form of compensation for project impacts, in most cases. However, off-site or out-of-kind compensation opportunities that prove to be more ecologically preferable to practicable on-site or in-kind compensation may be considered. When the applicant can demonstrate satisfactorily that an off-site or out-of-kind compensatory mitigation proposal is ecologically preferable, then such proposal may be deemed appropriate for compensation of project impacts.

Off-site Wetlands and Stream Compensation (Bank, In-Lieu Fee Fund Only)

- ☐ Discussion of why off-site compensation is ecologically preferable to on-site compensation, including following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, surface water functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructability, and cost
- ☐ Fund: Description of the intended compensation for unavoidable impacts, including written documentation of the willingness of the entity to accept the donation and how the amount of the contribution was calculated
- ☐ Bank: The name of the proposed mitigation bank, the bank sites' hydrologic unit code (HUC), the number of credits proposed to be purchased or used, and certification from the bank owner of the availability of credits

Off-site Wetlands Compensation (Creation, Enhancement, Restoration, Preservation, Bank, In-Lieu Fee Fund)

- ☐ Discussion of why off-site compensation is ecologically preferable to on-site compensation, including following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, surface water functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of

compensation versus impacts, acquisition, constructability, and cost

- ☐ Goals and objectives in terms of replacement *wetland* acreage, function, and values
- ☐ Discussion of included buffers, structures and features necessary for the success of the site, and the schedule for compensatory mitigation site construction
- ☐ Location map, including latitude and longitude (to the nearest second) of center of compensation site

Request hydrologic unit code (HUC) at center of mitigation site if not provided by applicant.

- ☐ Hydrologic analysis, including draft water budget based on expected monthly inputs and outputs that will project water level elevations for a typical, wet, and dry year
- ☐ Groundwater elevation data if available; or proposed location of groundwater monitoring wells
- ☐ Map of existing wetland areas on site, if applicable, including a copy of the Corps delineation confirmation or evidence of confirmation in progress (if existing wetlands are present at compensation site), and a copy of the wetland delineation data sheets (if existing wetlands are present at compensation site)
- ☐ Conceptual grading plan with existing and proposed elevations
- ☐ Conceptual planting schemes, including suggested species list and zonation of each vegetation type proposed
- ☐ Description of existing soils, including general information on topsoil and subsoil conditions, permeability, and need for soil amendments
- ☐ Draft design of any water control structures
- ☐ Fund: Description of the intended compensation for unavoidable impacts, including written documentation of the willingness of the entity to accept the donation and how the amount of the contribution was calculated
- ☐ Bank: The name of the proposed mitigation bank, the bank sites' hydrologic unit code (HUC), the number of credits proposed to be purchased or used, and certification from the bank owner of the availability of credits

Off-site Stream Compensation (Restoration, Enhancement, Preservation, Bank, In-Lieu Fee Fund)

- ☐ Discussion of why off-site compensation is ecologically preferable to on-site compensation, including following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, surface water functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructability, and cost
 - ☐ Goals and objectives in terms of replacement stream water quality benefits
 - ☐ Discussion of included buffers
 - ☐ Location map, including latitude and longitude (to the nearest second) of center of compensation site
- Request hydrologic unit code (HUC) at center of mitigation site if not provided by applicant.
- ☐ Location of proposed stream segment restoration, including plan view and cross-section sketches
 - ☐ Stream deficiencies to be addressed
 - ☐ Restoration measures to be used, including proposed design flows and types of instream structures
 - ☐ Proposed construction schedule
 - ☐ Fund: Description of the intended compensation for unavoidable impacts, including written documentation of the willingness of the entity to accept the donation and how the amount of the contribution was calculated
 - ☐ Bank: The name of the proposed mitigation bank, the bank sites' hydrologic unit code (HUC), the number of credits proposed to be purchased or used, and certification from the bank owner of the availability of credits

On-site Wetlands Compensation (Creation, Restoration, Enhancement, Preservation)

- ☐ Goals and objectives in terms of replacement *wetland* acreage, function, and values

- ☐ Discussion of included buffers, structures and features necessary for the success of the site, and the schedule for compensatory mitigation site construction

- ☐ Location map, including latitude and longitude (to the nearest second) of center of compensation site

Request hydrologic unit code (HUC) at center of mitigation site if not provided by applicant.

- ☐ Hydrologic analysis, including draft water budget based on expected monthly inputs and outputs that will project water level elevations for a typical, wet, and dry year

- ☐ Groundwater elevation data if available; or proposed location of groundwater monitoring wells

- ☐ Map of existing wetland areas on site, if applicable, including a copy of the Corps delineation confirmation or evidence of confirmation in progress (if existing wetlands are present at compensation site), and a copy of the wetland delineation data sheets (if existing wetlands are present at compensation site)

- ☐ Conceptual grading plan with existing and proposed elevations

- ☐ Conceptual planting schemes, including suggested species list and zonation of each vegetation type proposed

- ☐ Description of existing soils, including general information on topsoil and subsoil conditions, permeability, and need for soil amendments

- ☐ Draft design of any water control structures

On-site Stream Compensation (Restoration, Enhancement, Preservation)

- ☐ Goals and objectives in terms of replacement stream water quality benefits

- ☐ Discussion of included buffers

- ☐ Location map, including latitude and longitude (to the nearest second) of center of compensation site

Request hydrologic unit code (HUC) at center of mitigation site if not provided by applicant.

- ☐ Location of proposed stream segment restoration, including plan view and cross-section sketches
- ☐ Stream deficiencies to be addressed
- ☐ Restoration measures to be used, including proposed design flows and types of instream structures
- ☐ Proposed construction schedule
- ☐ Completed stream impact assessment methodology approved by the board

Disclaimer: This document provides procedural guidance to DEQ VWP permit staff for the review of VWP permit applications. It does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying the State Water Control Law and the implementation regulations on the basis of the site specific facts when permits are issued.

Sample Notice of Complete Application Letter

[Date]

[Applicant or Agent Name]

[Address]

RE: Joint Permit Application Number [WP#-##-####] or [##-####]
[insert project name], [County/City], Virginia
Notice of Complete Application

Dear [Applicant/Agent]:

[Use one of these paragraphs for complete app including fee]

The Department of Environmental Quality (DEQ) has determined that above-referenced permit application is complete, as of [date], in accordance with Section 80 of the Virginia Water Protection (VWP) Permit Program Regulation 9 VAC 25-210 et seq..

Coverage under a VWP permit shall be approved, approved with conditions, or denied within **[45 or 120]** calendar days. *[If project involves a new or existing landfill, add:* However, if approved or approved with conditions, please be aware that DEQ cannot issue a Virginia Water Protection Permit until the DEQ Waste Division determines what, if any, wetland limitations that are applicable to the landfill areas within your project.] *[When IP being considered, add:* Additionally, in accordance with § 62.1-44.15:5 D of the Code of Virginia, a determination will be made for the need of a public meeting or hearing, and if such a public meeting or hearing is held, sixty additional calendar days are allotted to hold the meeting or hearing, and ninety additional calendar days are allotted after the meeting or hearing for a final VWP individual permit decision.]

Please contact me at [phone number] or [e-mail address] with questions or concerns.

Sincerely,

[Permit Writer]

[Title]

cc: [DEQ Waste Permitting Office Director]
[DEQ Regional Waste Program Manager]

Sample Additional Information and Permit Application Fee Request Letter for General Permits

[Date]

[Applicant or Agent Name]

[Address]

RE: Joint Permit Application Number WP[##-###-####]
[insert project name], [County/City], Virginia
Additional Information [and Permit Application Fee] Request Letter

Dear [Applicant/Agent]:

The Virginia Department of Environmental Quality (DEQ) received your application for the above-referenced project on **[December 20, 2000]**. DEQ has determined that this project qualifies for authorization under the Virginia Water Protection (VWP) General Permit WP[#] in accordance with **[9 VAC 25-###]**, provided that a *complete* application is received.

The Virginia Water Protection Permit Program Regulation (9 VAC 25-210-80) details the information required for a complete application.

Please submit the following additional information to my attention at the letterhead address within 30 calendar days of the date of this letter:

[insert each item of information needed for a complete application; examples follow:

1. **[In accordance with 9 VAC 25-660-60 B 11, provide details regarding the location and dimension of the pipes that will be used to convey water away from the proposed buildings and parking areas. Also, discuss in detail how the selected design will not alter the stream channel flow or wetland hydrology to cause additional direct or indirect impacts.]**
2. ***[if a permit application fee is required and has not been received to date, insert the following:*** In accordance with 9 VAC 25-[###]-60 B 19, provide the appropriate application processing fee. A permit application fee of [\$] is required for the proposed activity. Issuance of the authorization to use this VWP general permit will not occur until the required permit application fee is deposited by the DEQ Receipts Control department. Checks or money orders should be made payable to the Treasurer of Virginia. ***Do not send cash.*** Please complete the enclosed Permit Application Fee Form and mail with the designated fee within 30 calendar days of the date of this letter to the following address:

2006 Virginia Water Protection Permit Manual

DEQ
Receipts Control
POB 1104
Richmond, Virginia 23218]]

[insert the following if it is pertinent to your application situation: In addition to the information needed for a complete application, please also provide the following information in order for DEQ staff to complete its technical review and reach a decision on this permit application:

[insert each item of information needed for your technical review and permit decision; examples follow:

1. [Provide a rationale for not purchasing available wetland credits at a mitigation bank to compensate for the wetland impacts. The applicant proposes to mitigate for all unavoidable impacts to wetlands and streams with a donation to the Virginia Aquatic Resources Trust Fund. However, there are suitable mitigation banks with wetlands credits available to compensate for the proposed wetland impacts.]
2. [Please confirm whether or not any portion of the proposed project involves a new or existing landfill. If the proposed project does involve any aspect of a new or existing landfill, please provide *[insert any information needed to clarify the details of the impacts to surface waters].*]]

The 45-calendar day processing period for authorization of use the VWP General Permit WP[#] will not commence until you provide the requested information noted herein. Please be advised that upon receipt of the requested information noted herein, additional information may still be required for DEQ to reach a permit decision.

Please contact me at [phone number] or [e-mail address] if you have any questions or concerns regarding this request. Thank you for your cooperation in this matter.

Sincerely,

[Permit Writer]
[Title]

Attachments: [Permit Application Fee Form]

cc: [Contact Name, U. S. Army Corps of Engineers]
[Contact Name, Virginia Marine Resources Commission]

Sample Additional Information and Permit Application Fee Request Letter for Individual Permits

[Date]

[Applicant or Agent Name]
[Address]

RE: Joint Permit Application Number [##-####]
[insert project name], [County/City], Virginia
Additional Information [and Permit Application Fee] Request Letter

Dear [Applicant/Agent]:

The Virginia Department of Environmental Quality (DEQ) received your application for the above-referenced project on **[December 20, 2000]**. DEQ has determined that this project qualifies for a Virginia Water Protection (VWP) individual permit in accordance with 9 VAC 25-210 et seq., provided that a *complete* application is received.

The Virginia Water Protection Permit Program Regulation (9 VAC 25-210-80) details the information required for a complete application.

Please submit the following additional information to my attention at the letterhead address within 30 calendar days of the date of this letter:

[insert each item of information needed for a complete application; an example follows:

1. [In accordance with 9 VAC 25-210-80 B 1 f, provide the amount of surface water impacts (wetlands, streams or open water) by type in square feet or acres, or linear feet for streams (if applicable).]
2. *[if a permit application fee is required and has not been received to date, insert the following:* In accordance with 9 VAC 25-210-80 B n, provide the appropriate application processing fee. A permit application fee of [\$] is required for the proposed activity. Issuance of the VWP individual permit will not occur until the required permit application fee is deposited by the DEQ Receipts Control department. Checks or money orders should be made payable to the Treasurer of Virginia. *Do not send cash.* Please complete the enclosed Permit Application Fee Form and mail with the designated fee within 30 calendar days of the date of this letter to the following address:

2006 Virginia Water Protection Permit Manual

DEQ
Receipts Control
POB 1104
Richmond, Virginia 23218]]

[insert the following if it is pertinent to your application situation: In addition to the information needed for a complete application, please also provide the following information in order for DEQ staff to complete its technical review and reach a decision on this permit application:

[insert each item of information needed for your technical review and permit decision; an example follows:

1. **[Provide a rationale for not purchasing available wetland credits at a mitigation bank to compensate for the wetland impacts. The applicant proposes to mitigate for all unavoidable impacts to wetlands and streams with a donation to the Virginia Aquatic Resources Trust Fund. However, there are suitable mitigation banks with wetlands credits available to compensate for the proposed wetland impacts.]**
2. **[Please confirm whether or not any portion of the proposed project involves a new or existing landfill. If the proposed project does involve any aspect of a new or existing landfill, please provide *[insert any information needed to clarify the details of the impacts to surface waters].*]]]**

The 120-calendar day processing period for a VWP individual permit will not commence until you provide the requested information noted herein. Please be advised that upon receipt of the requested information noted herein, additional information may still be required for DEQ to reach a permit decision.

Please contact me at **[phone number]** or **[e-mail address]** if you have any questions regarding this request. Thank you for your cooperation in this matter.

Sincerely,

[Permit Writer]
[Title]

Attachments: **[Permit Application Fee Form]**

cc: **[Contact Name, U. S. Army Corps of Engineers]**
[Contact Name, Virginia Marine Resources Commission]

Sample Notice of Application Suspension Letter

[Date]

[Applicant or Agent Name]

[Applicant or Agent Address]

RE: Joint Permit Application Number [##-####] [WP#-##-####]
[insert project name] [County/City], Virginia
Notice of Application Suspension

Dear [Applicant/Agent]:

The Department of Environmental Quality (DEQ) received your application for the above-referenced project on **[February 2, 2003]**. The application was found to be incomplete, as communicated in DEQ's **[date]** letter.

DEQ has not received the requested information to date, and therefore, the processing of the above application has been suspended in accordance with the VWP Permit Program Regulation 9 VAC 25-210-80 D. Note that impacts to state waters taken without a VWP permit are a violation of state law.

DEQ is willing to meet with you to discuss the required additional information as summarized in the above-referenced letter and to assist you in obtaining this information. Your application will remain suspended until the requested information is submitted. Please contact me at your earliest convenience at **[phone number]** or **[e-mail address]**.

Sincerely,

[Permit Writer]

[Title]

cc: [Contact Name, U. S. Army Corps of Engineers]
[Contact Name, Virginia Marine Resources Commission]

Sample Administrative Withdrawal of Application Letter (Applicable to General Permit Actions)

[Date]

[Applicant or Agent Name]

[Applicant or Agent Address]

RE: Joint Permit Application Number [##-####]
[insert project name] [County/City], Virginia
Pending Administrative Withdrawal of Application

Dear [Applicant/Agent]:

The Virginia Department of Environmental Quality (DEQ) received your application for the above-referenced project on [date]. Upon review of the application, DEQ determined that your application was incomplete and that additional information was required to continue the permit process. Our letter dated [date] (copy enclosed) notified you of this deficiency and the need to provide the requested information in a timely manner. Because DEQ did not receive the requested additional information, the application process was suspended on [date].

Please be advised that if the requested additional information is not received by [date], the application will be administratively withdrawn in accordance with 9 VAC 25-[###]-60 E. Should you choose to proceed with the same or similar project after the application is withdrawn, another permit application along with a permit application fee will be required. Please be advised that impacts to surface waters taken without a VWP permit is a violation of state law.

DEQ is willing to meet with you to discuss the required additional information as summarized in the above-referenced letter and to assist you in obtaining this information. Please contact me at your earliest convenience at [phone] or [email address].

Sincerely,

[Permit Writer]

[Title]

cc: [Contact Name, Virginia Marine Resources Commission]

Sample Returned Funds Letter

[Date]

[Applicant or Agent Name]

[Applicant or Agent Address]

RE: Joint Permit Application Number [##-####] [WP#-##-####]
[insert project name] [County/City], Virginia

Dear [Applicant/Agent]:

The permit application fee that you submitted to the Virginia Department of Environmental Quality (DEQ) for the above-referenced project was returned to DEQ Office of Financial Management on [December 20, 2000] for [insert reason, such as insufficient funds].

In accordance with Section 80 of the Virginia Water Protection (VWP) Permit Program Regulation 9 VAC 25-210 et seq., a permit application fee of [\$] is required for a complete application. Therefore, a balance of [\$] is due.

Checks or money orders should be made payable to the Treasurer of Virginia. *Do not send cash.* Please submit a copy of this letter, any applicable corrections on the attached original fee form, and the balance due within **30 calendar days** of the date of this letter to the following address:

DEQ
Receipts Control
POB 1104
Richmond, Virginia 23218

Because the proper permit application fee was not submitted, your application is deemed incomplete, and DEQ cannot continue processing your application until the balance due is received.

Please contact me at [phone number] or [e-mail address] if you have any questions or concerns regarding this request. Thank you for your cooperation in this matter.

Sincerely,

[Permit Writer]

[Title]

Attachment: Original Permit Application Fee Form

cc: DEQ Office of Financial Management

4 NO PERMIT REQUIRED

Many activities are exempt from requiring a permit under the Virginia Water Protection Permit (VWPP) Program, including some activities covered by other federal or state permit programs. The No Permit Required (NPR) process is typically implemented when the proposed activity does not require a VWP permit, such as activities covered by a U.S. Army Corps of Engineers (Corps) Nationwide or Regional Permit that has received Section 401 certification. However, the issuance of another federal or state permit for an activity does not preclude DEQ from issuing separate authorization for the same activity.

4.1 Exclusions to VWP Permit Program Regulations

The following summarizes the activities that do not require a VWP permit, as per the exclusions listed in Regulation 9 VAC 25-210-60.

4.1.1 *Miscellaneous Activities That Do Not Require VWP Permits by Law/Regulation*

- ⊗ Septic tanks permitted by the Virginia Department of Health
- ⊗ Normal agricultural and forestry activities
- ⊗ Private piers, boat houses

DEQ unconditionally certified the Corps' Regional Permit RP-17 for Private Piers and Mooring Piles in 1998. See Table 4-1 for the DEQ Section 401 Certification status of various Corps' Nationwide and Regional permits.

- ⊗ Bridge/walkway supports on uplands
- ⊗ Maintenance and/or replacement of previously-authorized water withdrawal structures, such as pumps
- ⊗ Normal residential gardening, lawn and landscape maintenance

The placement of yard waste, such as grass clippings, into a wetland adjacent to a residential lot will typically not require a permit. However, large scale clearing operations that include stumps, vegetation, and other debris is clearly not part of this exemption. Also, cutting down a [dead] tree in a wetland near or on a residential lot will typically not require a permit, provided that the stumps are not removed, the ground surface is not compressed or otherwise disturbed by mechanical equipment (e.g., the work is done with humans and hand tools such as a chain saw), the property is not entirely clear cut, and it does not result in the conversion of a wetland to upland, or to a different type of wetland than is currently present. However, the Chesapeake Bay Preservation Act regulations may not allow these types

of activities in Resource Protection Areas (RPA) without obtaining a variance from a local government's ordinances. For more on RPA requirements in a particular area, contact the local planning and/or zoning office.

- ⊘ *Maintenance* of serviceable structures, such as roads and utilities, dikes and dams, and drainage ditches

Maintenance dredging or excavation of streams and ditches may or may not require a VWP permit. The determination of whether or not a permit is required will need to be made on a case-by-case basis. The determination will be based on the answers to various questions, as well as various other resources.

The two most relevant aspects to consider are the cross-sectional configuration (original dimensions) of the channel and the presence of wetland vegetation.

Other questions to ask are:

- Is the channel man-made or natural?
- If the channel is a natural stream, is it channelized or not?
- Is the channel part of a stormwater management system, or roadway drainage system, or not?
- Are any threatened and endangered species present?
- Is there a history of routine maintenance on the channel?
- Will work be done in the dry?
- Will excavation drain any adjacent wetlands?
- Is there a connection to other waters?
- Is there return flow back into the surface water?

DEQ has provided VDOT the following in its September 21, 2005 guidance (paraphrased below) relative to excavation in streams and maintenance of ditches (contact Betina Rayfield at DEQ-Central Office for complete text):

Excavation in streams[, or channelized streams,] will need to be reviewed on a case by case basis for potential VWP permitting. DEQ does regulate any activity in a stream if it alters the physical, chemical, or biological properties of the surface water. DEQ requires a permit for stream channelization.

No VWP Permit is required [for ditch maintenance] if the cross-sectional area of [a] ditch does not go beyond [the] original specifications, or if work is in a ditch that was excavated from uplands[,], even if wetlands are located in [the] ditch.

The Corps has considered any ditch made in a surface water, or any ditch that has become a surface water, to be jurisdictional. An excerpt from Corps correspondence follows:

Channelized streams are often incorrectly referred to as ditches, particularly in Tidewater Virginia. This is especially prevalent in current and former agricultural lands. Existing streams were used to convey agricultural runoff by deepening, widening, and even straightening them. Keys to identifying these features include the review of aerial photography (including NRCS photos going back to the 1930s), old USGS quads, and soil surveys. If the drainage meanders extensively, it may well be a modified stream. We see a lot of headwater (1st order) streams that have been manipulated this way in the Lower Coastal Plain of Virginia. We also see a lot of "ditches" that were clearly excavated from wetlands, and thus, are waters, even if they are not streams. Good examples can be found on the Compaz property in Chesapeake (a.k.a. the proposed Hampton Roads Wetland Mitigation Bank). All of the ditches on this property (in excess of 3 miles) were excavated in the Dismal Swamp as recently as the late 1970s and early 1980s, and they have jurisdictional wetlands on one or both banks for some distance.

Other reference materials that can be used to make a determination are the DEQ Guidance Memorandum Number 04-2018 (BMPs), and the Corps' Nationwide Permits 3 and 41.

- ⊗ Construction or maintenance of farm ponds (refer to Virginia Water Protection Permit Program Guidance Memorandum Number 02-2011, July 3, 2003). The drainage of a farm pond would require a VWP permit for loss of open water and any fringe wetland (if applicable).
- ⊗ Farm and forest roads
- ⊗ Temporary sediment basins (see Virginia Water Protection Permit Program Guidance Memorandum Number 04-2018)

4.1.2 § 401 Certification of Corps Permits

When certain types of activities qualify for Corps general and regional permits, DEQ may grant § 401 Certification to those activities in order to meet the requirements of the Clean Water Act and reduce the permitting burden on the public. Again, DEQ does not have to waive its authority to issue a separate authorization if circumstances warrant further protection.

If DEQ *unconditionally* grants § 401 Certification to a certain activity allowed by a Corps general permit (NWP), regional permit (RP), or Letter of Permission (LOP), then DEQ deems the project as qualifying for coverage under the State Water Control Law and the VWP permit program regulations. Assuming that a JPA was received in these cases, the applicant will typically receive a No Permit Required (NPR) letter from DEQ indicating that the Corps permit conditions meet the state requirements and that a separate permit is

not required under the VWP Permit Program. However, situations such as emergency stream restoration under a conditionally certified Regional Permit 37 may require special consideration and additional coordination with natural resource agencies (see Emergencies section below).

DEQ may also *conditionally* grant § 401 Certification for certain activities covered under a Corps' NWP, RP, and LOP. When the proposed project meets certain DEQ criteria, a separate VWP permit from DEQ is not required. In these cases, the application must be reviewed carefully to ensure the criteria are met before issuing an NPR letter to the applicant. If an NPR letter is warranted, include the specific conditions or criteria that must be met in order for the applicant's project to remain exempt from requiring a separate VWP permit. If the activity does not meet the criteria, then a general permit authorization or individual permit will be required in addition to the Corps' permit.

Table 4-1 provides a list of NWPs, RPs, or LOPs and the DEQ Certification status of each, plus the DEQ conditions that apply to each type of activity.

DEQ's certification of Corps' permits is reviewed periodically and revised as needed. Also, since the Corps general permits, regional permits, and LOPs periodically expire, DEQ must re-evaluate its certification of each one before it can be re-issued or replaced by a similar Corps permit. This process is conducted by DEQ Central Office and generally requires a public notice and comment period.

4.1.3 VPDES Permit Activities

Discharges that qualify for a Virginia Pollutant Discharge Elimination System (VPDES) permit do not typically require a VWP permit. For example, when an outfall structure is covered by a Corps NWP 7 and a VPDES permit for the effluent discharge, no VWP permit is required. The NWP 7 has already received Section 401 Certification, provided the activity is not associated with a water intake structure.

Stormwater general permits are now administered by the Virginia Department of Conservation and Recreation when construction activities are involved, with the intent to control the discharge of stormwater and sediment. This is not the same discharge as a discharge of fill material to a wetland or excavation in a wetland. When both types of discharges occur on a construction project, a stormwater general permit *and* a VWP permit may be required.

The VWP Permit Program permitting requirements for stormwater best management practices (BMPs), which are also permitted under VPDES, are detailed in Guidance Memorandum Number 04-2018 *Requirements for VWPP to Impact Wetlands within Stormwater BMPs*, available on DEQNet. This guidance also provides information on permitting BMPs when these structures are not already permitted under VPDES.

Treatment of contaminated groundwater that emerges from springs is another special case when a VPDES permit may be issued instead of a VWP permit. Assuming that wetlands are present in conjunction with the spring, the two scenarios where this would be true are: 1) the contaminated groundwater is collected as it emerges from a spring, then is treated and discharged downstream of the spring; or 2) the contaminated groundwater is pumped from a well upstream of the spring, then conveyed to a water treatment facility. Pumping the groundwater directly from the spring is considered to be a water withdrawal, and thus, requires a VWP individual permit. Of overall importance is that the VWP Permit Program does not regulate a groundwater withdrawal, even if such a withdrawal dewateres a wetland area, or a wetland area containing a threatened or endangered species; in these cases, other state agencies may have enforcement authority (such as DGIF when a T&E species is affected, e.g., taken/harassed/harmed).

Since January 1, 2006, concentrated animal feeding operations (CAFOs) have been covered under the VPDES permit program. In certain circumstances, a CAFO may require a separate VWP permit. A separate VWP permit is required if: 1) a concentrated animal feeding operation (CAFO) was proposed in an area that *was not* previously part of an established agriculture or silviculture operation; 2) the CAFO is proposed in an area that *was* previously part of an established agriculture or silviculture operation, but has been converted to another use or has laid idle for such a time that hydrological modifications must occur to resume the operation; or 3) the CAFO is in a surface water, including wetlands.

4.1.4 VPA Permit Activities

The VWPP Program regulation generally excludes activities that are covered by a Virginia Pollution Abatement (VPA) permit, since VPA permit-related activities do not typically occur directly in state waters. However, an exception would be when the VPA-permitted activity involves construction of facilities directly in a wetland or other type of surface water. In those cases, a VWP permit *would be* required for that portion of the activity that directly impacts state waters.

Virginia Pollution Abatement (VPA) permits may be issued to handlers of waste and wastewater when the method of disposal is not to a sewage treatment work or a state water where a valid VPDES permit already exists. In general, land application of industrial waste or spray irrigation of industrial and municipal wastewater is covered by a VPA individual permit. Animal feeding operations are covered by a VPA individual or general permit. A separate VPA general permit covers confined poultry feeding operations for poultry waste management.

4.1.5 Permits Issued by VMRC and Corps

Under 9VAC25-210-220 B, “The board may waive the requirement for a VWP individual permit when the proposed activity qualifies for a permit issued by the USACE and receives a permit from the VMRC, pursuant to Chapter 12 (§[28.2-1200](#) et seq.) or

Chapter 13 (§[28.2-1300](#) et seq.) of [Title 28.2 of the Code of Virginia](#), and the activity does not impact instream flows.” This provision allows DEQ to determine if there would be an added benefit to an additional state permit for an activity already covered by two permits that adequately address water quality and fish/wildlife concerns. In cases where these concerns are adequately addressed, DEQ provides Section 401 Certification through an NPR letter rather than a waiver action (some old permits were processed as “waivers”, and these should now be located in CEDS History).

When concerns over water quality and fish/wildlife resources occur, particularly when they are not being addressed to meet DEQ’s regulatory requirements, DEQ may elect to issue a separate VWP permit for the proposed activity.

Activities permitted by VMRC under Chapter 12 of Title 28.2 include those involving use of submerged lands (both tidal and non-tidal), such as for piers, docks, dams, marinas, utility lines, and navigational dredging. Many of these projects are covered under the Corps regional permits RP-17 and RP-19, which DEQ has unconditionally certified (see Table 4-1).

Activities permitted by VMRC under Chapter 13 of Title 28.2 include those impacting vegetated and non-vegetated *tidal* wetlands, except private piers. These activities are also reviewed and processed by local wetlands boards with the Virginia Institute of Marine Science acting as the advisory agency. Again, many of these projects are covered by Corps Nationwide and Regional Permits that have already received Section 401 Certification. DEQ retains the option to issue a separate VWP permit if there are significant environmental concerns that are not being addressed, such as inadequate compensation for impacts to state waters.

4.1.6 *Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) facilities*

Actions conducted at facilities listed on the federally maintained CERCLA database do not require the issuance of a VWP permit, provided that the actions are conducted in accordance with state law.

Permitting requirements for actions pursuant to CERCLA Sections 104, 106, 120, 121, or 122 are detailed in the Code of Federal Regulations (CFR) (40 CFR 300.400(e)(1)), as follows:

(e) *Permit requirements.* (1) No federal, state, or local permits are required for on-site response actions conducted pursuant to CERCLA sections 104, 106, 120, 121, or 122. The term *on-site* means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action. ...

While you may receive a permit application for this type of project, this is one of those cases where a federal permit action negates the need for a VWP permit, and thus, no permit application fee is required; neither are notifications to local government bodies or landowners, or public notices. Follow the procedures below in this section to process the NPR.

4.2 Mining & Dredging

Mining activities often involve impacts to surface waters. However, there are instances when DEQ would issue a NPR in order to minimize duplication between permitting programs. No permit would be required in the following situations, since the activity is covered by another permit for which DEQ has issued Section 401 Certification, or is covered by another agency to which DEQ has delegated our authority.

- ▶ DEQ has issued unconditional Section 401 Certification for Corps NWP 21, effective December 15, 2004, which covers surface coal mining activities.
- ▶ DEQ has issued conditional Section 401 Certification for Corps NWP 44, which covers aggregate mining activities (e.g., sand, gravel, and crushed stone) and associated support activities in wetlands and certain streams. Additionally, the Certification for NWP 44 covers hard rock and mineral mining, and associated support activities, *in wetlands but not in streams*.
- ▶ The VWP general permit regulation for WP4, enacted on January 26, 2005, includes a provision for certain mining activities that involve wetland or stream impacts. A separate VWP permit or permit authorization is not required provided that the project is covered under a permit issued by the Department of Mines, Minerals and Energy (DMME) under the Virginia Coal Surface Mining Control and Reclamation Act (Chapter 19 of Title 45.1 of the Code of Virginia), where such permit contains a mitigation plan for the impacts.

Upon receipt of applications involving mining activities, DEQ permit managers are encouraged to coordinate with DMME staff on the proposed compensatory mitigation plan prior to sending an NPR letter to the applicant to ensure the plan is acceptable based on DEQ requirements.

If the activity does not fall within one of the above situations, or does not meet the conditions of the Section 401 Certification, then a VWP general or individual permit is required.

Wetlands or other surface waters, *created during a mining operation* that is permitted by the DMME, Division of Mined Land Reclamation (DMLR), are not regulated as state waters *during the life of the mining permit*, but these same wetlands/surface waters do become state waters when the site is no longer under an active DMLR permit.

For more information on the types of dredging regulated by the VWP Permit Program, see Section 8 of this manual. Also see DEQ Guidance Memorandum Numbers 04-2009 and 04-2018 on DEQNet.

4.3 Emergencies

Many severe weather events in recent years have resulted in the need for “emergency” work to roads and structures that require disturbance of a stream or wetland to correct.

Permitting emergency work in surface waters is often addressed on a case-by-case basis. For example, the VWPP Program in Central Office the September 25, 2003 DEQ memorandum entitled *Frequently Asked Questions Regarding Hurricane Isabel Clean-Up Activities*. This memo is located in the VWPP Program Library on DEQNet.

Emergency work done in surface waters only by the USDA - Natural Resource Conservation Service (NRCS) under the Emergency Watershed Protection Program (EWP) *may or may not* require the issuance of a VWP permit or permit authorization, based on the process detailed in a Memorandum of Understanding between DEQ, NRCS, the Corps, and VMRC that was issued in August 1993 (see VWPP Program Library under

water\Water_permit\VWP_Permit_Program\VWPP_Library\Misc_Program_Guidelines). These situations may also result in the issuance of a Regional Permit 37 by the USACE. If the emergency work is related to an event which was declared an emergency by the Governor of Virginia, then a streamlined, VWP permit process applies, and permit application fees are not required by DEQ.

When formal states of emergency have not been declared, your best professional judgment may be required. Typically, an NPR should not be issued without the applicant providing some written assurances regarding the planned work and restoration of impacted surface waters. At a minimum, it is recommended that the applicant provide details on precisely how the emergency work is to be performed, including protection measures for water quality and/or minimization measures for impacts; what the amount of anticipated surface water impacts will be, such as fill or excavation, what, if any, threatened and endangered species concerns exist; and whether they are permanent or temporary; what measures will be implemented to restore impacted areas, or how compensation will be provided, if required; and a plan sheet or construction sketch detailing the work, measures, and impacts previously noted here. Consult with VWP central office staff if further guidance is required.

4.4 Isolated Wetlands of Minimal Ecological Value (IWOMEV)

Isolated wetlands of minimal ecological value (IWOMEV) are also exempt from VWP permitting requirements, as per the State Water Control Law and Regulation 9 VAC 25-210-220 A. Applicants claiming to have IWOMEV impacts must first request that the

Corps verify in writing whether or not the wetland(s) being impacted qualify as isolated, and then must provide DEQ with the written *Corps* verification. In cases where isolated wetlands are verified, the applicant must also prove that the wetland(s) meet(s) the definition of minimal ecological value, as per Regulation 9 VAC 25-210-10. According to this definition, the wetland must:

- ▶ not have a surface water connection to other state waters;
- ▶ be less than one-tenth acre in size (0.00 to 0.09 acre);
- ▶ not be located in a FEMA designated, 100-year floodplain;
- ▶ not be identified by the Virginia Natural Heritage Program as a rare or state-significant natural community;
- ▶ not be forested; *and*
- ▶ not contain listed federal or state, threatened or endangered species.

If the wetland is determined to be isolated by the *Corps* and meets *all* of these criteria, then an NPR letter is issued to the applicant.

For a *single and complete* project that impacts more than one IWOMEV, an NPR letter is issued even if the cumulative impacts exceed 0.09 of an acre (the defining threshold). For example, if a single and complete project impacts eight IWOMEVs, and each one is 0.05 of an acre, an NPR letter is issued regardless of the fact that the total impacts (0.40 of an acre) exceed the threshold.

Another potential permitting situation may occur where the single and complete project involves a mixture of impacts to IWOMEV wetlands and other surface waters. An NPR letter would be issued for IWOMEV portion of impacts. The remaining impacts would be permitted as usual (VWP General or Individual Permit, COE NW and DEQ NPR). The acreage of the IWOMEV wetland(s) should not be included total permitted impacts for the other permit(s).

If a single and complete project impacts both an IWOMEV *and* another type of surface water that would normally require a VWP general or individual permit, then compensatory mitigation is not required for the IWOMEV portion of the impacts. Otherwise, compensatory mitigation is required for all permanent impacts totaling more than 1/10 acre.

Applicants impacting only isolated wetlands may simply notify DEQ by e-mail or letter concerning their project. In these cases, contact Priscilla Royal at DEQ Central Office to request a permit application number (peroyal@deq.virginia.gov or 804-698-4290).

4.5 Processing a JPA When No Permit is Required

If a 'No Permit Required' determination can be made after the cursory JPA review, prepare an NPR letter within **15 days** of receiving the application, as per program goals. A sample letter is provided at the end of this section. No permit application fee is required if the NPR determination can be made within the 15-day period. Enter the project information into your regionally-managed NPR/IWOMEV spreadsheet or database (not CEDS).

If more information is required to make a permit action determination, prepare an Add-Info letter within **15 days** of receiving the JPA, as detailed in Section 3, and include a permit application fee form. If a fee is received, and then the project qualifies as an NPR, the fee can be refunded to the applicant (see Section 3 for details on refunds).

Table 4-1**Summary of USACE Permits and VWP Requirements**

Nationwide or Regional Permit	Last Date of Issuance, Re-issuance or Modification	VWP Permit Process	Date of 401 Certification	401 Certification Conditions
1. Aids to Navigation	Mar-02	NPR	Mar-02	N/A
2. Structures in Artificial Canals	Mar-02	NPR	Mar-02	N/A
3. Maintenance	Mar-02	NPR	Mar-02	N/A
4. Fish and Wildlife Activities	Mar-02	NPR	Mar-02	N/A
5. Scientific Measurement Devices	Mar-02	NPR	Mar-02	N/A
6. Survey Activities	Mar-02	NPR	Mar-02	N/A
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	N/A
9. Structures in Fleet and Anchor Areas	Mar-02	NPR	Mar-02	N/A
10. Mooring Buoys	Mar-02	NPR	Mar-02	N/A
11. Temporary Recreation Structures	Mar-02	NPR	Mar-02	N/A
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 Waters)	Mar-02	Conditional *	Mar-02	1,2,4,8,9
14. REPLACED BY SPGP (Linear Transport Crossings - Nontidal Waters)	--	--	Expired Nov-02	--
15. U.S. Coast Guard Approved Bridges	Mar-02	NPR	Mar-02	N/A
16. Return Water - Upland Contained Disposal Areas	Mar-02	Permit Req'd	Mar-02	N/A
17. Hydropower Projects	Mar-02	Permit Req'd	Mar-02	N/A
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	N/A
21. Surface Coal Mining Activities	Dec-04	NPR	Mar-02	N/A
22. Removal of Vessels	Mar-02	NPR	Mar-02	N/A
23. Approved Categorical Exclusions	Mar-02	NPR	Mar-02	N/A
24. State Administered Section 404 Programs	Mar-02	N/A in VA	Mar-02	N/A
25. Structural Discharges	Mar-02	Conditional *	Mar-02	1,2,4,8,9

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Table 4-1

Summary of USACE Permits and VWP Requirements

Nationwide or Regional Permit	Last Date of Issuance, Re-issuance or Modification	VWP Permit Process	Date of 401 Certification	401 Certification Conditions
26. EXPIRED	--	--	Expired 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	N/A
29. Single-Family Housing	Mar-02	NPR	Mar-02	N/A
30. Moist Soil Management for Wildlife	Mar-02	NPR	Mar-02	N/A
31. Maintenance of Existing Flood Control Projects	Mar-02	NPR	Mar-02	N/A
32. Completed Enforcement Actions	Mar-02	NPR	Mar-02	N/A
33. Temporary Construction, Access and Dewatering	Mar-02	NPR	Mar-02	N/A
34. Cranberry Production Activities	Mar-02	NPR	Mar-02	N/A
35. Maintenance Dredging of Existing Basins	Mar-02	NPR	Mar-02	N/A
36. Boat Ramps	Mar-02	NPR	Mar-02	N/A
37. REPLACED BY RP-37 (11/21/05)	--	--	--	--
38. Hazardous and Toxic Waste Cleanup	Mar-02	NPR	Mar-02	N/A
39. REPLACED BY SPGP (Residential, Commercial and Institutional Development)	--	--	Expired Nov-02	--
40. Agricultural Activities	Mar-02	Conditional *	Mar-02	6
41. Reshaping Existing Drainage Ditch	Mar-02	NPR	Mar-02	N/A
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. DISCONTINUED (Abbreviated Standard Permit)	Discontinued Feb-02	--	--	--
LOP-1. Letter of Permission for VDOT Projects	Oct-03	Permit Req'd	Cert. Denied	N/A
LOP-2. Letter of Permission for Certain Navigationally-related Recreational and Commercial Dredging Projects	Mar-04	Conditional *	Mar-02	10
RP-05. Construction of Small Impoundments	Mar-06	Permit Req'd	Cert. Denied	N/A

Table 4-1**Summary of USACE Permits and VWP Requirements**

Nationwide or Regional Permit	Last Date of Issuance, Re-issuance or Modification	VWP Permit Process	Date of 401 Certification	401 Certification Conditions
RP-15. Maintenance of Certain Ditches	Oct-03	NPR	Aug-98	N/A
RP-17. Private Piers and Mooring Piles	Oct-03	NPR	Aug-98	N/A
RP-18. Private Piers not covered by RP-17	Oct-03	NPR	Oct-03	N/A
RP-19. Certain Activities covered by VMRC and/or Local Wetlands Boards (Note: As of 2/6/06, Activity 15 of this RP is covered under RP-20)	Oct-03	NPR	Aug-98	N/A
RP-20. Development of State-owned and Operated Artificial Fin and Shellfish Reefs	Apr-06	NPR	Apr-06	N/A
RP-22. For Certain Activities in Lake Gaston	Oct-03	NPR	Aug-98	N/A
RP-24. For Certain Activities in Claytor & Smith Mtn. Lake	Aug-98	NPR	Aug-98	N/A
RP-37. Discharges Performed or Funded by NRCS under its Emergency Watershed Protection (EWP) Program (Note: As of 11/21/05, replaces Nationwide Permit 37)	Jan-06	Conditional *	Jan-06	11
RP-40. Minor Maintenance Dredging in Nontidal Waters	Oct-03	Conditional *	Aug-98	12

Abbreviations/Definitions

VWPP = Virginia Water Protection Permit

NPR = No Permit Required (applies to VWPP only)

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.

Conditional@ = No separate VWP individual or general permit required provided that: 1) applicant has adequately sized the containment berm used for upland disposal of the dredged material; 2) applicant has adequately addressed need for a liner or impermeable material to prevent the leaching of any identified contaminants into ground water; and 3) applicant has ensured that dredging in waterbody segments on the current, effective Section 303(d) Total Maximum Daily Load (TMDL) priority list, or with an approved TMDL, will not exacerbate the impairment, and is consistent with any waste load allocation/limit/conditions imposed by an approved TMDL.

Conditions

Section 401 Certification is required when:

1. compensatory mitigation is in the form of mitigation bank credit purchase 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. 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 when mitigation does not meet the goal of no net loss of wetland acreage and function.
3. construction of irrigation impoundments is proposed on perennial streams (may include impoundments for golf course irrigation, snowmaking operations).
4. 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. hydraulic dredging or dredging a deep space/hole for water withdrawal is proposed.
6. any concentrated animal feeding operation or waste storage facility is proposed in surface waters.
7. used to permit a wetland mitigation bank (compensation for surface water impacts is debited from the mitigation bank credits).
8. stormwater management facilities are located in perennial streams or oxygen- or temperature-impaired waters.
9. impacts to perennial streams are in excess of 500 linear feet, and when impacts to intermittent streams are in excess of 1,500 linear feet.
10. the applicant **cannot** meet the following conditions: a) the containment area is adequately sized to prevent overtopping of any containment berm used for upland disposal of dredged material; b) the need is adequately addressed regarding a liner or impermeable material to prevent leaching of any identified contaminants into ground water; and c) the dredging will not exacerbate impairment of waterbody segments on the current effective Section 303(d) Total Maximum Daily Load (TMDL) priority list or waterbody segments with an approved TMDL; and the dredging is consistent with any waste load allocation, limit, or conditions imposed by an approved TMDL.
11. the applicant **cannot** meet the following conditions: a) work is to restore damage incurred by a natural disaster event declared as a local or state of emergency, pursuant to Code of Virginia § 44-146 et seq.; b) wetland or stream impacts [shall] be avoided and minimized to the maximum extent practicable; c) proposed work does not allow impacts that cause or contribute to a significant impairment of state waters or fish and wildlife resources; d) additional or inadvertent impacts caused by the restoration activities requires compensatory mitigation sufficient to achieve no net loss of existing wetland acreage and function; and that any such compensatory mitigation be provided through wetland or stream creation or restoration, purchase or use of mitigation bank credits in accordance with § 62.1-44.15:5 E of the Code of Virginia, contribution to an in-lieu fee fund approved by the board in accordance with these regulations, or preservation

or restoration of upland buffers adjacent to wetlands or other state waters or preservation of wetlands or streams when done in conjunction with creation, restoration or mitigation bank credits; and e) NRCS notifies DEQ if they or the local sponsor prefers not to incorporate one or more of the recommendations made by the Department of Game and Inland Fisheries, the Virginia Marine Resources Commission, or the Department of Conservation and Recreation regarding measures to avoid adverse effects of a project on state designated critical or proposed critical habitat or a state listed or proposed threaten or endangered species or two categories of trout waters, Class V (Put and Take Trout Waters) and Class VI (Natural Trout Waters); DEQ will then consult with the agency or agencies who made the recommendation(s) and determine whether or not they need to be incorporated into the project plans.

12. the amount of dredged/excavated material exceeds 5,000 cubic yards (no limits on method of dredging/excavation, and no separate limits on the area of impact).

Sample NPR Letter

[Date]

[Applicant or Agent Name]

[Applicant or Agent Address]

RE: Joint Permit Application Number [##-####]
Notification of No Permit Required

Dear [Applicant/Agent]:

The Department of Environmental Quality (DEQ) received your application on [date] to *[briefly describe activity]* on the [name of waterbody] in [city/town/county], Virginia.

[insert one of the following]

[For CERCLA projects:

As per 40 CFR 300.400(e)(1), no VWP permit is required for the proposed on-site response actions, provided that the actions are conducted in accordance with all state laws.

Should the proposed actions change to an off-site location, or should CERCLA Sections 104, 106, or 120-122 no longer apply to the actions, a VWP general or individual permit may be required.]

[For all other projects:

Based on the information provided in the JPA noted above, the water quality impacts appear to be minimal and/or temporary in nature. As per 9 VAC 25-210-60 of the Virginia Administrative Code, a Virginia Water Protection (VWP) permit will not be required for this project because *[insert justification(s) – see examples on following pages]*.

Should the size and scope of the project change, a VWP general or individual permit may be required.]

If you have any questions, please contact [permit writer] at [phone number] or [e-mail address].

Sincerely,

[Permit Writer]

[Title]

cc: [If applicable, Contact Name], U.S. Army Corps of Engineers
[If have jurisdiction, Contact Name], Virginia Marine Resources Commission

Possible justifications:

1. the project as presented will not involve any discharges to surface waters or impacts to wetlands.
2. the project as presented qualifies for a general or regional permit from the U.S. Army Corps of Engineers, on which DEQ has provided unconditional § 401 Certification.
3. the project activities are excluded under the regulation as: ***[choose one of the following excerpts from the regulation]***

discharges of dredged or fill material into state waters, excepting wetlands, which are addressed under a USACE Regional, General or Nationwide Permit, and for which no § 401 Water Quality Certificate is required.

a discharge, other than an activity in a surface water governed by § 62.1-44.15:5 of the Code of Virginia, permitted by a Virginia Pollutant Discharge Elimination System (VPDES) permit in accordance with 9 VAC 25-31-10 et seq.

an activity, other than an activity in a surface water governed by § 62.1-44.15:5 of the Code of Virginia, permitted by a Virginia Pollution Abatement (VPA) permit in accordance with 9 VAC 25-32-10 et seq.

septic tanks, when authorized by a state Department of Health permit.

an activity permitted under Wetlands, Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 (Fisheries and Habitat of the Tidal Waters) of the Code of Virginia, and for which no § 401 Water Quality Certificate is required.

normal residential gardening, lawn and landscape maintenance.

normal agriculture and silviculture activities such as plowing, seeding, cultivating, minor drainage and harvesting for the production of food, fiber and forest products, or upland soil and water conservation practices.

maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, groins, levees, dams, riprap breakwaters, causeways, bridge abutments or approaches, and transportation and utility structures. Maintenance does not include modifications that change the character, scope, or size of the original design. In order to qualify for this exemption, emergency reconstruction must occur within a reasonable period of time after damage occurs.

construction or maintenance of farm or stock ponds or irrigation ditches (provided that the final dimensions of the maintained ditch do not exceed the average dimensions of the original ditch, and that the construction is not a new ditch or to channelize a stream); the maintenance (but not construction) of drainage ditches; and discharge associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches.

construction of temporary sedimentation basins on a construction site which does not include the placement of fill materials into surface waters or excavation in wetlands.

construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with applicable best management practices (BMPs).

4. the impacted wetland is an isolated wetland of minimal ecological value (IWOMEV) as defined by 9 VAC 25-210-10.
5. the Virginia Marine Resources Commission is issuing a permit pursuant to Chapter 12 and Chapter 13 of Title 28.2 of the Code of Virginia, and the U.S. Army Corps of Engineers is issuing a § 404 permit for this activity.