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See DISCLAIMER in INTRODUCTION.

# CHAPTER 5: VWP PERMIT PROGRAM NON-CONTROVERSIAL INDIVIDUAL PERMITS

## 5.1 Applicable Provisions

Legislation passed in 2022 defines controversial permits as any air or water permit for which a public hearing has been granted pursuant to § [10.1-1184](https://law.lis.virginia.gov/vacode/title10.1/chapter11.1/section10.1-1184/).1.C (as enacted by Senate Bill 657). For guidance on processing controversial VWP individual permits, please see the most recent version of [“Public Hearing Procedures for Permitting Decisions [9.23.22].pdf”](https://covgov.sharepoint.com/sites/deqnet/Shared%20Documents/Forms/Name%20sort.aspx?id=%2Fsites%2Fdeqnet%2FShared%20Documents%2FAdministration%2FPolicy&viewid=fe19566a%2Dc6e3%2D490e%2D9204%2Da79f6f6580b5) on DEQnet, as well as [9VAC25-210-140 through -174](https://law.lis.virginia.gov/admincodefull/title9/agency25/chapter210/partIII/). This Chapter 5 addresses non-controversial VWP individual permits – that is, those instances where a public hearing is not mandated under state or federal law or regulation and where a public hearing is not occurring, whether that is due to not receiving the correct number of requests or due to the Director declining the requests. Any time that DEQ decides to hold a concurrent public comment period and a public hearing, without waiting requests from the public, then refer to the guidance on controversial permits and applicable regulatory provisions rather than this chapter.

Days are calendar days unless otherwise specified. With the exception of public notice comment periods, time periods measured in days that are required by regulation or by statute begin with the day after the item is received or a specific action is required.

Comments being provided by hand-delivery will be accepted until 5:00 PM on the last day of a public comment period, or when provided electronically, until 11:59 PM on the last day of a public comment period. For example, 30-day public comment periods are common. If the 30th day of a public comment period occurs on a weekend or holiday, the next **business** day is considered the 30th day, or ‘last day’ (in which case the comment period will be longer than 30 days; 30 days is the minimum).

Normal business hours are 8:00 AM to 5:00 PM Eastern Standard Time (EST), Monday through Friday.

Table 1: Individual Permit Targets and Deadlines

| Element | Timeline |
| --- | --- |
| Review of Individual Permit Application and Additional Information Requests | 15 Days ([9VAC25-210-80](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section80/).D) |
| Applicant Response to Additional Info Requests | 15 Days (as a Goal or Target) |
| Individual Permit Issuance | 120 Days (§ [62.1-44.15:21](https://law.lis.virginia.gov/vacode/title62.1/chapter3.1/section62.1-44.15:21/).E)  *From date of receipt of a complete permit application* |
| State Resource Agency Comment Period | 45 Days (§ [62.1-44.15:20](https://law.lis.virginia.gov/vacode/title62.1/chapter3.1/section62.1-44.15:20/).C) |
| Publication of Public Notice by the Applicant | 14 days after the applicant's receipt of a draft VWP permit ([9VAC25-210-140](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section140/).A) |
| Public Notice and Comment Period | 30 Days, Minimum ([9VAC25-210-140](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section140/), [-160](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section160/), [-165](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section165/))  *Beginning the day after the public notice is published* |
| Director’s Decision | 30 Days ([9VAC25-210-165](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section165/).C)  *From the close of the public comment period* |

## 5.2 Stepwise Individual Permit Review Process

The following table may be used by staff to track the processing steps.

Table 2: VWP Individual Permit Checklist

| Action | Reference | Complete |
| --- | --- | --- |
| Joint Permit Application Review | Chapter 3 |  |
| Identifying and Quantifying Impacts | Chapter 3 |  |
| Avoidance and Minimization | Chapter 3 |  |
| Additional Information Review and Requests | Chapter 3 |  |
| Site Visit | Chapter 3 |  |
| Determining the Application Fee | Chapter 3 |  |
| Compensation | Chapter 3 |  |
| State and Federal Agency Coordination | Chapter 3 |  |
| Local Government Notification | Chapter 5 |  |
| Riparian Property Owner Notification | Chapter 5 |  |
| Draft Individual Permit Fact Sheet | Chapter 5 |  |
| Draft Permit Cover Page | Chapter 5 |  |
| Draft Part I - Special Conditions | Chapter 5 |  |
| Draft Part II - General Conditions | Chapter 5 |  |
| Public Notice and Public Notice Verification Form | Chapter 5 |  |
| Public Notice Transmittal Letter | Chapter 5 |  |
| Review of Draft Permit Package | Chapter 5 |  |
| Public Notice Notification | 9VAC25-210-140 |  |
| Public Notice Verification | Chapter 5 |  |
| 30 Day Public Comment Period, Public Comment Review and Response | [9VAC25-210-140](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section140/), [-160](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section160/) and -[165](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section165/) |  |
| Permit Finalization and Issuance | 9VAC25-210-165, Chapter 5 |  |
| Denial of an Individual Permit Application | 9VAC25-210-160, 165, and -[230](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section230/) |  |
| Denial Notification to Applicant | 9VAC25-210-230 |  |
| Public Notice to Deny Permit | 9VAC25-210-230, Section [62.1-44.15:21](https://law.lis.virginia.gov/vacode/title62.1/chapter3.1/section62.1-44.15:21/).E |  |

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

**Step 1: Administrative Duties**

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

**Step 2: Review for Complete Application**

* Go through checklist [9VAC25-210-80](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section80/).B and -C.
* Carefully assess project purpose and need, avoidance and minimization (including off-site alternatives), proposed compensation, as well as potential secondary impacts.
* If applicable, identify items needed to complete the permit application.
* Schedule and conduct a site visit of the proposed project location, as necessary. Ensure properly completed Site Access Form has been submitted (see subsection 3.1.6 and Appendix A of Chapter 3).

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

* Determine the fee owed by the applicant.

**Step 4: Additional Information Requests**

* Request additional information identified during the application review process that is needed to complete the permit application or provide DEQ with necessary information to assist in the Agency’s review of the application, including the permit fee. Staff may request additional information as identified in [9VAC25-210-80](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section80/).B, if the information is necessary to facilitate review of the proposed project or issue a permit. It is important to identify, to the best of your ability, all subject areas that will require additional information or clarification. To the maximum extent practicable, subsequent information requests should not introduce entirely new topics for which information is needed.
* Typically, the applicant is provided 15 days from the date of the add info request to provide the additional information. Additional time may be necessary.
* Review the additional information to ensure the submission fulfills the additional information request. If the permit writer determines that further information is still outstanding, additional information request(s) will be required until all requested material is provided to DEQ. An incomplete application for an individual permit or general permit coverage may be administratively withdrawn from processing by the department for failure to provide the required information after 60 days from the date of the latest written information request made by the department. ([9VAC25-210-80](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section80/).D.2)
* The 120-day processing deadline does not begin until all information required by [9VAC25-210-80](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section80/).B has been received.

**Step 5: Local Government and Property Owner Notifications**

* Notify County/Local Government Administrators and property owners as detailed in Sections 5.5 and 5.6, respectively.
* Notify *riparian* property owners (§ 62.1-44.15:4.D):
  + In non-tidal waters: within one-half mile *downstream* of each impact site;
  + In tidal waters: within one-quarter mile upstream and one-quarter mile downstream of each impact site;
  + If applicable in non-tidal or tidal waters: within the applicable above distance(s) from any permittee-responsible mitigation site that incurs impacts covered by the pending individual permit.
* Obtain the list of affected *riparian* property owners:
  + If available, utilize locality’s GIS tools, or contact the locality’s Commissioner of Revenue for large requests.
  + For those cities or counties that do not have GIS tools, request the names and addresses of riparian property owners from the locality’s Commissioner of Revenue.
  + Note: If a list is provided by the applicant, it can be used as a starting point but should be verified per the options above in order to reduce the risk of missing or omitting an owner(s), especially when permittee-responsible mitigation applies.

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

* State Coordination:
  + Request comments from Virginia Department of Health (VDH), Virginia Department of Conservation and Recreation (VDCR), Virginia Department of Wildlife Resources (VDWR) and Virginia Marine Resources Commission (VMRC), giving a 45-day comment window. No species screening by DEQ staff is required prior to coordination; however, staff should request agency comments as soon as possible during application review.
  + Additional coordination with USFWS, VDACS, NOAA, and/or Tribes may be necessary, but only if recommended by one of the above state agencies and only if related to a state-listed threatened or endangered species.[[1]](#footnote-2) Note that many species occur on both the federal and state lists.
  + The state agencies have 45 days from receipt of the coordination request to review the proposed project and provide a response. If necessary, federal agencies are given the same period to review and comment. Agency comments will be accepted through 11:59 p.m. on the 45th day. The 45-day period is counted from application complete (APCP), or on the day the DEQ request for comments was sent, whichever occurs first.
  + If comments are received or permit conditions proposed by state or federal agencies, coordinate with the applicant and the reviewing agency to resolve any potential issues. Thoroughly document any final decisions in the Fact Sheet (e.g., rationale for such conditions if imposed).[[2]](#footnote-3)
* Recommend coordinating with USACE on projects where one or both agencies are asserting jurisdiction.
* For individual permits having an associated SPGP, note that USACE is currently leading coordination efforts for SPGP purposes (see the most recent SPGP Standard Operating Procedures regarding Section 106 coordination, Section 7 coordination, Section 408 coordination).

**Step 7: Draft Permit**

* Once the application is complete and state agency coordination is complete, DEQ makes a tentative permit decision, whether to issue or deny the permit. If the tentative decision is to issue the permit, a draft individual permit package should be prepared.
* *A draft permit may not be sent to the applicant until the required permit application fee has been documented by DEQ as having been received and deposited* ([9VAC25-210-80](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section80/).B.1.p)*.*
* The finalized draft permit should be peer reviewed and must be reviewed and approved by the regional program manager prior to release of the draft permit package to the applicant.
* This package must be prepared and sent to the applicant in sufficient time to allow for 14-day permittee review of the draft permit package, the required 30-day public comment period, preparation of the final permit package, and resolution of issues raised during the public comment period. Whenever possible, the draft permit should be provided to the applicant within 20 days of an application being technically complete.
* The draft permit package is to be sent to the applicant for review, including the draft public notice, which is prepared by the permit writer using template provided in the Templates subfolder of Chapter 5.
* With publication of the public notice, the applicant accepts the draft permit.
* If the applicant has comments, the permit writer is to work with the applicant to address these comments until both parties agree the permit is ready for public noticing. The regional program manager must review changes to the draft permit.

**Step 8: Public Notice Process**

* The applicant is responsible for publishing the public notice in a newspaper of general circulation[[3]](#footnote-4) in the area of the proposed activity. If the public notice is not published within 14 days of the date of the draft permit transmittal letter, the 120-day clock is suspended until the public notice is published ([9VAC25-210-140](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section140/).A). Best practice is to communicate with the applicant and request that you receive notification as soon as the publication date is determined between the applicant and the publisher. The IP Draft Transmittal Letter template includes this request.
* The applicant is to submit to DEQ a copy of the public notice verification form.
* The permit writer will provide a copy of the PN to the regional DEQ web author for posting on DEQ’s website <https://www.deq.virginia.gov/permits/public-notices/water/wetlands-streams-vwp>.
* The permit writer will send a copy of the draft permit and public notice to the necessary public officials of the locality(ies) that the proposed project is within. This is typically the Mayor and City Manager for cities and the Board of Supervisors and County Administrator for counties.
* As noted at the beginning of this chapter, the public comment period must be a minimum of 30 days after the date of publication.
* The permit writer should file incoming comments as they are received, and ideally create a centralized means of tracking such comments.

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

* If no public hearing is requested, comments on the draft permit will be reviewed and the permit decision made within 90 days of the close of the comment period, and preferably before the 120-day deadline.
* If, during the public comment period, DEQ receives 25 or more requests for a public hearing on the draft permit action, refer to the most recent version of the [“Public Hearing Procedures for Permitting Decisions [9.23.22].pdf”](https://covgov.sharepoint.com/sites/deqnet/Shared%20Documents/Forms/Name%20sort.aspx?id=%2Fsites%2Fdeqnet%2FShared%20Documents%2FAdministration%2FPolicy&viewid=fe19566a%2Dc6e3%2D490e%2D9204%2Da79f6f6580b5), as noted at the beginning of this chapter, to complete the permitting process.[[4]](#footnote-5)
* The permit writer will need to review each comment with respect to the proposed permit and determine if the comments relate to subjects under the jurisdiction of the VWP Permit Program.
* Each commenter shall be provided a response if warranted by the nature of the comment. The response will need to address each of the commenter’s concerns and clarify staff’s position on the issuance of the draft permit.

**Step 10: Permit Issuance**

* Once the public comment process has been concluded, and there are no comments, or any comments received were satisfactorily addressed, the draft permit is ready for issuance.
* The draft permit package will need to be finalized, dated, and signed by the regional program manager or regional director, or either’s designee.
* After signing, the permit is to be sent to the applicant with a copy to the agent by email if agreeable to the permittee. Also email an electronic copy to staff counterparts at the USACE and VMRC, or upload to an agency-designated site for their access and download.

**Step 11: Permit Denial**

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

## 5.3 Individual Permit Applicability

Individual permits are issued for proposed activities in both *nontidal and tidal* waters within the Commonwealth. The VWP Permit Program Regulation details the prohibitions and requirements ([9VAC25-210-50](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section50/)) and exclusions ([9VAC25-210-60](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section60/)) to using VWP individual permits.

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

A project may be elevated to a VWP individual permit, even when it meets the impact thresholds of a VWP general permit, if staff determines that the project will have greater than minimal impacts or has complex issues related to development, avoidance, compensation, threatened and endangered species or natural resources. Circumstances under which this may occur can be found in [9VAC25-210-130](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section130/).B (see also Section 1.5.4).

## 5.4 Joint Permit Application Review

The requirements for a complete application for a VWP Individual Permit (IP) are provided in [9VAC25-210-80](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section80/).B. Refer to Section 3.1 when reviewing a joint permit application (JPA) for completeness and for further directions concerning additional information requests.

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

While [9VAC25-210-80](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section80/).B may list all the informational requirements of a complete application, other sections of the SWCL, regulations, and DEQ Guidance outline specific requirements of a VWP Permit; therefore, staff is responsible for reviewing the application in accordance with all applicable regulations and Agency guidance and policy. In 2023, complete application checklists were developed to aid applicants in providing required information and to aid in application review by DEQ staff (on DEQ’s web site: <https://www.deq.virginia.gov/permits/water/wetlands-streams-vwp>).

### 5.4.1 Determining the Application Fee

To determine the application fee due for a particular individual permit, staff will need to determine the total acreage of impacts (permanent and temporary) proposed to all surface waters, including wetlands, open water, and stream channels. Refer to Section 3.4 of this manual for further directions concerning the application fee.

### 5.4.2 Avoidance and Minimization

VWP Permit Program regulations incorporate, by reference, the mitigation sequencing guidelines from the Clean Water Act, also known as the Section 404(b)(1) guidelines ([9VAC25-210-116](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section116/).C.1). These implementing guidelines for the Clean Water Act (40 CFR 230.10) state that the burden of proof for demonstrating compliance with the Section 404(b)(1) guidelines is the responsibility of the applicant, not the permitting entity. Applicants must (1) establish that avoidance of impacts to state waters, including wetlands is not practicable; (2) demonstrate that all practicable efforts to minimize unavoidable impacts to state waters, including wetlands, have been taken in project design and construction plan; and (3) provide a plan for compensation for all unavoidable impacts. As part of the permit evaluation process used to authorize a particular project proposing to impact surface waters, the VWP Permit Program regulations incorporate the concept of avoidance and minimization from the *Guidelines for Specification of Disposal Sites for Dredged or Fill Material*, [40 CFR Part 230](http://www.ecfr.gov/cgi-bin/text-idx?SID=c6734f3f1e97fb7f4c92dcadd9fa4744&mc=true&node=pt40.25.230&rgn=div5), also known as the Section 404(b)(1) guidelines ([9VAC25-210-80](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section80/).B.1.g).

Refer to Sections 3.3 and 3.5 of this manual for further directions concerning avoidance and minimization.

### 5.4.3 Compensation

In accordance with [9VAC25-210-80](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section80/).B.1.m, all permanent impacts to surface waters require compensatory mitigation without exception, including those incurred during the construction or development of a permittee responsible mitigation site. Such proposals shall follow the USACE-EPA Compensatory Mitigation for Losses of Aquatic Resources dated April 10, 2008 (33 CFR 325 and 332; 40 CFR 230). Refer to Sections 3.5 through 3.7 of this manual for further directions concerning compensatory mitigation.

### 5.4.4 Site Visit

A site visit is typically conducted for all new individual permit applications so that staff may familiarize themselves with the site and investigate areas of concern identified during the initial permit application review process. Refer to Section 3.8 of this manual for further directions concerning site visits.

## 5.5 Local Government Notification

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

Per § [62.1-44.15:4](https://law.lis.virginia.gov/vacode/title62.1/chapter3.1/section62.1-44.15:4/) of the Code of Virginia (Chapter 3.1, Article 2), the local official notification letter should include at a minimum: (i) the name of the applicant; (ii) the nature of the application and proposed discharge (a description of the proposed activities and impacts); and (iii) the availability and timing of any comment period (a brief explanation of the Public Notice process). Upon request, staff must provide any other information known to, or in the possession of, the Board or the Department regarding the applicant that is not required to be held confidential by Chapter 3.1 of the Code of Virginia.

## 5.6 Riparian Property Owner Notification

### 5.6.1 Notification Requirements

Per [§ 62.1-44.15:4](https://law.lis.virginia.gov/vacode/title62.1/chapter3.1/section62.1-44.15:4/) of the Code of Virginia (Chapter 3.1, Article 2), a good faith effort by the State Water Control Board to notify *riparian* property owners is required. For very wide surface waters, note that if two miles or more separate the proposed point of impact from the *nontidal or tidal* riparian property, there is no requirement to notify the riparian owners located on the shore opposite of the impact location. These distances also apply to any permittee-responsible mitigation site *that incurs impacts covered by the pending individual permit*. The U.S. Army Corps of Engineers (USACE) and Virginia Marine Resources Commission (VMRC) have their own requirements and protocols for notifying property owners that may differ from DEQ’s.

While no definitions exist in Chapter 3.1 of Title 62.1 of the Code of Virginia (State Water Control Law) for riparian property owner or adjacent property owner, DEQ guidance[[5]](#footnote-6) defines these terms as follows:

“Riparian property owner”: For the purposes of this guidance, a riparian property owner is an owner of land which borders on a body of water or watercourse (i.e., a body of water flowing in a reasonably definite channel with bed and banks in which water naturally flows).

“Adjacent property owner”: For the purpose of this guidance, an adjacent property owner is an owner of property that is bordering, contiguous to, or neighboring the property that is subject of the permit application (e.g., shares one or more common property lines with the subject property).

Additionally, Chapter 8 (Impoundment of Surface Waters) of Title 62.1 of the Code of Virginia (§ 62.1-104) defines the following terms:

"Riparian land" is land which is contiguous to and touches a watercourse. It does not include land outside the watershed of the watercourse. Real property under common ownership and which is not separated from riparian land by land of any other ownership shall likewise be deemed riparian land, notwithstanding that such real property is divided into tracts and parcels which may not bound upon the watercourse.

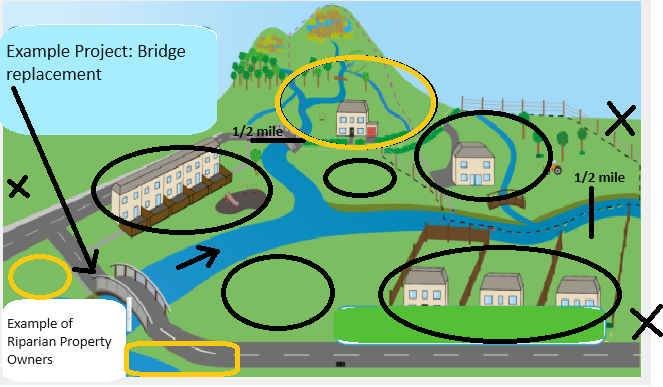
"Riparian owner" is an owner of riparian land.

Notification of *adjacent* property owners that are not also *riparian* property owners is not required in accordance with [§ 62.1-44.15:4](https://law.lis.virginia.gov/vacode/title62.1/chapter3.1/section62.1-44.15:4/). While the program’s obligation in Code focuses on notifying certain riparian property owners, notifying other property owners may be appropriate. Examples and suggested actions are below. When in doubt, consult the regional program manager.

* Impacts appear to affect the use of a non-riparian, adjacent property, such as when a non-tidal upstream owner is in close proximity to a proposed activity.
  + Notify adjacent, non-riparian property owners when staff determines the project impacts from activities described in § 62.1-44.15:20 A.1 through 3 may affect use of the adjacent, non-riparian property.
* Impacts to a non-tidal stream channel that is piped for some portion of the one-half mile downstream
  + Make a good faith effort to notify the riparian property owners, as best they can be identified, for the one-half mile downstream.
* Impacts to a non-tidal wetland adjacent and contiguous to a non-tidal stream channel but the permitted impact area is not the stream channel.
  + Notify riparian property owners adjacent to the impacted wetland as identified in the application and those for one-half mile downstream along the channel.
* Impacts to a non-tidal wetland system with no defined on-site channel that continues off-site beyond the project boundary.
  + Notify riparian property owners along the on-site portion of the impacted wetland as identified in the application. Also notify riparian property owners adjacent to the *off-site* portion of the wetland for a distance of one-half mile ‘downstream’ from the impact site. When more than one impact site exists, use the one closest to the project boundary that also overlies the wetland system. Use best professional judgement on where the off-site wetland boundary lies in cases where it is not identified in the application.
* Impacts to an isolated wetland.
  + Riparian owner notifications are not required for discharge to isolated wetlands where there is no receiving stream.
* When the notification distances cross over a county, city, or state boundary, make a good faith effort to notify *riparian* property owners along the required distance(s).
* Permittee-responsible mitigation site that *does not* incur impacts covered by the pending individual permit.
  + Riparian owner notifications are not required for the PRM site.

The example graphic below is provided as a simplified view of owners along a non-tidal water where a bridge replacement project is being proposed. Notifications would be sent to property owners noted with black circles. Notification to the property owners noted with orange circles would be discretionary.

Figure 5.1 Example notification graphic[[6]](#footnote-7)



### 5.6.2 Notification Procedures

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

Some cities and counties have migrated tax parcel and owner information to web-based GIS tool. For those cities or counties that do not have such tools, staff will have to request the names and addresses of riparian property owner. Contact information for the commissioners of revenue or tax assessors can be obtained from county/city government web sites, or on <https://www.vacomrev.com/>.

The request letter should include a map highlighting the pertinent land holdings, including those for any applicable permittee-responsible mitigation areas, based on the criteria outlined in the Notification Requirements section above. Provide the best possible map available, such as county road map. Oftentimes, county tax maps do not include rivers and streams as landmarks. A United State Geological Survey (USGS) topographic map may also be included as an additional resource for the county staff. A sample Request for Property Owner Information Letter is provided at the end of this section.

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

Per § [62.1-44.15:4](https://law.lis.virginia.gov/vacode/title62.1/chapter3.1/section62.1-44.15:4/), if contacted by a property owner, address their questions and provide them with any requested information. The request and staff’s response may be subject to the Freedom of Information Act procedures (see <http://www.deq.virginia.gov/info/foia.html>). Staff may also offer to send a copy of the Public Notice to the property owner once the draft is approved by the applicant and the notice is published.

## 5.7 State and Federal Resource Agency Coordination

### 5.7.1 Coordination with State Resource Agencies

Unlike the general permit process, state coordination for an individual permit is always required, but does not require pre-screening via agency resource databases. Table 3 lists the state agencies and contacts that staff is required to coordinate with for comments.

Options for staff to solicit comments include:

1. VIA e-mail, provide the request letter and if applicable, the Joint Permit Application materials. This works best for smaller sized files.
2. VWP staff may share links to these documents with other Virginia state agencies only via emailing links to the OneDrive-Commonwealth of Virginia SharePoint system, assuming that the state resource agency also has SharePoint capabilities.
3. Use the large-file transfer tool [VITAShare](http://deqnet/programs/admin/ois/vitafileshare.asp). VitaShare has a pre-file size limitation of 50 MB.

Table 3: State Resource Agency Contacts

| **Agency** | **Contact** | **Email/Web** | **Notes** |
| --- | --- | --- | --- |
| VDCR-All VDCR | Allison Tillett | [envreview@dcr.virginia.gov](mailto:envreview@dcr.virginia.gov) | When applicable, please submit the individual permit project directly to Allison Tillett, VDCR Environmental Review Coordinator, for coordination with all the VDCR divisions. An agency comment letter will be provided via email.  [Effective 8/12/2022] |
| VMRC | VMRC JPA submittal email.  Also CC Beth Howell, Tiffany Birge | [scoping@mrc.virginia.gov](mailto:scoping@mrc.virginia.gov)  [Beth.Howell@mrc.virginia.gov](mailto:Beth.Howell@mrc.virginia.gov)  tiffany.birge@mrc.virginia.gov | See also [DEQ-VMRC Memorandum of Agreement, Amended August 16, 2023](https://covgov.sharepoint.com/:b:/r/sites/deqnet/Shared%20Documents/Water%20Division/Water%20Permitting/Wetlands%20%26%20Stream%20Protection%20-%20VWP/1DRAFT-VWP%20Permit%20%26%20Compliance%20Manual/MOA-DEQVMRCPermittingInNontidalWatersAmd8-16-2023.pdf?csf=1&web=1&e=NEcDNo) |
| VDH-ODW | Office of Drinking Water- Central Office  For applicable projects, staff should also notify Office of Shellfish Sanitation. | odwreview@vdh.virginia.gov | This web page can be used to find VDH field office contact information: <https://www.vdh.virginia.gov/drinking-water/contact-us/> |
| VDWR | Amy Martin | [ESSProjects@dwr.virginia.gov](mailto:ESSProjects@dwr.virginia.gov) | Amy Martin will review and reply to coordination requests made via the ESS Projects email. |
| Maryland Department of the Environment |  |  | For VWP Permits sought by Virginia users of the Potomac River, the Maryland Department of Environment must be furnished copies of the applications and as an "interested and affected agency" must be consulted in the same manner as are Virginia agencies. |

If an application involves a surface water withdrawal, it should be copied to the Water Withdrawal Permitting Program immediately. In cases where VWP permits are being sought by Virginia users of the Potomac and other interstate waters, the applicable state or governmental agency with jurisdiction over the affected waters shall be provided copies of the application for full coordination, as dependent on the location of the project and the affected entity.

#### 5.7.1.1 Timelines

For VWP individual permits, coordination with state resource and other interested and affected agencies should occur as soon as possible after the application has been received. Agency coordination is often conducted concurrently with the riparian property owner and local government notifications.

Coordination should occur within 45 days from the date of the request to an agency to provide comments (§ [62.1-44.15:20](https://law.lis.virginia.gov/vacode/title62.1/chapter3.1/section62.1-44.15:20/).C). The 45-day period is counted from application complete (APCP), or on the day the DEQ request for comments was sent, whichever occurs first. If DEQ receives agency comments after the allowed time period, VWP permit staff may use discretion on incorporating any resulting permit conditions. If the inclusion of one or more conditions will not interrupt or delay the issuance process, VWP permit staff are encouraged to include any necessary conditions, such as a threatened or endangered species time-of-year restriction condition. If the administrative process is too far along where such consideration would cause interruption or delay – for example, during the public notice and comment period - the inclusion of conditions may not be warranted. Discuss these situations on a case-by-case basis with the VWP Regional Manager, and always copy applicants on any comments received late.

#### 5.7.1.2 Comments

The comments received from commenting agencies in a timely manner must receive full consideration prior to any proposed VWP individual permit action, including the public notice of the draft permit. Comments regarding listed threatened or endangered species issues must be resolved before issuance of a VWP permit, and ideally prior to any public notice.

DEQ permitting actions cannot result in a take of state listed threatened and endangered species or designated critical habitat. The VWP individual permit IP Special Conditions template contains a condition that addresses this statutory mandate. See specific information on the Canebrake rattlesnake and other species in the Chapter 5 References subfolder.

Although agencies may provide additional information or comments regarding migratory birds, natural area preserves, Stream Conservation Units (SCUs), stormwater or other issues, DEQ considers those comments only as they are relevant to listed threatened or endangered species. VMRC considers the factors listed in [§ 28.2-1205 A](https://law.lis.virginia.gov/vacode/title28.2/chapter12/section28.2-1205/) and may submit comments to DEQ on these factors when DEQ is likely to issue a VWP individual permit coverage in non-tidal waters. Forward all such comments received to the applicant for their information, but no response from the applicant is required.

VMRC considers the factors listed in [§ 28.2-1205 A](https://law.lis.virginia.gov/vacode/title28.2/chapter12/section28.2-1205/) and may submit comments to DEQ on these factors when DEQ is likely to issue a VWP individual permit coverage in non-tidal waters.

When a state agency recommends contacting a *federal* agency regarding a threatened or endangered species, DEQ staff should coordinate with the federal agency as requested.[[7]](#footnote-8)

### 5.7.2 Coordination with Federal Agencies

Comments or recommendations made by a federal agency regarding a threatened or endangered species should be addressed by the applicant and/or incorporated as a condition of the permit to the extent possible. Comments received by the various federal agencies should be documented in the permit file.[[8]](#footnote-9) While DEQ is legally mandated to protect *state* listed threatened and endangered (T-E) species, or designated critical habitat when making permit decisions, the USFWS should be consulted when any activity may result in an adverse impact to a federally listed T-E species, as identified by VDWR. Coordination with the USFWS should be emailed to the Service’s Virginia Field Office: [virginiafieldoffice@fws.gov](mailto:virginiafieldoffice@fws.gov). Any comments requesting surveys for the presence of, or suitable habitat for, threatened or endangered species within the project boundaries, or other types of comments, such as time-of-year restrictions (TOYR) for anadromous fish, should be considered and conveyed to the applicant, and may be incorporated into the individual permit conditions.[[9]](#footnote-10)

Staff is encouraged to coordinate closely with the USACE should the agency also be asserting jurisdiction over the proposed project, especially if the USACE is issuing an individual permit. The goal of coordination with the USACE is to align the conditions in the VWP individual permit and any USACE-issued permit and to avoid contradiction, provided that the conditions meet state laws and regulations.

If a SPGP is being processed simultaneously with the VWP individual permit, federal agency coordination is currently conducted by the USACE. See the SPGP SOP for coordination procedures.

## 5.8 Draft Permit

A Draft Individual Permit may be developed as early as reasonable after an application is complete and adequate technical information is obtained to draft permit terms and conditions. For example, staff should compile the Draft Individual Permit package for the applicant’s review after all coordination is completed with the commenting agencies; after staff has concluded that the proposed impacts have been avoided and minimized to the maximum extent practicable; and after the draft conceptual compensation plan is approved.

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

* Draft Fact Sheet
* Permit Cover Page
* Draft Part I - Special Conditions
* Part II - General Conditions
* Draft Public Notice and Public Notice Verification Form
* Transmittal Letter for the Draft Individual Permit and Public Notice

### 5.8.1 Fact Sheet

The Fact Sheet provides a written record of the decision process, from the application phase through the final permit decision by the department, as well as the basis for the department’s terms and conditions and final permit decision. The Fact Sheet documents that all statutory and regulatory requirements of the program were met. Accordingly, it includes details regarding the proposed project; the application review process; regulatory agency and public notification and comments; description of the proposed or authorized impacts, including those from building or developing a permittee responsible mitigation site, when applicable; description of mitigation (i.e., how all project impacts to existing beneficial uses were avoided and minimized and how unavoidable impacts were compensated); the rationale for the conditions included in the VWP individual permit; any additional, useful or pertinent information; and the staff recommendation for the permit decision.

Use the most recent Fact Sheet template(s) in the VWP Permit & Compliance Manual. The Fact Sheet is not signed.

One Fact Sheet should be prepared for *each* final IP case decision or action (i.e., one for an IP Issuance, another if the IP is modified after issuance, another if the IP is modified again after a previous modification, another if the IP is reissued for any reason, etc.). The Fact Sheet is a working document that continues to be revised up to the point of the final decision.

The Fact Sheet for draft individual permit or draft major modification of a permit is provided to the applicant for review. The Fact Sheet reflects information *up to and including* this point in the decision timeline, and such information is what the agency has used to develop the draft terms and conditions. Should the terms and conditions change one or more times as a result of the applicant reviewing a draft individual permit or major modification, the same Fact Sheet will be updated each time accordingly – a ‘working draft’ of the Fact Sheet can be saved to the DEQ server that is overwritten each time such revisions are necessary. **Avoid** making or keeping separate working draft files (i.e., Draft FSheet [date], Draft FSheet [next new date], Draft FSheet [next new date], etc.). The working draft should be labeled in the document Header with “Draft” in place of the Date, and the file name should contain the label “Draft”. Use of a watermark is optional.

Before sending the Fact Sheet to an applicant, ensure it is marked with a date footer [M/DD/YYYY]. Each time a Fact Sheet is provided to the applicant, upload it to ECM as part of the draft individual permit or modification documentation with the transmittal document (i.e., email) [ECM coding: Retention Schedule = 009550, Document Type = Correspondence & Case History]. See also [Library of Virginia Records Retention and Disposition Schedule General Schedule 101- 012019](https://www.lva.virginia.gov/agencies/records/sched_state/GS-101.pdf).

Fact Sheets are developed for minor modifications of an individual permit but are not prepared as draft and then final, thus only the final version is sent to the permittee upon the final decision.

### 5.8.2 Permit Cover Page

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

### 5.8.3 Part I – Special Conditions

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

The sections as shown in the most recent Part I – Special Conditions template(s) are the major categories that should be in every VWP individual permit. Within each of these major categories are subcategories of conditions. Every section of the special conditions, or every special condition in a section, may not apply to the proposed activities, and therefore, some special conditions may need to be altered to reflect project-specific needs, or may be deleted. Part I should only include the draft special conditions that are pertinent to the project at this phase of processing, or that could conceivably come up during the project (e.g., do not include dredging special conditions if there is no dredge work being proposed and little if any chance of dredging activities to occur). Additionally, staff may find it necessary to "create" specific special conditions to address site specific circumstances or concerns.

These special conditions should be marked “Draft” until such time that a final permit is developed.

### 5.8.4 Part II – General Conditions

The Part II - General Conditions are included in *all* VWP individual permits in accordance with VWP Permit Program regulation. Because the conditions are stated in the VWP Permit Program regulation [9VAC25-210 *et seq*](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/)*.*, *do not revise the General Conditions or mark them as “Draft”*.

### 5.8.5 Public Notice and Public Notice Verification Form

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

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

More details are provided in the ‘Public Notice Process’ section.

### 5.8.6 Transmittal Letter for the Draft Individual Permit and Public Notice

The Transmittal Letter includes directions to the applicant concerning the review of the Draft Individual Permit and publication requirements. Copy staff counterparts at the USACE and VMRC.

### 5.8.7 Review of Draft Individual Permit Package

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

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

The transmittal letter requests that the applicant review and comment on the Draft Individual Permit within 14 days and provides instructions for entering the specific public comment period on the Public Notice before submittal to any newspaper for publication. During this period, the applicant may request a meeting to discuss the proposed permit conditions or may elect to withdraw the application and thereby end permit processing. If the applicant desires significant changes to the draft special conditions, especially to those based on agency comments, discuss the desired changes with your supervisor and the applicable agency(ies) prior to committing to any changes.

If the applicant does not respond with comments, and does not publish the notice within 14 days, the permit processing clock is stopped on the 15th day after the date the Draft Individual Permit package is mailed to the applicant and is not resumed until after the date of publication (see [9VAC25-210-140](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section140/).A). If this occurs, document the Fact Sheet.

## 5.9 Public Notice Process

### 5.9.1 Public Notice Notification

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

Once the specific public comment period is determined, complete the dates in the Public Notice and e-mail a copy to the current web author in the DEQ regional office who has the responsibility to post VWP public notices to the program web page <https://www.deq.virginia.gov/permits/public-notices/water/wetlands-streams-vwp>.

### 5.9.2 Public Notice Verification

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

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

### 5.9.3 Thirty-Day Public Comment Period

During the comment period, individuals may submit written comments via hand-delivery, mail, fax, or e-mail (see Section 5.1). Comments may not be provided orally.

Typically, public comments submitted after the public comment period ends are not considered in the official permit record for informal proceedings such as a draft permit action. However, exceptions may be made on a case-by-case basis by the VWP Permit Program manager in the region processing the permit. This is not necessarily the case with formal proceedings.

### 5.9.4 Public Comment Review and Response

Public comment review by staff, as well as the Director’s decision whether to approve or deny a public hearing, must be completed within **30 days** of the end of the comment period. Based on a review of relevant public comments, changes in the draft Part I - Special Conditions may be warranted. Changes may be made to the permit conditions that correct typographical errors or are in response to comments that are within the purview of the VWP Permit Program. Changes made to the special conditions as a result of public comments should be discussed with the applicant and all applicable parties.

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

### 5.9.5 Public Hearing

The Director of DEQ typically has 30 calendar days following the end of the comment period to decide whether or not a hearing is warranted ([9VAC25-210-165](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section165/).C). In addition, the Director may, in his discretion, convene a public hearing on a permit action.

Any time that DEQ decides to hold a public hearing, or a concurrent public comment period and a public hearing, then refer to the guidance on processing controversial VWP individual permits in the most recent version of [“Public Hearing Procedures for Permitting Decisions [9.23.22].pdf”](https://covgov.sharepoint.com/sites/deqnet/Shared%20Documents/Forms/Name%20sort.aspx?id=%2Fsites%2Fdeqnet%2FShared%20Documents%2FAdministration%2FPolicy&viewid=fe19566a%2Dc6e3%2D490e%2D9204%2Da79f6f6580b5), as well as [9VAC25-210-140 through -174](https://law.lis.virginia.gov/admincodefull/title9/agency25/chapter210/partIII/). This procedures document directs staff to “Send notice to newspaper for publication in accordance with notice requirements of law and regulation and in accordance with purchasing procedures and verifies newspaper receipt and publication of notice.”

When developing the public notice for a public hearing, a beginning time is always included, but an ending time may not be. If there is a specific reason to include an ending time, such as a venue requires vacating the premises by a certain time, then include that in the notice. Otherwise, consider carefully before adding an ending time. If an ending time is listed in the notice, DEQ is required to remain until that ending time.

The hearing should be summarized in the Fact Sheet, along with any changes to the terms and conditions as a result of the hearing.

## 5.10 Permit Issuance

The Final Individual Permit package includes the transmittal letter; the final Fact Sheet, updated through the final department decision; the final Permit Cover Page (with the issuance and expiration dates filled in), the final Part I - Special Conditions, and the Part II - General Conditions. Templates for these documents are available in the Chapter 5 Templates folder.

The final Fact Sheet should reflect information *up to and including* the final decision, upon which the department has developed final terms and conditions.

*Once the final department decision is complete*, the Fact Sheet is dated in the header with the same date as the final permit and marked with a date footer [Revised M/DD/YYYY] before sending it to the permittee. Make sure to remove the “Draft” label. Upload the Fact Sheet to ECM as part of the final individual permit or modification documentation [ECM coding: Retention Schedule = 009550, Document Type = Permit Decision]. See also [Library of Virginia Records Retention and Disposition Schedule General Schedule 101- 012019](https://www.lva.virginia.gov/agencies/records/sched_state/GS-101.pdf).

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

Also email an electronic copy to staff counterparts at the USACE and VMRC, or upload to an agency-designated site for their access and download. Also, in cases where there were negotiations with concerned citizens or stakeholders, then it may be appropriate to send a copy of the final permit to those parties.

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

The VWP individual permit package is typically emailed to the permittee and/or agent. If sending a paper copy via postal mail, ensure a copy is also sent via email. Once the VWP individual permit has been issued, staff must complete the following steps as soon as possible:

* complete all CEDS information and ensure that the permit record Classification is changed from “application” to “active” and that any due dates are entered (refer to the most recent version of the VWP CEDS Permit Manual on DEQNet;
* ensure that all pertinent information is included and organized in the permit file;
* file hardcopy documents appropriately;
* prepare the permit file for upload to DEQ’s Enterprise Content Management (ECM) system per instructions in this chapter;
* add the permit record to the regional tracking form (if applicable);
* add the project boundary to GIS or confirm existing GIS entry is accurate, including applicable metadata; and
* begin compliance monitoring.

## 5.11 Process for Denial of an Individual Permit Application

The administrative and technical review of an application may result in a situation where the issuance of a permit or permit coverage is not supported by law and regulation. The first step in any denial process should always be a thorough discussion of the facts of the case with Regional Director and Central Office management. Do not begin the formal denial process until concurrence from department management is obtained. The sections below detail the reasons for a denial recommendation. See also § [62.1-44.15:21](https://law.lis.virginia.gov/vacode/title62.1/chapter3.1/section62.1-44.15:21/).E and [9VAC25-210-230](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section230/).

### 5.11.1 Bases for Denial

Denials may be warranted when one or more of the situations outlined in [9VAC25-210-230](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section230/) exist, or for other reasons deemed appropriate by VWP Permit Program managers; however, *denials are not processed for the applicant’s failure to provide a complete application*. Some of the more likely reasons for denial include:

* The project will result in violations of water quality standards or will impair the beneficial uses of state waters.
* The project that the applicant proposed fails to adequately avoid and minimize impacts to state waters to the maximum extent practicable.
* The proposed compensatory mitigation plan is insufficient or unsatisfactory and fails to achieve no net loss of existing wetland acreage and function and no net loss of functions in all surface waters.
* The Virginia Department of Wildlife Resources (VDWR) indicates that natural or stockable trout waters would be permanently and negatively impacted by the proposed activity.
* The effect of project impacts, together with other existing or proposed impacts to wetlands, will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

### 5.11.2 Notification to Applicant

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

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

This notification letter should be signed by the Regional Director or his/her delegate and sent to the applicant via certified mail. Also notify staff counterparts at the USACE and VMRC.

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

### 5.11.3 Public Notice to Deny Permit

When an applicant chooses to proceed with the project application as proposed or has not responded to the preliminary decision to tentatively deny, staff should prepare a Public Notice of the department’s intent to deny the VWP individual permit. The Public Notice should generally follow the form of a public notice for issuance except that it should clearly state that the department’s tentative decision is to deny the permit and include the applicable reason(s) for denial.

The notice should be published in a newspaper having circulation in the project area and should be copied to the Directors of the Water Permitting Division and Office of Regulatory Affairs & Outreach at DEQ-Central Office. *Note: DEQ pays for the publishing costs associated with a Public Notice of Intent to Deny Permit. Consult with your office’s accounting department or Office Manager if you have questions about processing the payment for the advertisement. Newspaper advertisements are procurements for which an approved requisition needs to be submitted to the OPS Mailbox. Per the* [*DEQ Procurement Procedures Manual*](https://covgov.sharepoint.com/:b:/r/sites/deqnet/Shared%20Documents/Administration/Procurement/DEQProcurementManual.pdf?csf=1&web=1&e=eByJHu)*, the requisition must be approved prior to placing the ad. If the final cost of the ad is not known at the time of getting the requisition approved, one way to complete the requisition is by using an estimated total cost, entered as a value higher than the anticipated actual cost and noting it is a ‘not to exceed’ amount. The DEQ Regional Office Manager is often responsible for ordering the advertisement and paying for the advertisement with the small purchase charge card (if the newspaper accepts credit card payments).*

If a public hearing is requested as a result of the Public Notice of Intent to Deny Permit, follow the most recent version of [“Public Hearing Procedures for Permitting Decisions [9.23.22].pdf”](https://covgov.sharepoint.com/sites/deqnet/Shared%20Documents/Forms/Name%20sort.aspx?id=%2Fsites%2Fdeqnet%2FShared%20Documents%2FAdministration%2FPolicy&viewid=fe19566a%2Dc6e3%2D490e%2D9204%2Da79f6f6580b5), as well as [9VAC25-210-140 through -174](https://law.lis.virginia.gov/admincodefull/title9/agency25/chapter210/partIII/).

When developing the public notice for a public hearing, a beginning time is always included, but an ending time may not be. If there is a specific reason to include an ending time, such as a venue requires vacating the premises by a certain time, then include that in the notice. Otherwise, consider carefully before adding an ending time. If an ending time is listed in the notice, DEQ is required to remain until that ending time.

If no requests for a public hearing are received as a result of the public notice of the proposed denial, the applicant should be offered, in writing, an Informal Fact Finding (IFF) proceeding as described in § [2.2-4019](https://law.lis.virginia.gov/vacode/title2.2/chapter40/section2.2-4019/) of the Code of Virginia. If no IFF is requested by the applicant, the permit application is denied by the DEQ Director. However, if the applicant does request an IFF, special procedures beyond the scope of this manual apply and should be thoroughly coordinated with department management.

1. See Section 3.2 of this manual for note about communications and FOIA. [↑](#footnote-ref-2)
2. Ibid. [↑](#footnote-ref-3)
3. Criteria for Newspapers of General Circulation. Code of Virginia § [8.01-324](https://law.lis.virginia.gov/vacode/title8.01/chapter8/section8.01-324/). [↑](#footnote-ref-4)
4. Please see the email in Chapter 5 References subfolder on DEQnet for further information regarding less than 25 requests. [↑](#footnote-ref-5)
5. Guidance Memorandum 11-2005 – rescinded for VWP Permit Program only, replaced by DEQ Guidance Memorandum GM16-2007, replaced by DEQ Guidance Memorandum 24-2005. [↑](#footnote-ref-6)
6. Graphic source: https://thefloodhub.co.uk/news/the-flood-hubs-riparian-owner-campaign/ [↑](#footnote-ref-7)
7. See Section 3.2 of this manual for note about communications and FOIA. [↑](#footnote-ref-8)
8. Ibid. [↑](#footnote-ref-9)
9. See Section 3.2 of this manual for note about communications and FOIA. See also Chapter 2 and 2007 MOU in Chapter 5 References. [↑](#footnote-ref-10)