Contents

[CHAPTER 6: STATE PROGRAMMATIC GENERAL PERMIT (SPGP) 1](#_Toc195361051)

[6.1 SPGP Overview 1](#_Toc195361052)

[6.2 SPGP Procedures/Coordination Outline 2](#_Toc195361053)

[6.3 Delineations 4](#_Toc195361054)

[6.4 Tidal Waters 4](#_Toc195361055)

[6.5 Deed Restrictions 5](#_Toc195361056)

[6.6 Transition 5](#_Toc195361057)

[6.7 Modifications 5](#_Toc195361058)

[6.8 File Documentation 5](#_Toc195361059)

See DISCLAIMER in INTRODUCTION.

# CHAPTER 6: STATE PROGRAMMATIC GENERAL PERMIT (SPGP)

## 6.1 SPGP Overview

State Programmatic General Permits (SPGP) authorize the discharge of dredged or fill material in nontidal waters of the United States (WOTUS), including wetlands, associated with specific activities that are regulated under the federal Section 404 and Section 10 programs administered by the U.S. Environmental Protection Agency (USEPA) and the U.S. Army Corps of Engineers (USACE). The USACE may choose to issue a SPGP to an individual state or tribal agency with authority over similar activities in surface waters.

Currently in Virginia, there are two primary SPGPs in use, the 22-SPGP-RCIR for certain residential, commercial, and institutional developments, and the 22-SPGP-LT for linear transportation projects[[1]](#footnote-1) (see <https://www.nao.usace.army.mil/Missions/Regulatory/RBregional.aspx>). These 22-SPGPs were issued in August 2022 and expire in August 2026. DEQ, on behalf of the USACE, provides SPGP applicants with verifications for the SPGP-covered activities when appropriate and when a DEQ VWP individual permit or general permit coverage is also issued for VWP-covered activities. Note that in cases where the SPGP applies, but a portion of the activities are excluded from VWP permitting, the SPGP verification may still be issued (see Parts II.D and E.4 of each SPGP). If all of the activities are excluded from VWP permitting, then the SPGP cannot be used for the project.

WP Permit Program staff review SPGP applications to ensure all SPGP-required information is included, as detailed in the SPGP permits and Standard Operating Procedures.

## 6.2 SPGP Procedures/Coordination Outline

Reference materials for VWP Permit Program staff are located in Chapter 6 References subfolder of the VWP Permit and Compliance Manual on [DEQnet](https://covgov.sharepoint.com/sites/deqnet/Shared%20Documents/Forms/Name%20sort.aspx?id=%2Fsites%2Fdeqnet%2FShared%20Documents%2FWater%20Division%2FWater%20Permitting%2FWetlands%20%26%20Stream%20Protection%20%2D%20VWP%2FTraining&viewid=fe19566a%2Dc6e3%2D490e%2D9204%2Da79f6f6580b5).

**Step 1**:

Determine if the project qualifies for a 22-SPGP using the applicable SPGP permit itself and the most current [SPGP SOP](https://www.nao.usace.army.mil/Missions/Regulatory/RBregional.aspx). Part of the eligibility criteria pertains to impact thresholds noted below.

Figure 1: 22-SPGP Thresholds

| Project Type | Threshold |
| --- | --- |
| Residential, Commercial, Institutional Development Activities | ≤ 1 acre permanent loss, nontidal Waters of the U.S. including wetlands, open water, and stream channel |
| Linear Transportation Activities | ≤ 0.5 acre, permanent loss, nontidal Waters of the U.S. including wetlands, open water, and stream channel |

Also review in each 22-SPGP and related SOP the activities that are not authorized or are excluded under the current 22-SPGPs.

**Step 2:**

Review the 22-SPGP and JPA applications for completeness. In 2023, DEQ developed new Complete Application checklists for VWP individual permits, general permit coverages, and 22-SPGPs.

Pre-application information:

1. In order for the 22-SPGP application process to be initiated, the following information must be obtained *prior to application*: A valid Preliminary Screening Form (PSF), *OR* a Preliminary Jurisdictional Determination (PJD) from the USACE, *OR* an Approved Jurisdictional Determination (PJD) from the USACE.

Notes:

1. AJDs completed prior to August 30, 2021 cannot be used, and this provision cannot be waived by the USACE Project Manager.
2. As of June 2023, the USACE-Norfolk District is coordinating all AJD requests with the U.S. Environmental Protection Agency (EPA) per USACE jurisdictional determination prioritization [Public Notice](https://www.nao.usace.army.mil/Media/Public-Notices/Article/3402545/notification-to-the-public-of-changes-to-the-districts-regulatory-program-pract/).
3. A State Surface Waters Determination (SSWD), provided by DEQ to an applicant, may be relied upon for DEQ permitting purposes. The USACE and other state or federal agencies may or may not accept the SSWD for their permitting purposes.
4. See DEQ *WAT-PER-003 Implementation Procedures for VWP Preliminary Jurisdictional Determinations (PJDs), Approved Jurisdictional Determinations (AJDs), and State Surface Waters Determinations (SSWDs)* (December 21, 2023; Chapter 1 References) for questions and answers related to determinations and recent WOTUS events.
5. See DEQ Memorandum *Recent Supreme Court Decision Sackett v. Environmental Protection Agency (EPA) - Effect in Virginia and How to Move Forward Without Economic Dislocation* (June 29, 2023; Chapter 1 References), for more information about obtaining boundary and feature verifications in VA.
6. A development plan that accurately accounts for all impacts to Waters of the United States (WOTUS), including secondary impacts, and that is acceptable by the USACE for permitting (includes all types of impacts, to WOTUS such as fill, dredging, temporary, permanent, etc.)
7. An accounting of all types of impacts (e.g., fill, dredging, temporary, permanent, etc.) to WOTUS.

The complete 22-SPGP application includes, at a minimum:

1. *The pre-application information listed above*.
2. A complete and signed Standard [Joint Permit Application (JPA)](https://www.nao.usace.army.mil/Missions/Regulatory/JPA/) clearly marked with “22-SPGP-RCIR” or “22-SPGP-LT”. The applicant must utilize the most recent JPA version.
3. A compensatory mitigation plan *applicable to the SPGP verification being sought*. Verify that any bank credits proposed are not outside of the General Service Area (GSA) of the approved mitigation bank. Also, USACE approval is required if permittee-responsible mitigation (PRM) is proposed, or if mitigation proposals do not follow the hierarchy in the Federal Mitigation Rule.
4. Mitigation will generally be required for all projects where the permanent loss exceeds 0.1 acre of wetlands and/or 0.03 acre of stream bed and/or 300 linear feet of stream bed. Stream channel loss must be reported in acreage and linear feet.
5. For linear transportation project, mitigation will generally be required for all permanent loss of wetlands and/or 0.03 acre of stream bed or 300 linear feet of stream bed. Stream channel loss must be reported in acreage and linear feet.

If the 22-SPGP application is incomplete, notify the applicant via an additional information request, indicating what additional items are required to complete the application. If the project does not qualify for a 22-SPGP verification, the applicant should either provide the requested information, including any revisions to the 22-SPGP application, or submit application to USACE for processing under a different federal permit. If the applicant does not respond within 60 days, DEQ will administratively withdraw the application and notify the applicant.

**Step 3**:

If necessary, submit the package to the USACE Regulator of the Day (cenao.reg\_rod@usace.army.mil), not to the USACE Project Manager, for federal coordination processing. The Preliminary Screening Form (PSF) will indicate whether or not the applicant has already coordinated with USACE and/or other federal resource agencies.

1. If coordination has already occurred, VWPPP staff may proceed directly to issuance of a 22-SPGP verification in the next step.
2. If coordination has not occurred, or DEQ staff does not receive a PSF with an application submittal, submit the complete 22-SPGP application and the 22-SPGP Federal Coordination Form (rev. August 2024) to the USACE-Norfolk District for the completion of federal coordination. Ensure the DEQ permit writer’s email address is on the form. Per the USACE SPGP SOP (rev. October 2023), the USACE permit manager will strive to notify DEQ permit staff of the need for federal coordination within 15 days of receiving the package.

When either a preliminary jurisdictional determination (PJD) or approved jurisdictional determination (AJD) are provided without the accompanying PSF, the project must be coordinated by the USACE with federal resource agencies. This may also be the outcome if applicants submit a PSF that does not match either the development plan or waters delineation.

**Step 4:**

The completed 22-SPGP Coordination Form should be returned to VWPPP staff by the USACE and may include special conditions to add to the 22-SPGP verification. The SPGP verification may not be issued until the USACE has confirmed in writing that the federal coordination process has concluded.

The 22-SPGP verification must reference the federally-permitted impacts to WOTUS. It should not include any state-only surface waters, such as isolated wetland impacts.

The 22-SPGP verification may be issued at the same time as a VWP permit or coverage, or after, but the verification letter is separate from any VWP authorization letter. Use the most recent templates provided in Chapter 6 of the VWP Permit and Compliance Manual.

The 22-SPGP SOP does not have a mandated timeframe as to when a verification must be issued.

## 6.3 Delineations

Until 2023, the USACE was the lead agency on the confirmation of delineations. The USACE announced a scale-back of confirming delineations in late 2022 and again in early 2023 that resulted in DEQ’s plan to continue confirmations, as provided in Code and program regulations. Refer to Chapter 1 for information on State Surface Water Determinations (SSWD) and upcoming protocols for wetland delineation professionals.

## 6.4 Tidal Waters

The 22-SPGP does not authorize *tidal* impacts; therefore, if a JPA for tidal impacts is marked ‘SPGP’, Staff should notify the applicant that the application may not qualify for the 22-SPGP. Staff must forward the application material to the USACE for this determination. Staff should complete the appropriate VWP decision action for the JPA.

## 6.5 Deed Restrictions

Staff in the Virginia Attorney General’s office, when necessary, will review and approve deed restriction language. If mitigation credit is given for deed-restricted land, the applicant must use the USACE-approved deed restriction template. If the applicant proposes deed restriction language that substantially deviates from the template, the USACE Office of Counsel must be provided the opportunity to review and approve the proposed language.

## 6.6 Transition

Permittees that receive 22-SPGP verifications and will not complete the authorized activities must reapply for verification under the upcoming reissued SPGP. *This means that these projects must comply with any new SPGP terms and conditions, including mitigation requirements.* Project proponents may meet with the USACE and DEQ to discuss the project and potential options for processing a new SPGP verification or approval under another USACE permit.

## 6.7 Modifications

Modifications to 22-SPGP verifications are not allowed per USACE regulations. Changes must be coordinated with Corps in accordance with New Verification Procedures as listed in the respective SOP. DEQ will likely need to provide a new verification once the applicant resubmits the revised application package with the updated information, including justification for additional impacts, if applicable.

## 6.8 File Documentation

Below is a suggested list of documents for DEQ staff to maintain for each 22-SPGP verification. Because no federal retention schedule is specified in the 22-SPGPs or SOPs, apply the same document retention schedules as used for VWP permit or coverage decisions. See the most recent VWP CEDS Manual and/or PEEP Guide for completing SPGP-related CEDS data entry.

* Preliminary Screening Form
* Approved or Preliminary USACE Jurisdictional Determinations made by USACE
* State Surface Water Determination, if applicable
* Project Development Plan, including all WOTUS impact amounts
* Proposed compensatory mitigation plan
* Joint Permit Application for DEQ decision purposes
* Federal project number, if applicable
* Coordination emails between all parties
* Verification Request Forms
* Verification Letter sent by DEQ
1. The 23-SPGP-PASDO, authorizing certain pier, aquaculture, shoreline, dredging, and other activities in tidal or non-tidal waters of the United States (WOTUS) is also used in Virginia. It was developed by the Virginia Marine Resources Commission (VMRC) and the USACE but is administered by the USACE. [↑](#footnote-ref-1)