Contents

[CHAPTER 9: PERMIT TERMINATION 1](#_Toc181365915)

[9.1 Permit Termination 1](#_Toc181365916)

[9.1.1 Types of Termination 1](#_Toc181365917)

[9.1.2 Processing a Termination Request 2](#_Toc181365918)

[9.2 Terminate, Issue, and/or Grant an Individual or General Permit Coverage 3](#_Toc181365919)

See DISCLAIMER in INTRODUCTION.

# CHAPTER 9: PERMIT TERMINATION

## 9.1 Permit Termination

A VWP individual permit or general permit coverage may be terminated for a variety of reasons. The most common reason is the permittee has completed all authorized activities, including compensation, and requests the termination of their permit *prior to* the expiration date.

### 9.1.1 Types of Termination

An active VWP individual permit or general permit coverage may be terminated under one of the following three scenarios, found in each VWP regulation ([9VAC25-210-180](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section180/); [9VAC25-660-90](https://law.lis.virginia.gov/admincode/title9/agency25/chapter660/section90/); [9VAC25-670-90](https://law.lis.virginia.gov/admincode/title9/agency25/chapter670/section90/); [9VAC25-680-90](https://law.lis.virginia.gov/admincode/title9/agency25/chapter680/section90/); [9VAC25-690-90](https://law.lis.virginia.gov/admincode/title9/agency25/chapter690/section90/)):

* Termination by Consent

(9VAC25-210-180.H; 9VAC25-660-90.A; 9VAC25-670-90.A; 9VAC25-680-90.A; 9VAC25-690-90.A)

A VWP general permit coverage termination by consent request is a requirement in the general permit conditions when a project reaches completion. A termination may be considered once all authorized activities (surface water impacts and compensation) are complete and/or any remaining authorized surface water impacts will not occur. In this case, the termination request also serves as the Notice of Project Completion required by [9VAC25-210-130](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section130/).F. A termination of general permit coverage may also be considered when a project’s impacts do not occur for a variety of reasons, such as when the project is cancelled. This typically means that, at a minimum, the site has reached final grading and stabilization in and around the vicinity of surface waters but not necessarily completion of every construction activity on the entire site.

A VWP individual permit may be terminated by consent, as initiated by the permittee. A termination may be considered once all authorized activities (surface water impacts and compensation) are complete and/or any remaining authorized surface water impacts will not occur. A termination may also be considered when a project’s impacts do not occur for a variety of reasons, such as when the project is cancelled. This typically means that, at a minimum, the site has reached final grading and stabilization in and around the vicinity of surface waters, but not necessarily completion of every construction activity on the entire site.

* Termination With Cause

(9VAC25-210-180.F; 9VAC25-660-90.B; 9VAC25-670-90.B; 9VAC25-680-90.B; 9VAC25-690-90.B)

A VWP individual permit or general permit coverage may be terminated by DEQ for cause in accordance with the requirements identified in the main VWP Permit Program Regulation. The reasons for terminating the permit with cause are found in [9VAC25-210-180](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section180/).F, such as noncompliance with the permit; the permit application misrepresented the project the permitted entity is no longer in existence based on a compliance review or inspection. Termination may allow administrative closure of a VWP individual permit or general permit coverage for which no activity will occur during the permit term. Any such terminations require the notice of and opportunity for a formal hearing pursuant to Procedural Rule No. 1 ([9VAC25-230-100](https://law.lis.virginia.gov/admincode/title9/agency25/chapter230/section100/)). Termination for cause is rare and must be discussed with Regional management prior to proceeding.

* Termination Without Cause

(9VAC25-210-180.G; 9VAC25-660-90.B; 9VAC25-670-90.B; 9VAC25-680-90.B; 9VAC25-690-90.B)

A VWP individual permit or general permit coverage may be terminated by DEQ without cause in accordance with the requirements identified in the in [9VAC25-210-180](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section180/).G. Termination without cause was added during the 2016 regulatory amendments to enable DEQ to terminate permits in situations where the permittee ceases to exist as a legal entity due to reasons such as bankruptcy or death. In these instances, DEQ may choose to terminate the permit instead of waiting for the permit to expire. Also, this type of termination may be necessary if a new applicant is requesting a permit on the same property as the existing permit. As there is no legal way to transfer the existing permit, DEQ may instead choose to terminate the existing permit to eliminate the occurrence of multiple permits on the same property but for different permittees.

### 9.1.2 Processing a Termination Request

Terminations by consent are the most common form of termination and are required to be submitted by the permittee within 30 days[[1]](#footnote-1) of completing all authorized activities and compensatory mitigation (see [9VAC25-210-180](https://law.lis.virginia.gov/admincode/title9/agency25/chapter210/section180/).H; [9VAC25-660-90](https://law.lis.virginia.gov/admincode/title9/agency25/chapter660/section90/).A; [9VAC25-670-90](https://law.lis.virginia.gov/admincode/title9/agency25/chapter670/section90/).A; [9VAC25-680-90](https://law.lis.virginia.gov/admincode/title9/agency25/chapter680/section90/).A; and [9VAC25-690-90](https://law.lis.virginia.gov/admincode/title9/agency25/chapter690/section90/).A). VWP permit staff is encouraged to initiate the review of these requests within 30 days of receipt. The level of review necessary will vary due to the complexities of each project and site-specific circumstances. Prior to termination of general permit coverage, all authorized surface water impacts must have been taken and all compensatory mitigation completed, including, if applicable, monitoring requirements. VWP permit staff should be in the regular habit of verifying that the CEDS record(s) contains the pertinent project information, including all impacts and compensation; that all required decision documentation is uploaded to ECM; and that any inspections conducted for purposes of the termination request or action is documented in the CEDS compliance module.

The steps for processing a termination by consent are as follows:

1. *Review Termination request[[2]](#footnote-2) / Final Permit Review* – review the request to ensure that all required information is provided. A completed Termination Agreement Form may be provided in lieu of a written request. *VWP permit staff must also conduct a final permit review to ensure all requirements of the permit have been fulfilled prior to processing the termination*. This review consists of the following:
	1. Administrative (file) review of the permit file, CEDS record, and ECM archive.
	2. Site inspection of the impact site and if applicable, compensation site, to verify permit compliance.
2. *Address any identified concerns/issues* – VWP permit staff will notify their Regional VWP Permit Manager of any concerns identified through the final permit review, such as unpermitted surface water impacts or ongoing construction activity in close proximity to non-impacted surface waters. Any unpermitted impacts must be resolved in accordance with the appropriate compliance or enforcement action(s) *prior to termination of the permit*. *For project sites with on-going activity, but for which all requirements of the VWP permit have been met, VWP permit staff should use their best professional judgment and discuss with their supervisor as to any negative implications in terminating the permit at that point in time.* For example, when the work in permitted areas is done, and a manager determines that a project no longer requires VWP permit or coverage protections, including time of year restrictions, they may terminate the permit or coverage at their discretion.
3. *Draft termination letter* – Once final permit review is complete, and if no issues were identified or no outstanding issues remain, permit coverage may be terminated. VWP permit staff drafts a termination letter using the applicable template.
4. *Terminate permit or permit coverage* – The termination letter is signed by the Regional VWP Program Manager. Once signed, it is distributed to the permittee, with the appropriate carbon copies.
5. *Update CEDS* – VWP permit staff updates the CEDS record to execute the termination action and move the record to “History” in accordance with the procedures in the CEDS Manual. The date of the termination letter should be used as the Action Date when using the *Complete Termination* Action. Do not use Termination action to move expired permits or coverages from the Active classification to the History classification in CEDS – use the ‘Move to History’ action instead.
6. *Upload files to ECM.*

## 9.2 Terminate, Issue, and/or Grant an Individual or General Permit Coverage

Circumstances arise when a VWP individual permit or the general permit coverage may need to be terminated and then either re-issued or another coverage granted in order to make a requested change to the permitted project or complete the project by the permit expiration date. In these cases, the individual permit or general permit coverage is terminated the same day that issuance of a new individual permit or a new general permit coverage is granted. The new individual permit or general permit coverage should have a new permit or tracking number (obtain from VMRC if necessary).

The steps for processing a termination/re-issuance are outlined below:

1. *Obtain new JPA number from VMRC* – Typically VMRC will also receive the application and provide a JPA number. In the event they do not, send a copy of the JPA to VMRC and request a new JPA number.
2. *Review the request* – The request is a new application for the type of permit being applied for, either a VWP individual permit or general permit coverage, and therefore is subject to the regulatory deadlines for application completeness review and authorization. VWP permit staff should follow the application review procedures that pertains to a new general permit coverage application provided under Chapter 4 or a new individual permit application under Chapter 5, as appropriate based upon which permit is being requested in the application. Ensure the permit file, CEDS record, and ECM are updated accordingly.
3. *Draft package* – VWP permit staff draft the applicable permit documents once all required reviews and coordination are complete and any issues or concerns are addressed. The transmittal letter for such an action covers both the termination and issuance/granting of coverage. The rest of the documents are the same as that which is used for a typical new permit.
4. *Final package* – The applicable documents are signed by the Regional VWP Program Manager. Once signed, these are distributed to the permittee with the appropriate copies to agents and/or agency contacts at USACE and VMRC.
5. *Update CEDS*
	1. VWP permit staff updates the current active CEDS record to complete the termination action and move the record to “History”. The date of the termination letter should be used as the Action Date when using the *Complete Termination* Action.
	2. VWP permit staff creates a new CEDS issuance record and workflow for the new individual permit or general permit coverage (refer to the CEDS and PEEP manuals as needed).
6. *Upload files to ECM*.
1. While this is a requirement of the regulations and associated permits, the lack of submitting such a request is not considered to be an actionable noncompliance item, provided that this is the only outstanding item. [↑](#footnote-ref-1)
2. For termination by consent for project completion, the permittee *may* provide the required information and certification statement via the **VWP PERMIT CONSTRUCTION STATUS UPDATE FORM**. The termination agreement forms represent termination when the project in has been completed. VWP permit staff should read the termination sections of the regulation be aware of other termination scenarios that may arise. [↑](#footnote-ref-2)