

SECTION VI

PUBLIC PARTICIPATION AND PUBLIC HEARING PROCEDURES

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A. Public Participation Procedures

1. Newspaper Public Notice (§§ [62.1-44.16](#) and [62.1-44.19](#); [9VAC25-31-290](#))

- a. Upon owner concurrence, proceed to public notice by publication once a week, for two consecutive weeks, in a newspaper of general circulation in the county, city or town in which the discharge is located. There is no list of acceptable newspapers kept by the agency. Newspapers must meet the requirements in [§8.01-324.B.5](#). Contact the newspaper if you are unsure as to the status. The Transmittal Letter to the Newspaper and the Public Notice Verification Form are available on [DEQnet](#).

In addition to the general notice, all individuals identified in [9VAC25-31-290.C.1.a, b, c, and d](#) shall be mailed, by electronic or postal delivery, a copy of draft permit, application, and Fact Sheet (if not previously received). Please note that the draft permit, Fact Sheet, and associated documents should only be sent to DWR, USFWS, DCR, and NOAA if T&E coordination was required (See Section II). Additionally, for proposed sewage discharges to or in near proximity to shellfish growing areas, DEQ must also provide notification to VDH-DSS and VMRC of the public comment period, and provide a copy of the final permit, if issued, to DSS (See [GM07-2009](#)).

- b. The VPDES Permit Regulation at [9VAC25-31-290.B](#) requires a period of at least **30 days** following the date of the initial public notice publication, during which time interested persons may submit their written comments (i.e. if the initial PN appears in Wednesday's newspaper, Thursday will be the first day of the 30 day comment period). If the comment period ends on a weekend or a holiday, the comment period should be extended through the next working day. Defer further processing actions until completion of public notice procedures. **The permit cannot be signed until after the comment period ends.**
- c. If a decision is made to deny the permit based upon comments received, follow the Denial Procedures in [Section II](#) of this manual.
- d. Send copies of the draft permit, Fact Sheet and application to persons who request them during the comment period. Attempt to resolve comments which were received during the comment period. Retain and consider all written comments submitted during the 30 days. Retain and consider all email comments. Send a copy of the Response To Comments to those individuals who commented during the public notice period. See below. If there are changes made to the draft permit as a result of public comment and those who commented on the original draft permit are sent the response to comments letter, no additional public notice is required.

If any changes are made in a draft permit for major facilities after the comment period, forward a copy of the revised pages of the draft permit and Fact Sheet to EPA for concurrence.

- e. All issuance and reissuance files at the RO are to contain evidence of publication and of the publication dates of the public notice. Actual public notices or a photocopy of the notice with a sworn statement from the newspaper that the notice was published on the proper dates are the preferred documentation. The RO may continue with the standard procedure of having the newspaper forward the certification of publication to

the RO, or the RO may, by letter, require the owner to obtain certification, while informing the owner that permit processing will not proceed until the verification form is received at the RO.

Regulations require proof of publication but no specific type of proof is listed in the regulation, therefore if the region is unable to obtain the sworn statement from the newspaper other means of providing proof of publication in the file are acceptable, such as printing off a copy of the notice from the newspaper website. If this is done and the date of publication does not appear on the printed notice, the permit writer should add the dates and verify the publication dates by signature.

2. Public Notice Preparation

a) Public notice formats

Once the permit has been drafted, the permit writer should prepare the newspaper public notice. There are two types of public notices for VPDES permits. A full public notice and an abbreviated public notice. For minor industrial facilities §62.1-44.16 of the Code of Virginia allows to the extent authorized by federal law (not majors) and if the permit applicant so chooses an abbreviated public notice to be published in the newspaper listing the name of the permitted facility, the type of discharge, and a link to the Department's website with the full public notice. See minor industrial newspaper notice protocol below. The example public notices found in this section contain the language that has been developed and authorized by the Policy Division. Common sense deviations from the exact format are allowable. All public notice templates, including pretreatment program proposals, approvals and hearing notices, and TMDL notices can be found on [DEQnet](#).

The public notice templates were developed to provide consistency and brevity in the notices published in the newspaper. The template sections cover the minimum content requirements of the law and regulations. The template does not address other requirements such as the duration of comment periods, what newspapers to use or the frequency of publication. These items are addressed in the applicable law, regulations, and permit manuals.

Modifying the Template: Some minor modifications can be made to the templates to address specific cases. If you have questions on making modifications, contact the central office program manager.

Public Comment Period: The public comment period begins on the date of the first week newspaper publication of the notice. However, when counting days to the end of the public comment period, start with the day after publication. If the last day of the public comment period falls on a Saturday, Sunday, or State Holiday, set the close of the comment period on the first business day after the Saturday, Sunday, or Holiday. (If a closing occurs, for example due to inclement weather, on the scheduled closing date, comments should be accepted through the next business day.) Also, do not put a time of day. All comment periods close at 11:59 p.m.

Setting an End Time for a Public Hearing/Public Meeting: While the template provides the option of including an end time for a public hearing or public meeting, setting an end time for a public hearing is only appropriate when the location has advised that the facility closes at a certain time. Also, if an end time is announced in the notice, the public hearing or public meeting cannot be ended prior to the announced end time.

Information Briefing: Having an "informational briefing" immediately before convening a public hearing is not required by the laws and regulations. However, it is agency policy.

Questions on the templates: Questions on the templates should be directed to the Central Office program manager.

b) Full public notice contents

Section [62.1-44.15:01](#) of the State Water Control Law says that the Board shall include in the permit public notice a statement of the estimated local impact of the proposed action, which at a minimum must include information on the specific pollutants involved and the total quantity of each which may be discharged. In the public notice templates developed, in order to provide information that the public could understand, the interpretation was made that rather than listing specific pollutants and amounts the intent of the law could be satisfied by listing generic groups of pollutants (e.g., bacteria, nutrients, organic matter, physical and chemical properties, solids, thermal, metals, inorganics, radionuclides, pesticides, organics) using the associated crosswalk (see table below) and statement of quantities listed as "amounts that protect water quality". The categorizations are not meant to be all inclusive with respect to parameters that may be limited within an individual permit. If a proposed limited parameter is not included in this list, please consult with your regional permit manager and Central Office staff as to how to proceed with including it in the public notice. This crosswalk was developed based on a summarization of the Attachment A priority pollutant categories and Standard Methods.

The public notice template also gives the flow from the facility. If the discharges are to more than one receiving stream, the total flow to each stream should be listed.

In the case of permits where waste is land applied, in order to meet the intent of the law, the volume of material to be land applied and the location of the land application sites should be included in the public notice. This is in addition to the description of the proposed activity and a listing of generic pollutants specified in the permit. The VPDES Permit Regulation specifically requires that the public notice include the location of sludge/waste storage and land application sites.

BACTERIA		
E. coli	Fecal Coliform	Enterococci

NUTRIENTS		
Ammonia-N	Nitrate + Nitrite	Total Nitrogen
Nitrate	Orthophosphorus	Total Phosphorus
Nitrite	Total Kjeldahl Nitrogen	

ORGANIC MATTER		
BOD ₅ /CBOD ₅	COD	TOC

PHYSICAL & CHEMICAL PROPERTIES		
Alkalinity	Dissolved Oxygen	Salinity
Color	Hardness	Turbidity
Conductivity / Specific Conductance	pH	

SOLIDS	
Total Dissolved Solids	Total Suspended Solids
Total Solids	Volatile Solids

THERMAL	
Heat Rejection (BTUs)	Temperature

METALS		
Aluminum	Chromium VI	Nickel
Antimony	Copper	Selenium
Arsenic	Iron	Silver
Barium	Lead	Thallium
Cadmium	Manganese	Zinc
Chromium III	Mercury	

INORGANICS		
Bromide	Fluoride	Sulfate
Chloride	Oil and Grease	Sulfide
Chlorine, Total Residual / Free	Total Petroleum Hydrocarbons	Sulfite
Cyanide	Phenols	

RADIONUCLIDES	
Beta Particle & Photon Activity (mrem/yr)	Combined Radium 226 and 228
Combined Radium 226 and 228	Uranium

PESTICIDES		
Aldrin	Beta-Endosulfan (synonym = Endosulfan II)	Kepone

Chlordane	Endosulfan Sulfate	Malathion
Chlorpyrifos (synonym = Dursban)	Endrin	Methoxychlor
DDD	Endrin Aldehyde	Mirex
DDE	Guthion (synonym = Azinphos Methyl)	Parathion (synonym = Parathion Ethyl)
DDT	Heptachlor	Toxaphene
Demeton (synonym = Dementon-O,S)	Heptachlor Epoxide	
Diazinon	Hexachlorocyclohexane Alpha-BHC	
Dieldrin	Hexachlorocyclohexane Beta-BHC	
Alpha-Endosulfan (synonym = Endosulfan I)	Hexachlorocyclohexane Gamma-BHC (syn. = Lindane)	

ORGANICS		
Acenaphthene	Carbon Tetrachloride	Hexachlorobenzene
1,2-Dichlorobenzene	Chlorobenzene (synonym = Monochlorobenzene)	Hexachlorobutadiene
1,2-Dichloroethane	Chlorodibromomethane	Hexachlorocyclopentadiene
1,2-Dichloropropane	2-Chloronaphthalene	Hexachloroethane
1,2-Diphenylhydrazine	Chloroform	Indeno(1,2,3-cd)pyrene
1,2-trans-dichloroethylene	Chrysene	Isophorone
1,3-Dichlorobenzene	Dibenzo(a,h)anthracene	Methyl Bromide(synonym = Bromomethane)
1,3-Dichloropropene	1,2-Dichlorobenzene	Methylene Chloride (synonym = Dichloromethane)
1,4-Dichlorobenzene	1,3-Dichlorobenzene	Nitrobenzene
2,4-Dinitrotoluene	1,4-Dichlorobenzene	N-Nitrosodimethylamine
3,3-Dichlorobenzidine	3,3-Dichlorobenzidine	N-Nitrosodi-n-propylamine
Acrolein	Dichlorobromomethane	N-Nitrosodiphenylamine
Acrylonitrile	1,2-Dichloroethane	PCB, total
Anthracene	1,1-Dichloroethylene	Pentachlorobenzene
Benzene	1,2-trans-dichloroethylene	Pyrene
Benzidine	1,2-Dichloropropane	1,1,2,2-Tetrachloroethane
Benzo (b) fluoranthene (synonym = 3,4-Benzofluoranthene)	1,3-Dichloropropene	1,2,4,5-Tetrachlorobenzene

Benzo(a)anthracene	Diethyl Phthalate	Tetrachloroethylene (synonym = Tetrachloroethene)
Benzo(a)pyrene	Dimethyl Phthalate	Toluene
Benzo(k)fluoranthene	Di-n-butyl Phthalate (synonym = Dibutyl Phthalate)	1,2,4-Trichlorobenzene
Bis (chloromethyl) Ether	2,4-Dinitrotoluene	1,1,1-Trichloroethane
Bis 2-Chloroethyl Ether	Dioxin (synonym = 2,3,7,8-tetrachlorodibenzo-p-dioxin) (ppq)	1,1,2-Trichloroethane
Bis 2-Chloroisopropyl Ether	1,2-Diphenylhydrazine	Trichloroethylene (synonym = Trichloroethene)
Bis 2-Ethylhexyl Phthalate (syn. = Di-2-Ethylhexyl Phthalate)	Ethylbenzene	2-(2,4,5-Trichlorophenoxy propionic acid (synonym = Silvex or 2,4,5-TP)
Bromoform	Fluoranthene	Vinyl Chloride
Butyl Benzyl Phthalate	Fluorene	

MISCELLANEOUS

The following parameters should be listed individually in the notice, as appropriate.

Application Rate	Flow
Evaporation	Whole Effluent Toxicity (expressed as "toxicity" in notice)

c. Full Public Notice Protocol

If the region manages coordination with the newspaper, send the [Public Notice Billing Authorization Form](#) to the permittee with the reissuance reminder letter. Attach it to the reissuance reminder letter. Completion of this form is considered part of a complete application.

- Develop the traditional full public notice. The template is available on the [DEQnet](#).
- Develop the mailing list notice using the template below:

*The purpose of this notice is to seek public comment on a draft permit from the Department of Environmental Quality that will allow the release of **[treated wastewater/stormwater]** into a waterbody in **City/County**, Virginia. Applicant: **Applicant Name; Applicant Address**. Facility: **Facility Name; Facility Address**; Permit No. VA00XXXXX. DEQ Contact: **Permit Writer**, Phone: **(XXX) XXX-XXXX**, Email: FirstName.LastName@deq.virginia.gov. Public Comment Period: **Month Day, Year to Month Day, Year**.*

- Conduct regional review of notice content.
- Send the mailing list notice paragraph to Peyton Geiszler (CO). Peyton will cut and paste exactly what you send her into the weekly notice. While it is ideal for the mailing of this notice to precede or coincide with the newspaper publication date, there are opportunities for case-by-case decisions otherwise to prevent expiration.

NOTE: This notice should NOT be distributed before a draft is ready for public comment. Include comment period dates in the paragraph.

- Send the full notice with comment period dates either to the newspaper for publication or to the permittee to coordinate publication independently. This correspondence should:
 - 1) Match the template language on [DEQnet](#).
 - 2) Include the signed Public Notice Billing Authorization, as applicable.
 - 3) Include the [Public Notice Verification Sheet](#) ([DEQnet](#))
- **Coordinate with the newspaper, as necessary, on proof reviews and confirm publication dates.**

d. Industrial Minor Abbreviated Newspaper Public Notice per §62.1-44.16

- If the region manages coordination with the newspaper, send the public notice billing authorization form ([DEQnet](#)) to the permittee with the reissuance reminder letter. Attach the form to the reissuance reminder letter. Completion of this form is considered part of a complete application.
- Send an email to the permittee offering the abbreviated public notice procedure; or, alternatively, the Public Notice Billing Authorization form ([DEQnet](#)) may be used to document the permittee's preference regarding whether to use the abbreviated newspaper notice. If the permittee elects for the abbreviated notice, proceed with the remaining steps. If not, revert to the standard full public notice protocol.

Email exchange or billing authorization should be retained in the permit record and a comment may be added to the Fact Sheet as follows:
 "In accordance with Chapter 552 of the 2018 Acts of Assembly, the VPDES permit regulation 9VAC25-31-290 has been revised to allow, if the permittee so elects, an abbreviated public notice procedure for industrial minors, in which an abbreviated notice is published in the newspaper with a link to the full notice on the Department's website. The permittee [did/did not] elect to use the abbreviated procedure."

- Develop the abbreviated public notice for the newspaper. A template for the abbreviated newspaper publication is on [DEQnet](#).
- Develop the traditional full public notice also on the [DEQnet](#) for posting on the website.
- Develop the mailing list notice (the weekly notice that is mailed out from CO) using this template:

*The purpose of this notice is to seek public comment on a draft permit from the Department of Environmental Quality that will allow the release of **[treated wastewater/stormwater]** into a waterbody in **City/County**, Virginia. Applicant: **Applicant Name; Applicant Address**. Facility: **Facility Name; Facility Address**; Permit No. VA00XXXXX. DEQ Contact: **Permit Writer**, Phone: (XXX) XXX-XXXX,*

Email: FirstName.LastName@deg.virginia.gov. Public Comment Period: **Month Day, Year to Month Day, Year.**

- Conduct regional review of notice content.
- Send the mailing list notice to Peyton Geiszler in CO. While it is ideal for the mailing of this notice to precede or coincide with the newspaper publication date, there are opportunities for case-by-case decisions otherwise to prevent expiration. **NOTE: This notice should NOT be distributed before a draft is ready for public comment.**
- Send the full notice (complete with comment period dates) via email to Central Office (CO) at the same time you contact the newspaper for publication of the abbreviated notice (or the permittee if they handle newspaper publication), **but no later than 3 full business days prior to the posting deadline.** The email should:
 - 1) Be addressed to the water permits division web author, Michelle Henicheck and copy Peter Sherman in order to make sure your request gets forwarded to someone in the Office of Communications for posting in the event Michelle is on leave. In the event neither Peter nor Michelle are available, contact the Office of Communications directly to get public notices published on the web. Please be mindful of your timeframe in making the initial contact with CO and place a phone call to ensure the request has been received if a response is not received or you do not see the notice on the website within 24 hours;
 - 2) Use the following naming convention for the email subject: VA00XXXXXFacilityName;
 - 3) Attach the full finalized notice with the same naming convention as the email header;
 - 4) Identify the planned newspaper publication date; and
 - 5) Identify the deadline for web posting.
- The newspaper correspondence should:
 - 1) Match the template language on [DEQnet](#);
 - 2) Include the signed [Public Notice Billing Authorization](#); and
 - 3) Include the [Public Notice Verification Sheet \(DEQnet\)](#)
- **Coordinate with the newspaper, as necessary, on proof reviews and confirm publication dates.**

If the sworn statement (affidavit) from the newspaper cannot be obtained, other means of providing proof of publication in the file are acceptable, such as printing off a copy of the notice from the newspaper website. If this is done and the date of publication does not appear on the printed web site notice, the permit writer should add the dates and verify the publication dates by signature.

3. Public Notice Procedures When Owner Does Newspaper Publication

Send the transmittal letter, draft permit, Fact Sheet, actual public notice, and the public notice verification form to the owner. The transmittal letter instructs the owner to review the permit and then publish the public notice in a newspaper designated by the permit writer. The owner must send verification of the publication to the RO within **35 days** of the transmittal letter date.

If verification is not received in 35 days, inform the owner that permit processing will cease until verification is received.

4. Mailing List and Website Posting

Federal and state regulations concerning NPDES programs mandate the use of a mailing list to provide potentially interested parties the opportunity to receive additional information and comment on specific permit actions. See 9VAC25-31-290 for the specific requirements concerning mailing lists for VPDES permits.

- Send an electronic copy of the mailing list public notice template (below) to Peyton Geiszler for inclusion on the mailing list at the same time the public notice is submitted to the newspaper. The mailing list is distributed once every two weeks by hard copy and publication on the [DEQ website](#) and via “Constant Contact” where individuals may sign up for email notifications as soon as the website is updated with the two week distribution.

Mailing List Template:

*The purpose of this notice is to seek public comment on a draft permit from the Department of Environmental Quality that will allow the release of **[treated wastewater/stormwater]** into a waterbody in **City/County**, Virginia. Applicant: **Applicant Name; Applicant Address**. Facility: **Facility Name; Facility Address**; Permit No. VA00XXXXX. DEQ Contact: **Permit Writer**, Phone: **(XXX) XXX-XXXX**, Email: FirstName.LastName@deg.virginia.gov. Public Comment Period: **Month Day, Year to Month Day, Year**.*

- When using the optional PN procedure, send the mailing list template to Peyton Geiszler at the same time the public notice package is sent to the owner.
- If people make comments or requests for information after the mailing list is sent, but prior to the public notice appearing in the newspaper, tell them the information will be sent following the notice in the newspaper.
- The mailing list is the mechanism by which the EPA (for minor permits), DWR, VIMS, F&WS, NMFS, Corps of Engineers, and adjacent states are notified of upcoming VPDES permit actions and are given the opportunity to comment on them. Provide additional information (application, draft permit, FS) concerning permit actions to these entities if requested by them. They have the public comment period for their review and comment.
- Place a copy of the mailing list page(s) with the notification of permit action in the permit correspondence file.

5. Local Government Notification

As required by the State Water Control Law Section 62.1-44.15:01, the permit full public notice must be mailed (or emailed) to three specific people in the locality where the discharge is to take place. They are: the chief elected official (i.e. mayor or chairman of Board of Supervisors), the chief administrative officer (i.e. city or town manager or county administrator) and the appropriate planning district commission.

If a discharge in a town has a mixing zone or other pollution impact that extends into the surrounding county, then both the town and the county should be notified.

Because of the distinct legal citation applicable here, a separate letter (or email) should be sent to each of the local officials rather than a copy of the letter (or email) sent to the newspapers or other agencies. This mailing should occur when the permit public notice is sent to the newspaper and the 2-week mailing list. If the regional office uses the optional public notice procedures, then the regional office would still be responsible for notifying these local officials. The law does not give the option of the permittee doing it. **These notices may be sent to local officials by postal mail that is not certified, or by e-mail.** The DEQ RO is responsible for maintaining the most current postal and electronic mailing addresses. If an e-mail notice to a local official is returned undeliverable, DEQ staff must take immediate action to ensure the notice is delivered to the correct e-mail address or send the notice via postal mail. The DEQ RO documents the fact that they sent the letters in the permit file.

If the applicant is one of the local officials listed above, receipt of the PN authorization from that person constitutes the notice required by the law. Other government officials and/or the planning district will still need to be notified. See [DEQnet](#) for an example letter.

6. Adjacent States Recommendations

If the RO does not incorporate recommendations of any affected state, provide that state and the EPA Regional Administrator for Region III with a written explanation of the reasons for not incorporating such recommendations. Provide this letter on all permits (major and minor) before final permit action.

7. Other Agency Comments ([9VAC25-31-330](#))

- a. Address comments from the Department of Wildlife Resources (DWR) on permits for proposed discharges into trout streams (Class V & VI).
- b. Address comments from the Virginia Institute of Marine Science (VIMS) on permits for new discharges into tidal areas.
- c. If the U.S. Fish and Wildlife Service (F&WS) or the National Marine Fisheries Service (NMFS) advise the RO in writing, during the 30-day comment period, that special conditions need to be imposed upon the permit to avoid substantial risk to public health, or impairment of fish and/or wildlife resources, including endangered species, the permit writer may include these special conditions in the permit if they are necessary to carry out the provisions of the SWCL or the CWA. If the requested conditions are not included in the draft permit, notify the requesting agency of the reasons for not including the requested conditions. Generally, threatened and

endangered species coordination will occur prior to the public comment period (see Section II.F).

- d. If the Corps of Engineers (COE) advises the RO in writing, during the comment period, that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, ask the owner to either modify the application to satisfy the COE or withdraw the application. Failure to do either results in a denial recommendation.

If the COE advises the RO that imposing specified conditions upon the permittee is necessary to avoid any substantial impairment of anchorage and/or navigation, include the conditions specified by the District Engineer. Any objection or redress by the applicant are to be made through the applicable procedures of the COE.

- e. Address comments from other agencies on the mailing list if they have concerns about the draft permit.

8. Public Hearing

It is very important these exact procedures are followed as deviating from the procedures could result in litigation. Any questions about procedures should be directed to the Division of Policy. See Section V.B for public hearing procedures.

If a decision is made to deny the permit based upon the hearing, follow the procedures for denials that received a public hearing described in Section VI.H.6 of this manual.

Provide EPA the opportunity to comment on a major permit that has been revised as a result of a public hearing.

9. Response to Comments ([9VAC25-31-320](#))

During the public comment period for the draft permit or public hearing, maintain a list of those individuals, organizations, etc., that respond to the notice for the comment period. After the public comment period, a Response to Comments memorandum must be developed. Include in this document a description of any changes made to the draft permit; and a brief description of, and staff response to, all significant comments received during the permit public comment period(s), and, if applicable, the public hearing comment period. List and respond to comments received from the owner, the public, EPA, adjacent states and other state/federal agencies.

The following items may be included in the Response to Comments. If they are not, then they must be documented elsewhere in the permit file:

- (a) Include a statement regarding the planning status of the discharge. The discharge should be described as either in conformance with the existing planning documents for the area OR state that the discharge is not addressed in any planning document but will be included when the plan is updated.
- (b) Include one of the following statements about VDH review of the draft permit in the Response To Comments memo, unless VDH has waived the right to comment and/or object to the draft permit:
 - "VDH has no objections to the draft permit." OR
 - State VDH comments and/or objections, if applicable, and how resolved.

The Response to Comments memo shall be made available to the public and a copy of it should be sent to those who commented during the public notice. Send EPA a copy of the Response to Comments memo with the revised permit pages. If a public hearing will not be held for a draft permit, send the Response to Comments memo to commenting parties following the comment period of the draft permit. If a public hearing will be held for a draft permit, send the Response to Comments memo to commenting parties following the comment period of the public hearing.

B. Public Hearing Procedures

Chapter 356 of the 2022 Acts of Assembly ([SB 657](#), effective July 1, 2022) shifted the authority to issue permits and other powers, including conducting hearings and issuing orders, from the State Water Control Board to the Department of Environmental Quality (Department). To remain informed about permitting decisions, the fifth enactment clause requires the Department, at each regular board meeting, to provide an overview and update regarding any “controversial permits” pending before the agency. Immediately after such presentation by the Department, the board has an opportunity to respond to the presentation and provide commentary regarding such pending permits. The fifth and sixth enactment clauses of the law define a “controversial permit” as permitting action for which a public hearing has been granted pursuant to the law and set out procedural requirements for granting and conducting a public hearing on a permit action during a public comment period in instances where a public hearing is not mandatory under state law or federal law or regulation. This section of the Permit Writer’s Manual establishes procedures for controversial permits that the Department considers under the State Water Control Law, which are therefore relevant to the State Water Control Board. Note that the law did not change the State Water Control Board’s authority over the adoption of regulations.

The requirements for controversial permits have been codified at Code of Virginia [§10.1-1184.1](#) and Part IV of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation, [9VAC25-31-260](#) et seq. They include conducting an additional informal public hearing process for controversial permits, the Department providing an overview and update to the State Water Control Board regarding any controversial permits that are pending, and, before rendering a final decision on a controversial permit, publishing a Summary of and Response to Public Comments (“Summary of Comments”) received during the draft permit public comment period, public hearing, and public hearing comment period. The Department must also hold a second public hearing to provide an opportunity for individuals who previously commented, either in person at the draft permit public hearing or in writing during the public comment period, to respond to the Department’s Summary of Comments. No new information will be accepted during the public hearing for the Summary of Comments.

Set forth below are the Water Division procedures for informal VPDES permit public hearings (hearings), except for hearings on terminations of permits. Its purpose is to identify specific legal requirements for hearings, specific steps to be taken for authorizing and convening these hearings and acquiring Department’s action, and the responsibilities of the Originating Unit (OU) and other agency offices in the hearing process. These procedures are to be used by all Water Division units. **It is very important these exact procedures are followed to ensure compliance with the law and VPDES Permit Regulation.**

1. Determining Need for Hearing on Applications for Permits

- a. Maintain a list of those individuals, organizations, etc. that responded to the public notice of the draft permit. Review all responses to the public notice and requests for public hearing in order to make a recommendation on the need for a public hearing. The final decision on holding a public hearing must be made by the Director within 30 days after the close of the public comment period above, unless the applicant agrees to a later date. In those cases where the owner has requested a hearing or the staff recommends that a public hearing should be held and there has been no notice of a comment period on a draft permit, the final decision on holding a public hearing should be made by the Director within 30 days after the request for public hearing was received from the owner or the recommendation was made by the staff. In those

instances, the public notice would then be a joint notice of the draft permit and the public hearing (proceed to section B.2).

- b. Determine whether the responses and requests meet the following criteria:
 - 1) There is a significant public interest in the issuance, denial, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing;
 - 2) The requesters raise substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and
 - 3) The action requested by the interested party is not on its face inconsistent with, or in violation of, state law, federal law or any regulation promulgated thereunder.
- c. If fewer than 25 individual requests for a public hearing are received, staff may proceed to review and consider public comments and develop recommended final action on the permit (unless the permit is otherwise a “controversial permit” under law or regulation). If the permit is considered to be controversial, staff should prepare a “Hearing Authorization Memorandum” to the Director in accordance with Section B.2 below.
- d. If at least 25 individual requests for a public hearing that meet the criteria in B.1.b(2), and B.1.b(3) above are received, staff will proceed under Section B.2 for authorization to convene or deny a hearing.

2. Authorization to Deny or Convene a Hearing

(NOTE: Final decision on holding a public hearing must be made by the Director within 30 days after the close of the public comment period. In those cases where the owner has requested a hearing or the OU believes that a public hearing should be held and there has been no notice for the comment period of the draft permit, the final decision on holding a public hearing should be made by the Director within 30 days after the request for public hearing was received from the owner or was made by the OU.)

- a. The OU shall prepare a “Hearing Authorization Memorandum” to the Director which includes:
 - 1) Brief background (include a purpose statement, information on the project, draft permit development, compliance with notification requirements, etc.).
Example “Hearing Authorization Memorandum” is available on [DEQnet](#).
 - 2) Summary of issues raised/comments received and requests for a public hearing from the public.
 - 3) Summary of staff’s analysis and response to issues raised as they apply to Section B.1.b.
 - 4) Recommendation for denying or holding a hearing.
 - 5) Rationale for recommendation (i.e., criteria in Sections B.1.c.(2) or (3) are met or not met).
 - 6) Copy of all responses received (if there are a large number of responses, send representative samples).

- b. Submit the "Hearing Authorization Memorandum" electronically to the Division Director, Director of Operations, and Chief Deputy **within 21 days of the close of the draft permit public comment period.**
- c. Division Director, Director of Operations, and Chief Deputy review package and consult, as necessary, with the Director with a decision from the Director made within 30 days of the close of the draft permit public comment period.
- d. If the Director grants a public hearing through the signature and issuance of the "Hearing Authorization Memorandum" then staff shall proceed to Section B.4 to arrange for the draft permit public hearing. The hearing has to be between 45 and 75 days after emailing or mailing the notice of the decision to grant the public hearing to (1) each requester and (2) the applicant or permittee in accordance with [9VAC25-31-315.D](#).
- e. If the Director denies a public hearing, the staff may proceed with appropriate and necessary steps to finalize the permit action. However, in accordance with [§10.1-1184.1.C](#) and [9VAC25-31-315.D](#), staff shall notify by email or mail at the last known address (1) each requester and (2) the applicant or permittee of the decision to grant or deny a public hearing.

3. Draft Permit Public Hearing Preparation

- a. Staff determines legal requirements for notice of public hearing based on statutes and regulations. These include newspaper notice in the city or county where the facility that is subject of the permit is located at least 30 days before the hearing date.
- b. Regional Director or appropriate media Division Director identifies selects a hearing officer for the Draft permit public hearing through the following steps:
 - 1) The Regional or Division Director appoints the Hearing Officer from DEQ staff. The Regional or Division Director issues a "Hearing Officer appointment memo" naming the Hearing Officer and describing their Hearing responsibilities, copying the Regional Office Permitting Staff, Division Director, Director of Operations, and the Chief Deputy. When arranging a date for the hearing, it is important to remember that the hearing must be held within **45 to 75** days after notice of the decision is mailed to requesters of the hearing and to the applicant or permittee. (NOTE: Permit public hearings held in response to public requests shall be in the evening (i.e., 7:00 p.m.) and there should be an information briefing immediately preceding the public hearing to provide information and answer questions. The need for a public information briefing will be determined through coordination between the Regional Director and Director of Water.)
 - 2) The Hearing Officer should have basic knowledge of the laws and regulations involved in the case. All staff within Pay Band 6 and above are authorized by DEQ's Delegation Memo to serve in the capacity of a Hearing Officer. Staff prepares opening remarks and briefing material for Hearing Officer (opening remarks, "Authorization Memorandum", travel arrangements, map, parking etc.) 10 days prior to hearing.

- 3) The Hearing Officer will preside over both the “Draft Permit Public Hearing” and the “Summary of Comments Public Hearing”.
- c. Draft Permit public hearings held in response to public requests shall be in the evening (i.e., 7:00 p.m.) and there shall be an informational briefing immediately preceding the public hearing to provide information and answer questions. Staff shall prepare a presentation for the informational briefing. The Regional Director shall coordinate with the Hearing Officer to arrange for a mutually acceptable time, date and place for the hearing that complies with all legal requirements.
 - 1) While the template provides the option of including an end time for a public hearing, setting an end time for a public hearing is only appropriate when the location has advised that the facility closes at a certain time. Also, if an end time is announced in the notice, the public hearing cannot be adjourned prior to the announced end time.
 - 2) Staff and Hearing Officer should agree on commenter time limit; typically, commenters are limited to three minutes.
 - d. Staff provides written notice to requesters of the public hearing and to the applicant or permittee of the decision to grant the hearing within **14** days of the decision.
 - e. Staff prepares “Draft Permit Public Hearing” notice using public notice templates on [DEQnet](#).
 - f. The public comment period for any permit subject to the locality particularly affected provisions of the water laws cannot close in less than **15 days** after the public hearing) Staff should consider publication schedules of local newspapers when establishing the public comment period.
 - g. Staff finalizes the “Draft Permit Public Hearing” notice and forwards a copy to the appropriate Board Coordinator to post the notice of the hearing to the Virginia Regulatory Town Hall and to media web coordinator for posting to DEQ Public Calendar and the external DEQ website, and a notification of the “Draft Permit Public Hearing” to the Water Division staff responsible for inclusion in the DEQ mailing list.
 - h. Staff provides a copy of the Draft Permit Public Hearing notice to the appropriate media Division Director to advise that this is a “controversial permit” to be reported to the Board.
 - i. Staff is responsible for mailing the notice to interested parties, including those who requested a public hearing; any entities required by law or regulation to receive notice and appropriate agency staff. Notice can be by postal mail or email or as directed by applicable law or regulation.
 - j. Staff sends notice to newspaper for publication in accordance with notice requirements and agency purchasing procedures, and verifies newspaper receipt and publication of notice. The cost of public notice shall be paid by the owner in accordance with [9VAC25-31-290.C.2](#). The notice shall be published once in a newspaper of general circulation in the city or county where the facility is located.

- k. The Board Coordinator causes notice of hearing to be posted to the Virginia Regulatory Town Hall as a public notice (with no Town Hall public forum).

4. Draft Permit Public Hearing (First Hearing)

- a. Attendees include technical support personnel from OU, management representatives from the appropriate headquarters or regional office based on program or geographical areas of responsibility and the degree of public interest and controversy surrounding the permit.
- b. Staff records proceedings or hires a court reporter and receives all written statements for inclusion in the hearing file and closes the files in accordance with date specified in notice. A tape recording OR written transcript of the hearing should be permanently kept on file (File Series: 006001) and available to the public. The regional office may consider hiring a court reporter instead of recording the hearing if the regional office has reason to believe the final decision will be challenged.
 - 1) In order to secure a court reporter, staff will need to develop an Agency requisition to be submitted to the Department's Office of Procurement Services. Please contact Renee Bishop (Procurement) for the current contract rates to be included in the requisition.
 - 2) The Department is contracted for acquisition of a court reporter. Coordination must occur through DEQ's Office of Procurement Services.
 - 3) Costs associated with Court Reporter services are covered by the program's budget.

5. Summary of Comments Public Hearing Preparation

DEQ must conduct a second public hearing on the agency's Summary of Comments for any draft permit receiving a public hearing. **A final case decision should be made within 90 days of the close of the "Draft Permit Public Hearing" public comment period if possible.** This deadline may be challenging to accomplish in all scenarios since the timeline will include the need to notice and conduct the summary "Summary of Comments Public Hearing".

- a. Summary of Comments Public Hearing for Controversial Permits
 - 1) Following the close of the Draft Permit Public Hearing public comment period, staff prepares a Summary of Comments which includes the Agency's Response to Comments (see [example Summary of Comments on DEQnet](#)).
 - 2) Staff prepares draft "Summary of Comments Public Hearing" notice using public notice templates on [DEQnet](#).
 - 3) At least 20 days prior to the "Summary of Comments Public Hearing", staff finalizes the notice and forwards a copy of the notice and the Summary of Comments to the appropriate Board Coordinator to post as a meeting notice on the Virginia Regulatory Town Hall (with the "Summary of Comments" and response to comments included) and to the media web coordinator for posting to the DEQ Public Calendar. **The public shall be provided with at least 14 days advance notice of the summary of public comments hearing. Notice shall be provided**

as specified in 9VAC25-31-290 C 2 (once a week for two successive weeks in a newspaper of general circulation in the area affected by the discharge).

- 4) The Board Coordinator causes notice of hearing and the Summary of Comments to be posted to the Virginia Regulatory Town Hall.

6. Summary of Comments Public Hearing (Second Hearing)

- a. Attendees include technical support personnel and management representatives from central or regional office based on program or geographical areas of responsibility.
- b. Individuals who previously commented, either in person at the draft permit public hearing or in writing during the public comment period will have an opportunity to respond to the Department's Summary of Comments. **No new information will be accepted at that time.**
- c. Staff records proceedings or hires a court reporter and receives all written statements for inclusion in the hearing file and closes the file following the close of the summary of comments public hearing.

7. Final Action by the Department

- a. Regional staff prepares a Final Permit Package for Hearing Officer consideration. The package shall include:
 - 1) A Memorandum to the Director from the Hearing Officer including;
 - a) a purpose statement;
 - b) background information on the permit up through the authorization to convene a summary of comments public hearing;
 - c) any commentary from the Board (provided by the Division Director);
 - d) a summary of any written or verbal comments received during the Summary of Comments Public Hearing;
 - e) any revisions made to the draft permit summary of comments or permit language after the summary of comments public hearing;
 - f) a clear and concise statement that the permit Fact Sheet, Engineering Analysis, or other permit supporting documentation includes the legal basis, scientific rationale, and justification for the decision reached; and
 - g) a recommendation to authorize issuance/denial of the permit.
 - 2) A copy of the Summary of Comments document developed after the Draft Permit Public Hearing;
 - 3) Full copy of comments received during the public comment periods, the Draft Permit Public Hearing, and the Summary of Comments Public Hearing; and
 - 4) A copy of the draft permit.
- b. In making its decision on a controversial permit, the Department shall consider the verbal and written comments received during the public comment periods, the Draft

- Permit Public Hearing, and the Summary of Comments Public Hearing made part of the record, any commentary of the Board, and the Agency files.
- c. The Hearing Officer conveys the Final Permit Package to the Division Director, the Director of Operations, and the Chief Deputy for review prior to Director consideration.
 - d. The Division Director conveys the Final Permit Package to the Director for consideration.
 - e. The Director signs the Memorandum recommending issuance of the permit thereby providing the Director's certification of the decision, and returns it to the appropriate Regional or Central Office for inclusion in the record. The decision shall be conveyed to the permittee or applicant with confirmation of receipt.
 - f. Permit signature, issuance, and distribution will be completed by the appropriate Regional or Central Office immediately but no later than two (2) business days after the Director's authorization.
 - g. When the decision of the Department is to deny a permit, the Department shall, in consultation with the Attorney General's Office provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the Department's decision is in compliance with applicable laws and regulations.

8. Public Hearing Timelines

STEPS	TIMELINE DRIVER
Close of Draft Permit Comment Period	Submit the "Authorization Memorandum" electronically to the Division Director, Director of Operations, and the Chief Deputy within 21 days of the close of the public comment period on the draft permit.
DEQ Hearing Decision	9 VAC 25-31-315(C) states in part: "Upon completion of the public comment period on a permit action, the director shall review all timely requests for public hearing filed during the comment period on the permit action and, within 30 calendar days..."
Notify in writing applicant and each requester of hearing of decision to grant hearing.	Within 14 days of decision to hold a hearing. 9VAC25-31-315(D) states "The director of DEQ shall notify by email or postal mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing."
Notice of Draft Permit Public Hearing Published	9 VAC 25-31-315(E)(2) states in part: "...publish notice of a public hearing to be published once in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located at least 30 days before the hearing date."
Draft Permit Public Hearing Held	9 VAC 25-31-315(E) states in part: "If the request for a public hearing is granted, the director shall: Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the notice of the decision to grant the public hearing."
Close of Draft Permit Public Hearing Comment Period	9 VAC 25-31-315(F) states: "The public comment period shall remain open for 15 days after the close of the public hearing if required by § 62.1-44.15:01 of the Code of Virginia."
Finish Summary of Comments	DEQ Public Hearing Procedures, page 6: "Following the close of the draft permit public hearing public comment period, staff prepares a Summary of Comments...and at least 20 days prior to the summary of public comments public hearing, staff finalizes notice and forwards a copy of the notice and the summary of comments to the appropriate Board Coordinator to post as a meeting notice on the Virginia Regulatory Town Hall...and to the media web coordinator for posting to the DEQ Public Calendar."
Send Information to Town Hall	
Notice of Summary of Comments Public Hearing Published	DEQ Public Hearing Procedures, page 6: "Public notice period for the summary of comments public hearing shall be 14 days."
Summary of Comments Public Hearing Held	DEQ Public Hearing Procedures, page 7: Staff prepares a Memo to Director including (but not limited to) all background information, comments, revisions (if applicable), fact sheet/permit, etc., supporting justification for the recommendation to issue/deny permit.
Agency Permit Decision	DEQ Public Hearing Procedures, page 6: The Agency's goal is to issue a determination within 90 days of the close of the draft permit public hearing comment period, when possible.

9. Example of Opening Remarks for Draft Permit Public Hearing

HEARING OFFICER OPENING REMARKS

PUBLIC HEARING
[NAME OF PERMITTEE]
[DATE]

Good evening. It is now XX:00 PM, Day, Date.

This hearing is now called to order. My name is [Hearing Officer] and I'm a [position title]. I will serve as Hearing Officer for tonight's hearing. You will be presenting your comments directly to me and the recorder for entry into the administrative record.

This public hearing is being held in [Location] at [Address]. It is being held pursuant to Virginia Code section 10.1-1184.1 and the requirements of sections 315 and 316 of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation, Title 9, Agency 25, Chapter 31 of the Virginia Administrative Code.

The purpose of this hearing is to allow the opportunity to provide comments on the draft permit proposed to be issued by the Department of Environmental Quality to [Applicant Name] for [Facility Name]. The draft permit would allow for the discharge of treated sewage wastewaters/wastewater/stormwater at a rate of XX gallons per day into the [Receiving Stream] in [County].

A notice of this hearing and the opportunity for public comment was published in the [Newspaper Name] on [Date]. This notice was also published in the Virginia Regulatory Town Hall on [Date]. The public comment period will extend through [Date]. During this period, the Department of Environmental Quality will be accepting comments on the proposed draft VPDES permit.

During this hearing, public comments are encouraged on the technical merits of the draft permit. In order to be recognized to speak on this project, you must sign in to comment at the back of the room.

I invite anyone who wishes to speak at this hearing but has not signed up to comment, to do so at this time.

{Pause}

- I would now like to review the procedures for the hearing so we can work to allow as many here as possible to have a chance to be heard within the allotted time for this hearing. This hearing will have to end at XX PM and if anyone that wanted to comment but was unable to do so at this hearing, you will still be able to submit a written comment for the administrative record before the end of the public comment period. Thank you for being here and participating in this hearing. Public participation is an important and essential part of the Department's decision process, and I appreciate you taking the time to be a part of it.
- [Staff Name] with the Department of Environmental Quality will make the staff presentation prior to hearing public comments.

- Each commenter will be given three minutes to comment, and the timer will begin once you start.
- The applicant will have the opportunity to provide comments.
- You will be called to come forward and speak one person at a time and in the order that is recorded on the official sign-up sheet to comment for this Public Hearing. If there are any governmental elected or appointed officials, you will be invited to speak first.
- This meeting is being recorded for the administrative record. Please speak slowly and clearly so your comments can be accurately and completely recorded into the official record of this hearing. [We have a court reporter for this hearing to record your comments.]
- Please introduce yourself before making a comment by giving full name and who you represent if applicable prior to making your comments.

Again, please limit your comment period to a maximum of 3 minutes in order to allow those who are present and desire to speak an opportunity to do so. If your comment has been covered by a previous commenter it is appropriate to simply state that you agree with the previous commenter. At 3 minutes or when done, whichever comes first, the next commenter will be called and we will move on, even if you are not finished with your comments.

You have an opportunity to submit written comments after the hearing today. Please send those to [Permit Writer] at the Department of Environmental Quality, XX Regional Office, [Mailing Address] or Permit.Writer@deq.virginia.gov. Written comments must be received before 11:59 p.m. on [Date].

[Permit Writer Name] is the Department's permit writer for this project. At this time, he/she is the person who is designated as the Department's representative for this project.

[Permit Writer] would you please stand up and be recognized? Thank You.

Questions presented during this public hearing will not be answered tonight and no decisions concerning the permit action will be made here today. Following the close of the draft permit public hearing public comment period, DEQ staff will prepare a Summary of Comments received and the Department's Response to Comments.

A second public hearing will then be held to provide individuals who previously commented, either in person at this hearing or in writing during the public comment period, the opportunity to respond to the Department's Response to Comments.

Notice of the second hearing will be posted to the Virginia Regulatory Town Hall with the Summary of Comments and Response to Comments included.

Following the second hearing, the Director of the Department of Environmental Quality will consider all applicable information regarding the draft permit. He will issue a decision to approve or deny the proposed draft permit for [insert name of permit]

[Permit Writer], would you please bring forth the Official sign-up list to comment? Thank You.

{Pause} {Register brought forth}

The signup to comment sheet indicates that there are [no/number] individuals who wish to speak on the record at this time.

If there is anyone present that has not signed up to comment and wishes to be entered into the official record, please come forward to sign up to comment at this time.

[Call on [Staff Name] to make the staff presentation.]

[Call on the applicant to provide comments.]

[If there are persons who do wish to speak – call them up one at a time until all have spoken. Let each speaker know when they have reached 3 minutes and call the next speaker.]

[At the conclusion state:] I hereby declare that this hearing is adjourned as of this time, XX PM, [Day], [Date].

Thank you everyone for coming.

Hearing is ended.

10. Example of Opening Remarks for Summary of Comments Public Hearing

HEARING OFFICER OPENING REMARKS

PUBLIC HEARING
[NAME OF PERMITTEE]
[DATE]

Good evening. It is now XX PM, [Day], [Date].

This hearing is now called to order. My name is [Hearing Officer] and I'm a [position title]. I will serve as Hearing Officer for tonight's hearing. You will be presenting your comments directly to me and the recorder for entry into the administrative record.

This public hearing is being held in [Location] at [Address]. It is being held pursuant to Virginia Code section 10.1-1184.1 and the requirements of sections -315 and 316 of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation, title 9, Agency 25, Chapter 31 of the Virginia Administrative Code.

The purpose of this hearing is to obtain input on the Department of Environmental Quality's Summary of Comments from individuals who previously commented, either in person at the draft permit public hearing or in writing during the public comment periods for the draft VPDES permit proposed to be issued to [Applicant Name] for [Facility Name]. The draft permit would allow for the discharge of treated sewage wastewaters/wastewater/stormwater at a rate of XX gallons per day into the [Receiving Stream] in [County]. No new information will be accepted at the hearing. Only comments regarding the Department's Summary of Comments will be accepted.

In order to speak at this hearing, you must have previously commented, either in person at the draft permit public hearing or in writing during the public comment periods. In order to be recognized to speak at this hearing, you must sign in to comment at the back of the room.

I invite anyone who wishes to speak at this hearing but has not signed up to comment, to do so at this time.

Thank you for being here and participating in this hearing. Public participation is an important and essential part of the Department's decision process, and I appreciate you taking the time to be a part of it.

- Each commenter will be given three minutes to comment, and the timer will begin once you start.
- You will be called to come forward and speak one person at a time and in the order that is recorded on the official sign-up sheet to comment for this Public Hearing. If there are any governmental elected or appointed officials, you will be invited to speak first.
- This meeting is being recorded for the administrative record. Please speak slowly and clearly so your comments can be accurately and completely recorded into the official record of this hearing. We have a court reporter for this hearing to record your comments.]
- Please introduce yourself before making a comment by giving full name and who you represent if applicable prior to making your comments.

Again, please limit your comment period to a maximum of 3 minutes. If your comment has been covered by a previous commenter it is appropriate to simply state that you agree with the previous commenter. At 3 minutes or when done, whichever comes first, the next commenter will be called and we will move on, even if you are not finished with your comments.

[Permit Writer] is the Department's permit writer for this project. At this time, he/she is the person who is designated as the Department's representative for this project.

[Permit Writer] would you please stand up and be recognized? Thank You.

Questions presented during this public hearing will not be answered tonight and no decisions concerning the permit action will be made here today.

Following this hearing, the Director of the Department of Environmental Quality will consider all applicable information regarding the draft permit. He will issue a decision to approve or deny the proposed draft permit for [Applicant Name].

[Permit Writer], would you please bring forth the Official sign up list to comment? Thank You.

{Pause} {Register brought forth}

The signup to comment sheet indicates that there are [no/number] individuals who wish to speak on the record at this time.

If there is anyone present that has not signed up to comment and wishes to enter their comments into the official record, please come forward to sign up to comment at this time.

[If there are persons who do wish to speak – call them up one at a time until all have spoken. Let each speaker know when they have reached 3 (or however many) minutes and call the next speaker.

[At the conclusion state:] I hereby declare that this hearing is adjourned as of this time, XXX PM, [Day], [Date].

Thank you everyone for coming.

Hearing is ended.