

## 10 TRANSFER OF PERMIT COVERAGE OR PERMIT

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### 10.2 TRANSFER OF PERMIT COVERAGE OR PERMIT

The regulations 9VAC25(-660, -670, -680, -690)-100 Part III H and 9VAC25-180 E 4, respectively, address the transfer of VWP general permit coverage VWP individual permit to a new permittee.

Any permittee requesting to transfer general permit coverage must include a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

The steps for processing a Transfer of General Permit Coverage are as follows:

1. *Log Transfer of General Permit Coverage request* – If the transfer request is approved, update the CEDS record in accordance with the procedures in the CEDS Manual.
2. *Review the request* – Review the request to ensure that a completed Transfer of VWP General Permit Coverage Agreement Form is provided in the request (see Ch. 10 templates), and that the request is signed by both the actual permittee (not agent or different legal entity) and the new permittee. Staff should also ensure the new permittee is a legal entity(ies) as described in Chapter 3.3.1 (Legal Name). If needed, request clarification as to whether any completed compensation (i.e., credits or permittee responsible compensation) transfers with the permit because a VWP permit does not transfer property rights. For example, if the compensation site is off-site and still requires monitoring, does the new permittee have the right of entry to that property?
3. *Draft Transfer of General Permit Coverage package* – Once review of the request is complete and any questions or concerns are addressed, the documents are drafted. The permit writer drafts a Transfer of VWP General Permit Coverage Approval Letter (see Ch. 10 templates). Also revise the general permit coverage letter (see Ch. 4 templates) to reflect the new permittee information. Note: If the transfer affects a VWP general permit authorization provided before August 2, 2016, it is the general permit authorization cover page that will need revising rather than the post-August 2016 coverage letter. Also, for general permit authorizations provided before August 2, 2106, attach the general permit conditions provided with the original general permit authorization.
4. *Transfer of Coverage package* – The package is signed by the Regional VWP Program Manager. Once signed, it is distributed to the permittee, with the appropriate copies.

Unless a VWP individual permit has been revoked/reissued or automatically transferred, a minor modification of the permit must be processed to reflect a permit transfer. Any permittee requesting to transfer an individual permit must include a written agreement between the current and proposed permittees containing the date of transfer of VWP permit responsibility, authorization, and liability to the new permittee.

The steps for processing a Minor Modification is as follows:

1. *Log Transfer of Permit request* – The permit writer updates the CEDS record in accordance with the procedures in the CEDS Manual.
2. *Review the request* – Review the request to ensure that a completed Transfer of VWP Individual Permit Agreement Form is provided in the request (see Ch. 10 templates), and that the request is signed by both the actual permittee (not agent or different legal entity) and the new permittee. All relevant information will need to be provided for DEQ to assess the modification request – e.g., project (modification) need, revised impact maps, efforts to avoid and minimize additional impacts, and full mitigation of additional permanent impacts at ratios not less than the compensatory mitigation ratios of the original impacts. Staff should also ensure the new permittee is a legal entity(ies) as described in Chapter **3.3.1 (Legal Name)**.
3. *Local Government and Riparian/Adjacent Landowner Notification* – If additional/new impacts are proposed in conjunction with the transfer, the local government entity in which the project is located and riparian landowners must be notified of the minor modification via written notification (email is appropriate for localities). Local governments are provided 30 days to comment on the proposed permit modifications. Adjacent land owners may also need to be notified if the proposed modification may affect their property or land use. Please refer to Guidance Memorandum 11-2005 for additional details concerning the notification process.
4. *Request additional information* – As necessary, additional information will need to be requested to allow Staff to adequately assess the modification request and determine if further interagency coordination is necessary. If needed, request clarification as to whether any completed compensation (i.e., credits or permittee responsible compensation) transfers with the permit because a VWP permit does not transfer property rights. For example, if the compensation site is off-site and still requires monitoring, does the new permittee have the right of entry to that property?
5. *Interagency coordination* – As stated above, minor modifications typically do not require further coordination, unless additional impacts are being proposed to areas outside of the scope of original coordination. If such coordination is necessary, then the coordination procedures will be the same as for the issuance of the original VWP individual permit (see Section 5.9).
6. *Draft Permit Modification package* – The permit writer will need to utilize the original permit documents, as issued, as the basis from which to develop the modified permit. Modify only those sections that are applicable to the request. The minor modification issuance package will need to include a modification transmittal/approval letter which specifies the special conditions being modified and a modified cover page. Also, rather than including only the pages of special conditions that were modified, it will include an entire new set of special conditions with the modification date noted in the header of each page. Providing an entire new set of conditions helps avoid confusion and enables easier tracking of the permit.
7. *Minor Modification Fact Sheet* – A minor modification fact sheet may be needed. The fact sheet details the specific changes being made to the existing permit, and lists all relevant dates associated with the modification. Justification for approval or denial will need to be provided in the fact sheet.
8. *Modification Signature* – The minor modification's transmittal letter and cover page will require signature in accordance with current signature delegation guidance and office procedures.

9. *Issuance* – Once the permit is signed, it is ready for issuance to the permittee, with the appropriate electronic copies to others.

Revocation and Reissuance: Revocation and reissuance of a general permit coverage or individual permit will rarely be required to the conduct a transfer if the transfer is the sole change to the permit coverage or permit. Typically, such action is due to other reasons, one of which may also be a permit coverage or permit transfer. If staff determines a transfer cannot be completed, this should be discussed with the Regional VWP Program Manager.

Automatic transfer of a VWP individual permit: Any individual VWP permit shall be automatically transferred to a new permittee if the current permittee:

- Notifies the board of the proposed transfer of the permit and provides a written agreement between the current and proposed permittees containing the date of transfer of VWP permit responsibility, authorization, and liability to the new permittee; and
- The board does not within 15 days notify the current and new permittees of its intent to modify the VWP permit.

Although the permit transfer occurs automatically if all requirements are met, the transfer is encouraged to be documented by processing a minor modification or NOPC to update the permit documentation to identify the new permittee. Also, review of such transfers is important to identify if the compensation requirements have been completed by the current permittee or if the requirements will transfer to the new permittee.

In certain instances, a new owner or responsible party will request to transfer a permit coverage or permit even if the current permittee cannot be located or is unwilling to sign the transfer agreement. If the current permittee refuses or is unavailable to complete the transfer agreement, a separate new coverage or permit may be issued to the new owner. Staff should notify the original permittee that a second VWP permit coverage or permit will be issued for the site, and if the original coverage or permit is not terminated by the original permittee, the original permittee and the new owner will have joint liability for the actions that occur on the site, including liability for compliance with the requirements of enforcement activities related to the authorized activity. If the original permittee is no longer a legal entity due to death or dissolution, or when a company is no longer authorized to conduct business in the Commonwealth, staff must initiate termination of the original permit in accordance with VWP regulations.

### 10.3 TRANSFERRING PORTIONS OF A PERMIT COVERAGE OR PERMIT

In some instances, a permittee requests to transfer only a portion of a VWP general permit coverage or individual permit. The division of authorized activities across two or more separate general permit coverages or individual permits is processed as a NOPC or minor modification but requires a more detailed review. One part of the project will continue under the existing permit coverage or permit, while the other portion(s) will require new general permit coverage(s) or individual permit(s), and thus, new permit number(s). Typically this is requested when a portion of the permitted project is sold to a new owner, and the new owner and existing permittee do not wish to become co-permittees of the permit (which would cause both to be equally responsible for all activities, even those not on their respective properties).

#### 10.3.1 REVIEW

Staff will need to assess the transfer request to ensure that the original permit terms are still being met, including any special conditions included with general permit coverage or individual permit, specifically with regard to compensatory mitigation. Furthermore, the permittee will need to adequately detail how the authorized impacts and associated compensatory mitigation will be divided between the responsible parties, as well as provide impact maps that clearly depict the separate projects. JPA Sections 1-9 are required for the new permit or coverage; however if appropriate, the original JPA may suffice to fulfill complete application requirements.

The request between multiple permittees should contain the following:

- The transfer agreement form with details about what is being transferred.
- Reasons for requesting that only a portion be transferred.
- Completed Sections 1-9 of the JPA.
- Identification of the impacts assigned to each coverage or permit.
- Identification of any unfulfilled compensatory mitigation associated with each coverage or permit.
- Revised impact maps for the original coverage or permit and the portion to be controlled by a new permittee must clearly demarcate the division of the project and associated impact locations.
- If the permittee is proposing additional impacts or other modifications to the project, then additional application materials may be required.
- Completed and signed change of ownership agreement form, if applicable.

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### 10.3.2 COORDINATION AND MODIFICATIONS

In most cases, such a the transfer will not result in inter-agency re-coordination at either the state or federal levels, as the activities of the transferred portion of the project have previously been coordinated. However, if certain aspects of the project are proposed to change, re-coordination may be necessary. Some scenarios when such re-coordination may be needed are provided below.

- If an individual permit modification is being processed concurrently and there are additional impacts being proposed, then riparian land owner notifications may be required, depending upon the nature of the proposed impacts (see Section 5.8). If additional impacts are proposed to an individual permit that do not meet the requirements for additional impacts, the existing or the transferred portion of the permit - whichever is relevant - would be subject to a major modification process (see Section 8.4), and thus require state and federal agency coordination, notification of the locality and affected riparian land owners, and a public notification of the proposed action.
- If additional, proposed impacts do not meet the requirements under a NOPC, the project will require a new coverage and associated state and federal coordination. Otherwise, the authorization of additional impacts will be processed concurrently with the transfer. (See Section 7).

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### 10.3.3 PERMIT DOCUMENTATION

Efforts should be made to cross-reference the existing project name and VWP permit number with the new VWP permit number(s) - in the language of the coverage or permit, in the transmittal letter, in the electronic permit file, and in CEDS - to facilitate permit compliance review post-issuance.

- Changes to the existing coverage or permit will be processed as a NOPC or individual permit minor modification in accordance with Section 10.2. The existing coverage or permit will retain the existing permit number but will need to be revised to reflect the revised impacts, compensation (if not already fulfilled), and impact(s) map. As such, revisions will be necessary to the coverage letter or cover page, construction monitoring reporting update form, and if an individual permit, the special conditions. Likewise, a MultiplePermittees Memo (i.e., fact sheet) should be created to capture details about the transfer.
- The new coverage or permit will be assigned a new VWP permit number, and thus a new file will need to be created.
- Transference of a portion of a project will involve revisions to the CEDS record for the existing permit or coverage and creation of a new CEDS permit record for the new permitted portion of the project. Staff should refer to the CEDS manual for procedures on how to correctly enter a new permit and the minor modification under the existing permit.
- The transfer of ownership will require approval of the modified coverage or permit package for the existing portion(s) of the project to the current permittee, as well as issuance of the new coverage or permit to the

new permittee; therefore, each issuance package should include a signed change of ownership agreement form.

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#### 10.3.4 DENIAL OF REQUEST

In the event staff determines that a transfer of owner request should not be approved, discuss the case with the Regional VWPP Program Manager to determine the appropriate course of action.