



COMMONWEALTH of VIRGINIA

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SUBJECT: Guidance Memorandum No. **16-2004** – Coverage Transition for Virginia Water Protection General Permit Regulations:
Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (9VAC-25-660-10 et seq.);
Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (9VAC25-670-10 et seq.);
Virginia Water Protection General Permit for Linear Transportation Projects (9VAC25-680-10 et seq.); and
Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (9VAC25-690-10 et seq.) (Effective August 2, 2016)

TO: Regional Directors, Regional VWPP/Water Permit Managers, VWPP Staff, Enforcement Staff

FROM : Melanie D. Davenport, Director, Water Permitting Division *Melanie D Davenport*

DATE: July 26, 2016

COPIES: Virginia Water Protection Permit Program managers; David Davis, Director, Office of Wetlands and Stream Protection; Scott Kudlas, Director, Office of Water Supply; Angela Jenkins, Director, Policy Division

Introduction and Background:

The purpose of this guidance is to summarize amendments made to the Virginia Water Protection Permit (VWP) Program general permit regulations noted above regarding the transition between permit cycles, the permit term, and the continuation of already-issued permit coverage.

The existing VWP general permits were first promulgated in October 2001 and were last revised in August 2006. The existing general permits expire on August 1, 2016, and Department of Environmental Quality (DEQ) expects the reissued general permits to become effective on

August 2, 2016. This document provides guidance on general permit coverage transition between the existing regulations and those effective August 2, 2016.

This guidance supersedes the following Guidance Memoranda:

TITLE	NUMBER	DATE
Revisions to the VWP General Permits 9VAC25-660, 9VAC25-670, 9VAC25-680, 9VAC25-690 (Effective 8/1/06)	GM06-2014	10/25/2006
Revisions to the VWP General Permits 9VAC25-660, 9VAC25-670, 9VAC25-680, 9VAC25-690 (Effective 1/26/05)	GM05-2003	02/28/2005

Electronic Copy:

An electronic copy of this guidance in PDF format is available for staff internally on DEQNet, and for the general public on DEQ's website at: <http://www.deq.virginia.gov>.

Contact Information:

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Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any particular method for the analysis of data or the establishment of permit conditions.

I. Applications

A. General options for new projects through August 1, 2016, as noted in Section 25 A of each general permit regulation effective August 2, 2016:

- Application may be made for general permit coverage that, if granted, remains valid only through July 31, 2021, which may be appropriate if a project can be completed on or before this date. If the project cannot be completed by this date, the applicant should consider applying on or after August 2, 2016, as an expiration date of August 1, 2026 would then apply, thus providing five additional years.
- Applicants may apply for a VWP individual permit under the Virginia Water Protection Permit Regulation 9VAC25-210 that would provide a maximum permit term of up to 15 years from date of permit issuance.

Applications received *prior to* August 2, 2016 cannot be held by DEQ and subsequently processed under the VWP general permit regulations effective August 2, 2016. The receipt of any application triggers a specific timeline for staff review, as described in Code of Virginia § 62.1-44.15:21.

Applications received prior to August 2, 2016 must be deemed complete prior to August 2, 2016 in order for that application to be processed under the provisions of the regulations effective August 1, 2006 through August 1, 2016. If an application or notification is incomplete, or if there is not adequate time as allowed by § 62.1-44.15:21 for staff to make a completeness determination, the applicant will need to reapply for coverage under a VWP general permit effective August 2, 2016, or will need to apply for a VWP individual permit, including payment of any required permit application fee. Applicants may use the same Joint Permit Application form that was previously submitted; however, the applicant may be required to submit further information that was not previously required, since the application will be subject to review under the regulations effective August 2, 2016 rather than the previous regulations. A new permit application number from the Virginia Marine Resources Commission will *not* be necessary. Applicants should contact the appropriate DEQ regional VWP Permit Program staff to determine if an additional fee is required or can be credited toward the resubmitted application.

B. Applications received on or after August 2, 2016 will be processed in accordance with the VWP general permit regulations effective August 2, 2016.

II. Coverage Granted Prior to August 2, 2016

A permittee who has already received general permit coverage under the regulations effective August 1, 2006 through August 1, 2016 would had to have requested a continuation of coverage by July 1, 2016 in order to complete the project under that regulation. See Section III of this memorandum for more information on continuations.

Any coverage granted prior to August 2, 2016 remains in effect until 11:59 p.m. on the expiration date stated on the VWP authorization cover page, including any coverage that was processed as a continuation – see Section III below. Existing permittees who are *not* granted continuations must reapply for and receive another VWP permit of the appropriate type before continuing the project beyond the existing authorization’s expiration date. Again, previously paid application fees will not be refunded or credited.

The State Program General Permit (SPGP) and DEQ’s general permit coverage are separate actions, and while DEQ attempts to issue these in conjunction for convenience, this action and the next SPGP reissuance will not likely be on the same schedule. DEQ will continue to process the SPGP in accordance with the effective SPGP Standard Operating Procedures (SOP) until such time that the SPGP is reissued and/or the SOP is revised. More information on the SPGP may be found on the U.S. Army Corps of Engineers web page
<http://www.nao.usace.army.mil/Missions/Regulatory/RBregional.aspx>.

III. Continuation of Coverage Granted Prior to August 2, 2016

A permittee who has received general permit coverage under the regulations effective August 1, 2006 through August 1, 2016, and desires to continue that coverage beyond the expiration date noted on the cover page, would have had to request a continuation of coverage *no later than July 1, 2016*. *The latest date for which coverage may be continued is July 31, 2021*, as the maximum permit term set by § 62.1-44.15 is 15 years.

Any such request or notification for a continuation must include the appropriate permit application fee, based on the original permitted impacts.

Please contact the regional DEQ VWP Permit Program manager for any assistance:
<http://www.deq.virginia.gov/Locations.aspx>

IV. Notices of Planned Change

A. Through August 2, 2016:

Requests or notifications of planned change that are received prior to August 2, 2016 must be deemed complete prior to August 2, 2016 in order for that request or notification to be processed under the provisions of the regulations effective August 1, 2006 through August 1, 2016. No revisions made will allow the coverage to be effective for more than a total of 15 years.

If the request or notification is not complete prior to August 2, 2016, the permittee must resubmit the request for or notification of a planned change if he/she desires to pursue the changes to the project, and staff will process the resubmitted request or notification in accordance with the provisions in the VWP general permit effective August 2, 2016. Thus, additional and/or differing information may be required per the 2016 regulation.

B. After August 2, 2016:

When a permittee who holds a valid general permit coverage under the 2006 regulation and submits a request for or notification of a planned change after August 2, 2016, the request or notification will be processed in accordance with the provisions of the general permit regulation effective August 2, 2016, regardless of when the permittee's coverage was granted.

V. General Permit Term

The VWP general permit contained in Section 100 of each applicable general permit regulation was reissued through the regulatory action effective August 2, 2016. The general permits have a fixed 10-year term and are valid through August 1, 2026. There is no separate 'authorization' expiration date. While the VWP general permit regulations themselves do not expire, the general permits contained in the regulations will need to be reissued prior to their expiration date, via a regulatory action, if general permit coverage is to remain as a permitting option for the regulated public.