

9 PERMIT TERMINATION

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9.2 PERMIT TERMINATION

An Individual Permit or the coverage under a General Permit 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. DEQ may also choose to terminate a permit if through a compliance review or other means it is identified that the entity is no longer in existence. Reasons staff may chose this option is to avoid having two permits on the same site (if there is a new applicant for the site in question) or to close permits for which no activity will occur during the permit term.

9.2.1 TYPES OF TERMINATION

An Individual Permit or coverage under a General Permit may be terminated under one of the following three scenarios:

- Termination by Consent

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

An Individual Permit or coverage under a General Permit may be terminated at the request of 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. 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 all site work or construction.

- Termination With Cause

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

An Individual Permit or coverage under a General Permit may be terminated by DEQ for cause in accordance with the requirements identified in the main VWP Permit Program Regulation (9VAC25-210-180 F). The reasons for terminating the permit with cause are found in 9VAC25-210-180 F and consist of reasons such as noncompliance with the permit or the permit application misrepresented the project. Any such terminations require the notice of and opportunity for a formal hearing pursuant to Procedural Rule No. 1 (9VAC25-230-100). 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)

An Individual Permit or coverage under a General Permit may be terminated by DEQ without cause in accordance with the requirements identified in the in 9VAC25-210-180 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.

9.2.2 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 days¹ of completing all authorized activities and compensatory mitigation (9VAC25-210-180 H and subdivision -90 A of each VWP General Permit regulation). 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.

The steps for processing a “Termination by Consent” are as follows:

1. *Log Termination request* – update CEDS following the CEDS manual
2. *Review Termination request² / Final Permit Review* – review the request to ensure that all required information (9VAC25-6x0-90 A) is provided. A completed Termination Agreement Form may be provided in lieu of a written request. 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:
 - a. Administrative (file) review of the permit file.
 - b. Site inspection of the impact site and if applicable, compensation site, to verify permit compliance.
3. *Address any identified concerns/issues* – 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, 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.
4. *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. The permit writer drafts a termination letter using the applicable template.

¹ **Note: The general permit regulation requires that a request for termination by consent be submitted by the permittee within 30 days of project completion or project cancellation.** While this is a requirement of the permit, the lack of submitting such a request is not considered to be an actionable noncompliance item, provided that this is the only outstanding item.

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. Staff should read the termination sections of the regulation be aware of other termination scenarios that may arise.

5. *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.
6. *Update CEDS* – The permit writer updates the CEDS record to move the record to “History” in accordance with the procedures in the CEDS Manual.

9.3 TERMINATE, ISSUE, AND/OR GRANT AN INDIVIDUAL OR GENERAL PERMIT COVERAGE

Circumstances arise when an individual permit or the coverage under a general permit 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, using a new permit/tracking number.

9.3.1 PROCESSING THE COMBINED TERMINATION AND NEW ISSUANCE OR NEW COVERAGE

The steps for processing are outlined below:

1. *Log in the request* – This will necessitate updating the current active CEDS record and creating a new CEDS record for the new individual permit or general permit coverage. Follow the CEDS manual procedures for how to terminate an active record and create a new record.
2. *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.
3. *Review the request* – The request is a new application for the type of permit being applied for, either an individual permit or coverage under a general permit, and therefore is subject to the regulatory deadlines for application completeness review and authorization. Staff is to follow the application review procedures that pertains to a new individual permit application under Chapter 5 or a new general permit coverage application provided under Chapter 4, as appropriate based upon which permit is being requested in the application.
4. *Draft package* – 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.
5. *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.
6. *Update CEDS* – The permit writer updates the CEDS record to terminate the existing permits and issue the new individual permit or general permit coverage in accordance with the procedures in the CEDS manual.