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CHAPTER 7: CHANGES TO GENERAL PERMITS

7.1 Notice of Planned Change (NOPC)

9VAC25-660-80 (WP1); 9VAC25-670-80 (WP2); 9VAC25-680-80 (WP3); 9VAC25-690-80 (WP4)

Upon written request by the permittee, coverage under a general permit may be modified through a Notice of Planned Change (NOPC) request that meets the regulatory criteria of the respective general permit and Section 80 of each general permit regulation. Any NOPC request should be made in writing (email format is sufficient) by the permittee or their authorized agent. A permit application fee is not required to process a NOPC. See Section 80 of each general permit regulation which discusses NOPCs.

NOTE: Staff must consult Chapter 6 for the State Program General Permit (SPGP) to determine if the proposed changes requested in the NOPC warrant any actions under the SPGP.

7.1.1 Allowable Changes Under a NOPC

Changes to the permit coverage that may occur under NOPC are as follows:

- **Impact Increase:** A cumulative increase (after original coverage) in *permanent* surface water impacts of up to 0.25 acre (10,890 square feet) of wetlands and open waters and 100 linear feet of stream channel, that meet the requirements of Subdivision 80 B 1.

Table 1: NOPC Impacts Thresholds

Resource	Permanent Impact Increase*	Temporary Impact Increase*
Wetlands and Open Water	≤ 0.25 Acre (10,890 Square Feet)	No threshold
Streams	< 100 Linear Feet	No threshold

*Total impacts (permanent and temporary) may not exceed the applicable *general permit* threshold.

If the cumulative additional *permanent* impacts cause an exceedance of the reporting-only thresholds (0.10 acre of wetlands or open waters, or 300 linear feet of stream channel), the permittee must apply for a Notice of Planned Change, and may be required to provide compensatory mitigation and/or additional information.

For an increase in *temporary* impacts within the original project boundary or in areas directly related to off-site work (see subdivision 80 B 1 b), the permittee shall submit to DEQ a written statement that addresses all the items identified in -80 B 1 h. The notice shall be submitted a minimum of 10 days prior to initiating the impact. If DEQ does not respond to the notification within the 10 days, the additional temporary impacts are deemed approved and the permittee may proceed with initiating the additional temporary impacts. Staff should still process a NOPC to identify the approved additional temporary impacts in the coverage letter.

If the original application process indicated no threatened or endangered (T&E) species concerns then the NOPC does not require coordination with DCR or DGIF. If there were T&E concerns or conditions of coverage in the original permit process, the permittee is to provide sufficient documentation that any additional impacts will not impact federal or state listed T&E species, designated critical habitat, or taking of a T&E species. In these cases, staff may determine coordination with DCR and DGIF necessary.

All proposed additional impacts shall demonstrate avoidance and minimization of the proposed impacts and that those impacts shall not impact threatened or endangered species. Appropriate compensation, if required, must be proposed (for general permit coverage that is above the threshold for the compensation requirement, i.e., not a reporting-only coverage.)

Additional impacts are to be located within the project boundary of the original coverage or in areas directly related to off-site work (see subdivision 80-B 1 b). Impacts proposed in “new” areas not within those areas of the original coverage are to be considered under a new application for coverage which must address the original work as well as the “new” areas.

The cumulative permanent and temporary impacts authorized shall not exceed the *general permit threshold*, as specified in the applicable general permit (Section 100 of each general permit regulation). Should the applicable threshold be exceeded, the permittee must reapply, either for a qualifying general permit coverage that has a higher threshold (e.g., WP1 may still qualify for WP4) or for a VWP individual permit for the entire project. In this case, the current permit coverage must be terminated (see Chapter 9).

- **Impact Decrease (Subdivision 80 B 2):** A decrease in *permanent and temporary* surface water impacts. The compensation requirement may be reduced accordingly, provided that the resulting compensation still meets the regulatory requirements for compensation. If the reduction brings the total *permanent* impacts down below the reporting-only thresholds (0.10 acre of wetlands or open waters, or 300 linear feet of stream channel), process a NOPC, including any change to compensation requirements in the *NOPC and Transfer of Ownership Transmittal* template. DEQ is not responsible for ensuring any purchased credits are refunded.
- **Change in project plans but not impacts (Subdivision 80 B 3):** A change to the authorized project plans or use that does not result in changes to authorized surface water impacts or required compensation may be authorized under this criterion. For instance, a project purpose may change from residential to industrial. Any such change that also results in changes to surface water impacts may be allowed as long as the requirements for additional surface water impacts are met (i.e., impact threshold and location).

- **Change in Compensation (Subdivision 80 B 4):** An NOPC may be used to substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program, or substitute all or a portion of the prior authorized permittee-responsible compensation with a purchase of mitigation credits from a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory mitigation requirement. An NOPC may not be used to change from a more preferred mitigation method to a lesser preferred mitigation method.
- **Typographical Error (Subdivision 80 B 5):** Any typographical errors in the coverage letter may be revised under this criterion.

NOPCs do not have regulatory deadlines to review and complete the action, nor do these actions require application fees at this time. However, staff is encouraged to process NOPCs using the general permit timeframes. Therefore, reviews of NOPC requests and initial requests for additional information should be conducted within 15 days (10 days for VDOT projects) of receipt as time allows. Approval or denial of the NOPC should be completed within 45 days (30 days for VDOT projects) of receiving all necessary information associated with the request.

7.1.2 Processing a NOPC

The steps for processing a NOPC are as follows:

1. *Log NOPC request* – Update CEDS following the CEDS manual.
2. *Review the NOPC request* – Review the request to determine if it qualifies for a NOPC in accordance with Section 80 of the applicable general permit regulation and whether additional information is needed to review the request. For NOPCs that request an increase in permanent surface water impacts, the following information should be provided at a minimum:
 - a. Detailed description of the proposed change(s), including (as appropriate) the location of the change(s) (for example, Station Number, Impact Area, etc.).
 - b. Documentation that the proposed impacts have been avoided and minimized to the maximum extent practicable.
 - c. Revised impacts map(s) and table, to include a to-scale hardcopy map(s) as needed.
 - d. Conceptual compensation plan for additional permanent impacts (if applicable).
 - e. Documentation that the proposed change will not impact threatened and/or endangered species. In some cases, the NOPC may affect T&E conditions of coverage and staff may have to coordinate the NOPC with the appropriate agencies.

Review should include ensuring that the new impact totals, including the new areas, are within the impact thresholds for the applicable general permit and the NOPC thresholds. If the impacts proposed in the NOPC are not within the originally authorized project boundary or not located in areas of directly-related off-site work, then the proposed additional impacts do not qualify for a NOPC (see 7.1.3 below).

3. *Request additional information* – Request any additional information necessary to adequately assess the request. Examples of possible additional information needs are signed change of ownership request forms, project (notice of planned change) purpose and need, revised impact maps (including a to-scale hardcopy if necessary), efforts to avoid and minimize additional impacts, and full mitigation of additional permanent impacts at ratios required by the general permit.

4. *Draft NOPC* – The permit writer drafts a NOPC approval using the *NOPC and Transfer of Ownership Transmittal* template. Revise only the relevant portions of the general permit coverage letter, or in the case of an authorization provided before August 2, 2016, the general permit authorization cover page. If the NOPC action needs further clarification or explanation, staff may choose to draft a separate document, such as a permit summary sheet.
5. *Attach the applicable General Permit* – For general permit authorizations provided before August 2, 2106, attach the general permit conditions provided with the original general permit authorization. Since new regulatory requirements may now apply, however, add any necessary additional conditions to the general permit authorization cover page as Authorization Notes. [this reflects what regions said they have done/are doing]
6. *NOPC Approval* – The NOPC’s package is signed by the Regional VWP Program Manager. Once signed, it is distributed to the permittee, with the appropriate copies to the agent and USACE (if applicable).
7. *Update CEDS* – The permit writer updates CEDS following the CEDS manual and uploads appropriate documents to ECM.

7.1.3 Denying a NOPC

In the event that DEQ Staff determines that an NOPC request does not comply with the regulatory NOPC requirements, appropriate justification must be documented in the file and communicated to the permittee. A NOPC request may not qualify due to inadequate avoidance and minimization of proposed additional permanent impacts or the increase in impacts exceeds the NOPC or general permit thresholds.

- Notification to the permittee that the request cannot be processed due to lack of avoidance and minimization or other decision that staff must make should be signed by the Regional VWP Program Manager and mailed to the permittee (email is acceptable).
- Notification to the permittee that the request cannot be processed because the request clearly does qualify for any of the NOPC criterion can be sent by staff.

Staff should discuss the matter with the permittee (or their authorized agent) prior to sending the notification and address any concerns of submitting an application requesting new coverage under a general permit upon termination of the existing permit coverage.

7.2 Transfer of Permit Coverage

9VAC25-660-100 Part III H (WP1); 9VAC25-670-100 Part III H (WP2); 9VAC25-680-100 Part III H (WP3); 9VAC25-690-100 Part III H (WP4)

At this time, a transfer of VWP general permit coverage is processed like a Notice of Planned Change (NOPC), as discussed in Chapter 10.