

4VAC15-35-80. Permit procedures.

A. ~~Required general information.~~ A permit application must ~~contain the following information: be completed and submitted to the department.~~

~~1. Applicant's full name and address, telephone number, and, if available, fax number and email address;~~

~~a. If the applicant resides or is located outside of the Commonwealth of Virginia, the name and address of an agent located in the Commonwealth of Virginia; and~~

~~b. If the applicant is an entity, a description of the type of entity and the name and title of an individual who will be responsible for the permit;~~

~~2. Location of the regulated activity;~~

~~3. Certification in the following language: "I hereby certify that the information submitted in this application is complete and accurate to the best of my knowledge and belief";~~

~~4. Desired effective date of the permit except where issuance date is fixed by the sector-specific plan under which the permit is issued;~~

~~5. Desired duration of the permit, if less than the default term for the sector-specific plan under which the general or individual incidental take permit is requested;~~

~~6. Date of application;~~

~~7. Signature or electronic signature of the applicant; and~~

~~8. Such other information or documentation as may be required by the applicable sector-specific plan.~~

B. Administrative procedures.

1. The department shall determine the completeness of an application and shall notify the applicant of any determination within 45 calendar days of receipt. Where available to the applicant, electronic communication may be considered communication in writing.

a. If, within those 45 calendar days, the application is deemed to be incomplete, the applicant shall be notified in writing of the reasons the application is deemed incomplete. If the application is resubmitted, all deadlines in this section shall apply from the date of receipt of the resubmitted application.

b. If a determination of completeness is made and the associated sector-specific plan does not require additional department review, the application is deemed approved and the applicant will be notified in writing.

c. If a determination of completeness is not made and communicated to the applicant within 45 calendar days of receipt, the application shall be deemed complete on the 46th day after receipt.

d. If the application is complete and the associated sector-specific plan requires additional department review, the department will take no more than 120 days to review. Bundled projects subject to prior approval of biennial standards and specifications as described in [4VAC15-35-90](#) may take up to 180 days. If, at the end of the designated review period, the department has not taken final action on the application or notified the applicant in writing of the need for an additional 60 days for review, the application shall be deemed approved.

2. During the review period, the application shall be approved or disapproved, and the decision communicated in writing to the applicant. If the application is not approved, the reasons for not approving the application shall be provided in writing. Approval or denial shall be based on the application's compliance with the requirements of this chapter and the applicable sector-specific plan.

a. If the application is not approved, the applicant shall have 45 calendar days to revise the permit application to bring it into compliance with the appropriate sector-specific plan or to appeal the decision to the director of the department under the department's dispute resolution and administrative appeals procedure. The applicant may request, in writing, an extension of the timeframe in which to submit a revised application, not to exceed an additional 60 calendar days. If the revised application is not submitted within the defined timeframe, the department will administratively close the application.

b. Upon submission of a revised application after denial, the department shall have 120 days to review and make a determination. If the application is denied again, the applicant will have 45 days after denial to appeal the decision to the director of the department under the department's dispute resolution and administrative appeal procedure. Any new revisions to the permit must be submitted as a new application.

3. Upon approval of an application for an individual incidental take permit, the department will provide the applicant with a permit, including terms and conditions. The applicant shall have 30 calendar days to appeal terms and conditions to the department director under the department's dispute resolution and administrative appeals procedures.

C. Permit issuance.

1. Denial. The department shall not issue a permit if:

a. The applicant has one or more of the disqualifying factors included in subdivision 2 of this subsection;

b. The applicant has failed to disclose material information or has made false statements as to any material fact in connection with the application; or

c. The department determines that the application fails to comply with the applicable sector-specific plan or any other applicable wildlife law, regulation, or ordinance.

2. Disqualifying factors. The department will provide written notice of any known disqualifying factors to the applicant. Any one of the following will disqualify an applicant from receiving or exercising a permit:

a. A conviction of, or entry of a plea of guilty or nolo contendere by, the applicant or a representative of the applicant for a violation of the Lacey Act (16 USC § 3371 et seq.); the federal Migratory Bird Treaty Act (16 USC § 668 et seq.); the federal Bald and Golden Eagle Protection Act (16 USC § 668 et seq.); the federal Endangered Species Act (16 USC § 1531 et seq.); the Virginia Endangered Species Act (§ [29.1-563](#) et seq. of the Code of Virginia); or this chapter within the five-year period preceding the application, unless such disqualification has been expressly waived by the department in response to a request by the applicant.

b. The failure to pay any required fees.

c. The suspension of any other incidental take permit. The applicant is disqualified from receiving any additional incidental take permits as long as the suspension exists.

3. Fees. An application fee of \$50 and a permit fee of \$50 per year shall be due for each permit. ~~The application fee shall be due at the time of application submittal, and no~~ No application shall be processed until the fee is received. ~~The full amount of the permit fee shall be based on the default duration of the permit and is due at the time of certification if no approval is required. If the department's approval is required, the full amount of the permit fee is due upon approval or issuance of a permit. The fees will be deposited into the Nongame Cash Fund and used for the conservation and management of regulated bird species consistent with § 58.1-344.3 of the Code of Virginia. No refund of any fees paid shall be made if a permit application is denied or if a permit is terminated prior to the expiration date.~~

4. Permit renewal. Applications for renewal shall meet and comply with all requirements for permit application and be submitted at least 90 calendar days prior to the expiration of an existing permit.

5. Modifications to permits. Permits may be modified with the department's approval in accordance with the following:

a. Applicant's request. Where circumstances have changed so that an applicant desires to have any condition of the permit modified, the applicant must submit a full written justification and supporting information to the department in conformity with the terms and conditions under which the permit was issued.

b. Department determination. The department may amend any permit during its term where circumstances have changed such that amendments to the permit are deemed necessary by the department. In such instances, the department will notify the applicant in writing 60 calendar

days in advance of the effective date of any amendment. The applicant shall have 30 calendar days to appeal the decision to the department director under the department's dispute resolution and administrative appeals procedures.

6. Transfer of permits and scope of permit authorization.

~~a. Except as otherwise provided for in this subsection, permits issued under this part are not transferable or assignable.~~

b. Permits may be transferred in whole or in part through a joint submission by the applicant and the proposed transferee, or, in the case of a deceased applicant, the deceased applicant's legal representative and the proposed transferee. The department will review the submission and approve the transfer provided that:

(1) The proposed transferee meets all of the qualifications under this part for holding a permit;

(2) The proposed transferee has provided adequate written assurances that it will implement the relevant terms and conditions of the permit; ~~and~~

~~(3) The proposed transferee has provided other information that the department determines is relevant to the processing of the submission.~~

c. Except as otherwise stated on the face of the permit, any person who is under the direct control of the applicant or who is employed by or under contract to the applicant for purposes authorized by the permit may carry out the activity authorized by the permit. However, the applicant will remain responsible for ensuring compliance with all aspects of the permit.

7. Discontinuance of permit activity. When an applicant discontinues activities authorized by a permit, the applicant shall within 30 calendar days of the discontinuance notify the department of permit termination.

8. Permit inspections. The department shall have the right to perform inspections of a permitted activity to ensure compliance with permit conditions. Written, including electronic, or verbal notice of such inspection shall be given on a business day, and the inspection shall not occur no less than one and no more than five business days from the date of the notice, except when the department determines that an emergency inspection is necessary.

9. Permit suspension and revocation.

a. Criteria for suspension. The privileges of exercising some or all of the permit authority may be suspended at any time if the applicant is not in compliance with the conditions of the permit, the sector-specific plan, or any applicable laws or regulations governing the conduct of the regulated activity. Such suspension shall remain in effect until the department determines that the applicant has corrected the deficiencies.

b. Criteria for revocation. A permit may be revoked for any of the following reasons:

(1) The applicant willfully violates any provision of the Virginia Endangered Species Act (§ [29.1-563](#) et seq. of the Code of Virginia); the federal Migratory Bird Treaty Act (16 USC § 703 et seq.); the federal Bald and Golden Eagle Protection Act (16 USC § 668 et seq.); the federal Endangered Species Act (16 USC § 1531 et seq.); or the conditions or a permit issued under those acts or this chapter; or

(2) The applicant fails within 60 calendar days to correct deficiencies that were the cause of a permit suspension.

c. Procedure for suspension and revocation.

(1) The applicant shall be notified in writing of the suspension or revocation by certified or registered mail. This notice shall identify the permit to be suspended, the reasons for such suspension, and the actions necessary to correct the deficiencies and inform the applicant of the right to appeal the suspension. The department may amend any notice of suspension or revocation at any time.

(2) The applicant shall be provided with an opportunity to appeal the suspension or revocation within 30 calendar days of mailing the suspension or revocation notice. Appeal may be requested by filing a written objection specifying the reasons the applicant objects to the suspension or revocation and may include supporting documentation. Amendment of a notice of suspension or revocation will allow the applicant another 30 calendar days to appeal the decision from the date of mailing notice of the amendment if they have not already initiated an appeal.

(3) If at the end of 30 calendar days no appeal has been received by the department, a final order shall be issued suspending or revoking the permit.

(4) If the applicant timely submits an appeal, an informal fact-finding proceeding will be held within 30 calendar days, or at the option of the department or the applicant, a formal hearing may be scheduled as soon as may be practicable.

(5) Following an informal fact-finding proceeding or formal hearing, a final decision shall be made by the director within 30 calendar days of the informal fact-finding proceeding or receipt of a recommendation by any hearing officer.

Rationale: Amendments applied are for regulatory reduction purposes to remove unnecessary requirements and do not change the desired outcomes of the regulation's intent.