

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER DIVISION

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Subject: Guidance Memo 08-2008
Investigating and Coordinating Complaints Related to Discharges of Sediment from Construction Sites.

To: Regional Directors

From: Ellen Gilinsky 

Date: June 9, 2008

Copies: Rick Weeks, James Golden, Deputy Regional Directors, Regional VWP Managers, VWPP Staff

Summary:

The Virginia Department of Conservation and Recreation (DCR) regulates discharges of stormwater from construction sites, while the Virginia Department of Environmental Quality (DEQ) regulates dredge, fill, or discharge of any pollutant into, or adjacent to surface waters, including wetlands. DCR and DEQ routinely receive complaints and make observations related to discharges of sediment from construction sites. Regulation of such discharges may fall within the jurisdiction of either or both agencies, depending on the facts. For this reason, this guidance memorandum explains how DEQ and DCR have agreed to coordinate addressing these kinds of complaints.

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:

Please contact David Davis, Office of Wetlands and Water Protection, (804) 698-4105 or dldavis@deq.virginia.gov if there are any questions about this guidance.

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, establishment of a wasteload allocation, or establishment of a permit limit. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Investigating and Coordinating Suspected Discharges of Sediment from Construction Sites

I. Introduction: The DCR and the DEQ routinely receive complaints and make observations related to discharges of sediment from construction sites. Regulation of such discharges may fall within the jurisdiction of either or both agencies, depending on the facts. For this reason, this guidance memorandum explains how DEQ and DCR have agreed to coordinate addressing these kinds of complaints

II. Background: Sediment discharges to streams, wetlands, and waters can have a detrimental impact to aquatic biota, water quality, and the physical integrity of the impacted resource. DCR is obliged by statute to investigate every complaint it receives regarding discharges of sediment from construction sites in the state of Virginia.

III. Authority: DCR regulates discharges of stormwater from construction sites pursuant to the Virginia Stormwater Management Act, Virginia Code § 10.1-603.2 *et seq.*, and the Virginia Stormwater Management (VSMP) Program Permit Regulations 4 VAC 50-60-10 *et seq.*

Pursuant to Virginia Code § 10.1-603.2.2, it shall be unlawful to cause a stormwater discharge from a land-disturbing activity except in compliance with a permit issued by a permit issuing authority. The Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities, codified at 4 VAC 50-60-1170, provides that stormwater discharges which the permit-issuing authority determines cause, or may reasonably cause, or contribute to a violation of water quality standards are not covered by the permit. (4 VAC 50-60-1130.A.4)

DEQ administers the Virginia Water Protection Permit (VWPP) Program, which regulates impacts to state waters, including wetlands. This permit program also serves as Virginia's Section 401 certification program for federal Section 404 permits under the Clean Water Act.

Under the authority of the Code of Virginia, regulated impacts to state waters are described as follows (See §§62.1-44.15 and 62.1-44.15:5, 9VAC25-210-50 *Prohibitions and requirements for VWP permits*):

Except in compliance with a VWP permit, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters, withdraw surface water, otherwise alter the physical, chemical, or biological properties of surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; excavate in wetlands on or after October 1, 2001, conduct the following activities in a wetland:

- 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;*
- 2. Filling or dumping;*
- 3. Permanent flooding or impounding; or*
- 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.*

IV. Definitions:

“State waters” mean all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

“Surface waters” mean all state waters that are not ground water as defined in §62.1-255 of the Code of Virginia.

V. Interagency Coordination of Discharges of Sediment From Construction Sites :

The Agency receiving the complaint shall investigate and determine if coordination between agencies is necessary. Staff will either receive a complaint or personally make an observation of possible discharge from a construction site. Next, staff will make a preliminary evaluation either by further questioning the complainant or through additional on-site investigation. Under circumstances where DCR staff conducts the initial investigation, DCR will coordinate with designated DEQ staff if there is reason to suspect discharge of sediment to surface waters, including wetlands. Under circumstances where DEQ staff conducts the initial investigation, DEQ will coordinate with designated DCR staff if there is reason to suspect discharge of sediment from a construction site. Typically, coordination will involve contacting the designated field staff, discussing the facts of the case, arranging a joint inspection if necessary, and developing independent corrective action plans, when appropriate. Agency staff will follow up with each other as necessary.

DEQ should contact the regional DCR office using the following link,

http://deqnet/docs/water/Water_permit/VWP_Permit_Program/VWPP_Library/Contacts_and_Resources/DCR_Stormwater_Programs_Staff.pdf).

DCR should contact the appropriate regional DEQ office. See the following link:

http://www.deq.virginia.gov/export/sites/default/wetlands/pdf/VWP_Permit_Staff.pdf.

**MEMORANDUM OF AGREEMENT
BETWEEN
THE VIRGINIA DEPARTMENT OF CONSERVATION AND RECREATION
AND
THE VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
FOR
INVESTIGATING AND COORDINATING COMPLAINTS RELATED TO
DISCHARGES OF SEDIMENT FROM CONSTRUCTION SITES**

WHEREAS, the Virginia Department of Conservation and Recreation (DCR) and the Virginia Department of Environmental Quality (DEQ) each routinely receive complaints and make observations related to discharges of sediment from construction sites.

WHEREAS, DCR regulates discharges of stormwater from construction sites pursuant to the Virginia Stormwater Management Act, Virginia Code § 10.1-603.2 *et seq.*, and the Virginia Stormwater Management (VSMP) Program Permit Regulations 4 VAC 50-60-10 *et seq.*

WHEREAS, pursuant to Virginia Code § 10.1-603.2.2, it shall be unlawful to cause a stormwater discharge from a land-disturbing activity except in compliance with a permit issued by a permit-issuing authority.

WHEREAS, the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities, codified at 4 VAC 50-60-1170, provides that stormwater discharges which the permit-issuing authority determines cause, or may reasonably cause, or contribute to a violation of water quality standards are not covered by the permit. (4 VAC 50-60-1130.A.4).

WHEREAS, DEQ administers the Virginia Water Protection Permit (VWPP) Program codified at 9VAC-25-210, which regulates impacts to state waters, including wetlands.

WHEREAS, pursuant to Virginia Code §§62.1-44.15 and 62.1-44.15:20, except in compliance with a Virginia Water Protection permit issued by DEQ, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters, otherwise alter the physical, chemical, or biological properties of surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; excavate in wetlands on or after October 1, 2001.

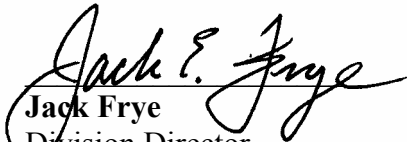
THEREFORE, it is agreed that DCR and DEQ shall follow the procedure below for addressing complaints or observations related to discharges of sediment from construction sites:

1. The Agency receiving the complaint shall investigate and determine if coordination between agencies is necessary.

2. Under circumstances where DCR staff conducts the initial investigation, DCR will coordinate with designated DEQ staff if there is reason to suspect discharge of sediment to surface waters, including wetlands.
3. Under circumstances where DEQ staff conducts the initial investigation, DEQ will coordinate with designated DCR staff if there is reason to suspect discharge of sediment from a construction site.

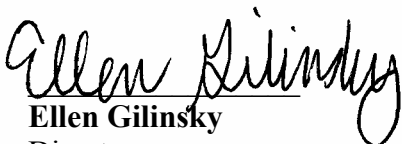
This Memorandum of Agreement shall become effective on April 15, 2008, and remain in affect until modified or superseded, or until either of the signatories determines that it no longer serves its agency's needs, and then only after 30 days written notice.

IN WITNESS WHEREOF, the parties sign and cause this MOA to be executed on this the 9th day of June, 2008.



Jack Frye
Division Director,
DCR Division of Soil and Water Conservation
Commonwealth of Virginia,
Department of Conservation and Recreation

6-17-2008
Date



Ellen Gilinsky
Director,
Water Division
Commonwealth of Virginia,
Department of Environmental Quality

6/9/08
Date