

MEMORANDUM OF UNDERSTANDING AMONG THE VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, THE VIRGINIA DEPARTMENT OF GAME AND INLAND FISHERIES, AND THE VIRGINIA DEPARTMENT OF CONSERVATION AND RECREATION REGARDING SCREENING AND COORDINATION PROCEDURES DURING THE VIRGINIA WATER PROTECTION APPLICATION REVIEW PROCESS

The intent of this Memorandum of Understanding (MOU) is to describe procedures for coordination among the Department of Environmental Quality (DEQ), the Department of Game and Inland Fisheries (DGIF), and the Department of Conservation and Recreation (DCR) ¹ during the Virginia Department of Environmental Quality's Virginia Water Protection Permit (VWPP) review process to obtain input regarding the potential for significant impairment of state waters, fish and wildlife resources, and threatened or endangered species. This MOU specifically addresses VWPP permits regulating impacts to surface waters, including wetlands, and review for species and habitat that are protected by the Virginia Endangered Species Act (Title 29.1, Chapter 5, Article 6, Sections 29.1-563 through 29.1-570 as amended of the Code of Virginia) and the Endangered Plant and Insect Species Act (Title 3.1, Chapter 39, Sections 3.1-1020 through 3.1-1030 as amended of the Code of Virginia). This MOU, however, does not constitute, convey, or imply authority to any permit applicant or recipient to unlawfully take any wildlife or plant species otherwise protected by Virginia laws or regulations (e.g., "incidental take" of a Threatened or Endangered species).

The participating agencies agree to the following procedures for coordination during the review of VWPP permits:

1. When DEQ receives a VWPP application, DEQ will screen the proposed surface water impact location for the presence of state or federally listed threatened or endangered (T&E) species, designated Threatened and Endangered Species Waters, and sensitive fish, wildlife, and plant resources using the DGIF Virginia Fish and Wildlife Information Service online database and the Virginia Department of Conservation and Recreation, Division of Natural Heritage, Natural Heritage Data Explorer. DEQ will screen applications using the databases to perform a 2-mile radius search around the proposed impact location(s).
2. If the database searches indicate the presence of state or federally listed threatened or endangered species, designated Threatened and Endangered Species Waters, anadromous fish waters, colonial waterbird colonies, or trout streams within 2 miles of the surface water impact, DEQ will coordinate with DGIF and/or DCR for information regarding the potential impacts to these resources. This coordination will initially be submitted to DGIF and DCR on a VWPP Permit Natural Resources Consultation Form. In the notification, DEQ will provide information including: permit applicant name; contact information; location information including latitude and longitude; the receiving stream, if applicable; description of the impact area; description of the entire property; a topography map identifying project boundaries; and the results of the database search.
3. DGIF and DCR will have 14 calendar days for a VWPP general permit review and 45 calendar days for an individual permit review in which to provide comments on the permit application. Paraphrasing from the Code of Virginia §62.1-44.15:5.F, DEQ will give full consideration to the written recommendations of DGIF and/or DCR regarding the potential impacts to fish, wildlife, plant and natural community resources. If written comments are not submitted by DGIF and/or DCR within these time periods, or within any extended commenting periods approved by DEQ, then DEQ shall assume that DGIF and/or

¹ Under a Memorandum of Agreement established between the Virginia Department of Agriculture and Consumer Services (VDACS) and DCR, DCR represents VDACS in comments regarding potential impacts on state-listed T & E plant and insect species.

DCR have no comments on the proposed permit, and DEQ will continue processing the permit application.

4. DGIF and DCR agree to provide specific comments related to the potential impacts to threatened or endangered species that could occur as a direct result of the proposed surface water impact. These comments are required to be addressed by DEQ during the decision to issue or deny the permit.
5. DGIF and DCR may also provide specific comments related to the overall potential project impacts to Species of Greatest Conservation Need (Tiers I-IV) as identified in the DGIF Wildlife Action Plan; Natural Heritage Resources as identified by the DCR Natural Heritage Division; or other species or natural communities of concern to these agencies. DEQ will determine whether these comments are related to the surface water and/or wetland impacts, and whether further avoidance, minimization, or compensation is appropriate. If the comments regarding these resources do not pertain to the surface water and/or wetland impacts, then DEQ may determine to not require any further action by the applicant based on those comments.
6. DGIF and DCR agree to be specific with their comments in terms of their requests for species surveys, recommendations for reduction of impacts, or suggestions for mitigating impacts. Comments should be provided in a manner that clearly distinguishes between the following:
 - **No objection to the activities proposed in the permit application.**
 - **General suggestions to minimize project impacts such as employing erosion and sediment control measures, stormwater controls, buffer recommendations, and mitigation alternatives.**
 - **Surveys required to confirm presence of T&E species or habitat within the proposed project's direct surface water impact area, or within 2 miles downstream thereof.** If a survey shows T&E species are present at the proposed impact site or within 2 miles downstream of affected waters, DEQ will coordinate with the permit applicant and DGIF/DCR to discuss changes needed to the project to mitigate for their presence and any potential impacts.
 - **Recommendations to conduct surveys for listed T & E species located within the project site, but that are not within the direct impact area of the proposed project.** The applicant may be required to survey for these species at the discretion of DEQ.
 - **Recommendations to conduct surveys for those resources of concern that are not listed threatened or endangered within the direct impact area.** These recommendations will be provided to the applicant as suggestions, but will not likely be required by DEQ as part of the VWP process.
 - **Recommendations to conduct surveys for non-listed species, habitats, or natural communities located within the project site, but that are not within the direct impact area of the proposed project.** These recommendations will be provided to the applicant as suggestions, but will not likely be required by DEQ as part of the VWP process.

- **Recommendation for denial for projects that will have a significant impact on fish and wildlife resources, threatened or endangered species, plants, or natural communities.** In the event that a proposed project is deemed unacceptable to the DGIF and/or DCR as a result of potential impacts to fish and wildlife resources, threatened or endangered species, plants, or natural communities, the comments shall clearly state the agency's opposition to the project and specifically express recommendations for denial. Each agency should be prepared to support their position at a meeting(s) with the applicant or before the SWCB if necessary.
- **Additional Recommendations.** In the event that DGIF and/or DCR believe a proposed project may result in significant impact to fish or wildlife resources, plants, or communities, but that there are measures available that would appropriately mitigate for those impacts, then DGIF and DCR may make additional recommendations for DEQ's consideration.

7. DEQ will respond to the comments provided by DGIF and/or DCR with the actions being undertaken, and will coordinate survey implementations or other information development with the appropriate agencies during the processing of the permit. DEQ, however, shall make the final determination to issue or deny any VWP permits, including final determination of specific permit conditions.

The undersigned agree that these procedures for coordination will be used to evaluate VWP permit applications for impacts to surface waters of Virginia.

Signed: David K. Paylor Date: 1/9/2007
 David K. Paylor, Director
 Virginia Department of Environmental Quality

Signed: J. Carlton Courter III Date: 01/10/07
 J. Carlton Courter III, Director
 Virginia Department of Game and Inland Fisheries

Signed: Joseph H. Maroon Date: 1/16/07
 Joseph H. Maroon, Director
 Virginia Department of Conservation and Recreation