

## **MEMORANDUM**

TO: Steve Begg

FROM: Steve Hardwick

SUBJECT: Memorandum of Understanding between VDOT and DEQ on the Virginia Water Protection Permit Process

DATE: March 9, 2017

The attached Memorandum of Understanding (MOU) between VDOT and DEQ is the third revision of the original MOU signed in 2003. This new version provides revised guidance for complying with the Virginia Water Protection Permit Regulations that became effective on August 2, 2016.

The MOU has been developed with the technical staff and program management at both agencies. The purpose of the MOU is to streamline the permit process for VDOT projects, set out the procedure for review of VWP Permit applications through the Inter Agency Coordination Meeting, and detail the reporting method by which VDOT will submit general permit applications for projects impacting up to 0.10-acre. Everything contained in the MOU is an accurate representation of the processes currently in place between our two agencies.

The attached MOU is signed by David Paylor for DEQ and will become effective on the date that it is signed by VDOT. If you have any questions, please contact Steve Hardwick at [steven.hardwick@deq.virginia.gov](mailto:steven.hardwick@deq.virginia.gov) or 804-698-4168.

## **MEMORANDUM**

TO: David Paylor

THOUGH: James Golden

FROM: Melanie Davenport

SUBJECT: Memorandum of Understanding with VDOT on Virginia Water Protection Permit Process

DATE: March 8, 2017

The attached Memorandum of Understanding (MOU) between VDOT and DEQ is the third revision of the original MOU signed in 2003. This new version provides revised guidance for complying with the Virginia Water Protection Permit Regulations that became effective on August 2, 2016.

The MOU has been developed with the technical staff and program management at both agencies. The purpose of the MOU is to streamline the permit process for VDOT projects, set out the procedure for review of VWP Permit applications through the Inter Agency Coordination Meeting, and detail the reporting method by which VDOT will submit general permit applications for projects impacting up to 0.10-acre. Everything contained in the MOU is an accurate representation of the processes currently in place between our two agencies.

Please note that this MOU is not a binding contract and its provisions shall neither be enforceable against any signatory party nor bestow any benefit upon any other persons or entities and shall give rise to no legal right to such other persons or entities.

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY  
AND  
THE VIRGINIA DEPARTMENT OF TRANSPORTATION  
FOR  
VIRGINIA WATER PROTECTION PERMIT PROCESS STREAMLINING**

WHEREAS, the Virginia Department of Environmental Quality (VDEQ) and Virginia Department of Transportation (VDOT) have explored efficiencies for streamlining the processing of the general and individual Virginia Water Protection Permits (VWPPs); and

WHEREAS, the processing of VWPPs is regulated by the Virginia Administrative Code (9 VAC 25-210 *et seq.*, 9 VAC 25-660 *et seq.*, 9 VAC 25-670 *et seq.*, 9 VAC 25-680 *et seq.*, and 9 VAC 25-690 *et seq.*);

WHEREAS, the VDEQ has assumed additional authorities from the U.S. Army Corps of Engineers (Corps) to administer the State Program General Permit (currently, 12-SPGP-01);

WHEREAS, the VDEQ has revised the VWPP Regulation (9 VAC 25-210) and the Virginia Water Protection General Permit (9 VAC 25-660, 9 VAC 25-670, 9 VAC 25-680 and 9 VAC 25-690) Regulations in order to, in part, incorporate policies and guidance developed in recent years; incorporate certain federal regulatory provisions relative to the program, such as compensatory mitigation requirements; and revise and clarify the application process;

WHEREAS, this Memorandum of Understanding (MOU) is intended to further clarify and define the responsibilities of each agency in the VWPP process and, upon execution, will replace the existing MOU between the two agencies, executed on November 20, 2007.

NOW, THEREFORE, VDEQ and VDOT agree to the following stipulations for the streamlined processing of VWPPs, the current 12-SPGP-01, and subsequent versions of the SPGP-01:

1. VDEQ's Central Office VWPP staff will serve as the point-of-contact for all VWPP-related issues.
2. VDOT's Interagency Coordination Meeting (IACM) process will be an acceptable means for VDOT to submit permit applications, permit modifications, requests for notice of planned change, and permit waiver requests for VWPPs. The IACM process will be the official method of obtaining regulatory and advisory agencies' comments on permit applications for VWP General Permit Coverage and Individual Permits submitted through this process.

3. VDOT will submit permit applications such that VDEQ receives them 10 business days prior to the next IACM.
4. The date of the IACM will be the due date for VDEQ's application completeness review. VDEQ will either accept the application in their initial comments at the IACM or provide a written request for additional specific information from VDOT within 10 business days from the IACM.
5. VDOT's IACM application form constitutes an acceptable VWP permit application, provided it includes an original signed certification statement, applicable attachments, and the *Permit Fee Registration Form for Virginia Department of Transportation Projects* (when applicable).
6. For linear transportation projects, a single and complete project is defined by 9 VAC 25-680-10 and SPGP-01. A linear transportation project will be assigned one permit application number regardless of the number of single and complete projects contained within the transportation project.
7. VDOT will submit a monthly report on the last day of each month, including a spreadsheet, which summarizes the listed projects and their corresponding surface water impacts for projects that meet the following criteria: (a) projects with permanent wetland or open water impacts of less than or equal to 0.10-acre, or stream bed impacts of less than or equal to 300 linear feet; (b) projects that do not affect threatened or endangered species and/or for which VDOT agrees to comply with applicable time-of-year restrictions); and (c) projects that qualify for the SPGP-01, and are not to be presented at the IACM. VDEQ will review the monthly report to determine if the VWP General Permit requirements and Corps' SPGP-01 requirements have been met and provide coverage for the projects that qualify for a VWPP general permit or both a VWPP general permit and an SPGP-01 permit. VDOT may, at their discretion, commence work on all single and complete projects with less than or equal to 0.10-acre of permanent impacts in advance of submitting the monthly report or receiving VDEQ comments, provided the projects are listed on the concurrent monthly report. Construction monitoring and reporting will not be required for these projects.

The following information, at minimum, will be provided in the monthly report for each permitted project, if applicable: permit number, project description, name of waterbody, hydrologic unit code, city/county, topo quad, latitude, longitude, permanent and temporary wetland and stream impacts, mitigation trust fund amount or bank name with number of credits, avoidance and minimization statement and acknowledgement that each project does not have outstanding threatened/endangered species or cultural resources issues.

8. VDOT will submit a separate monthly report on the last day of each month, including a spreadsheet, which summarizes the listed projects and their corresponding surface

water impacts for jurisdictional ditch cleanout projects impacting up to 1,500 linear feet of stream channel, and that (a) qualify for a VWPP general permit, (b) the jurisdictional ditch is located entirely within VDOT-owned right-of-way, or (c) if VDOT has an existing maintenance agreement with a locality. VDEQ will review the monthly report to determine if the VWPP general permit requirements have been met and provide coverage for the projects that qualify for a VWPP general permit. VDOT may, at their discretion, commence work on all single and complete projects with less than or equal to 0.10-acre of permanent impacts in advance of submitting the monthly report or receiving VDEQ comments, provided the projects are listed on the concurrent monthly report. Construction monitoring and reporting will not be required for these projects.

The following information, at minimum, will be provided in the monthly report for each permitted project, if applicable: permit number, project description, name of waterbody, hydrologic unit code, city/county, topo quad, latitude, longitude, permanent and temporary wetland and stream impacts, mitigation trust fund amount or bank name with number of credits, avoidance and minimization statement and acknowledgement that each project does not have outstanding threatened/endangered species or cultural resources issues.

9. The VDEQ regulatory requirement for a Corps delineation confirmation will be met for IACM projects through (a) a written delineation confirmation, (b) the Corps' verbal acceptance of the delineation at IACM, or (c) the lack of comments by the Corps regarding the delineation. In addition, VDOT will not be required to include Resource Protection Areas on delineation maps or on permit sketches for linear transportation projects.
10. The VDEQ regulatory requirement to provide scaled graphs or plots in the permit application may be met if engineering scale is not available by indicating "Not to Scale" on the permit sketch. In this case, the sketch must include dimensions of structures, impact areas, and other points of reference.
11. The VDEQ regulatory requirement to provide existing contours on the permit sketch may be met if the existing contours are not available by including a fixed reference point for elevation or dimensions relative to a baseline elevation.
12. When the Federal Highway Administration (FHWA) is the lead federal agency for VDOT projects requiring federal permits, FHWA will follow its own procedures for compliance with Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.
13. VDOT will conduct the threatened and endangered species data searches using the Virginia Department of Game and Inland Fisheries' (VDGIF) Fish and Wildlife Database, the Virginia Department of Conservation and Recreation's (VDCR) Natural Heritage Data Explorer and/or mapping and, as applicable, the U.S. Fish and Wildlife Service

Information, Planning and Conservation System (IPaC). Results of these searches, and any follow-up coordination, will be provided in the permit application or monthly report for review by VDEQ.

14. VDEQ and VDOT will follow the provisions in the Trout MOA (signed by VDOT, the Corps of Engineers and VDGIF), effective April 4, 2001 with regards to reporting requirements for trout stream impacts.
15. VDOT will conduct the cultural resources data search using the Department of Historic Resources' (DHR) Data Sharing System (DSS) database. Results of this search, and any follow-up coordination with DHR, will be provided in the permit application or spreadsheet for review by VDEQ.
16. VDOT will not be required to provide zip codes for project locations in the IACM applications.
17. VDOT will not be required to provide surface water impact quantities with the sum converted to acres. VDOT will supply this information in square feet.
18. VDOT will not be required to determine the perennial or intermittent characteristic of a stream bed in the permit application or monthly report unless there is a proposed impoundment in the stream or as requested by VDEQ for mitigation or flow analysis.
19. VDEQ will review and respond to VDOT requests for additional temporary impacts within 10 business days of the request. Per 9 VAC 25-680-80B-1h, if DEQ does not respond within 10 business days, the request is automatically authorized.
20. VDOT will use the State Environmental Review Process (SERP), NEPA documents, DEQ's Wetland Condition Assessment Tool (WetCAT), or the GIS Integrator to meet VDEQ's condition of providing a written description and graphical depiction of all areas under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument.
21. VDEQ will not require additional compensation for restored temporary impacts from projects provided coverage under VWPP general permits.
22. VDEQ will require the following compensation ratios for projects qualifying for a VWPP general permit for which wetland compensation is required: (a) 2:1 for forested wetlands, (b) 1.5:1 for scrub/shrub wetlands, (c) 1:1 for emergent wetlands, and (d) 1:1 for the permanent conversion of forested wetlands to emergent wetlands. Stream compensation requirements shall be calculated using the current Corps and VDEQ endorsed stream assessment methodology. This condition does not supersede any mitigation requirement under the SPGP-01.

23. VDEQ will consider granting credit for riparian buffers proposed in VDOT's compensation plans, including buffers that occur within Resource Protection Areas, in accordance with 9 VAC 25-210-116.C.3.g. Upon VDEQ approval, stream mitigation credit provided for riparian buffer preservation will be quantified using the current Corps and VDEQ endorsed stream assessment methodology and applicable VDEQ guidance memoranda.
24. VDOT may propose the use of available acreage at established multi-project mitigation sites for compensating project impacts by providing VDEQ documentation of the compensatory mitigation site's success and the available acreage at the site. VDEQ will then determine if the site is acceptable for use. No additional monitoring and reporting of the multi-project mitigation site success will be required in the project permit, if these requirements have already been completed or required by another permit.
25. When VDOT determines a need to proceed with minor field adjustments to compensation site plans during construction, VDOT will notify VDEQ with the proposed field adjustment for approval. VDEQ will strive to respond to such requests within 24 hours with verbal or written approval via email.
26. When an emergency, as defined by Section 44.146.16 of the Code of Virginia and Section 325.2(e)(4) of Title 33 of the Code of Federal Regulations, has been declared that requires immediate repair, servicing, or replacement of a VDOT structure or facility, VDOT may proceed with emergency work prior to receiving authorization from VDEQ. VDOT will provide VDEQ with an email documenting the emergency declaration for the project detailing the reason for the emergency measures and the type of measures taken (or to immediately be taken), to include photographs of the project site (if available), and a location map of the project. The email will also be sent to the Corps, Virginia Marine Resources Commission, Virginia Department of Game and Inland Fisheries and Virginia Department of Conservation and Recreation – Division of Natural Heritage for their review and response. Within 3 months of the date of the emergency repair activities, VDOT will submit an "emergency" permit application using the appropriate application or monthly report method. If, due to the nature of the emergency or emergency repair activities, VDOT cannot submit an "emergency" permit application within 3 months, VDOT will notify VDEQ in writing of the exceptional circumstances and request an additional 3 month extension for submission of the "emergency" permit application.
27. VDOT shall place erosion and sediment controls concurrent with clearing and grubbing in accordance with the project-specific erosion and sedimentation control plan.
28. VDOT will file requests for individual permit extensions up to 30 days prior to the expiration date of the permit. No continuation of coverage under VWPP general permits may occur.

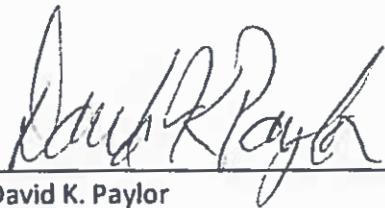
29. When a permit issue cannot be resolved between the VDOT permit coordinator and the VDEQ permit writer, resolution of the issue will follow this sequence: the VDOT District Assistant Environmental Manager or Central Office Water Quality Permits Manager will contact the VDEQ VWPP Permit Coordinator; the VDOT District Environmental Manager or Central Office Natural Resources Program Manager will contact the VDEQ Office of Wetlands and Stream Protection Director; the VDOT Environmental Division Administrator will contact the VDEQ Water Division Director; the VDOT Chief of Policy, Planning and the Environment will contact the VDEQ Deputy Director for Program Development; the VDOT Commissioner will contact the VDEQ Director; the Secretary of Transportation will contact the Secretary of Natural Resources; and vice versa if VDEQ makes the contact.

30. The content of this MOU is subject to modification at any time on the mutual consent of VDEQ and VDOT.

This MOU is not a binding contract and its provisions shall neither be enforceable against any signatory party nor bestow any benefit upon any other persons or entities and shall give rise to no legal right to such other persons or entities.

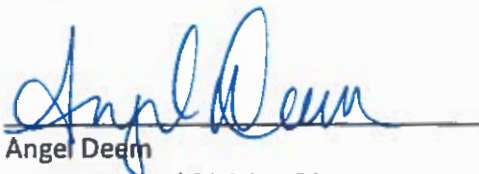
This MOU shall become effective after it has been executed by both parties.

In WITNESS WHEREOF, the parties sign and cause this MOU to be executed on this the 8th day of March, 2017.



David K. Paylor  
Director  
Department of Environmental Quality

3/9/2017  
Date



Angel Deem  
Environmental Division Director  
Department of Transportation

3/10/2017  
Date