



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

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October 2, 2015

Colonel Jason E. Kelly
U.S. Army Corps of Engineers
Norfolk District
803 Front Street
Norfolk, Virginia 23510

Colonel Edward P. Chamberlayne
U.S. Army Corps of Engineers
Baltimore District
City Crescent Building
10 South Howard Street
Baltimore, Maryland 21201

RE: Regulation of Dredging and Aquatic Resource Restoration Activities Conducted by the U.S. Army Corps of Engineers in Commonwealth of Virginia Waters

Dear Colonel Kelly and Colonel Chamberlayne:

The Department of Environmental Quality (DEQ) appreciates the long-standing role that the U.S. Army Corps of Engineers (the Corps) has played as the federal agency responsible for the Nation's navigation system. The Corps' navigation projects include waterway channels, anchorages, turning basins, locks and dams, harbor areas, protective jetties and breakwaters, and the maintenance of harbor access channels for commerce, recreation, and naval activities. My purpose in writing is to clarify when dredging and aquatic resource restoration activities conducted by the U.S. Army Corps of Engineers are under our statutory authority. Virginia Water Protection (VWP) permit regulations do not specifically define "maintenance dredging." DEQ permits for various types of dredging are governed by the VWP permit regulations (9 VAC 25-210 *et seq.*) as well as Chapters 12 and 13 of Title 28.2 of the Code of Virginia.

Colonel Jason E. Kelly
Colonel Edward P. Chamberlayne
September 29, 2015

Dredging Activities:

While the Commonwealth of Virginia holds submerged aquatic lands in the public trust, DEQ acknowledges the National benefits of commerce, recreation, and naval operations. Maintenance dredging undertaken by the Corps of an existing Federal Navigation Channel already has, or should have, a Federal Consistency Determination (FCD) concurrence from DEQ. An approved FCD from DEQ means that a Corps dredging project is consistent with all of the Enforceable Policies, including nontidal wetlands. For these projects, no VWP permit or permit fee will be required; including reissuance of any expired VWP permit. For Corps capital dredging projects that do not have a FCD, any water quality or habitat concerns will be identified and addressed through the FCD process, and no further VWP permit or permit fee will be required. As the lead Federal agency, it is the Corps' responsibility to submit the necessary FCD information to DEQ's Office of Environmental Impact Review for review prior to undertaking the project. Other Corps dredging projects (i.e., those projects undertaken by the Corps, or where the Corps would otherwise be viewed as "an applicant" or "a permittee") will also follow this decision process. Overboard disposal of dredge materials associated with Corps dredging projects will not require a VWP permit or permit fee. DEQ's regulatory decision process does not eliminate the need, if appropriate, for other permits from the Virginia Marine Resources Commission (VMRC) or other federal, state, or local regulations and ordinances.

Through State Water Control Law and the Virginia Coastal Program, DEQ is responsible for maintaining the water quality and coastal resources for the Commonwealth. Should there be any alleged violations of state water quality standards from these types of projects, DEQ will investigate the matter through our normal enforcement processes, and work with the Corps to correct any identified deficiencies.

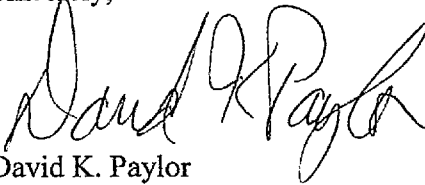
Aquatic Resource Restoration Activities

DEQ agrees with and supports restoration of habitat to improve aquatic species, which will provide an overall benefit to water quality. While many of these types of projects do not impact State Waters, some projects do impact State Waters, albeit for a greater good. DEQ will review Corps restoration projects on a case-by-case basis to determine if a VWP permit will be required. If a permit is required, no permit fee will be assessed. DEQ's regulatory decision process does not eliminate the need, if appropriate, for other permits from the VMRC or other federal, state, or local regulations and ordinances. A FCD will be required if the project meets the appropriate criteria.

I hope this helps to clarify when permits from DEQ will or will not be required for dredging and aquatic resource restoration projects. Should you have specific, project-related questions, please contact Mr. Dave Davis at 804-698-4105 or dave.davis@deq.virginia.gov.

Colonel Jason E. Kelly
Colonel Edward P. Chamberlayne
September 29, 2015

Sincerely,

A handwritten signature in black ink, appearing to read "David K. Paylor". The signature is fluid and cursive, with the first name "David" and last name "Paylor" clearly distinguishable.

David K. Paylor

cc: Mr. Tony Watkinson, VMRC Habitat Division
Ms. Bettina R. Sullivan, DEQ Office of Environmental Impact Review
DEQ Regional VWP Permit Managers