COMMONWEALTH OF VIRGINIA
Department of Environmental Quality

Subject: Waste Guidance Memo No. 06-2005 and Water Guidance Memo No. 05-2012
COORDINATION OF PERMITTING REQUIREMENTS FOR WETLANDS AND THE SITING OF SOLID WASTE LANDFILLS

To: Regional Directors

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Summary:

The Department of Environmental Quality (DEQ) administers both Waste and Water programs throughout Virginia. Both programs have overlapping jurisdiction regarding the approval of wetland impacts and stream impacts at landfills. This guidance is intended to coordinate the review activities of the two permit programs to ensure that both regulations are satisfied, and to ensure that the permit conditions of the two permits are consistent. Coordination on these permits is also needed because landfill siting review and approval is a Central Office function and VWP permit applications are reviewed in the Regional Offices.

Legislation was approved on July 1, 2005 that affected landfill siting and wetland impacts. New landfills or expansion of existing landfills may involve wetland/stream impacts and all such projects will need to be evaluated to determine whether they satisfy the solid waste siting criteria and the VWP requirement to demonstrate avoidance and minimization with respect to impacts to wetlands and streams. Since both divisions' regulations may alter the location of the landfill and associated features, early coordination is critical. The "companion" technical guidance for the legislation is Waste Guidance Memorandum 04-2005.

Electronic Copy:

An electronic copy of this guidance is available for staff internally on DEQNet, and for the general public on DEQ's website at http://www.deq.virginia.gov/waterguidance/permits.html.

Contact Information:

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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.

COORDINATION OF PERMITTING REQUIREMENTS FOR WETLANDS AND THE SITING OF SOLID WASTE LANDFILLS

1. Background

Solid Waste Disposal Facilities must have siting (Part A) approval in order to submit a Design Report (Part B) application and obtain a Solid Waste Permit. In the Part A application, the applicant must demonstrate how wetlands will be avoided and protected in the siting of the landfill or its supporting facilities. If wetlands can not be avoided, then the applicant must minimize the impact and mitigate the taking of the wetlands. The VWP permit satisfies this requirement.

Solid Waste Disposal Facilities seeking to impact wetlands and/or streams are required to submit an application to DEQ under the State Water Control Law (§§ 62.1-44.15 and 62.1-44.15:5, Code of Virginia) and the VWP regulations. In the VWP application, the applicant is required to demonstrate that impacts to wetlands and/or streams have been "avoided and minimized to the maximum extent practicable," regardless of the amount of the impact. Mitigation is required for unavoidable impacts greater than 1/10 of an acre. Solid Waste Part A applications should include the required wetland permits prior to permit issuance. This guidance refers to wetlands and streams as the same potential impacts for identification purposes on water permit applications and applications for landfill siting. A site visit confirms the type of impacts irrespective of the applicant's intended impacts.

2. Authority

§ 62.1-44.15:5 of the Code of Virginia authorizes DEQ to issue Virginia Water Protection Permits (VWP). § 9 VAC 25-210-10 et seq. are the main regulations, which implement the Virginia Water Protection Permit Program. § 9VAC-25-210-660 et seq., § 9VAC 25-210-670 et seq., § 9VAC 25-210-680 et seq., and § 9 VAC 25-210 – 690 et seq. are the regulations that govern four general permits under the VWP program. § 10.1-1408.1 of the Code of Virginia authorizes DEQ to issue Solid Waste Permits for Landfills. The following sections from the Code of Virginia pertain to the siting of municipal solid waste landfills:

§ 10.1-1408.5. Special provisions regarding wetlands.

A. The Director shall not issue any solid waste permit for a new municipal solid waste landfill or the expansion of a municipal solid waste landfill that would be sited in a wetland, provided that this subsection shall not apply to subsection B or the (i) expansion of an existing municipal solid waste landfill located in a city with a population between 41,000 and 52,500 when the owner or operator of the landfill is an authority created pursuant to § 15.2-5102 ~~which~~ that has applied for a permit under § 404 of the federal Clean Water Act prior to January 1, 1989, and the owner or operator has received a permit under § 404 of the federal Clean Water Act and § 62.1-44.15:5 of this Code, or (ii) construction of a new municipal solid waste landfill in any county with a population between 29,200 and 30,000, according to the 1990 United States Census, and provided that the municipal solid waste landfills covered under clauses (i) and (ii) have complied with all other applicable federal and state environmental laws and regulations. It is expressly understood that while the provisions of this section provide an exemption to the general siting prohibition contained herein; it is not the intent in so doing to express an opinion on whether or not the project should receive the necessary environmental and regulatory permits to proceed. For the purposes of this section, the term "expansion of a municipal solid waste landfill" shall include the siting and construction of new cells or the expansion of existing cells at the same location.

B. The Director may issue a solid waste permit for the expansion of a municipal solid waste landfill located in a wetland only if the following conditions are met: (i) the proposed landfill site is at least 100 feet from any surface water body and at least one mile from any tidal wetland; (ii) the Director determines, based upon the existing condition of the wetland system, including, but not limited to, sedimentation, toxicity, acidification, nitrification, vegetation, and proximity to existing permitted waste disposal areas, roads or other structures, that the construction or restoration of a wetland system in another location in accordance with a Virginia Water Protection Permit approved by the State Water Control Board would provide higher quality wetlands; and (iii) the permit requires a minimum two-to-one wetlands mitigation ratio. This subsection shall not apply to the exemptions provided in clauses (i) and (ii) of subsection A.

D. This section shall not apply to landfills which impact less than ~~1.25~~ *two* acres of nontidal wetlands.

E. For purposes of this section, "wetland" means any tidal wetland or nontidal wetland contiguous to any tidal wetland or surface water body.

§ 9VAC25-210-50 of the VWP regulations (Prohibitions and requirements for VWP permits) requires compliance with the Municipal Solid Waste siting law:

B. No VWP permit shall be issued for the following:

1. Where the proposed activity or the terms or conditions of the VWP permit do not comply with state law or regulations including but not limited to §10.1-1408.5 of the Code of Virginia;

3. Definitions

The definitions in 9 VAC 25-210-10 of the VWP regulations and 9 VAC 20-80-10 of the

solid waste regulations apply to these Procedures.

Under the VWP regulations, wetlands "means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." The VWP program also regulates isolated wetlands.

4. Requirements

A. Water Permit Program

1. Coordination with Central Office Waste Permit Staff begins when a Regional VWP Permit Writer receives a VWP permit application or a request for a VWP pre-application meeting and the development activity at the site is a new or existing landfill.
   If the purpose of the development activity at the site is unknown or could be related to a landfill activity, i.e., borrow area, access roads, other activities within 1,000 feet of a landfill; the applicant must provide the affirmative information. The VWP permit writer will add a comment to the completeness letter that requests the applicant to clarify the site use. The VWP permit writer will also notify, in writing, the Waste Permitting Office Director of the scope of the project and request coordination as needed in accordance with 9 VAC 20-80, 9 VAC 25-210, and existing technical guidance.

   Waste Permit Staff will assist in determining if such VWP activities are associated with a landfill and if the activity satisfies the Part A siting criteria. This determination will be confirmed after the completeness review of the water permit application and may be confirmed during the completeness review if time allows. The primary responsibility for the initial determination of VWP applicability with a landfill is with the applicant.

2. Once the applicant certifies that the activity is not associated with a landfill or the Waste Permit Staff determine that the activity does not require siting review, the VWP application may be processed in accordance with standard water permit application processing procedures.

3. If the application specifies that impacts are associated with a landfill, the VWP permit writer must notify the applicant in writing as soon as possible during the completeness review, that the proposed activity may involve landfill siting approval limitations on wetlands and that no further action can be taken by the VWP Program (per 9VAC25-210-50.B.1) until the Waste Permit Program determines what those wetland limitations are in accordance with 9 VAC 20-80. The VWP permit writer should copy the review letter and application to the Waste Permitting Office Director and the Regional Waste Program Manager. Once both applications are submitted, coordination should be conducted to ensure that both regulations are satisfied, and to ensure that the permit conditions of the two permits are consistent.

B. Waste Permit Program

1. In the Waste Permit Program, wetland and/or stream impacts from landfill development are intended to be fully addressed in the Site Suitability (Part A application) determination for landfills. Coordination with Regional VWP Permit Staff begins when the Central Office Part A permit writer receives a Part A application or a request for pre-application review, where wetlands and/or streams may be impacted. The Part A permit writer will notify, in writing, the Regional Waste Program Manager and the Deputy Regional Director. All Part A applications that include wetland and/or stream impacts or copies of wetland permit applications or wetland documents will be forwarded to the Deputy Regional Director. The Deputy Regional Director will then notify the regional VWP staff. The Part A permit writer will invite a VWP permit writer to the initial pre-application meeting for all landfill siting meetings.

2. The Part A permit writer will review all documents that affect landfill siting and wetland and/or stream impacts. The Part A permit writer will determine if the activity satisfies the Part A siting criteria. The Part A permit writer will advise, in writing, all necessary DEQ staff (waste and water) of the scope of the project and request coordination as needed in accordance with 9 VAC 20-80, 9 VAC 25-210, and existing technical guidance. The Part A permit writer should request that the applicant submit a Joint Permit Application for impacts to wetlands and/or streams. Once both applications (Part A and VWP) are submitted, coordination should be conducted to ensure that both regulations are satisfied, and to ensure that the permit conditions of the two permits are consistent.

3. If the Regional Solid Waste Permit Writer has any question regarding any issue of landfills and wetlands, he/she should contact their immediate supervisor first and may contact the CO Solid Waste Permit Coordinator regarding coordination or technical issues.