

Memorandum


VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

Division of Water Program Coordination

629 East Main Street, Richmond, VA

SUBJECT: Guidance Memorandum No. 00-2010
Protocol for DEQ Action in the Event Unpermitted Discharges are Identified

TO: Regional Directors

FROM: Larry Lawson, P.E. 

DATE: August 22, 2000

COPIES: Regional Permit Managers, Regional Water Permit Managers, Regional Compliance and Enforcement Managers, Regional Water Compliance and Enforcement Managers, Martin Ferguson, Mary Jo Leugers, Dave Paylor, Sharon Brown, OWPP Staff

This guidance outlines suggested DEQ actions to be taken in the event an unpermitted discharge to State waters is identified. This guidance was developed as part of the Work Plan "Inspect Unpermitted Facilities", in response to the January 31, 2000 DEQ Internal Audit Report WCRO Compliance and Enforcement Review. There are established procedures, routinely applied by DEQ, to address unpermitted discharges. It is the intent of this guidance not to replace or supercede these established procedures, but to provide a concise overview of the general procedure to bring an unpermitted discharge into compliance with applicable laws and regulations within a reasonable time period. As such, any or all of the steps outlined herein could be implemented, as long as the goal is achieved.

With some exclusions, the State Water Control Law requires discharges of pollutants to State waters to be permitted under the Virginia Pollution Discharge Elimination System (VPDES). VPDES permits establish conditions under which a discharge is allowable, and specify the effluent limits necessary to protect existing water quality in the receiving water body. When the DEQ identifies, or otherwise becomes aware of, an unpermitted discharge to State waters, there exists the concern that pollutant concentrations may exceed those that would be allowable under a VPDES permit, and possibly pose a threat to public health or the environment. Therefore, the unpermitted facility must be brought into compliance with applicable laws and regulations. Additionally, steps may need to be taken to determine the impact the unpermitted discharge is having on in-stream water quality, and the appropriate regulatory and governmental agencies may need to be notified.

DEQ generally becomes aware of an unpermitted facility through a complaint or some other notification. DEQ's initial response typically includes a cursory inspection and documentation consisting of a memorandum or report. Although each situation is anticipated to have site specific considerations that will need to be addressed based on the judgment and expertise of the regional office staff, the following steps provide a general basis for actions to be taken when an unpermitted discharge is identified. This guidance presumes that the cursory inspection has been completed and that the unpermitted discharge has been documented.

1. **Notify Owner/Operator of Unpermitted Discharge and Permit Application.**

Upon identification and documentation of an unpermitted discharge, the facility owner or operator must be formally notified. In cases where environmental harm has occurred or the discharge is a repeat violation, initial notification may be in the form of a Notice of Violation. The notification should inform the facility owner or operator that the discharge is unpermitted, that unpermitted discharges are a violation of state law, and that action needs to be taken to bring the facility into

compliance. Notification should be in written form to both the owner and the operator, if they are different. The notification should include the name of the facility and the nature of the discharge, as well as the facility location and water body to which it discharges. The notification should also include a VPDES permit application, with instructions to either submit the VPDES permit application to the appropriate regional office within 30 days or provide evidence that the discharge been eliminated (i.e. permanent fix). Depending on the situation, the notification can include a description of possible alternatives to VPDES permitting, such as connection to a publicly owned treatment works, cessation of the activity causing the discharge, on-site disposal resulting in no point source discharge, or facility closure.

It should be documented during the initial cursory inspection whether the unpermitted discharge contains treated or untreated domestic sewage. Written notification of the unpermitted discharge should be copied to the Office of Water Programs of the Virginia Department of Health (VDH), the local VDH office, and the municipality where the discharge is located. In cases where the facility is privately owned and treats domestic sewage generated by 10 or more users, the State Corporation Commission (SCC) should also be copied.

If action is taken by the facility owner or operator which results in the discharge complying with applicable laws and regulations within a reasonable time frame, enforcement action is unnecessary.

2. Initiate Enforcement Action.

If the preceding does not result in the discharge complying with applicable laws and regulations, enforcement action is necessary. Enforcement action may also be appropriate where environmental harm has occurred or the discharge is a repeat violation. Established procedures as contained in the DEQ enforcement manual should be followed in all cases and should prevail if they conflict with the following general guidelines.

Issue Notice of Violation. Issuance of a Notice of Violation is necessary in all cases where an unpermitted discharge is identified and formal notification (Step 1) does not result in submittal of a VPDES permit application with appropriate fee or other substantial, documented action to comply with applicable laws and regulations.

Perform Facility Inspection. A detailed facility inspection serves to establish the degree of potential for detrimental impact to State waters. The facility inspection should document the facility type, operational status, and discharge characteristics. Effluent samples should be taken as part of the inspection to establish discharge characteristics. In-stream monitoring should be performed at the discretion of and as deemed appropriate on a site-specific basis by the regional office to help determine any potential detrimental impact the unpermitted facility may be having on the receiving stream. As necessary, the facility inspection may be coordinated with other State or local agencies.

Establish Compliance Mechanism. Where an NOV has been issued, a compliance mechanism is necessary to document the requirements to bring the facility into compliance with laws and regulations, and to establish a schedule for doing so. The requirements set forth in the Letter of Agreement, Consent Special Order, or alternative compliance mechanism prescribed by DEQ enforcement procedures must result in either the issuance of a VPDES permit for the discharge or the cessation of discharge of pollutants to State waters. Possibilities include, but are not limited to, submittal of a complete VPDES permit application and associated fee, connection to a publicly owned treatment works, on-site disposal, and facility closure. Depending on the results of the initial owner or operator contact, facility inspection, and in-stream monitoring, requirements such as periodic effluent monitoring and/or in-stream monitoring may be incorporated into the compliance mechanism. Periodic in-stream monitoring by the DEQ regional office instead of the facility owner or operator may be warranted based on the judgment of the regional office and site specific considerations. Additional site specific requirements can be incorporated into the

compliance mechanism based on the judgment of the regional office. The compliance mechanism must provide clear, measurable steps to be taken to achieve compliance, and include firm dates for completion of each step where possible.

Monitor Progress. The progress of implementation of the requirements of the compliance mechanism should be monitored to determine if the requirements are being met. In the event compliance mechanism requirements are not being met, the mechanism should be updated or appropriate additional enforcement actions taken to ensure the mechanism remains applicable and current.

If you have any questions regarding this guidance, please contact Jon van Soestbergen at (804) 698-4117.

DISCLAIMER

This document provides procedural guidance to the Water Division staff. This document is guidance only. It does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying the State Water Control Law and the implementation regulations on the basis of the site specific facts.