



Guidance Memorandum

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

Subject: E-Signature Guidance

To: Central Office and Regional Office: Compliance, Permitting, and Enforcement

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Director of Central Operations [per email]

Date: October 1, 2021

Copies: Regional Directors, Division Directors, Central Office Compliance Managers, Enforcement Managers, Permitting Managers, Compliance Managers, Angela Jenkins, Cindy Berndt (electronic distribution)

Summary:

This guidance provides a definition of an electronic signature, and provides an outline by which the Agency will accept an electronic signature, as authorized under Virginia Code § 59.1-482 et al. Public comment on these updates were accepted from October 25, 2021 through November 24, 2021. This guidance is effective as of December 1, 2021.

Electronic Copy:

An electronic copy of this guidance is available on the Department's website at: [Virginia DEQ Enforcement — Laws, Regulations, & Guidance.](#)

Contact Information:

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Certification:

As required by Subsection B of § 2.2-4002.1 of the Administration Process Act (APA), the agency certifies that this guidance document conforms to the definition of a guidance document in § 2.2-4101 of the Code of Virginia.

Disclaimer:

Guidance documents set forth presumptive operating procedures. They do not establish or affect legal rights or obligations, do not establish a binding norm, and are not determinative of the issues addressed. DEQ will make decisions in individual cases by applying the laws, regulations, and policies of the Commonwealth to case-specific facts. *See* Va. Code [§ 2.2-4001](#).

DEQ's Electronic Signature Guidance

Introduction

On June 30, 2000, the Electronic Signatures in Global and National Commerce Act (E-Sign Act) was signed into law by the United States Federal Government (15 U.S.C. Chapter 96). According to the Federal Deposit Insurance Corporation (FDIC) Consumer Compliance Manual, January 2014, "The E-Sign Act allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, if the consumer has affirmatively consented to such use and has not withdrawn such consent." As a result, many federal and state agencies have since adopted electronic signature policies. On April 20, 2018, the Environmental Protection Agency ("EPA") issued its Electronic Signature Policy which allows for the use of electronic signatures on electronically submitted records.¹ The EPA Electronic Signature Policy details requirements to meet EPA's Cross-Media Electronic Reporting Rule (CROMERR) and are driven by Title 40 of the Code of Federal Regulations (CFR) Part 3. EPA's electronic signature policy was frequently referenced as DEQ developed its electronic signature policy.

In 2000, Virginia passed the Uniform Electronic Transaction Act ("the Act"), Va. Code Section 59.1-482 et. al., which authorizes a transaction to be conducted by electronic means between agreeable parties. Specifically, the Act recognizes the legal enforceability of an electronic signature: "A record or signature may not be denied legal effect or enforceability solely because it is in electronic form", Va. Code 59.1-485a.

Historically, DEQ required original wet signatures on Agency documents, including, for example, permit applications, Discharge Monitoring Reports ("DMRs"), and Consent Orders.² As technology advances, and DEQ employs an increase in electronic methods of communication, submission, and record storage, the need for this E-signature policy was evident. As a result, the Agency reviewed internal policies and guidance, as well as statutory and regulatory requirements, in order to develop this guidance, and allow for the use of electronic signatures. This guidance also memorializes DEQ's acceptance and application of our authority to accept electronic signatures as authorized under the Act. Equally, this guidance shall serve to encourage electronic submittal of documentation to support the Agency's move towards more environmentally friendly and sustainable operations.

Definitions

For the purposes of this guidance, the following terms have these meanings:

"Agency", "DEQ", or "Department" means the Virginia Department of Environmental Quality.

"E-Signature" means an electronic signature, symbol, or process, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record (Va. Code § 59.1-480).

"Person" means an individual, corporation, business trust, estate, trust, partnership, Limited

¹ (https://www.epa.gov/sites/production/files/2018-04/documents/electronic_signature_policy.pdf)

² Wet Ink signatures are those where a person has executed a document using a customary ink and paper method.

Liability Company, association, joint venture, governmental body, public corporation or any other legal or commercial entity (Va. Code § 59.1-480).

“Record” means recorded information that documents a transaction or activity by or with any public officer, agency or employee of an agency. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business. The medium upon which such information is recorded has no bearing on the determination of whether the recording is a public record (Va. Code § 42.1-77).

“Wet Signature” is an original signature, physically penned onto a record by a person, in person.

Acceptance of Electronic Signature

This guidance serves to provide acceptance of e-signatures on records submitted to DEQ, as an acceptable alternative to wet signatures. A record or signature may not be denied enforceability solely because it is in electronic form.³ This document is guidance, and shall serve as a general reference for acceptance of e-signatures

This guidance does not mandate the use of an e-signature; DEQ will still accept original records and documents with wet signatures.⁴

This guidance intends to cover all programs administered by DEQ, including those of the Virginia Waste Management, State Air Pollution Control and State Water Control Boards, with specificity listed below:

E-Signature Authentication

E-Signatures requiring identity verification, including eDMR, must use a two-factor authentication solution that complies with identity proofing requirements to confirm that the signatory is who they say they are and is legally enforceable.

The Responsibility Party/Permittee may utilize the myDEQ Portal through DEQ’s external website; the user will be required to meet Agency criteria for myDEQ Portal access, accept an Electronic Signature Agreement, complete identity proofing and set knowledge questions or other type of secondary verification functionality within the myDEQ Portal.

E-Signature on Consent Orders, Executive, or other Compliance Agreements

The e-signature process must use standard practices for collection of signature data that are necessary for legal enforcement.

The e-signature must capture the date and time of signature, the unique identity of the individual who signed the document and their intent to sign, and detect alteration of the

³ Pursuant to the Virginia Uniform Electronic Transactions Act, Va. Code § 59.1-485.

⁴ Except for the instances where EPA’s Cross-Media Electronic Reporting Rule (CROMERR) or other federal or state statute, regulation or permit requires electronic submittals.

document. If any modifications are made to the content of the document, it must be re-signed. For example, an e-notary is an acceptable form of an e-signature.

General Submittals and Internal Documents

E-Signatures on response letters, submitted citizen concerns/complaints, requests, reports, etc. not requiring certification and documents internal to DEQ approvals may:

- Have an alternative placement of an electronic signature, be it placed or dropped, or practicable alternative (i.e. insert jpg, scanned in, etc.);
- Use the methods set forth above in the Acceptance of Electronic Signature section.

In the event where DEQ historic guidance requires wet signatures, this e-signature guidance supersedes only those portions and/or requirements to allow for e-signature.

Exceptions

As an exception for the following, DEQ requires a wet signature⁵ as a result of overarching, more stringent requirements from certain institutions such as:

- Financial mechanisms, where the financial institutions require wet signatures
- Trust Agreements per 9 VAC 20-70-150(M) (Court Documents, where the Court requires original, wet signatures (deed restrictions, UECA, Certificate of Satisfactory Remediation (VRP), Declaration of Restrictive Covenant)
- Nutrient Bank Certification per 9 VAC- 25-900-130

⁵ Statutory and regulatory requirements which require original signature, not listed under Section D of this guidance, take precedent to this guidance in the event of inadvertent omission.