

COMMONWEALTH OF VIRGINIA

Department of Environmental Quality

Water Permitting Division

Subject: **GUIDANCE MEMORANDUM No. 02-2010, Amendment No. 4**
Water Compliance Auditing Manual Revisions – Section I.H (Assessment of Unauthorized Discharges, Overflows, and Bypasses of Sanitary Wastewater) and Appendix 1 (Point Assessment Criteria)

To: Regional Directors

From: Scott Morris, Director of Water



Date: **December 1, 2022**

Copies: Central and Regional Office Water Permit and Compliance Managers, Rebecca Vice

Summary:

The purpose of this guidance is to revise compliance auditing procedures for unauthorized discharges, overflows and bypasses from facilities covered by a VPDES or VPA permit. Additionally, compliance assessment of overflows from satellite sewage collection systems and unauthorized dry weather discharges from combined sewer systems are included in this guidance. Assessed points are based upon the significance criteria set forth in this guidance. This guidance supersedes Section I.H and Appendix 1 of the Compliance Auditing Manual (GM#02-2010 and its amendments) and will be incorporated into the Compliance Auditing Manual, Guidance Memorandum No. 02-2010.

Electronic Copy:

Once effective, an electronic copy of this guidance will be available on:

The Virginia Regulatory Town Hall under the Department of Environmental Quality
(<http://www.townhall.virginia.gov/L/gdocs.cfm?agencynumber=440>);

Please contact Rebecca Vice, VPDES Water Compliance Coordinator, Office of Water Compliance @ (571) 866-6058, or rebecca.vice@deq.virginia.gov if you have any questions about this guidance.

Certification:

As required by Subsection B of [§ 2.2-4002.1](#) of the 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:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate or prohibit any particular action not otherwise required or prohibited by law or regulation. If alternative proposals are made, such proposals will be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Effective Date: 2/2/2023

Initials: ASM

ASSESSMENT OF UNAUTHORIZED DISCHARGES, OVERFLOWS, AND BYPASSES OF SANITARY WASTEWATER

Definitions

“Board” means the State Water Control Board. However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, “board” means the Department of Environmental Quality.

"Bypass" is the intentional diversion of waste streams from any portion of a treatment facility.

“Combined Sewer Overflow (CSO)” is the discharge of wastewater from a VPDES permitted combined sewer system. The combined sewer systems overflow occasionally and discharge excess wastewater directly to nearby streams, rivers, or other state water bodies.

“Combined Sewer System (CSS)” is a sewer system that collects rainwater runoff, domestic sewage, and/or industrial wastewater. During wet weather periods of heavy rainfall or snowmelt, the wastewater volume in a combined sewer system can exceed the capacity of the sewer system or treatment plant.

“Overflows” is the unintentional diversion of waste streams from any portion of a treatment works.

“Permitted facility” is a facility that has received a VPDES or VPA permit in accordance with State Water Control Law and Regulations (VA Code § 62.1-44.5).

“Sanitary Sewer Overflow (SSO)” is the discharge of wastewater (including infiltration and/or inflow) from a sewage collection system.

“Satellite Sewage Collection System” is a sewage collection system that is not under the operational control of the owner of a permitted facility.

“Sewage collection system” is a collection system consisting of pipelines or conduits, pumping stations and force mains and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of waste streams to a treatment works.

“Treatment facility” is only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g. pump stations, unit treatment processes). For clarification, it does not include any component of a gravity conveyance sewer collection system.

“Treatment Plant” is a portion of the treatment facility that is designed to provide treatment of sewage and industrial waste. A treatment plant does not include a sewer collection system.

"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system

used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

“Unauthorized Discharge” is any discharge to state waters that is not in compliance with a certificate or permit issued by the State Water Control Board (Board).

“Wastewater” means any combination of domestic sanitary sewage, sanitary sewage from a business or industrial facility and/or any liquid waste from an industrial manufacturing process that is discharged to a treatment works.

Unauthorized Discharges

Va, Code § 62.1-44.5 A states in part: “Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances... 3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses...”

Va. Code § 62.1-44.5 B states: “Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act.”

9VAC25-31-50 A of the VPDES Permit Regulation states in part: “Except in compliance with a VPDES permit, or another permit, issued by the board or other entity authorized by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses...”

9VAC25-31-50 B of the VPDES Permit Regulation states in part: “Any person in violation of subsection A of this section, who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section shall notify the department of the discharge, immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;

4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by the permit..”

**While not mandated by 9VAC25-31-50 B, it is recommended that the initial notification and/or 5 day letter include the name of the receiving water body when there is a discharge into or upon state waters.*

9VAC25-32-30 B of the VPA Permit Regulation states: “Except in compliance with a VPA permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into, or adjacent to, state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.”

9VAC25-32-30 C of the VPA Permit Regulation states in part: “Any person required to obtain a permit pursuant to this chapter who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of subsection B of this section; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection B of this section shall notify the department of the discharge immediately upon discovery of the discharge and, in any event, no later than 24 hours after the discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge.

1. The written report shall contain:
 - a. A description of the nature of the discharge;
 - b. The cause of the discharge;
 - c. The date on which the discharge occurred;
 - d. The length of time that the discharge continued;
 - e. The volume of the discharge;
 - f. If the discharge is continuing, how long it is expected to continue;
 - g. If the discharge is continuing, what the expected total volume of the discharge will be; and
 - h. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by the permit..”

**While not mandated by 9VAC25-32-30 C, it is recommended that the initial notification and/or 5 day letter include the name of the receiving water body when there is a discharge into or upon state waters.*

Reporting Requirements for Unauthorized Discharges from Permitted Facilities

Unauthorized discharges from VPDES permitted facilities are to be reported in accordance with 9VAC25-31-50 B.

Unauthorized discharges from VPA permitted facilities are to be reported in accordance with 9VAC25-32-30 C.

Reporting Requirements for Unauthorized Discharges from Unpermitted Facilities

Unauthorized discharges from unpermitted facilities, including SSOs from satellite sewage collection systems, are to be reported in accordance with Va. Code § 62.1-44.5 B (prompt notification, no later than 24 hours of discovery, to DEQ or the Virginia Department of Emergency Management – Emergency Operations Center).

A report of the unauthorized discharge is to be submitted within five days of discovery of the discharge. Although State Water Control Law does not prescribe the information to be included in the report, the information provided should follow the report content contained in “Reporting Requirements for Unauthorized Discharges from Permitted Facilities” section above.

Overflows

Although overflows typically occur within a sewer (municipal or industrial) collection system, they may also occur at a treatment plant if the diversion is unintentional (e.g. pump failure prior to a unit process that results in a discharge to state waters).

All overflows from permitted facilities into or upon state waters or that may reasonably be expected to enter state waters shall be reported in accordance with the requirements in “Reporting Requirements for Unauthorized Discharges from Permitted Facilities” section above.

Overflows from any satellite sewage collection system into or upon state waters or that may reasonably be expected to enter state water should be reported in accordance with the requirements in “Reporting Requirements for Unauthorized Discharges from Unpermitted Facilities” section above.

NOTE: While some VPDES permits authorize wet weather combined sewer overflows, combined sewer overflows during dry weather are unauthorized discharges and additional reporting requirements may be specified in the VPDES permit. Points are to be assessed in accordance with the Point Assessment Criteria.

To meet VPDES permit requirements, overflows from any portion of a treatment plant should also be reported on the overflows/bypasses section of the DMR submitted for the time period that the overflow occurred. Overflows from a sewer collection system should not be reported on the overflows/bypasses section of the DMR.

Bypasses from Permitted Facilities

Bypasses from permitted treatment facilities (located at the treatment plant and pump station) must meet the following requirements:

Bypasses are prohibited. DEQ may take enforcement action for these bypasses unless DEQ determines that the following conditions are met:

- (1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- (2) There were no feasible alternatives to the bypass - this condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering

judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee reports the bypass as follows.

Anticipated bypass - prior notice provided to DEQ (if possible at least ten days before the date of the bypass)

or

Unanticipated bypass

1. An initial report provided within 24 hours from the time the permittee becomes aware of the bypass.
2. A report submitted within 5 days with the following information:
 - A description of the noncompliance and its cause;
 - The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
 - Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

An anticipated bypass may be approved if adequate prior notice is provided, the bypass was unavoidable and there were no feasible alternative as described above.

The report for the unanticipated bypass may be waived on a case-by-case basis if the initial report has been received within 24 hours, the initial report meets reporting requirements, and no adverse impact on state waters has been reported.

For permitted treatment facilities bypasses from any portion of a treatment plant should also be reported on the overflows/bypasses section of the DMR submitted for the time period that the bypass occurred. Bypasses associated with a sewer collection system should not be reported on the overflows/bypasses section of the DMR.

NOTE: The permittee may allow bypasses that do not cause permit effluent limitations to be exceeded and occur for essential maintenance to assure efficient operation. These bypasses are not prohibited and have no requirements for notification to DEQ.

Bypasses from Satellite Sewage Collection Systems

Bypasses occurring at satellite sewage collection systems that discharge to state waters or that may reasonably be expected to discharge to state waters should be reported in accordance with the requirements in "Reporting Requirements for Unauthorized Discharges from Unpermitted Facilities" section above.

In Appendix 13 of this document there is a template letter for Owners of Satellite Collection Systems. The letter reminds them of their responsibility under State Law, § 62.1-44.5.B, to report unauthorized discharges to state waters immediately but in no case later than 24 hours after detection. The regional compliance or permit staff will send out letters after the guidance is effective.

Tracking Overflows and Bypasses

Reported overflows and bypasses that meet reporting requirements of the regulation are tracked in CEDS and reported to EPA.

The Hampton Roads Sanitation District and certain municipalities in the Tidewater Region use the Sanitary Sewer Overflow Reporting System (SSORS) to report and track SSOs.

Unauthorized Discharge / Overflow / Bypass Data Review and Determination of Noncompliance

1. Monthly review - For any bypass or overflow equal to or above 3,000 gallons that reached state waters (or may reasonably be expected to reach state waters), the Regional Water Compliance Manager will determine if the unauthorized discharge is significant and warrants the assessments of points. As appropriate, the following factors should be evaluated to determine if the discharge is significant:
 - a. Size of storm event for wet weather bypass/overflow
 - b. Cause of the bypass/overflow
 - c. Duration of the bypass/overflow
 - d. Number of bypasses/overflows that have occurred in the last 12 month period at a treatment works or satellite sewage collection system
 - e. Compliance history related to the bypass/overflow
 - f. Previous action taken to address bypass/overflow by permittee or owner of a satellite sewage collection system
 - g. Recent enforcement actions and plans/corrective actions to address the bypass/overflow.

The Compliance Manager identifies significant discharges and refers them to the Compliance Auditor (CA) for appropriate point assessment.

2. Annual review - For facilities with multiple bypasses or overflows less than 3,000 gallons (including unknown volume) that reached state waters, the Regional Water Compliance Manager will determine if the unauthorized discharges are significant when considered together and will refer them to the CA for determination of appropriate point assessment by August 1. As appropriate, the factors listed in item 1 above should be evaluated to determine if the discharge is significant.
3. Consideration will be given for permitted treatment facilities that minimize the volume of an overflow to the maximum extent possible, i.e. a permitted facility treating at maximum design capacity may be assessed only one point for two separate discharges caused by the typical diurnal flow fluctuations of the collection system.
4. Overflows/bypasses that do not reach state waters, are contained, and are cleaned up will not be assessed points (GM02-2010, Amendment 2, Appendix 1, Section 1.c.iii does not apply to overflows from VPA facilities). If a permitted facility or satellite sewage collection system exhibits a pattern of frequent overflows/bypasses, the case should be referred to an inspector to

determine if there are operation and maintenance issues that should be addressed.

5. Point assessments may be waived by the Regional Water Compliance Manager, Deputy Regional Director, or Regional Director, for potential violations where the permittee or the responsible party has demonstrated to the satisfaction of staff that such bypass or overflow was outside the control of the permittee and were caused by vandalism, third party, earthquake, flood, or other acts of nature. Staff may consider a named storm event and a storm event that meets the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 year as an act of nature. For consideration of any storm event the permittee will be required to submit supporting information for staff to evaluate.
6. The CA reviews five day letter to determine reporting non-compliance and referrals for significant unauthorized discharges. The CA should assess the points for the potential violations based on the Point Assessment Criteria (See Appendix 1, Section 1.a.v for overflows and bypasses, and Section 4.a for other unauthorized discharges). A Notice of Violation is warranted when any bypass or overflow causes adverse environmental impact or presents an imminent and substantial danger. A warning letter should be sent for all unreported bypasses and overflows or for incomplete or failure to submit five day letter if not waived.
7. These potential violations are considered as single event violations and they should be properly entered in CEDS by the CA for uploading to EPA's Integrated Compliance Information System (ICIS). All data for the previous month are to be entered prior to the monthly CEDS evaluation of data (usually the 25th of the month).

Appendix 1 Point Assessment Criteria

Points assessed using these Point Assessment Criteria are used as a management-ranking tool to determine the best use of costly resources. Points are assigned when there is evidence that a violation has occurred, but the assignment of points and/or issuance of Warning Letters (WLs) (issued between cumulative, rounded point assessments of 1 and 3) or Notices of Violation (NOVs) (issued when point assessment reaches 4 cumulative, rounded points) are neither agency determinations (i.e., case decisions) nor adjudications. The purpose of the WL and the NOV is to advise that the Board may consider taking or seeking action, and that the facts therein could provide a basis for civil proceedings under Code §§ 62.1-44.15(8), 62.1-44.23, 62.1-44.32(a), 62.1-44.34:20 and 10.1-1186(10), or others. Further evaluations are made to determine if and when a violation has occurred and that an enforcement action should be initiated.

<i>VIOLATION DESCRIPTION</i>	<i>POINTS ASSESSED</i>
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1) PERMIT VIOLATIONS

a) VPDES (including General Permits)

i Effluent Limits

(1) TOXIC Parameters (Except Cl₂ and ammonia)

(a) Value equal or greater than 1.2 x Limit

Major.....	2
Minor	1

(b) Value less than 1.2 x Limit

Major.....	0.5, 0.5, 1, 2
Minor	0.2, 0.2, 0.5, 1

(c) WET..... 2

(2) NONTOXIC Parameters (including ammonia)

(a) Value equal or greater than 1.4 x Limit

Major.....	2
Minor	1

(b) Value less than 1.4 x Limit

Major.....	0.5, 0.5, 1, 2
Minor	0.2, 0.2, 0.5, 1

(3) Dissolved Oxygen, pH, Temperature, All Exceptions, Except Cl₂ (Major and minor)

(a) Value less or equal to 0.8 x minimum limit 0.5, 0.5, 1, 2

(b) Value greater or equal to 1.2 x maximum limit..... 0.5, 0.5, 1, 2

(c) Value less than 1.2 x maximum limit..... 0.2, 0.2, 0.5, 1

(d) Value greater than 0.8 x minimum limit 0.2, 0.2, 0.5, 1

(4) Chlorine

(a) Cl₂-Inst. Resid. Tech. Max and Inst. Min. Tech Limit (Parameters 166 and 213)

Major.....	1
Minor.....	0.5

(b) All Other Cl₂ Including Exceptions (Major & Minor)

(i) Value less than or equal to 0.8 x minimum limit..... 0.5, 0.5, 1, 2

(ii) Value greater or equal to 1.2 x maximum limit..... 0.5, 0.5, 1, 2

(iii) Value less than 1.2 x maximum limit 0.2, 0.2, 0.5, 1

(iv) Value greater than 0.8 x minimum limit.....	0.2, 0.2, 0.5, 1
(5) Quarterly Reporting	
Major.....	1, 1, 2
Minor	1
ii Pretreatment Violations	
Major.....	1, 1, 2
Minor.....	1
iii Toxics Monitoring Program (Major and minor)	
(1) Failure to report under TMP/TRE	1, 1, 2
(2) Inadequate reporting under TMP/TRE, 1st submittal	1, 1, 2
(3) Inadequate reporting under TMP/TRE, subsequent submittals	1, 1, 2
iv Inspection Deficiencies (Major and minor)	
(1) Egregious, severe or substantial repetitive inspection deficiency	2, 2
(2) Deficiency not corrected by an established due date or acceptable response to address deficiency not received by an established due date	1, 1, 2
(3) Failure to develop the Storm Water Pollution Prevention Plan (SWPPP).....	4
(4) Failure to maintain the SWPPP on site or failure to implement the SWPPP.....	1, 1, 2
v Bypasses and Overflows from permitted facilities (Major and minor) and satellite sewage collection systems - points assessed per discharge, per day)	
(1) Adverse environmental impact or presenting an imminent and substantial danger.....	4
(2) Unreported.....	2
(3) Incomplete reporting - inadequate or no 5 day letter (unless waived).....	1, 1, 2
(4) Significant Wet/Dry weather discharges.....	1, 1, 2
(5) Dry weather discharges from permitted combined sewer system.....	1, 1, 2

4) OTHER VIOLATIONS

a) Spills into state waters and discharge to state waters not authorized by permit (address all Bypass and Overflow discharges under section 1.a.v.)	
ii) Adverse environmental impact, or presenting an imminent and substantial danger	4
ii) All other spills or unpermitted discharges	
(1) Not Reported.....	4
(2) Reported.....	1
b) Refusal to reimburse for collectible cost recovery.....	2, 2
c) Violations of regulations and laws not stated above.....	Case by Case

Appendix 13

Dear

As the owner/operator of a satellite sewage collection system, the Department of Environmental Quality (DEQ) would like to remind you of your responsibilities for any sewage bypass or overflow that may occur from your collection system. State law (§ 62.1-44.5) prohibits any discharge of sewage, industrial wastes, other wastes, or any noxious or deleterious substances into or upon state waters except in compliance with a Virginia Pollution Discharge Elimination System (VPDES) Permit, or another permit issued by the State Water Control Board. State law (§ 62.1-44.5.B) also requires any unauthorized discharge into or upon state waters or a discharge that may reasonably be expected to enter state waters to be immediately reported but in no case later than 24 hours. This report can be made to the {XXX} Regional Pollution Response Office by any of the following methods:

Telephone:

Fax:

Online WEB Reporting: <https://portal.deq.virginia.gov/prep/Report/Create>

A report of the unauthorized discharge is required to be submitted to DEQ within five days of discovery of the discharge. The report should include the following information:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.
9. The name of the receiving water body when there is a discharge into or upon state waters.

Should you have any question regarding these requirements please contact _____.

Sincerely,

Water Compliance Manager

Cc: