


**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER PERMITTING DIVISION**

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**Subject:** Guidance Memo No. 18-2012, Amendment No. 1  
Points Assessment for Alleged Violations of the Construction General Permit Criteria  
and Enforcement Referral Guidance

**To:** Regional Directors

**From:** Meghan M. Mayfield, Director, Division of Water Permitting 

**Date:** November 1, 2024

**Copies:** Deputy Regional Directors, Regional VWP Program Managers, Regional Stormwater  
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**Summary:**

This guidance document provides direction for evaluating noncompliance with the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities ([9 VAC 25-880](#)), the Virginia Erosion and Stormwater Management Regulation ([9 VAC 25-875](#)) and the State Water Control Law ([Va. Code § 62.1-44.2 et seq.](#)) and provides a point system for determining the appropriate compliance response, including when to refer cases to the Division of Enforcement. The point system allows the Virginia Department of Environmental Quality (DEQ) Stormwater Compliance staff to consistently assess and respond to alleged noncompliance. This amendment revises and reissues DEQ Guidance Memo No. 18-2012.

**Electronic Copy:**

An electronic copy of this guidance document in PDF format is available for staff internally on DEQNET, and for the general public on DEQ's website at: <https://www.deq.virginia.gov/permits/water/stormwater-construction/guidance-and-resources>.

**Contact Information:**

Please contact the Office of Stormwater Management, at [SWMguidance@deq.virginia.gov](mailto:SWMguidance@deq.virginia.gov) or 804-698-4000, with any questions regarding the application of 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.**

## I. PURPOSE

This guidance establishes procedures for addressing alleged noncompliance with the General VPDES Permit for Discharges of Stormwater from Construction Activities (Construction General Permit or CGP), 9VAC25-875, and unpermitted discharges of stormwater from construction activities. It establishes methods and tools for quantifying noncompliance and unpermitted activities in order to determine the appropriate compliance response and for referring cases to the Division of Enforcement. This guidance provides the Point Assessment Criteria for assessing noncompliance in the Virginia Stormwater Construction General Permit Program.

## II. AUTHORITY

The DEQ's authority to conduct compliance investigations and inspections is provided for in the State Water Control Law ([Va. Code §§ 62.1-44.2 thru 62.1-44.34:33](#)), the Virginia Erosion and Stormwater Management (VESM) Regulation, 9VAC25-875, and the CGP conditions, 9VAC25-880-70.

- Code of Virginia [§ 62.1-44.15\(6\)](#) authorizes the State Water Control Board: “To make investigations and inspections, to ensure compliance with the conditions of any certificates, land-disturbance approvals, standards, policies, rules, regulations, rulings and orders that it may adopt, issue or establish, and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance.”
- Code of Virginia [§ 62.1-44.20](#) states: “Any duly authorized agent of the Board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this chapter.”
- Code of Virginia [§ 62.1-44.15:39](#) states: “In addition to the Board's authority set forth in § 62.1-44.20, a locality serving as a VESMP authority or any duly authorized agent thereof may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article. For localities that operate regulated municipal separate storm sewer systems, this authority shall apply only to those properties from which a discharge enters their municipal separate storm sewer systems.”
- [9VAC25-875-140.A](#), Inspections, states: “The VESMP authority shall inspect the land-disturbing activity during construction for:
  1. Compliance with the approved erosion and sediment control plan;
  2. Compliance with the approved stormwater management plan;
  3. Development, updating, and implementation of a pollution prevention plan; and
  4. Development and implementation of any additional control measures necessary to address a TMDL.”
- [9VAC25-880-70 Part III.W](#), Inspection and entry, states: “The operator shall allow the department, the VESMP authority, EPA, or an authorized representative of either entity (including an authorized contractor), upon presentation of credentials and other documents as may be required by law, to:
  1. Enter upon the operator's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this general permit;
  2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this general permit;
  3. Inspect and photograph at reasonable times any facilities, equipment (including

monitoring and control equipment), practices, or operations regulated or required under this general permit; and

4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the Clean Water Act or the Virginia Erosion and Stormwater Management Act, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours and whenever the facility is discharging. Nothing contained in this general permit shall make an inspection unreasonable during an emergency.”

### **III. POINT ASSESSMENT FOR ALLEGED VIOLATIONS OF THE CONSTRUCTION GENERAL PERMIT**

Alleged permit noncompliance or unpermitted activities are evaluated using the Point Assessment for Alleged Violations of the CGP (Attachment A) and associated criteria and guidance. The Point Assessment Criteria provides a mechanism for determining the level of response to noncompliance: informal corrective action, Warning Letter (WL), or a referral to the Division of Enforcement using a Notice of Violation (NOV).

## **Point Assessment for Alleged Violations of the CGP**

### Notes:

- Points will be assessed and documented for all inspections starting with the first inspection and observation of alleged violation(s). There is no grace period for correction without an assessment of points unless the item has been identified through self-inspection by qualified personnel, documented in the Stormwater Pollution Prevention Plan (SWPPP), and corrected or will be corrected within the required timeframe(s). At a minimum, documentation of alleged noncompliance found during a site inspection includes an inspection report summarizing observations, photographs with supporting descriptive information, point assessment calculation, and any required Comprehensive Environmental Data System (CEDS) entry in accordance with the following steps:
  1. Identify alleged permit noncompliance or unpermitted activity through site inspections, file review, and/or other appropriate means. Document alleged permit noncompliance or unpermitted activity using field notes, photographs, inspection forms, file review notes, inspection reports, and/or other methods to provide supporting information for future compliance or enforcement actions.
  2. Utilize the Point Assessment Criteria to characterize all noncompliance identified during an inspection and group violations into standardized categories.
  3. Compile a comprehensive list of all noncompliance and resulting points in order to provide a useful reference for future enforcement cases. Points are tracked over the entire permit term. When available, use CEDS to track alleged noncompliance and points.
  4. Use the sum of all points calculated to determine the appropriate compliance response. A total point value greater than or equal to 4 points warrants an NOV; a total point value greater than or equal to 2 and less than 4 points warrants a WL; and a total point value less than 2 points warrants written notice in the inspection report.
- After utilizing Steps 1 through 4 above to calculate the total points and to determine the appropriate compliance response, staff review the result of the Point Assessment Criteria with their managers. Situations may arise when a case exceeds the 4.0-point threshold, but the facts of the case do not merit immediate referral to the Division of Enforcement. However, staff should always refer unpermitted activities that exceed the 4.0-point threshold to the Division of Enforcement. With DEQ Central Office consultation and concurrence, points may be assessed cumulatively for a responsible party (i.e. owner, operator) that has violations at multiple sites.
- Reassessment of points will occur if a responsible party has not corrected violations or provided an adequate response (i.e., appropriate schedule of corrective action) within the timeframes given by the written notice<sup>1</sup>.
- Point totals for a site should be evaluated cumulatively over the rolling 12-month period, beginning with the date of first inspection. However, noncompliance corrected more than 3 months ago may be excluded from the cumulative total unless there is an established pattern of noncompliance.

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<sup>1</sup> “Written notice” means the written document that is the outcome of the point assessment. If points do not warrant a WL or NOV, the written notice is the inspection report. If point totals warrant a WL or NOV, the written notice means the WL or NOV. Note: In the latter case, the written notice would not mean an inspection report provided to the responsible party prior to the issuance of a WL or NOV

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- Points should be doubled as follows for repeat occurrences of SWPPP documentation items and failure to install or to properly install and maintain stormwater management, pollution prevention, or erosion and sediment control measures, including stabilization. For repeat occurrences at a site of the same violation(s) (i.e. in the same location, under the same operating circumstances and no intermediate corrective action taken) within 12 months, points shown in this table should be doubled after the 1st occurrence (e.g., first occurrence = 1, 2nd occurrence = 2, 3rd occurrence = 2, Total = 5 points) and evaluated cumulatively.
- Points shall not be assessed for routine maintenance issues for the 1<sup>st</sup> occurrence. Points may be assessed for the 2<sup>nd</sup> occurrence when corrective actions were not taken after being noted on the previous inspection report.
- Points should not be doubled for repeat occurrences of maintenance issues related to erosion and sediment control or pollution prevention control measures when all previously noted maintenance issues were expeditiously corrected and new maintenance issues developed since the previous inspection. (e.g. silt fence maintenance). However, repeated incidents of failure to maintain erosion and sediment control measures shall be considered a repeat occurrence and cited appropriately.
- Staff should only issue additional NOVs for specific violations if the responsible party has failed to respond adequately to earlier NOVs. Staff should only send multiple NOVs after consulting with the Division of Enforcement.

*With concurrence of the Office of Water Compliance and the Division of Enforcement, the aggravating factors listed at the end of this document (Table 2) should be added if there is an actual or potential adverse impact to state waters.*

ATTACHMENT A

**Table 1. Point Assessment Criteria**

	<b>Type of Violation</b>	<b>Points (first occurrence)</b>	<b>Notes</b>
1	Failure to obtain permit coverage when required prior to commencing land disturbing activities.	<b>3</b>	Use for sites without required construction general permit coverage. Evaluate the site for unpermitted discharge or unauthorized impacts.
2	Unpermitted discharge to state waters or discharge to state waters not in compliance with permit.	<b>2</b>	<p>Use where there is a discharge of stormwater from land disturbing activities, which reaches state waters, either (1) from a site without required permit coverage, or (2) from a site with permit coverage where required treatment controls, and pollution prevention measures are wholly or almost entirely lacking or deficient, such that stormwater discharged from the site has essentially bypassed treatment or control, or (3) from a site with permit coverage where discharge due to a violation of permit conditions results in a significant demonstrated environmental impact (e.g. a fish kill).</p> <p>Do not use this category (Item #2) for the point assessment when stormwater discharge results in a measurable volume of sediment accumulation on the bed of the receiving water. Use Item #3, “Unauthorized impacts to wetlands and/or streams.”</p> <p>May be used in conjunction with Items #1 and #7 with evidence of discharge to state waters.</p>
3	<p>Unauthorized impacts to wetlands and/or streams.</p> <p>A. Major</p> <p>B. Minor</p>	<p><b>4</b></p> <p><b>2</b></p>	<p>Use when the unauthorized discharge of stormwater from land-disturbing activities results in a measurable volume of sediment accumulation on the bed of the receiving wetlands, streams or other surface waters. Virginia Water Protection (VWP) impacts will be cumulative within a single project area and any points assessed for impacts to wetlands/waters shall not be duplicated for the same impacted area if inspections onsite were to occur “back-to-back.”</p> <p>A. Impacts of 0.10 or greater of wetlands or open water or 301 linear feet or greater of stream</p> <p>B. Impacts to less than 0.10 acres of wetland or open water, or up to 300 linear feet of streambed</p>

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	<b>Type of Violation</b>	<b>Points (first occurrence)</b>	<b>Notes</b>
			Do not use this category (Item #3) for the point assessment when an unauthorized stormwater discharge results in turbidity in the receiving water without a measurable volume of sediment accumulation on the bed of the receiving water.
4	<p>Failure to develop a stormwater pollution prevention plan (SWPPP).  <b>OR</b>                      Failure to have</p> <ol style="list-style-type: none"> <li>1. An approved Erosion and Sediment Control (ESC) Plan, agreement in lieu of a plan, or ESC plan prepared in accordance with department-approved standards and specifications.</li> <li>2. Pollution prevention components</li> <li>3. An approved or incorporated Stormwater Management (SWM) Plan, agreement in lieu of a plan as defined in 9VAC25-875-20, or SWM plan prepared in accordance with department-approved standards and specifications.</li> </ol>	<p style="text-align: center;"><b>3</b></p> <p style="text-align: center;"><b>1</b></p> <p style="text-align: center;"><b>1</b></p> <p style="text-align: center;"><b>1</b></p>	<p>The lack of all the documents noted under this section is a failure to develop a SWPPP. Failure to develop a SWPPP may be established by lack of SWPPP at the site along with verbal or written confirmation from the operator that a SWPPP has not been developed or failure to provide the SWPPP in response to a Request for Information (RFI).</p> <p>When a SWPPP is available onsite, assess the document for required components based on a Focused or Comprehensive inspection report.</p> <p>In no situation should the assessment under this section (Item #4) and Item #5 exceed 3 points total.</p>
5	Failure to Implement CGP and/or SWPPP Requirements or comply with SWM Plan or ESC Plan, not otherwise specifically listed.	<b>0.1</b>	<p>May be used for violations that are not specifically listed. Points are assessed per requirement.</p> <p>Examples of components considered may include: a copy of the coverage letter, a copy of the CGP, delegation of authority, identification of qualified personnel, identification of contractors, dates of major grading or stabilization measures initiated, posting of coverage, criteria for TMDL WLA addressed (other than inspections).</p>

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	<b>Type of Violation</b>	<b>Points (first occurrence)</b>	<b>Notes</b>
6	Failure to maintain SWPPP on site or make available when dormant.	<b>0.25</b>	This assumes that a SWPPP was developed; but the most recent copy of the SWPPP is not available onsite or was not presented to the inspector upon request.
7	Failure to install or to properly install or maintain ESC or other pollution prevention measures.	<b>0.25</b>  <b>2</b>	Points are assessed for the overall site.  Routine maintenance issues.  50% or less of the controls have been installed, installed correctly or maintained appropriately.
8	Failure to install or properly install post-construction stormwater management Best Management Practice (BMP) or to complete final stabilization.	<b>0.5 - 2</b>	Points are assessed for the overall site. The upper end of the range may be used when many controls, or one or more critical controls, have not been installed correctly.  Points assigned to final stabilization should be assessed when the site lacks an established ground cover that is “uniform (e.g., evenly distributed), provides 75% or more vegetative cover with no significant bare areas, mature enough to survive, and will inhibit erosion.” 9VAC25-880-1, definition of “Final stabilization.” Evaluation of post-construction SWM BMPs may consider the SWM plan and the design specifications for correct implementation or the site’s history of proper sequencing of post-construction SWM BMPs.  If final stabilization has not been applied to the site, applied but failed to establish within prescribed timeframes, or the post-construction SWM BMPs have not been installed, the highest values should be used.
9	Failure to conduct or record inspections, incomplete inspections, or to take corrective	<b>0.5-1 (as noted below)</b>	



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	<b>Type of Violation</b>	<b>Points (first occurrence)</b>	<b>Notes</b>
	actions from previous inspections within the required time frame.	<p style="text-align: center;"><b>1</b></p> <p style="text-align: center;"><b>0.75</b></p> <p style="text-align: center;"><b>0.5</b></p>	<p>No inspections.</p> <p>Inspection(s) do not meet the required frequency.</p> <p>Inspection(s) meet the required frequency but are incomplete or are not corrected within the required time frame(s).</p>

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**Table 2. Aggravating Factors**

**Notwithstanding the above, any violation with the following characteristics may be considered an aggravating factor. This should be determined on a case-by-case basis and in consultation with the Office of Water Compliance and the Division of Enforcement.**

Factor	Points	Notes
Adverse environmental impact, loss of beneficial use, or presenting an imminent and substantial danger.	4	“Adverse Environmental Impact” includes fish kills, loss of drinking water supply, or loss of other beneficial uses. Report any allegation of adverse environmental impact due to spills, bypasses, unpermitted discharges, and other violations of state law and regulations to the Division of Enforcement with documentation that demonstrates the basis for alleging that either there was or was not an adverse impact.
Potential for adverse impact or potential loss of beneficial use.  When a BMP, control, or measure treats an area:  ≥3 acres, ≥1 acre and <3 acres, <1 acre.	1-3   3 2 1	Use when there is an imminent storm event for a site without functioning BMP(s) necessary and identified in the Assessment Criteria (Item #6 and 7) to prevent the release of sediment or other pollutants to state waters.
Violations resulting in exceedances of water quality standards.	2	
Suspected falsification.	4	When falsification is considered an aggravating factor, follow up discussions with Central Office will be necessary.
Suspected willful violation.	4	
Violation due to clear indifference.	4	
Site access violations:  Failure to provide reasonable access otherwise required by statute, regulation, or the CGP to any facilities where there is adverse environmental impact or an imminent and substantial danger,  Other site access violations.	4   A. 1 B. 3	A. First occurrence. B. Second occurrence.