



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY / DEPARTMENT OF TRANSPORTATION

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

AND

THE VIRGINIA DEPARTMENT OF TRANSPORTATION

FOR

CENTRALIZED BURNING OF VEGETATIVE DEBRIS FROM VDOT

ROADSIDE MAINTENANCE OPERATIONS

THIS UNDERSTANDING is entered into by the Virginia Department of Environmental Quality (VDEQ) and the Virginia Department of Transportation (VDOT) as authorized under 9 VAC 5-130-60 to ensure that VDOT maintenance operations involving centralized burning of vegetative debris is performed in a safe and consistent manner, is protective of human health and the environment, and is performed in accordance with the Air Quality and Solid Waste Regulations of the Commonwealth of Virginia.

Whereas, VDEQ is charged with the responsibility to require proper management of solid wastes generated in the Commonwealth and to control air pollution emissions in the Commonwealth; and

Whereas, VDOT is charged with the duty to construct, reconstruct, alter, maintain, and repair highways and to maintain a safe and efficient transportation system in the Commonwealth; and

Whereas, VDOT, via its Maintenance Program, is responsible for the statewide control of vegetation along the transportation systems to:

- Afford safe travel for motorists and to ensure adequate sight distance on the roadway,
- Ensure unobstructed views of signs and other roadside appurtenances,
- Ensure vegetation along the transportation systems is not a fire hazard; and

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Whereas, VDOT, as a result of its maintenance efforts, routinely generates significant volumes of vegetative debris requiring disposal; and

Whereas, VDOT and VDEQ agree that alternatives to burning vegetative debris for disposal (including landfilling, mulching, debris processing, and related transportation costs) may not be economically feasible, especially in rural areas of the Commonwealth; and

Whereas, Under §10.1-1307.2(B), the Director of Department of Environmental Quality may be vested with the authority of the Board when it is not in session, subject to regulations or delegations prescribed by the Board; and

Whereas, 9 VAC 5-130-60 of its regulations, the Board has delegated to the Director the authority to approve waivers related to open burning; and

Whereas, 9 VAC 5-130-40 (A)(8) provides that "*[o]pen burning or the use of special incineration devices is permitted onsite for the destruction of clean burning waste and debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations...*"; and

Whereas, 9 VAC 5-130-60 (A) provides that "*[a] waiver from any provision of this article may be granted by the board for any person or geographic area provided that satisfactory demonstration is made that another state or local government entity has in effect statutory provisions or other enforceable mechanisms that will achieve the objective of the provision from which the waiver is granted...*"; and

Whereas, 9 VAC 5-130-60 (C) provides that "*[w]aivers under subsection A of this section shall be executed through a memorandum of understanding between the board and affected governmental entity and may include such terms and conditions as may be necessary to ensure that the objectives of this article are met by the waiver...*"; and

Whereas, VDOT has in place enforceable mechanisms governing how vegetation along transportation systems is controlled and managed, including policies and procedures for VDOT personnel, as well as contractual provisions for its contractors; and

Whereas, VDOT has the legal authority to enforce requirements of this MOU upon VDOT personnel through its policies and procedures, and upon VDOT contractors through legal contracts; and

Whereas, this document represents an understanding between VDEQ and VDOT so that both may better fulfill their respective agency mandates; and

Whereas, both VDEQ and VDOT agree that, except as provided herein, nothing in this agreement shall grant any rights to a third party; be it

NOW, THEREFORE, WITNESSETH THIS MEMORANDUM OF UNDERSTANDING:

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Consistent with the intent of the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia), and the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), VDEQ and VDOT enter into this Memorandum of Understanding (MOU) under 9 VAC 5-130-60 to govern under what conditions VDOT, and its contractors, may perform centralized burning of vegetative debris generated from VDOT roadside maintenance operations.

Vegetative Debris is defined by this MOU as naturally occurring plant material generated during on-site maintenance of the right-of-ways maintained by VDOT. Vegetative Debris is limited to tree cuttings, limbs, branches, sticks, twigs, bark, stumps, roots, leaves, shrubs, bushes, weeds, grass, and grass clippings generated (in raw or reduced form) from VDOT right-of-ways.

Through this MOU, VDEQ grants VDOT a waiver from the provision of 9 VAC 5-130-40(A)(8), requiring vegetative debris to be burned onsite (where the vegetative debris was produced). If the vegetative debris is not managed onsite in accordance with 9 VAC 5-130-40(A)(8), VDOT shall ensure that VDOT personnel comply with the requirements of this MOU through policies and procedures, and that VDOT's contractors comply with the requirements of this MOU through the enforcement of related contracts.

The following articles describe VDOT's and VDEQ's responsibilities as they relate to the implementation of this MOU. It shall be understood that each condition is applicable to both *Regular Burn Sites* and *Infrequent Burn Sites* unless indicated otherwise.

- A *Regular Burn Site* is defined by this MOU as a state-owned property where burning is expected to occur greater than once per year.
- An *Infrequent Burn Site* is defined by this MOU as a state-owned property or other property approved by the owner for VDOT burning activity that is established to serve a defined maintenance activity and where burning will be limited to no more than one event per year.

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Article 1: VDEQ Responsibilities

Section 1 - VDEQ shall:

- a) Provide VDOT adequate opportunity to comment on proposed changes to applicable regulations or this MOU; and
- b) Allow VDOT, within a reasonable timeframe, to find an alternative method of disposal and/or use of the vegetative debris should the provisions of Article 2 preclude VDOT from burning the vegetative debris at a given time or location; and
- c) Provide VDOT, upon request, a list of currently identified facilities that manage vegetative debris; and
- d) Maintain the right to revoke, suspend, or revisit this MOU under conditions including the following:
 - o Proposed changes to applicable regulations impact the practices detailed herein, or
 - o VDEQ becomes aware of instances of potentially non-compliant activities by VDOT concerning any relevant law contained within the Code of Virginia, Virginia Air Pollution Control Regulations, or requirements of this MOU, or
 - o Other circumstances or findings warrant additional restrictions to ensure compliance with the intent of Virginia Air Pollution Control Regulations; and
- e) Maintain the right to take appropriate enforcement action if VDOT fails to adequately demonstrate compliance with the requirements of this MOU.

Article 2: VDOT Responsibilities

Section 1 - Prior to all burning activity, VDOT shall:

- a) Sell merchantable timber where feasible; and
- b) Establish a Best Management Practice (BMP) for VDOT's management of vegetative debris. The BMP shall:
 - 1. Consider and document the reason(s) for exclusion of other available waste management and disposal alternatives to burning the vegetative debris including mulching, chipping, composting, recycling, and energy recovery; and
 - 2. Establish a burn site approval process; and
 - 3. Be reviewed by VDOT annually, and updated as appropriate; and

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- c) Store and manage vegetative debris in accordance with all federal and state laws, as well as applicable local laws, ordinances, prohibitions, and restrictions; and
- d) Not accumulate vegetative debris at Regular Burn Sites for more than 180 days between burns and 270 days in VOC Emission Control Areas or during burn bans; and
- e) Take appropriate action to remedy any vector or nuisance issues created as a result of accumulation of vegetative debris; and
- f) Provide appropriate erosion and siltation control for storage of vegetative debris as well as any associated ground disturbance; and
- g) Provide appropriate fugitive dust control in accordance with 9 VAC 5-40-60 et seq for storage and transportation of vegetative debris; and
- h) Establish, maintain, and adhere to appropriate siting provisions for the storage of vegetative debris included in Table 1 of this MOU; and
- i) Obtain permit(s) from, and make appropriate notifications to, the local City or County Fire Marshall and Virginia Department of Forestry as required by applicable local laws and ordinances; and
- j) Complete the notification form in Attachment 1 and provide to the local VDEQ Regional Office at least 5 business days before commencement of a burn.

Section 2 - During all burning activity, VDOT shall:

- a) Conduct burning in accordance with all federal and state laws, as well as applicable local laws, ordinances, prohibitions, and restrictions; and
- b) Burn only vegetative debris as defined in this MOU; and
- c) Not burn or use liquid accelerants (e.g. diesel, motor oil, etc.) or other prohibited materials (e.g. building debris, treated wood, painted wood, paper, cardboard, asphaltic materials, tires, metal, garbage, etc.) to start or maintain burning vegetative debris; and
- d) Not conduct any burning activity in a VOC Emission Control Area as defined in 9 VAC 5-20-206 during May, June, July, August, and September, or in violation of § 10.1-1142 et seq of the Code of Virginia (4 p.m. Burning Law); and
- e) Not schedule or commence more than one burn event per Regular Burn Site per 60-day period; and
- f) Ensure that the duration of any burn does not exceed 72 hours; and
- g) Ensure that all vegetative debris to be burned is dry and in a condition that sustains good combustion and minimizes smoke; and

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- h) Ensure that adequate firefighting equipment is on-site for extinguishing purposes; and
- i) Ensure that the burn is attended by appropriately trained and qualified VDOT or VDOT Contract personnel at all times until the burn is completely extinguished (smoldering is not allowed); and
- j) Extinguish the open burn for reasons including the following:
 - 1) Unfavorable meteorological conditions (i.e., high winds or air stagnation), or
 - 2) Official declaration by a governmental entity of a pollution alert, code red air quality action day, or air quality health advisory where the burn activity is occurring, or
 - 3) When the emission of smoke, ashes, dust, dirt, odors, or any other substance creates a threat to public health, a nuisance, a pollution problem, a fire hazard, a safety hazard, or impairment to visibility on traveled roads or airports; and
- k) Provide appropriate erosion and siltation control for burn and extinguishment as well as any associated ground disturbance; and
- l) Establish, maintain, and adhere to appropriate siting provisions for the burning of vegetative debris provided in Table 1 of this MOU.

Section 3 - Following all burning activity, VDOT shall:

- a) Store and manage ash and incompletely burned vegetative debris in accordance with all federal and state laws, as well as applicable local laws, ordinances, prohibitions, and restrictions; and
- b) Provide appropriate erosion and siltation control for storage of ash and unburned vegetative debris as well as any associated ground disturbance; and
- c) Provide appropriate fugitive dust control in accordance with 9 VAC 5-40-60 et seq for storage and transportation of ash and unburned vegetative debris; and
- d) Within 180 days of the burn, dispose of ash and incompletely burned vegetative debris at a permitted solid waste management facility (landfill) or use ash as a soil amendment or fertilizer in accordance with 9 VAC 20-80-150 E 2;
- e) Take appropriate action to remedy any vector or nuisance issues created as a result of extended storage of ash or incompletely burned vegetative debris; and
- f) Take appropriate precautions to minimize dust or ash becoming airborne during loading and hauling operations related to disposal of ash and incompletely burned vegetative debris; and

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- g) Establish, maintain, and adhere to appropriate siting provisions for the storage of ash or incompletely burned vegetative debris provided in Table 1 of this MOU; and
- h) Notify the local VDEQ Regional Office within 1 business day if the burn was not performed or burning was performed inconsistently with the terms of this MOU or the initial notification; and
- i) Document the estimated quantity of ash and incompletely combusted vegetative debris generated as a result of the burn on a copy of the submitted notification form in Attachment 1 and maintain a copy of the form on file.

Article 3: General Provisions

- 1. This MOU shall become effective upon the signature of VDEQ and VDOT representatives; and
- 2. This MOU may be modified by consent of both parties for any purpose at any time; and
- 3. Any proposed revisions or modifications to this MOU shall be in writing and signed by VDEQ and VDOT representatives; and
- 4. All revisions and modifications shall become effective following written concurrence from each signatory; and
- 5. VDEQ and VDOT shall work together to resolve issues of mutual interest that are not sufficiently addressed by this MOU; and
- 6. VDOT and VDEQ will review this agreement every four years from the date of implementation to assess its effectiveness and it may be amended or withdrawn at any time upon mutual consent of both parties; and
- 7. The requirements of this MOU shall be binding upon VDEQ and VDOT. VDOT will ensure that its personnel and its contractors performing related activities on behalf of VDOT do so in compliance with the requirements of this MOU. In addition, VDOT will provide a copy of this MOU to all of its contractors prior allowing them to perform any related activities.

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Table 1 - Siting Criteria

Siting Criterion	Vegetative Debris Storage	Vegetative Debris Burning	Ash*** Storage
Storage pile area not to exceed 1/3 acre	√		√
Storage pile not to exceed 15' in height above base grade	√		√
Minimum of 50-foot firebreak (e.g., a clear zone absent of any structure or tree line, etc.) maintained between storage pile and any structure or tree line	√	√	√
Minimum 50-foot setback from any property line	√		√
Minimum 100-foot setback from any regularly flowing surface water body, river, floodplain*, or wetland	√	√	√
Minimum 200-foot setback from water wells or other drinking water sources	√	√	√
Maximum 4:1 slope within the area of the vegetative debris; and within 50 feet of the vegetative debris	√	√	√
Minimum 300-foot setback from any roadway** or residential structure		√	

* VDOT and VDEQ agree that the floodplain (as it relates to this MOU) is defined by the edge of "bank full" condition which is generally referred to as the 2-year floodplain.

** Or as distant as practical provided no significant smoke is allowed to create deleterious driving conditions.

*** Ash storage provisions also apply to incompletely burned vegetative debris.

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Attachment 1 - Notification of Proposed Burn (form)

Notification of Proposed Burn

This notification is made pursuant to the *Memorandum of Understanding (MOU)* between the Virginia Department of Environmental Quality and the Virginia Department of Transportation for *Centralized Burning of Vegetative Debris from VDOT Roadside Maintenance Operations*.

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To: VDEQ Regional Air Compliance Manager & VDEQ Regional Waste Program Manager
 Blue Ridge Regional Office Northern Regional Office
 Piedmont Regional Office Southwest Regional Office
 Tidewater Regional Office Valley Regional Office

From: VDOT _____ District,
_____ Residency
_____ Area Headquarters

Date of proposed burn: _____ Estimated duration (not to exceed 72 hours): _____

Type of Burn Site: Regular Burn Site Infrequent Burn Site

Specific location of proposed burn: _____

Activity generating vegetative debris:
 Routine Roadside Maintenance Emergency Roadside Maintenance
 Bridge Maintenance Other (Describe: _____)

Estimated quantity of vegetative debris to be burned: _____ cubic yards

Is there any other material not included in the definition of vegetative debris included? Yes No

Will an Air Curtain or other Special Incineration Devices be used? Yes No

If Yes, Describe: _____

I certify that all adjacent property owners have received notification of burning activity at this location, that required notifications have been made to the local office of the Virginia Department of Forestry and local City or County fire Marshall, and that all other conditions of the aforementioned *Memorandum of Understanding* have been and will continue to be met in relation to this burn event.

Signature: _____ Date: _____
Name: _____ Phone: _____
Title: _____

TO BE COMPLETED FOLLOWING THE BURN EVENT. THE COMPLETED FORM MUST BE MAINTAINED ON FILE.

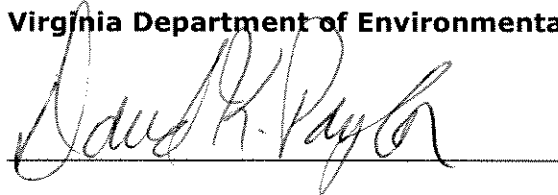
Estimated quantity of ash and incompletely burned vegetative debris generated by the burn: _____ cubic yards

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Article 4: Signatures

The undersigned do hereby agree to the terms and conditions contained in this MOU.

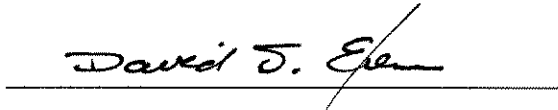
Virginia Department of Environmental Quality



David K. Paylor, Director

Date 12/22/2009

Virginia Department of Transportation



David S. Ekern, P.E., Commissioner

Date 12/15/2009