

VIRGINIA DEPARTMENT OF TRANSPORTATION

# LOCATION AND DESIGN DIVISION

## INSTRUCTIONAL AND INFORMATIONAL MEMORANDUM

GENERAL SUBJECT: Virginia Stormwater Management Program	NUMBER: IIM-LD-256.1
SPECIFIC SUBJECT: VDOT Oversight Responsibilities for VDOT projects with coverage under the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities and other Regulated Land Disturbing Activities	DATE: April 17, 2019
	SUPERSEDES: IIM-LD-256
APPROVAL:	Susan H. Keen, P.E. State Location and Design Engineer Approved April 17, 2019

Changes are shaded.

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### CURRENT REVISION

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This is the second version of the Instructional and Informational Memorandum (IIM).

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### EFFECTIVE DATE

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Unless otherwise identified herein, the information and directions contained in this IIM are effective upon receipt.

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### 1.0 PURPOSE, NEED AND PROJECT APPLICABILITY

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The primary application of this IIM is to all VDOT regulated land disturbing activities that are 1 acre of in disturbance and are covered under the General VPDES Permit for Discharges of Stormwater from Construction Activities (Construction General Permit – or – CGP). In addition, this IIM focuses on VDOT regulated land disturbing activities that are between 10,000 square feet (or 2500 square feet in the Chesapeake Bay Preservation Area) and 1 acre in area and occur within VDOT's service area as defined

by VDOT's VPDES Individual Permit for Discharges of Stormwater from its Municipal Separate Storm Sewer System (MS4). These activities are considered secondary in that the frequency of inspection (further discussed in this IIM) may be reduced given the project's scope, nature, and perceived risk to VDOT's other VPDES permit (the MS4 Individual Permit).

This IIM outlines the policy and guidelines for those VDOT projects that are performed by state forces or by contract, including those developed/constructed under the Design-Build (DB) process or as part of the or under the Capital Outlay Program; and outlines permit compliance requirements, VDOT's permit oversight responsibilities, reporting procedures, and enforcement efforts.

Nothing in this IIM shall be construed as eliminating or changing:

- The established procedures for Erosion & Sediment Control (ESC) and Stormwater (SWM) Plan development, approval, and modification as identified in IIM-LD-195, IIM-LD-242, and the VDOT Drainage Manual.
- The requirements for the project team to complete and certify the Construction Runoff Control Inspection Form (CRCIF aka [C-107 Part I form](#)).
- The requirement for the VDOT Area Construction Engineer (ACE) or designee to complete and certify the [C-107 Part II form](#). Note: see the notes section of the form for detailed instructions on completing and certifying the form
- The requirements in Environmental Division's EM-COMP-05-16-2016, which outlines the established policy, procedures, and responsibilities, relating to the Environmental Compliance Assistance Program (ECAP).

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## 2.0 ROLES AND RESPONSIBILITIES

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**District NPDES Coordinator** – The District NPDES Coordinator shall serve as the single point of contact for all projects regarding environmental compliance. All concerns or questions can be communicated to the NPDES Coordinator regardless of implication across multiple environmental areas. The intent is to eliminate confusion and streamline project oversight reviews. It will be the responsibility of the NPDES Coordinator to communicate with other functional areas such as ECAP to minimize the need for project personnel to discern the difference.

The NPDES Coordinator will operate under the authority and as the district representative of the CGP signatory, the State L&D Engineer. The NPDES Coordinator will coordinate with the District Environmental Manager (DEM) regarding the DEM's assignment of an Environmental Compliance Inspector (ECI) to projects in accordance with the ECI assignment guidelines (see EM-COMP-05-16-2016).

The NPDES Coordinator will be certified by the Virginia Department of Environmental Quality (DEQ) as a Combined Administrator in both ESC and SWM, also known as a Dual Combined Administrator.

**NPDES Coordinator Designee** – If a designee is assigned by the NPDES Coordinator, the individual will have the same responsibilities and qualifications as the NPDES Coordinator. The designee shall be certified by DEQ, at a minimum, as an ESC and SWM inspector, also known as a Dual Inspector.

To provide consistency to a project, any designee shall remain the same individual throughout the project to the maximum extent practicable. The NPDES Coordinator shall notify the Area Construction Engineer (ACE) and Construction Manager (CM) of any changes to the designee prior to performing evaluations.

Central Office (CO) MS4 Staff shall serve as the NPDES Coordinator Designee for all CO-led projects such as Capital Outlay and Total Maximum Daily Load (TMDL) retrofit projects. Central Office MS4 Staff will notify the NPDES Coordinator and the District Project Development Engineer prior to inspecting a project. These CO-led projects receive a color classification; however, the lines of communication differ from those identified in Section 7.0 Central Office MS4 Staff will communicate the rating to the NPDES Coordinator, the DPDE, and the applicable Central Office project proponent.

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### 3.0 PRE-CONSTRUCTION MEETING

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The NPDES Coordinator or their designee will coordinate with any assigned ECI in advance of and shall attend all applicable pre-construction meetings to ensure the project team is aware of the CGP and/or ESC requirements. The assigned ECI will also attend and communicate requirements of any water quality permit and/or other environmental commitments.

Material to be covered by the NPDES Coordinator or their designee will be dependent on the specific project, but general topics to be covered may include:

- Identification of NPDES Coordinator or designee
- Discussion on limits of disturbance and avoidance areas
- Utilization of off-site support areas
- Requirements for documentation and recordkeeping including grading logs
- Stormwater Best Management Practice (BMP) Installation
- Requirements for modifications of the SWPPP (ESC, SWM, and Pollution Prevention (P2) Plans) and the approval process, including phasing
- Project close-out and termination requirements, including final stabilization and BMP acceptance (including record drawings, shop drawings, as-built documents as required)

Any concerns of the contractor regarding CGP requirements, including the ESC Plan, should be communicated at the time of the pre-construction meeting.

#### 4.0 EVALUATION OF PROJECT IMPLEMENTATION

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The NPDES Coordinator or designee will periodically evaluate ESC and SWM compliance on all applicable projects, as explained in Section 1.0, through an independent documentation review and/or field inspection. The evaluation will be two-pronged in its scope. The NPDES Coordinator or designee will evaluate the project to 1) determine if the project has, or should have, self-identified and self-corrected deficiencies (herein referred to as project-identified deficiencies) and 2) confirm deficiencies previously noted by the Coordinator or designee have been corrected (herein referred to as Coordinator-identified deficiencies).

The scope and extent of the evaluation will be determined by the NPDES Coordinator or their designee. The evaluation could be a cursory review of field conditions, a SWPPP documentation review, or a fully encompassing inspection following the framework of [C-107 Part I form](#). The NPDES Coordinator or their designee will communicate the level of evaluation that will be performed when arriving on-site. The NPDES Coordinators inspections will be utilized to satisfy the periodic compliance inspections requirements in VDOT's Municipal Separate Storm Sewer System (MS4) Individual Permit.

Compliance with the CGP and VDOT's Annual ESC and SWM Standards and Specifications (and all parts thereof) is expected throughout the duration of CGP coverage.

Compliance solely resides with the project by implementing and maintaining a compliant SWPPP including the ESC Plan. As such, an emphasis will be placed on project-identified deficiencies, and what the project has done to correct those deficiencies. If it is evident to the NPDES Coordinator or designee that the project has repeatedly failed to identify the need for corrective action, the NPDES Coordinator or their designee will initiate enforcement efforts as specified in Section 7.0.

The NPDES Coordinator or designee will coordinate on-site with the CM or designee to take corrective actions and report issues back to the NPDES Coordinator, as applicable. If issues are noted during the inspection and the project has failed to perform the necessary corrective action, the Coordinator will initiate enforcement efforts as specified in Section 7.0.

The Coordinator and their designee will utilize a cloud-based database that is provided by VDOT Central Office and is accessible in the field using mobile devices.

While the ACE maintains responsibilities to complete the C-107 Part II form, the NPDES Coordinator's inspection can be used by the ACE to satisfy the C-107 Part II form provided it is within the scope and timeframe as required by the C-107 Part II form.

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## 5.0 PROJECT CLOSE-OUT AND ACCEPTANCE

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Requirements for BMP installation and acceptance have been defined in the latest version of IIM-LD-195. In addition, the NPDES Coordinator or their designee will evaluate adherence to these BMP installation and acceptance requirements. Failure to adhere to these requirements shall initiate enforcement efforts as specified in Section 7.0.

The NPDES Coordinator or their designee will help facilitate BMP acceptance at project close-out which allows the ACE or designee to certify the BMP is constructed per plans.

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## 6.0 REGULATORY (DEQ/EPA) COORDINATION AND REPORTING

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### 6.1 Regulatory Inspections

During any oversight inspections of VDOT land-disturbing activities by DEQ, the United State Environmental Protection Agency (EPA), or other regulatory agencies, compliance with the CGP, VDOT's MS4 permit, and VDOT's Annual ESC and SWM Standards and Specifications (and all parts thereof) will be expected.

VDOT CO will maintain and share a distribution list of ACEs and NPDES Coordinators with DEQ staff for their use and reference. The intent for sharing this with DEQ staff is to have all DEQ inspection reports sent to the ACE or designee and the NPDES Coordinator who will in turn provide to the DEM, where findings could affect the ECAP. If ECAP is associated in the DEQ report, it will be the responsibility of the NPDES Coordinator to communicate with and incorporate input from the ECI within the DEQ established timeframe. It will be the responsibility of the Contractor's Project Manager to implement the necessary corrective action to address all deficiencies noted in the DEQ report.

Failure to address any deficiencies to the satisfaction of DEQ within the allowable timeframe shall initiate enforcement efforts as specified in Section 7.0.

## 6.2 Regulatory Communication and Reporting

All regulatory correspondence for which VDOT is the permittee under the CGP, VDOT will be responsible for communication with DEQ for CGP related matters. External entities including contractors shall not contact or report to DEQ without prior consent and approval from VDOT.

For any deficiency identified by DEQ that requires corrective action, the contractor shall provide the CM and the NPDES Coordinator a corrective action plan to address all deficiencies identified. The plan shall be provided within 3 business days of receiving the DEQ report, which will allow VDOT sufficient time to review, comment, and request any additional information, while allowing the contractor sufficient time to perform the corrective action.

Expected amounts of sediment discharge that pass through an ESC measure are not required to be reported to DEQ. For example, turbid water and sediment is expected to be discharged from a 60%-efficient sediment basin. However, there are instances on VDOT CGP-permitted projects where reporting to DEQ is appropriate or necessary. The NPDES Coordinator, in consultation with the State Location & Design (L&D) Engineer, the District Project Development Engineer (DPDE), or the District Construction Engineer (DCE), will determine if self-reporting to DEQ is required unless the contractor is obligated to report a spill or dumping occurrence in accordance with [Section 107.16\(b\)1 of the 2016 VDOT Road and Bridge Specifications](#). In cases where the contractor is obligated to report, the contractor shall coordinate their reporting with the VDOT CM and the NPDES Coordinator to minimize duplicative efforts.

There will be two general types of pollutant discharges that result in notification or reporting to DEQ:

Type 1: Is typically confined to a discharge of sediment and the cause of the discharge was something generally beyond the control of the project resulting in a downstream/down-property impact. Examples are:

- a. The project is implementing a compliant ESC plan with proper implementation, maintenance, and documentation efforts, but something beyond the project's control like a large storm event causes an excessive amount of sediment loss that is likely to cause a downstream impact (such as sediment flowing over or around a properly implemented control) or that is likely to cause down-property impacts (such as a discharge to a public water supply).
- b. Notification to DEQ shall closely follow the elements of Part III.G of the CGP including 24-hour notification as well as a 5-day written report with the elements as identified in Part III.G The 5-day written report can be provided within 24 hours if all elements of the report are included. Notification to DEQ is considered to be for awareness purposes only, and is not considered a violation of the CGP. After initial notification to DEQ (by email

for tracking purposes), no additional reporting is expected unless follow-up is requested by DEQ.

Type 2: This type of discharge can include sediment, chemicals, waste products, or other pollutants that are improperly managed, stored, or disposed that causes a pollutant to reach or has the potential to reach a waterway. This type is different from a Type 1 in that the discharge was due to an operational deficiency of the project. This is considered a possible violation of the permit, and will follow the noncompliance reporting requirements of Part III.G of the CGP. In addition to a 24-hour notification, the reporting includes submittal of a follow-up written report to DEQ within five days of discovery. The written report, to be developed by the ACE or project team, should include a description of the discharge and steps taken to reduce future occurrences.

a. In the case of an oil or chemical discharge, the contractor is obligated to report a spill or dumping occurrence in accordance with Section 107.16(b)1 of the 2016 Road and Bridge Specifications. Examples include:

1. Wastewater from washout of concrete;
2. Wastewater from the washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
4. Oils, toxic substances, or hazardous substances from spills or other releases;
5. Soaps, solvents, or detergents used in equipment and vehicle washing; or
6. Other discharges that causes a fish kill.

The report should be developed in coordination with the District NPDES Coordinator.

b. In the case of a sediment discharge, this type is different from a Type 1 sediment discharge in that the discharge was due to a deficiency in ESC measures that were missing or improperly installed/maintained. This deficiency should be substantiated through project documentation such as previous inspection records by the project and/or the NPDES Coordinator or their designee. The report shall be developed in coordination with the District NPDES Coordinator.

## 7.0 COMMUNICATION AND ENFORCEMENT EFFORTS

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Every evaluation that is performed by the NPDES Coordinator or designee will receive a color-coded compliance description. In general, the color classification (see last page of IIM) signifies where the ownership for ESC and SWM compliance lies and who grades the project's attention to project-deficiencies. The color classification will dictate the level of internal and external communication that is required as well as enforcement efforts that may be necessary. Each color category is described in the following table. The actual or perceived attention to compliance will factor into the color coding change and is based on the NPDES Coordinator's best professional judgment. For example, a history of non-compliance by the project team, including the contractor, can change the color classification of the project.

The color classification will be recorded within the NPDES inspection database. The date assigned to the color classification will be the date at which a rating is communicated to the project team in either verbal or written form. This is necessary in the event the NPDES Coordinator requests additional information before assigning a color and/or seeks input from management.

ACE's and DCE's still have the authority to shut down a project as they normally would at their own discretion as they have in the past without a coordinated consensus as described in this IIM.

It will be the responsibility of the NPDES Coordinator and the management team engaged for each color classification to assess when a return to "green" classification is appropriate. While a project may 'jump' a color classification category with increasing engagement (e.g. green to orange), a project decreases incrementally, or one color at time, with decreasing engagement (e.g. orange to yellow). Changes to project color classifications may be changed as project conditions dictate to reflect current conditions with the process outlined herein.



	<b>GREEN</b> <i>Proactive, Project Team Engaged</i>	<b>YELLOW</b> <i>District Leadership Engaged</i>	<b>ORANGE</b> <i>VDOT Central Office Divisional Leadership Engaged</i>	<b>RED</b> <i>VDOT Executive Leadership Engaged</i>
General discussion on what could prompt the color classification	The project is implementing a compliant SWPPP by self-identifying and self-correcting deficiencies (project-identified deficiencies)  <b>And</b> The project is correcting deficiencies noted by the NPDES Coordinator (Coordinator-identified deficiencies) or regulatory agency within allowable timeframes.	The project has failed to address any deficiencies to the satisfaction of a regulatory agency within the allowable timeframe  <b>Or</b> The project has repeatedly failed to identify similar deficiencies that were previously documented by the project and/or the NPDES Coordinator (*See notes below)  <b>Or</b> The project has failed to implement the SWPPP such as failure to install silt fence or a sediment trap as required by the ESC Plan (*See notes below)  <b>Or</b> The project has failed to perform the necessary corrective action that was identified by the project on the C-107 reports and/or by the NPDES Coordinator (**See notes below)  <b>Or</b> The project has a Type 1 self-reporting incident. <i>The color classification is for purposes of ensuring VDOT management is aware that DEQ has been notified. The color classification is not an indication of a deficiency.</i>	A previous yellow classification has not been addressed  <b>Or</b> The project has repeatedly failed to address similar yellow incidents persist  <b>Or</b> The project has a Type 2 self-reporting incident.  <b>Or</b> The project has received a Warning Letter that has been issued by a regulatory agency  <b>Or</b> Egregious non-compliant findings are documented. Examples include land disturbance without a construction general permit when it is required or when a support facility is being used outside the limits of disturbance without the necessary permit coverage or permit modifications taking place.	The project has received a Notice of Violation that has been issued by a regulatory agency  <b>Or</b> Systematic non-compliant findings that necessitate additional intervention from executive leadership
Discussion on the level of communication with management team that may be warranted	Routine correspondence between project team, NPDES Coordinator, and designee	The NPDES Coordinator will notify the CM, the ACE, DCE, and District Project Development Engineer (DPDE) of the project's status. The DCE and DPDE will communicate to the District Administrator following District protocols.  The NPDES Coordinator, in consultation with the State Location & Design (L&D) Engineer, the District Project Development Engineer, or the District Construction Engineer (DCE), will determine if self-reporting to DEQ is required under the CGP.	The NPDES Coordinator will notify the same individuals as identified in yellow in addition to the State L&D and Construction Engineers.  The NPDES Coordinator, in consultation with the State Location & Design (L&D) Engineer, the District Project Development Engineer, or the District Construction Engineer (DCE), will determine if self-reporting to DEQ is required under the CGP.	The NPDES Coordinator will notify the same individuals as identified in yellow in addition to the State L&D and Construction Engineers.  The NPDES Coordinator, in consultation with the State Location & Design (L&D) Engineer, the District Project Development Engineer, or the District Construction Engineer (DCE), will determine if self-reporting to DEQ is required under the CGP.
Discussion on the level of enforcement that may be warranted	N/A	The NPDES Coordinator will evaluate the need for increased oversight inspections.	The District Administrator will consider possible shut down (partial or full) of the project to address the deficiencies: either grading activities or all project activities in consultation with the State L&D and Construction Engineers and the Environmental Division Director.	The project will be shut down in some capacity: either grading activities or all project activities as determined by the District Administrator in consultation with the State L&D and Construction Engineers and Environmental Division Director.

The following instances or deficiencies, in general, can prompt an escalation of color classification changes.

- Failure to install stormwater BMPs or erosion and sediment controls per plan(s)\*
- Failure to conduct required inspections including missed inspections\*
- Incomplete or improper inspections\*
- Incomplete SWPPP or not available for review\*
- Stormwater BMPs or erosion and sediment controls improperly installed or maintained or functioning\*
- Operational deficiencies\*\*
- No state permit registration and is operating without a required CGP

The actual or perceived attention to compliance will factor into the color coding change and is based on the NPDES Coordinator's best professional judgment. For example, a history of non-compliance by the project team, including the contractor, can change the color classification of the project.

- Contractor has not actively sought to identify and correct potential deficiencies as indicate by field conditions (including transition of phasing)
- Contractor has been unresponsive
- Conditions in the field are a clear violation of permit conditions