

STORMWATER PROGRAM ADVISORY

SWPA 12-02

Date: April 26, 2012

SUBJECT: ELIMINATION OF LESS THAN ONE ACRE OF LAND DISTURANCE
PER OUTFALL EXEMPTION

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Actions of the 2012 Virginia General Assembly have eliminated the exemption in the Virginia Stormwater Management Program (VSMP) Law for linear development activities/projects with less than one acre of land disturbance per outfall or watershed and where there will be insignificant increases in peak flow rates and where there are no existing or anticipated flooding or erosion problems downstream of the discharge point. This office has been working with the Department of Conservation and Recreation (DCR) to develop a Memorandum of Understanding (MOU) between our Agencies in order to provide as much flexibility as allowed by law in assisting VDOT to comply with this change on its land disturbing activities. The following guidance is a result of those negotiations.

Effective July 1, 2012, all proposed VDOT activities/projects (except routine maintenance activities) that disturb a total of one acre or more (2,500 square feet or greater in a designated CBPA) will require coverage under the VSMP Construction Permit and will require compliance with the applicable water quality requirements contained in the VSMP Regulations. The need to acquire VSMP Construction Permit coverage and/or address water quality requirements (pollutant load reductions) for projects/activities previously utilizing the “less than one acre of land disturbance per outfall” exemption will not apply to roadway projects/activities where the construction advertisement has begun (i.e., Pre Advertisement Conference held for Design/Bid/Build projects or RFP issued for Design/Build projects) prior to July 1, 2012 or to construction contracts in existence or land disturbance activities in operation prior to July 1, 2012.

Effective the date of this SWPA, any applicable land disturbance activity/project or outfall that had previously been exempted from VSMP Construction Permit coverage and/or water quality requirements using the “less than one acre of land disturbance per outfall” exemption shall be re-evaluated to determine the need for coverage under the VSMP Construction Permit and/or the need to provide for any water quality requirements in accordance with the guidance in IIM-LD-195.7 as amended by SWPA 12-01 dated April 5, 2012.

If the re-evaluation process determines the need for VSMP Construction Permit coverage, the process outlined in the latest IIM-LD-242 for obtaining such shall be followed.

If the re-evaluation process determines the need to provide for water quality requirements, such shall be accomplished in the following manner:

1. Water quality requirements shall be achieved within the proposed land disturbing activity/project limits provided such can be accomplished without the acquisition of additional right of way or easement.
2. Any water quality requirements not achieved within the land disturbing activity/project limits may be achieved in one or more of the following manners provided such can be accomplished without the acquisition of additional right of way or easement:
 - a. Water quality requirements may be achieved on other VDOT properties within the same or upstream Hydrologic Unit Code (HUC 6) that the land disturbing activity directly discharges to or within the same watershed as determined by the Department of Conservation and Recreation (DCR).
 - b. Water quality requirements may be achieved through participation in a comprehensive stormwater management plan adopted pursuant to section 4VAC50-60-92 of the VSMP Regulations effective September 13, 2011 for the local watershed within which the land disturbing activity is located.
 - c. Water quality requirements may be achieved through participation in a locality pollutant loading pro rata share program established pursuant to § 15.2-2243 of the Code of Virginia or similar local funding mechanism.
 - d. Water quality requirements may be achieved through participation in the nonpoint nutrient credit program established pursuant to § 10.1-603.8:1 of the Code of Virginia.
 - e. Water quality requirements may be achieved through any other offsite options approved by DCR.

For any applicable land disturbing activity/project where the total water quality requirements (pollutant load reductions) cannot be achieved utilizing the provisions of 1 and 2 of this document, the activity/project may be granted an exception by DCR, in accordance with the provisions of section 4VAC 50-60-122 of the VSMP Regulations effective September 13, 2011, for that portion of the water quality requirements determined to be unachievable provided:

- a. VDOT submits a written request to DCR requesting the exception. The request shall state the need for the exception and document that the exception is the minimum necessary to afford relief; and
- b. Any approved exception is documented in the Stormwater Pollution Prevention Plan for the project/activity (i.e., date approved, by whom and for what is included in the appropriate SWPPP General Information Sheet notes); and
- c. Any approved exception is noted (i.e., date approved, by whom and for what) and included with other registration information when applying for coverage for the proposed land disturbing activity/project under the VSMP Construction Permit.

The guidance contained in this Stormwater Program Advisory shall also apply to any future VDOT linear development projects/activities (except routine maintenance activities) with less than one acre of land disturbance per outfall or watershed and where there will be insignificant increases in peak flow rates and where there are no existing or anticipated flooding or erosion problems downstream of the discharge point.

The guidance contained in this Stormwater Program Advisory shall be followed until such time it can be incorporated into Instructional and Informational Memorandum IIM-LD-195 and 242.