

SECTION 107—LEGAL RESPONSIBILITIES

107.01 - Laws To Be Observed

The Contractor shall keep fully informed of federal, state, and local laws, bylaws, ordinances, orders, decrees, and regulations of governing bodies, courts, and agencies having any jurisdiction or authority that affects those engaged or employed on the work, the conduct of the work, or the execution of any documents in connection with the work. The Contractor shall observe and comply with such laws, ordinances, regulations, orders, or decrees and shall indemnify and hold harmless the Commonwealth and its agents, officers, or employees against any claim for liability arising from or based on their violation, whether by himself, his agents, his employees, or subcontractors. The Contractor shall execute and file the documents, statements, and affidavits required under any applicable federal or state law or regulation required by or affecting his bid or Contract or prosecution of the work there under. The Contractor shall permit examination of any records made subject to such examination by any federal or state law or by regulations promulgated there under by any state or federal agency charged with enforcement of such law.

In accordance with the *Code of Virginia* (Virginia Public Procurement Act), the Contractor shall make payment to all subcontractors, as defined in the Code, within seven days after receipt of payment from the Department; or shall notify the Department and subcontractor in writing of his intention to withhold all or a part of the amount due along with the reason for nonpayment.

In the event payment is not made as noted, the Contractor shall pay interest at the rate of 1 percent per month, unless otherwise provided in the Contract, to the subcontractor on all amounts that remain unpaid after seven days except for the amounts withheld as provided in this Section.

These same requirements shall be included in each subcontract and shall be applicable to each lower-tier subcontractor.

107.02—Permits, Certificates, and Licenses.

General

The Contractor shall conform to the permit conditions as shown in the contract documents. Construction methods shall conform to the stipulations of the permit and/or certification conditions. The Contractor shall assume all obligations and costs incurred as a result of complying with the terms and conditions of the permits and certificates.

If any of the permits shown herein are applicable to the project, the contract documents will indicate such and the applicable permit conditions will be included in the contract documents.

- (a) **Department of the Army, Corps of Engineers Nationwide Permits:** A nationwide permit is issued to the Department by the U.S. Army Corps of Engineers to place fill or dredge material in waters of the United States including wetlands.
- (b) **The State Program General Permit for Linear Transportation Projects (SPGP- 01 2A & B):** The SPGP-01 2A & B is a permit issued to the Department by the U.S. Army Corps of Engineers to proceed with linear transportation projects involving work, structures and filling both temporary and permanent, in waters of the United States including wetlands.
- (c) **Letter of Permission (LOP-1):** The LOP-1 is a regional permit issued to the Department by the U.S. Army Corps of Engineers to proceed with roadway projects involving work, structures and filling both temporary and permanent, in waters of the United States including wetlands.
- (d) **Virginia Marine Resources Commission – Virginia General Permit (VGP-1):** A VGP-1 permit is issued to the Department by the Virginia Marine Resources Commission and is required on projects that cross in, on or over state-owned land which is submerged below low water (channelward of the mean low water line), in tidal areas including tidal wetlands, or below ordinary high water anywhere in the Commonwealth of Virginia.
- (e) **Virginia Water Protection Permit (VWPP):** The VWPP is issued to the Department by the Virginia Department of Environmental Quality, Water Division and is required for activities that result in a discharge to surface waters and wetlands. The VWPP is issued as an individual or general permit.
- (f) **Virginia Stormwater Management Program General/Stormwater Management Permit (VSMP):** The VSMP permit is issued by the Virginia Department of Conservation and Recreation and is required for all construction activities in accordance with Section 107.16. The general VSMP permit covers the discharges from the site during construction. The Department will be

responsible for acquiring the VSMP permit from the Virginia Department of Conservation and Recreation for the project.

- (g) **Coastal Zone Management (CZM) Consistency Concurrence:** This clearance is issued to the Department by the Virginia Department of Environmental Quality for projects in navigable waters requiring a U.S. Coast Guard bridge permit.
- (h) **Tennessee Valley Authority (TVA) Permit:** The TVA Section 26a permit is issued to the Department by the Tennessee Valley Authority and is required for construction activities in or along the Tennessee River or its tributaries.
- (i) **U.S. Coast Guard Bridge Permit:** This permit is required for bridge projects over navigable waters. The Department is responsible for acquiring these permits.
- (j) **Other Permits, Certificates and Licenses:** Except as otherwise specified herein, the Contractor shall procure all necessary permits, certificates or licenses that have not been obtained by the Department. The Contractor shall pay all charges, fees, and taxes and shall comply with all conditions of the permits, certificates or licenses.

Construction or excavation material shall not be stored within the waterway or wetlands. Cofferdams, stream channel retaining structures and all necessary dikes shall be constructed of non-erodible materials or if specified in the permit(s), faced with coarse non-erodible materials. If faced with non-erodible material, filter cloth shall be placed between the granular fill and riprap in accordance with Section 245, 204, 303.03 and 414. Temporary structures shall be removed from the waterway with minimal disturbance of the streambed. Discharge of dredge or fill material shall be placed in accordance with the best management practice, project permits and all applicable laws and regulations. Dredged or fill material shall be removed to an approved, contained, upland location in accordance with Section 106.04. The disposal area will be of sufficient size and capacity to properly contain the dredge material, to allow for adequate dewatering and settling of sediment, and to prevent overtopping. The disposal area shall be stabilized prior to placement of dredge material.

The Contractor activities shall not substantially disrupt the movement of those species of aquatic life indigenous to the water body including those species that normally migrate through the area. The Contractor to the maximum extent practicable shall not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water. The Contractor shall avoid and minimize all temporary disturbances to surface waters during construction. The Contractor shall remove any temporary fill in its entirety and the affected areas returned to their preexisting elevation conditions within 30 days of completing work, which shall include re-establishing pre-construction contours, and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The Contractor shall perform all work activities during low-flow conditions and shall isolate the construction area via the implementation of nonerodible cofferdams, sheetpiling, stream diversions or similar structures.

The Contractor shall accomplish all construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project in a manner that minimizes construction or waste materials from entering surface waters. Access roads and associated bridges or culverts shall be constructed to minimize the adverse effects on surface waters. Access roads constructed above preconstruction contours and elevations in surface waters must be bridged or culverted to maintain surface flows. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area shall be returned to its original contours and restored within 30 days of completing work in the area.

The Contractor shall prepare and implement an erosion and sediment control plan in compliance with the Erosion and Sediment Control Law, the Erosion and Sediment Control Regulations, and the annual erosion and sediment control standards and specifications approved by the Department of Conservation and Recreation. The Contractor shall stockpile excavated material in a manner that prevents reentry into the stream, restores original streambed and streambank contours, revegetates barren areas, and implements strict erosion and sediment control measures throughout the project period as described in the Virginia Department of Transportation Annual Program approved by the Virginia Department of Conservation and Recreation.

The Contractor shall comply with the Stormwater Management Act, the Stormwater Management Regulations, and the annual storm water management standards and specifications approved by the Department of Conservation and Recreation. The Contractor shall provide fill material that is clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and

regulations. The Contractor shall comply with all applicable FEMA-approved state or local floodplain management requirements.

The Contractor shall adhere to any time-of-year restriction conditions as required by state and federal permitting agencies. No in-stream work shall be permitted during in-stream time-of-year restriction.

The Contractor shall prohibit wet or uncured concrete from entry into flowing surface waters. The Contractor shall not dispose of excess or waste concrete in surface waters and prevent wash water from discharging into surface waters. The Contractor shall employ measures to prevent spills of fuels or lubricants into state waters.

The Contractor shall not violate the water quality standards as a result of the construction activities. The Contractor shall not alter the physical, chemical, or biological properties of surface waters and wetlands or make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses.

The Contractor shall not proceed with work covered by a permit until the work is released in writing by the Engineer.

If the Department has not released work covered by a U.S. Army Corps of Engineers permit and the Contractor has completed all other work within the limits of the project, the Contractor shall so advise the Engineer in writing. Upon receipt of the notification, the Engineer will evaluate the status of the project and advise the Contractor within 45 days of the portion of the project that is acceptable under Section 108.09. If the Engineer determines that all of the work except that encumbered by the permit application is acceptable under the requirements of Section 108.09, the Contractor will be notified accordingly. The Department or the Contractor may then elect to continue or terminate the remaining portion of the Contract.

The party electing to terminate the Contract shall so advise the other party in writing after the 45-day period. The terms of contract termination will be in accordance with the requirements of Section 108.08. No compensation will be made for delays encountered or for work not performed except for an extension of time as determined in accordance with the requirements of Section 108.04.

The Contractor shall submit a request to the Engineer in writing if he wants to deviate from the plans or change his proposed method(s) regarding any proposed work located in waterways or wetlands. Such work may require additional environmental permits. If the Engineer determines that the activities are necessary for completion of the work, the Contractor shall furnish the Engineer all necessary information pertaining to the activity. The Contractor shall be responsible for designing and supplying all sketches and notes necessary to acquire any permit modification required for changes in the proposed construction methods. Such information shall be furnished at least 180 days prior to the date the proposed changed activity is to begin. The District Environmental Manager will apply for the necessary permits modifications to the permits obtained by the Department. The Contractor shall not begin the activity until directed to do so by the Engineer. Additional compensation will not be made for delay to the work or change in the Contractor's proposed methods that result from jurisdiction agency review or disapproval of Contractor's proposed methods.

If additional permits are required to perform dredging for flotation of construction equipment or for other permanent or temporary work as indicated in the Contractor's accepted plan of operation, but have not been obtained by the Department, the Contractor shall furnish the Engineer, at least 75 days prior to the proposed activity, all necessary information pertaining to the proposed activity in order for the Department to apply for the permits. The Contractor shall not begin the proposed activity until the additional permits have been secured and the Engineer has advised the Contractor that the proposed activity may proceed.

The Contractor shall permit representatives of state and federal environmental regulatory agencies to make inspections at any time in order to insure that the activity being performed under authority of the permit(s) is in accordance with the terms and conditions prescribed herein.

The Department will secure necessary rights of way and easements in advance of construction. The Department will not be responsible for any delay in the acquisition of a right of way other than consideration of an extension of time. The Department will provide notification of known delays in the

107.06 - Personal Liability of Public Officials

In carrying out any of the provisions of these Specifications or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Board, Commissioner, Engineer, or their authorized representatives, either personally or as officials of the Commonwealth. In all such matters, they act solely as agents and representatives of the Commonwealth.

107.07 - No Waiver of Legal Rights

The Commonwealth shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after final acceptance of the work and payment therefor from showing (1) the true amount and character of the work performed and materials furnished by the Contractor, (2) that any such measurement, estimate, or certificate is untrue or incorrectly made, or (3) that the work or materials do not comply with the provisions of the Contract. The Commonwealth shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate, and payment in accordance therewith, from recovering from the Contractor or his surety, or both, such damage as it may sustain by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the Department or any representative of the Department nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Department shall operate as a waiver of any portion of the Contract or of any power herein reserved or of any right to damages. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

107.08 - Protecting and Restoring Property and Landscape

The Contractor shall preserve property and improvements along the boundary lines of and adjacent to the work unless their removal or destruction is specified in the Contract Documents. The Contractor shall use suitable precautions to prevent damage to such property.

When the Contractor finds it necessary to enter on private property, beyond the limits of the construction easement shown on the plans, he shall secure from the owner or lessee a written permit for such entry prior to moving thereon. An executed copy of this permit shall be furnished to the Engineer.

The Contractor shall be responsible for any damage or injury to property during the prosecution of the work resulting from any act, omission, neglect, or misconduct in the Contractor's method of executing the work or attributable to defective work or materials. This responsibility shall not be released until final acceptance of the project and a written release from the owner or lessee of the property is obtained.

When direct or indirect damage is done to property by or on account of any act, omission, neglect, or misconduct in the Contractor's method of executing the work or in consequence of the nonexecution thereof on the part of the Contractor, the Contractor shall restore such property to a condition similar or equal to that existing before such damage was done by repairing, rebuilding, or restoring, as may be directed by the Engineer, or making settlement with the property owner. The Contractor shall secure from the owner a release from any claim against the Department without additional compensation therefor. A copy of this release shall be furnished the Engineer.

107.12 - Responsibility for Damage Claims

The Contractor shall indemnify and save harmless the Commonwealth, the Board, and its officers, agents, and employees, and the city, town, county, or other municipality in which the work is performed and their officers, agents, and employees, from suits, actions, or claims brought for or on account of any injuries or damages received or sustained by any person, persons, or property resulting from or arising out of the work performed by the Contractor, or by or in consequence of any neglect in safeguarding the work, through the use of unacceptable materials in the construction or the improvement, or resulting from any act or omission, neglect, or misconduct of the Contractor; or by or on account of any claims or amounts recovered by infringement of any patent, trademark, or copyright. The Commissioner may retain as much of the monies due the Contractor under and by virtue of his Contract as the Commonwealth considers necessary to ensure that a fund will be available to pay a settlement or judgment of such suits, actions, or claims. If no monies are due, the Contractor's surety will be held accountable until all such claims and actions have been settled and suitable evidence to that effect has been furnished the Board. Any extension of time granted the Contractor, in which to complete the Contract shall not relieve him or his surety of this responsibility.

It is not intended by any of the provisions of any part of the Contract to establish the public or any member thereof as a third party beneficiary hereunder, or to authorize anyone not a party to the Contract to enter into a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

The Contractor shall comply with all requirements, conditions, and terms of the Contract, including but not limited to, environmental permits, commitments identified in the Contract, and applicable environmental laws and regulations. The Contractor shall not cause damage, except as allowed under the terms of the Contract, or as allowed under applicable permits or laws, to the air, water, or other natural resources, or cause damage to adjacent or off-site property.

When any act, omission, or other action of the Contractor occurs, that violates the requirements, conditions or terms of the Contract, and affects the health, safety, or welfare of the public or natural resources, the Engineer will direct the Contractor to take prompt action to repair, replace, or restore the damage or injury within a time frame established by the Engineer, and to comply with the requirements of Section 107.01. If the Contractor fails to make such repair, replacement, or restoration within the established time frame, the Engineer will have the damage or injury repaired, replaced, or restored and will deduct the cost of such repair, replacement, or restoration from monies due the Contractor.

If the Department determines by its own investigation that injury or damage has occurred as a result of work performed or neglected by the Contractor, the Department may suspend the Contractor from future bidding for a period of time commensurate with the severity of the injury or damage as determined by the Chief Engineer. Injury is defined as harm or impairment to persons or natural resources. Damage is defined as the loss or harm resulting from injury to person or property. In addition, the Department may recover either (i) the loss or damage that the Department suffers as a result of such act, omission or other action or (ii) any liquidated damages established in such contract plus (iii) reasonable attorney's fees, expert witness fees, staff salaries, incidental and equipment charges associated with any investigation.

Upon a finding against the Contractor by the Department, the Contractor shall be responsible for and shall reimburse the Department for all expenses associated with the injury or damage. Expenses include, but are not limited to: costs for investigating the act, omission or other action, financial penalties incurred by the Department as a result of the injury or damage, salary and expenses incurred by employees or consultants of the Commonwealth, road user expenses as determined by the Department due to damage or loss of use of the project area, attorney fees, and expert witness fees. The Department may deduct the reimbursement of expenses from any payments owed the Contractor.

Upon determination by the Department of willful, flagrant or repetitious acts, omissions or other actions related to injury or damage to person or property, the Contractor shall be responsible for and shall reimburse the Department for all expenses associated with the investigation as shown herein, and the Department will impose other appropriate actions, as permitted by law, policy and Specifications, such as but not limited to, suspension of work, termination for cause, removal from the bidders' list.

Once a determination is made that injury or damage has resulted in an action against the Contractor, the Contractor shall have the right of appeal in accordance with the provisions and requirements of Section 105.19.

Should any cost remain in dispute after appeal, resolution shall be handled in accordance with the provisions and requirements of Section 105.19

107.16 - Environmental Stipulations

By signing the bid, the bidder shall have stipulated (1) that any facility to be used in the performance of the Contract (unless the Contract is exempt under the Clean Air Act as amended [42 U.S.C. 1857, et seq., as amended by P.L. 91-604], the Federal Water Pollution Control Act as amended [33 U.S.C. 1251 et seq. as amended by P.L. 92-500], and Executive Order 11738 and regulations in implementation thereof [40 C.F.R., Part 15]) is not listed on the EPA's List of Violating Facilities pursuant to 40 C.F.R. 15.20; and (2) that the Department will be promptly notified prior to the award of the Contract if the bidder receives any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be used for the Contract is under consideration to be listed on the EPA's List of Violating Facilities.

No separate payment will be made for the work or precautions described herein except where provided for as a specific item in the Contract or except where provision has been made for such payment in these Specifications.

Reference is made in various subsections of this section to Tidewater, Virginia. For the purposes of identifying the affected regions assigned to this designation and the requirements therein Tidewater, Virginia is defined as the Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland and York and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach and Williamsburg.

- (a) **Erosion and Siltation:** The Contractor shall exercise every reasonable precaution, including temporary and permanent soil stabilization measures, throughout the duration of the project to control erosion and prevent siltation of adjacent lands, rivers, streams, wetlands, lakes, and

impoundments. Soil stabilization and/or erosion control measures shall be applied to erodible soil or ground materials exposed by any activity associated with construction, including clearing, grubbing, and grading, but not limited to local or on-site sources of materials, stockpiles, disposal areas and haul roads.

The Contractor shall comply with the requirements of Sections 301.02 and 303.03. Should the Contractor as a result of negligence or noncompliance leave an area exposed more than 15 days, the cost of temporary soil stabilization in accordance with the provisions of Section 303 shall be at the Contractor's expense. If the delay in stabilizing an exposed area of land is due to circumstances beyond the Contractor's control, the Department will be responsible for the expense.

Temporary measures shall be coordinated with the work to ensure effective and continuous erosion and sediment control. Permanent erosion control measures and drainage facilities shall be installed as the work progresses.

For projects that disturb 10,000 square feet or greater of land or 2,500 square feet or greater in Tidewater, Virginia, the Contractor shall have within the limits of the project during land disturbance activities, an employee certified by the Department in Erosion and Sediment control who shall inspect erosion and siltation control devices and measures for proper installation and operation immediately after each rainfall, at least daily during periods of prolonged rainfall, and weekly when no rainfall event occurs and promptly report their findings to the Inspector. Failure of the Contractor to maintain a certified employee within the limits of the project will result in the Engineer suspending work related to any land disturbing activity until such time as a certified employee is present on the project. Failure on the part of the Contractor to maintain appropriate erosion and siltation control devices in a functioning condition may result in the Engineer notifying the Contractor in writing of specific deficiencies. Deficiencies shall be corrected immediately. If the Contractor fails to correct or take appropriate actions to correct the specified deficiencies within 24 hours after receipt of such notification, the Department may do one or more of the following: require the Contractor to suspend work in other areas and concentrate efforts towards correcting the specified deficiencies, withhold payment of monthly progress estimates, or proceed to correct the specified deficiencies and deduct the entire cost of such work from monies due the Contractor. Failure on the part of the Contractor to maintain a Department certified erosion and sediment control employee within the project limits when land disturbance activities are being performed will result in the Engineer suspending work related to any land disturbance activity until such time as the Contractor is in compliance with this requirement.

(b) Pollution:

- 1 **Water:** The Contractor shall exercise every reasonable precaution throughout the duration of the project to prevent pollution of rivers, streams, and impoundments. Pollutants such as, but not limited to, chemicals, fuels, lubricants, bitumens, raw sewage, paints, sedimentation, and other harmful material shall not be discharged into or alongside rivers, streams, or impoundments or into channels leading to them. The Contractor shall provide the Engineer a contingency plan for reporting and immediate actions to be taken in the event of a dump, discharge, or spill within eight hours after he has mobilized to the project site.

Construction discharge water shall be filtered to remove deleterious materials prior to discharge into state waters. Filtering shall be accomplished by the use of a standard dewatering basin or a dewatering bag. Dewatering bags shall conform to the requirements of Section 245. During specified spawning seasons, discharges and construction activities in spawning areas of state waters shall be restricted so as not to disturb or inhibit aquatic species that are indigenous to the waters. Neither water nor other effluence shall be discharged onto wetlands or breeding or nesting areas of migratory waterfowl. When used extensively in wetlands, heavy equipment shall be placed on mats. Temporary construction fills and mats in wetlands and flood plains shall be constructed of approved nonerodible materials and shall be removed by the Contractor to natural ground when the Engineer so directs.

If the Contractor dumps, discharges, or spills any oil or chemical that reaches or has the potential to reach a waterway, he shall immediately notify all appropriate jurisdictional state and federal agencies in accordance with the requirements of Section 107.01 and shall take immediate actions to contain, remove, and properly dispose of the oil or chemical.

Excavation material shall be disposed of in approved areas above the mean high water mark shown on the plans in a manner that will prevent the return of solid or suspended materials to

state waters. If the mark is not shown on the plans, the mean high water mark shall be considered the elevation of the top of stream banks.

Constructing new bridge(s) and dismantling and removing existing bridge(s) shall be accomplished in a manner that will prevent the dumping or discharge of construction or disposable materials into rivers, streams, or impoundments.

Construction operations in rivers, streams, or impoundments shall be restricted to those areas where identified on the plans and to those that must be entered for the construction of structures. Rivers, streams, and impoundments shall be cleared of falsework, piling, debris, or other obstructions placed therein or caused by construction operations. Stabilization of the streambed and banks shall occur immediately upon completion of work if work is suspended for more than 15 days.

The Contractor shall prevent stream constriction that would reduce stream flows below the minimum, as defined by the State Water Control Board, during construction operations.

If it is necessary to relocate an existing stream or drainage facility temporarily to facilitate construction, the Contractor shall design and provide temporary channels or culverts of adequate size to carry the normal flow of the stream or drainage facility. The Contractor shall submit a temporary relocation design to the Engineer for review and acceptance in sufficient time to allow for discussion and correction prior to beginning the work the design covers. Costs for the temporary relocation of the stream or drainage facility shall be included in the Contract price for the related pipe or box culvert, unless specifically provided for under another Pay Item. Stabilization of the streambed and banks shall occur immediately upon completion of, or during the work or if the work is suspended for more than 15 days.

Temporary bridges or other minimally invasive structures shall be used wherever the Contractor finds it necessary to cross a stream more than twice in a 6 month period, unless otherwise authorized by water quality permits issued by the U. S. Army Corps of Engineers, Virginia Marine Resources Commission or the Virginia Department of Environmental Quality for the Contract.

- 2 **Air:** The Contractor shall comply with the provisions of Section 107.01 and the State Air Pollution Control Law and Rules of the State Air Pollution Control Board, including notifications required therein.

Burning shall be performed in accordance with all applicable local laws and ordinances and under the constant surveillance of watchpersons. Care shall be taken so that the burning of materials does not destroy or damage property or cause excessive air pollution. The Contractor shall not burn rubber tires, asphalt, used crankcase oil, or other materials that produce dense smoke. Burning shall not be initiated when atmospheric conditions are such that smoke will create a hazard to the motoring public or airport operations. Provisions shall be made for flagging vehicular traffic if visibility is obstructed or impaired by smoke. At no time shall a fire be left unattended.

Asphalt mixing plants shall be designed, equipped, and operated so that the amount and quality of air pollutants emitted will conform to the rules of the State Air Pollution Control Board.

Emission standards for asbestos incorporated in the EPA's National Emission Standards for Hazardous Air Pollutants apply to the demolition or renovation of any institutional, commercial, or industrial building, structure, facility, installation, or portion thereof that contains friable asbestos or where the Contractor's methods for such actions will produce friable asbestos.

- 3 **Noise:** The Contractor's operations shall be performed so that exterior noise levels measured during a noise-sensitive activity shall not exceed 80 decibels. Such noise level measurements shall be taken at a point on the perimeter of the construction limit that is closest to the adjoining property on which a noise sensitive activity is occurring. A *noise-sensitive activity* is any activity for which lowered noise levels are essential if the activity is to serve its intended purpose and not present an unreasonable public nuisance. Such activities include, but are not limited to, those associated with residences, hospitals, nursing homes, churches, schools, libraries, parks, and recreational areas.

The Department may monitor construction-related noise. If construction noise levels exceed

80 decibels during noise sensitive activities, the Contractor shall take corrective action before proceeding with operations. The Contractor shall be responsible for costs associated with the abatement of construction noise and the delay of operations attributable to noncompliance with these requirements.

The Department may prohibit or restrict to certain portions of the project any work that produces objectionable noise between 10 P.M. and 6 A.M. If other hours are established by local ordinance, the local ordinance shall govern.

Equipment shall in no way be altered so as to result in noise levels that are greater than those produced by the original equipment.

When feasible, the Contractor shall establish haul routes that direct his vehicles away from developed areas and ensure that noise from hauling operations is kept to a minimum.

These requirements shall not be applicable if the noise produced by sources other than the Contractor's operation at the point of reception is greater than the noise from the Contractor's operation at the same point.

- (c) **Forests:** The Contractor shall take all reasonable precautions to prevent and suppress forest fires in any area involved in construction operations or occupied by him as a result of such operations. The Contractor shall cooperate with the proper authorities of the state and federal governments in reporting, preventing, and suppressing forest fires. Labor, tools, or equipment furnished by the Contractor upon the order of any forest official issued under authority granted the official by law shall not be considered a part of the Contract. The Contractor shall negotiate with the proper forest official for compensation for such labor, tools, or equipment
- (d) **Archeological, Paleontological, and Rare Mineralogical Findings:** In the event of the discovery of prehistoric ruins, Indian or early settler sites, burial grounds, relics, fossils, meteorites, or other articles of archeological, paleontological, or rare mineralogical interest during the prosecution of work, the Contractor shall act immediately to suspend work at the site of the discovery and notify the Engineer. The Engineer will immediately notify the proper state authority charged with the responsibility of investigating and evaluating such finds. The Contractor shall cooperate and, upon the request of the Engineer, assist in protecting, mapping, and removing the findings. Labor, tools, or equipment furnished by the Contractor for such work will be paid for in accordance with the requirements of Section 104.03. Findings shall become the property of the Commonwealth unless they are located on federal lands, in which event they shall become the property of the U.S. government.

When such findings delay the progress or performance of the work, the Contractor shall notify the Engineer in accordance with the provisions of Sections 108.03 and Section 109.05.

(e) **Storm Water Pollution Prevention Plan**

The Storm Water Pollution Prevention Plan (SWPPP) is comprised of, but not limited to, the Erosion and Sediment Control (ESC) Plan, the Stormwater Management (SWM) Plan and related Specifications and Standards contained within all contract documents and shall be required for all land-disturbing activities that disturb 10,000 square feet or greater, or 2,500 square feet or greater in Tidewater, Virginia.

For land-disturbing activities that disturb 1 acre or greater, or 2500 square feet or greater in an area designated as a Chesapeake Bay Preservation Area, coverage under the Department of Conservation and Recreation's Virginia Stormwater Management Program (VSMP) General Construction Permit DCR-01 is required. Where applicable, the Department will apply for and retain coverage under this permit for the land disturbing activity. The requirements of this permit will be satisfied by the Contractor's compliance with the project's SWPPP terms and conditions.

The Contractor shall be responsible for reading, understanding, and complying with the terms and conditions of the DCR-01 General Permit and the project's SWPPP as follows:

1 **Project Implementation Responsibilities**

The Contractor shall be responsible for the installation, maintenance, inspection, and ensuring the functionality of all erosion and sediment control measures on a daily basis and all other stormwater and pollutant runoff control measures identified within or referenced within the plans, Specifications, permits, and other contract documents.

The Contractor shall take all reasonable steps to prevent or minimize any stormwater or non-stormwater discharge that will have a reasonable likelihood of adversely affecting human

health or public and/or private properties.

2 Certification Requirements

In addition to satisfying the personnel certification requirements contained herein, the Contractor shall certify his activities by completing, signing, and submitting Form C-45 VDOT SWPPP Contractor and Subcontractor Certification Statement to the Engineer at least 7 days prior to commencing any project related land-disturbing activities, both on-site and off-site.

3 Off Site (Outside the Construction Limits) Requirements

The Contractor shall develop erosion and sediment control plan(s) and stormwater pollution prevention plan(s) for submission and acceptance by the Engineer prior to usage of any support facilities, off-site borrow and disposal areas, construction materials or equipment storage areas, and any other areas that may generate a stormwater or non-stormwater discharge directly related to the construction process. Such plans, upon acceptance, shall become a part of and subject to the overall project plan, the VSMP General Construction Permit, and all other contract requirements.

4 Reporting Procedures

a. Inspection Requirements

The Contractor shall be responsible for conducting inspections in accordance with the requirements herein. The Contractor shall document such inspections by completion of Form C-107 (a) and (b), Construction Runoff Control Inspection Form and Continuation Sheet, in strict accordance with the directions contained within the form.

b. Unauthorized Discharge Requirements

The Contractor shall not discharge into state waters sewage, industrial wastes, other wastes or any noxious or deleterious substances nor shall otherwise alter the physical, chemical, or biological properties of such waters that render such waters detrimental for or to domestic use, industrial consumption, recreational or other public uses.

(1.) Notification of non-compliant discharges

The Contractor shall immediately notify the Engineer upon the discovery of or potential of any unauthorized, unusual, extraordinary, or non-compliant discharge from the land disturbing activity. Where immediate notification is not possible, such notification shall be not later than 24 hours after said discovery.

(2.) Detailed report requirements for non-compliant discharges

The Contractor shall submit to the Engineer within 5 days of the discovery of any actual or potential non-compliant discharge a written report describing details of the discharge to include its volume, location, cause, and any apparent or potential effects on private and/or public properties and state waters or endangerment to public health, as well as steps being taken to eliminate the discharge. A completed Form C-107 (a) and (b) shall be used for such reports.

5 Plans, Changes, Deficiencies and Revisions

a. Contractor SWPPP

The Contractor shall develop and provide a SWPPP that documents the location and description of potential pollutant sources such as vehicle fueling areas, storage areas for fertilizers or chemicals, sanitary waste facilities, construction and waste material storage areas, etc. prior to any such pollutant sources being established on the project site. Such plans and documentation shall include a description of the controls to reduce, prevent and control pollutants from these sources including spill prevention and response. The Contractor shall submit such plans and documentation as specified herein to the Engineer and, upon review and approval, they shall immediately become a component of the project's SWPPP and subject to all corresponding requirements contained therein.

The Contractor shall ensure that the SWPPP is kept on the project site at all times in accordance with the provisions of Section 105.10 and shall be available for review upon request.

b. Changes and Deficiencies

The Contractor shall report to the Engineer when any planned physical alterations or additions are made to the land disturbing activity or deficiencies in the project plans or contract documents are discovered that could significantly change the nature or increase the quantity of the pollutants discharged from the land disturbing activity to surface waters.

c. **Revisions to the SWPPP**

Where site conditions or construction sequencing or scheduling necessitates revisions or modifications to the erosion and sediment control plan or other any other component of the SWPPP for the land disturbing activity, such revisions or modifications shall be approved by the Engineer and shall be documented by the Contractor on a designated plan set (Record Set). Such plans shall be kept on the project site at all times and shall be available for review upon request.

107.20 - Construction Over or Adjacent to Navigable Waters

The Department will obtain a permit from the U.S. Coast Guard for the anticipated construction and/or demolition activities of structures on Department projects that cross a waterway(s) under the jurisdiction of the U.S. Coast Guard. As the permit holder, the Department must apply to the U.S. Coast Guard for approval of permit modifications to the original Department permit that the Contractor requests.

Prior to starting demolition or construction operations the Contractor shall meet with the Engineer and the U.S. Coast Guard (U.S. Coast Guard Coordination Meeting) to present its planned operations and the potential impacts those operations may pose to water traffic. As part of this meeting, the parties shall establish in writing the proper protocol for emergency closures and be governed accordingly.

- (a) **Activities subject to Coast Guard regulation under the Permit.** Following the U.S. Coast Guard Coordination meeting, the Contractor shall submit its proposed schedule of operations in writing to the Engineer. The Engineer shall review and provide written comments, if applicable, to the Contractor within 7 calendar days following receipt of the Contractor's schedule of operations. The Contractor shall incorporate the Engineer's comments and submit its notice of scheduled operations to the Engineer and to the U.S. Coast Guard at least 30 days prior to commencement of any permitted construction or demolition operations. U.S. Coast Guard acceptance of the Contractor's written schedule of operations is a condition precedent to the Contractor's commencement of those operations.
- (b) **Activities that require channel closures or restrictions.** In addition to the submittal of its proposed schedule of operations as described in (a) above, Contractor shall submit plans that comply with the Permit for falsework, cofferdams, floating equipment and other obstructions to the channel or channels to the Engineer. The Contractor's attention is directed to the possibility that advance notification for consideration of approval may vary depending on the type and duration of proposed closures, the time of year for requested closure(s), and location of existing bridge(s) and waterway(s) involved, and the impact to entities served along or through the waterway(s). The Engineer shall review and provide written comments, if applicable, to the Contractor within thirty (30) calendar days following receipt of the Contractor's plans. The Contractor shall incorporate the Engineer's comments and submit its plans to the Engineer and to the U.S. Coast Guard at least 30 days prior to commencement of any permitted construction or demolition operations. The Contractor may not commence activities that require channel closures or restrictions without the prior written approval of the Department and the U.S. Coast Guard. The Contractor shall be responsible for complying with all operational requirements that the U.S. Coast Guard may place on the Contractor as conditions of approval.

In addition, the Contractor shall request and obtain Department and U.S. Coast Guard approval in writing before commencing any operations that deviate from the Contractor's schedule of operations when these operations interfere or have the potential to interfere with navigation of water traffic outside of timeframes previously approved by the Department and the U.S. Coast Guard.

Notices shall be sent to the U.S. Coast Guard, Fifth District Bridge Office (OBR), 431 Crawford Street, Portsmouth, VA 23704-5004. Payment of any penalty or fine that may be levied by the U.S. Coast Guard for Contractor violations of bridge regulations found in 33 CFR Parts 115, 116, 117 and 118 shall be the responsibility of the Contractor. Further, any delay to the contract as a result of actions or inaction by the Contractor relative to the requirements herein that are determined by the Department to be the fault of the Contractor will not be compensable.

Excerpts from VDOT 2007 Road and Bridge Specifications as related to VDOT Stormwater Management Program

The cost to comply with the requirements of this provision and to provide and maintain temporary navigation lights, signals and other temporary work associated with the structure(s) under this contract required by the U.S. Coast Guard for the protection of navigation during construction or demolition operations shall be included in price bid for other appropriate items.