

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER DIVISION

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SUBJECT: Guidance Memo No. 08-2011
Permitting Dam Maintenance Activities in Surface Waters

TO: Regional Directors

FROM: Ellen Gilinsky, Ph.D., Director 

DATE: July 30, 2008

COPIES: Deputy Regional Directors, VWP Permit Managers, David Davis

Summary:

The Virginia Code requires dams and a corresponding 25-foot buffer area to be free of trees and woody vegetation (See § [10.1-609.2](#). Prohibited Vegetation). Vegetation removal and grubbing activities in surface waters, including wetlands, fall under the regulatory authority of the Virginia Water Protection (VWP) Permit Program. This guidance provides a framework for consistent VWP permitting and compensatory mitigation of impacts to surface water, including wetlands, resulting from dam vegetative maintenance activities.

Electronic Copy:

An electronic copy of this guidance in PDF format is available for staff internally on DEQNET, and for the general public on DEQ's website at: <http://www.deq.virginia.gov>.

Contact information:

Please contact David Davis, Office of Wetlands and Water Protection, (804) 698-4105 or dldavis@deq.virginia.gov if there are any questions about this guidance.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any particular method for the analysis of data, establishment of a wasteload allocation, or establishment of a permit limit. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Permitting Woody Vegetation Removal and Grubbing in Surface Waters for Dam Maintenance

I. Background:

The Virginia Dam Safety Act, §10.1-609.2 entitled Prohibited Vegetation, prohibits the growth of trees and other woody vegetation on the slopes and crest of embankments and the emergency spillway area of a dam, and within a distance of 25 feet from the toe of the embankment and abutments and requires the dam owner to remove any such vegetation in these areas.

Vegetation removal and grubbing activities in surface waters, including wetlands, fall under the regulatory authority of the VWP Permit Program. The VWP Permit Program does not require a permit for maintenance of dikes or dams (see 9VAC25-210-60. Exclusions.); however, the current VWP Permit Program Regulation does not specifically address vegetation maintenance near dams or other impounding structures. To maintain consistency between DEQ water protection regulations and the Virginia Soil and Water Conservation Board (SW Board) Impounding Structure Regulations, this guidance defines the serviceable structure of a dam and compensatory mitigation requirements for surface water impacts where dam vegetative maintenance is performed. Compensatory mitigation described in this guidance applies to any impounding structure, or dam, regardless of height or capacity.

II. Authority:

The Dam Safety Act in the Code of Virginia states: § [10.1-609.2](#). Prohibited Vegetation.

Dam owners shall not permit the growth of trees and other woody vegetation and shall remove any such vegetation from the slopes and crest of embankments and the emergency spillway area, and within a distance of 25 feet from the toe of the embankment and abutments of the dam. Owners failing to maintain their dam in accordance with this section shall be subject to enforcement pursuant to § [10.1-613](#). (2006, c. 30.)

§62.1-44.15:20-23 of the Code of Virginia authorizes DEQ to issue VWP permits for impacts to surface waters, including wetlands, and §9 VAC 25-210-10 *et seq.* is the regulation that implements the VWP Permit Program.

The full Virginia Impounding Structure (Dam Safety) guide is located at:

http://www.dcr.virginia.gov/dam_safety_and_floodplains/documents/dsregs030804.pdf

Pursuant to Virginia Code §62.1-44.15:20, activities requiring a VWP permit include dredging, filling, or discharging any pollutant into or adjacent to surface waters, or otherwise altering the physical, chemical or biological properties of surface waters, excavating in wetlands, or on or after October 1, 2001, conducting the following in a wetland:

1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions
2. Filling or dumping
3. Permanent flooding or impounding
4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

VWP Permit Program Regulation Section 9 VAC25-210-60 excludes dam maintenance from VWP permit requirements:

8. Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, groins, levees, dams, riprap breakwaters, causeways, bridge abutments or approaches, and transportation and utility structures. Maintenance does not include modifications that change the character, scope, or size of the original design. In order to qualify for this exclusion, emergency reconstruction must occur within a reasonable period of time after damage occurs.

III. Definitions:

"Impounding structure" means a man-made structure, whether a dam across a watercourse or other structure outside a watercourse, used or to be used to retain or store waters or other materials (Adapted from 4VAC50-20-30).

"Permanent impacts" are those impacts to surface waters, including wetlands that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters or of the functions and values of a wetland (9 VAC25-210-10).

"Required Vegetative Maintenance Area (RVMA)" means an area mandated by the Dam Safety Act in the Code of Virginia (§ 10.1-609.2. Prohibited Vegetation.) to be clear of woody vegetation, including the slopes and crest of embankments and the emergency spillway area, and within a distance of 25 feet from the toe of the embankment and abutments of an existing impounding structure.

"Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of areal extent of the existing wetland or cause a change in wetland community type resulting in the loss of more than minimal degradation of its existing ecological functions (9 VAC25-210-10).

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands (9 VAC25-210-10).

"Surface waters" means all state waters that are not ground water as defined in §62.1-255 of the Code of Virginia (9 VAC25-210-10).

"Temporary impacts" means those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical or biological properties of the surface water or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction contours and elevations, such that previous functions and values are restored (9 VAC25-210-10).

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas (9VAC25-210-10).

IV. Permitting Dam Maintenance Activities in Surface Waters:

In the interest of public safety and to encourage protection of communities downstream, VWP staff will not require compensatory mitigation for permanent wetland conversion within the RVMA for vegetative maintenance of dams. VWP staff should consider the RVMA part of the serviceable structure of a dam and therefore should exclude the dam and RVMA from VWP requirements under 9VAC25-210-60. Mitigation is required for permanent wetland conversion beyond the RVMA.

V. Avoidance & Minimization of Impacts during Dam Maintenance Activities

For dam maintenance activities, avoidance and minimization measures must be employed to the maximum extent practicable. Erosion and sedimentation control measures, such as silt fences, seeding or other ground stabilization, shall be designed in accordance with the most recent edition of the Virginia Erosion and Sediment Control Handbook and applicable ordinances. Heavy equipment in surface waters, including wetlands, must tread over mats, geotextile fabric, or other similar materials to minimize disruption of aquatic life and disturbance to substrate.

All areas exposed by vegetation removal and operations must be stabilized consistent with the most recent edition of the Virginia Erosion and Sediment Control Handbook and applicable ordinances.

Areas of temporary disturbance beyond the RVMA for equipment access, staging or other similar activities must be restored to their pre-existing condition. Achieving pre-existing conditions may require seeding, grading ruts, and grading to pre-existing contours. Planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested) will be required, except when at the discretion of DEQ the applicant demonstrates the need to modify the vegetation type for future maintenance access.