

ENVIRONMENTAL NOTES

May 2015

VIRGINIA'S DRAFT STATE WATER RESOURCES PLAN

BY: HENRY R. "SPEAKER" POLLARD, V

The severe drought in Virginia in 2002 saw several localities nearly exhaust available public water supplies and reenergized public policy concerns about Virginia's water resources and their proper and sustainable management. This led the General Assembly to mandate the development of local and state water supply plans to ensure better planning and coordination of use of available surface water and groundwater supplies. It further charged Virginia's Department of Environmental Quality ("DEQ") to oversee this process and prepare an overall state water supply plan ("SWRP"). Local and regional plans were due in 2011, and DEQ has been working since then to compile the information from the forty-eight local and regional plans it received and develop a draft SWRP. DEQ has just recently issued a draft SWRP for public comment. See <http://www.deq.virginia.gov/Programs/Water/WaterSupplyWaterQuantity/WaterSupplyPlanning/StateWaterPlan.aspx>.

Virginia relies heavily on available water supplies for nearly every critical function of public health and the economy, and preserving appropriate instream flows and groundwater levels is essential for environmental and aquatic species function and sustainable planning. It is therefore difficult to overstate the importance of this process to local and regional water suppliers, business and industry, and agricultural interests, as well as other natural resources agencies and environmental groups, many of which have watched this process closely.

Several key findings of the draft SWRP warrant special attention. First, DEQ anticipates a net increase of 32%

in statewide demand for water by 2040 – an additional 450 million gallons per day – the great majority of which is to come from surface water supplies. Second, nearly 97% of the additional demand is likely to be sought from only 25% of the surface water supplies in the Commonwealth, and drought impacts are expected to be more severe for many water resources. Surface storage through reservoirs and other tank storage will be better able to withstand this increased stress. Third, DEQ reports a number of challenges in further water supply planning, including lack of understanding of unpermitted withdrawals, groundwater withdrawal impacts in the western part of the state with karst geology, difficulties in developing new reservoirs, and addressing potential conflicting uses of water resources, to name a few.

The SWRP itself states that it is designed in part to "assist the DEQ in the efficient and effective regulation and management of water resources by examining projected water demand, identifying water resources targeted to meet this demand, and analyzing potential impacts that may occur if the demand is met." Given DEQ's additional regulatory role in permitting surface water and groundwater withdrawals, the SWRP will be an important (though not dispositive) reference during DEQ's review of withdrawal permit applications, particularly as to the justification for such withdrawals, conflicts with other users of those resources, and wastewater and stormwater discharges affecting downstream flows.

Virginia's relative abundance of water supply should not be taken for granted. The SWRP should help provide water supply stakeholder with meaningful information and analysis. A work in progress, it is hoped that it will fulfill its mission.

FREQUENT QUESTIONS: FORM R PART II

BY: ETHAN R. WARE

As the July 1 deadline for filing the Form R for your facility approaches, these additional Frequent Questions may assist your preparation.

QUESTION: For purposes of Section 313 reporting, is ammonium nitrate in a fuel oil slurry considered in solution and therefore in the physical state reportable under Form R?

ANSWER: No. Ammonium nitrate and fuel oil are commonly used as explosives in the mining industry; ammonium nitrate in solution is the listed toxic chemical form. This mixture does not constitute a "solution" under Form R requirements and is not reportable, because the ammonium nitrate is not dissolved; the ammonium nitrate in fuel oil is in suspension or dispersion.

QUESTION: Zinc in a metal bar is ground in a wet process. The resulting slurry contains zinc dust which is released into solution. Is this facility "manufacturing" zinc as fume or dust (the form of zinc reportable under Form R), even though it is released directly into an aqueous solution?

ANSWER: No. Zinc releases need only be reported where the zinc release occurs in the form of fume or dust. EPA guidance indicates the terms "fume or dust" as to zinc refer only to the dry forms of zinc, not the wet forms in solutions or slurries. In reporting releases, only zinc fume or dust should be reported.

QUESTION: A manufacturing facility receives toluene containing chlorobenzene at concentrations below its de minimis limit of 1%. Through distillation, the chlorobenzene content in process streams is increased above the de minimis threshold. Is the facility required to account for chlorobenzene in reporting threshold calculations?

ANSWER: Yes. From the point at which the chlorobenzene equals or exceeds 1% in process streams, the amount present must be factored into threshold and release calculations. The facility does not need to consider the amount of chlorobenzene in its raw materials when below 1%, however.

If the concentration of the chlorobenzene fluctuates above and below the de minimis levels, the facility must treat the chemical as reportable from the point it first exceeds the de minimis levels. Once the de minimis limit has been reached, the exemption cannot be taken.

MANUFACTURERS AND TEMPORARY WORKERS

BY: A. KEITH "KIP" MCALISTER, JR.

On April 29, 2013, the U.S Department of Labor's Occupational Safety and Health Administration (OSHA) announced its temporary worker initiative. OSHA contends that temporary workers encounter an increased risk of work-related injuries. As a result, host employers, such as manufacturing facilities, have been subject to numerous inspections and enforcement actions.

OSHA recently cited a Georgia-based paint manufacturer for exposing temporary workers to respirable crystalline silica in excess of permissible exposure limits (PELs) and to corrosive materials without a written hazard communication program. Though OSHA noted staffing agencies that provided the workers were onsite and failed to properly supervise its own workers, no citations were issued to those companies.

Temporary workers are a point of emphasis for OSHA inspectors. Manufacturers and industry bear the burden of ensuring all safety and health requirements, such as adequate training and supervision, are implemented.

FARMS AND THE WATER RESOURCES REFORM AND DEVELOPMENT ACT (WRRDA)

BY: JESSIE J.O. KING

Pursuant to the Clean Water Act's Oil Spill Pollution, Prevention, Control and Countermeasures Rule (SPCC Rule) ¹, farmers and other oil storage and handling facilities are required to have an SPCC Plan to prevent oil spills into "Waters of the United States." On June 10, 2014, the President signed the Water Resources Reform and Development Act (WRRDA) of 2014.² Section 1049 of the WRRDA changes certain applicability provisions of the SPCC Rule for farms and allows a farm to self-certify its SPCC Plan under certain conditions.

Pursuant to the WRRDA, a farmer is not required to have an SPCC Plan if it has: (1) an aggregate aboveground storage capacity less than 2,500 gallons; or (2) an aggregate aboveground storage capacity greater than 2,500 gallons and less than 6,000 gallons and no reportable discharge history.³ A farmer can self-certify the SPCC Plan if the farm has an aggregate aboveground storage capacity greater than 6,000 gallons but less than 20,000 gallons, no individual tank with a capacity greater than 10,000 gallons, and no reportable discharge history.

The WRRDA also changes which fuel storage containers must be included when calculating a farm's aggregate fuel storage capacity. This change may affect whether a farm falls into the exempt, self-certified or professionally certified plan category. Previously, the SPCC rule required a farm to include any storage container of 50 gallons or more in its aggregate capacity calculation. Under the new law, a farm may now exclude all containers on separate parcels that have a capacity of 1,000 gallons or less and those holding animal feed ingredients approved for use in livestock feed by the Commissioner of Food and Drugs.

Finally, the law requires that EPA conduct a study to determine the appropriate amount for an SPCC rule exemption based on what amount creates a significant risk of an oil discharge to water. EPA expects the study

to be completed by June 2015, and, within 18 months of completion, it can adjust the SPCC exemption level to not more than 6,000 gallons and not less than 2,500 gallons. It will be interesting to see if EPA attempts to lower the current 6,000 gallon exemption. Either way, once EPA finishes the study, it is expected to promulgate a rule amending the SPCC requirements associated with the applicability thresholds and other WRRDA amendments.

¹ 40 CFR 112.

² H.R. 3080 – 113th Congress (2104-2014).

³ "Reportable discharge history" is defined as a single oil discharge that exceeds 1,000 gallons, or two oil discharges that each exceed 40 gallons within any 12-month period either: (1) in the 3 years prior to the certification date of the SPCC Plan; or (2) since becoming subject to the SPCC rule, if the facility has been in operation for less than 3 years.

CHANGE MANAGEMENT FOR THE INDUSTRIAL WASTEWATER DISCHARGER

BY: RYAN W. TRAIL

Facilities discharging industrial wastewater to Publicly Owned Treatment Works (POTWs) must be sensitive to changes in the nature and volume of their discharge. Proper planning, notification and interaction with the POTW may mean the difference between the smooth road of evolving business and the bumpy road of enforcement. Unfortunately, all too often, enforcement actions from POTWs include pretreatment violations involving the introduction of a new chemical or establishment of an entirely new process line without requisite notification.

Such an oversight may easily result in multiple violations. Particularly in the case of Significant Industrial Users subject to a Categorical Pretreatment Standard in 40 CFR §§ 405 – 471, even minor alterations to processes have the potential to cause exceedances of categorical limits. Because categorical limits are uniquely customized for particular process types, limits vary dramatically even within industry categories. For instance, within the Textile Mills Point Source Category (40 CFR § 410), a facility in the wool scouring sub-category is subject to a daily maximum BOD5 limit of 10.6 kg, whereas the wool

finishing sub-category daily BOD5 limit is 22.4 kg. Subtle variations in processes within industry categories may result in violations of sub-category limits. In addition to violations of effluent limitations, changes in process chemistry or discharge volume may result in procedural violations as well. The General Pretreatment Regulations require any industrial user to “promptly notify the . . . POTW . . . in advance of any substantial change in the volume or character of pollutants in their discharge.” 40 CFR § 403.12(j). Where such notification is not given and the discharge exceeds effluent limitations, multiple violations may be alleged.

Defenses to these types of violations may be limited. The often used “upset defense” requires noncompliance to have been “unintentional and temporary” and “beyond the reasonable control of the Industrial User.” 40 CFR § 416(a). Planned process changes are certainly intentional, often long term and well within the control of the Industrial User. The advisable path forward when planning a change in process chemistry or volume is to carefully review current pretreatment permit limits and consider the impact the change will have on the facility’s ability to comply with those limits. Finally, where planned changes to the volume or character of pollutants in the discharge are substantial, proper notification of the POTW is essential to continued compliance.

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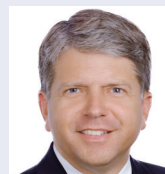
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