



Via U.S. Mail

March 18, 2013

Virginia Soil and Water Conservation Board:

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David A. Johnson, DCR Director, Ex-Officio, Richmond
John A. Bricker, NRCS, Ex-Officio, Richmond

UPDATE: Due to revisions in the April 2013 regulation, the line references in this letter have changed to:

February 2013	April 2013
Line 53-54	Lines 56-57
Line 55	Line 58
Line 541	Line 537
Line 544	Line 540
Line 545	Line 541
Line 595	Line 591
Line 598	Line 598
Line 599	Line 595
Line 1069	Line 1289
Line 1070	Line 1290
Lines 540-545	Lines 536-541
Lines 594-599	Lines 590-595
Lines 1065-1070	Lines 1285-1290

Re: Construction General Permit Regulations – Revision Required

Dear Members of the Board:

I had the pleasure of serving on the Regulatory Advisory Panel (RAP) for the subject regulations (one of many in the past 20+ years). As you have probably heard – it was a very “messy” RAP process, and we had to add an extra session with the Director in order to get the regulations in a reasonable enough format for publication. However, there is one significant issue that, due to a miscommunication with staff, was not corrected, and therefore needs your attention. Thus, I am writing to you.

Summary

Four small changes are needed:

1 & 2. In lines 541 and 595, please add the phrase “normal working” such that both lines read:

“At least once every four normal working days”

3. Add the following definition of “Normal Working Days” in line 55, as this phrase is also used in lines 544, 545, 598, 599, and 1069 (it should also be in 1070):

“Normal Working Days” means Monday through Friday, excluding state and federal holidays.

4. In line 1070, replace “business day” with “working day” to maintain consistency.



Inspection Frequency Requirements Discussion

Inspection frequency requirements are specified in three locations¹: (i) lines 540-545, (ii) lines 594-599, and (iii) lines 1065-1070.

The third location (1065-1070) is the standard requirement state-wide, and is:

- 1065 a. Inspections shall be conducted at a frequency of:
1066 (1) At least once every seven days; or
1067 (2) At least once every 14 days and no later than 48 hours following any measureable
1068 storm event. In the event that a measureable storm event occurs when there are
1069 more than 48 hours between normal working days, the inspection shall be conducted
1070 no later than the next business day.

Several years ago I advocated for the seven day option because we found that sites that inspected on this regular and frequent basis typically had better maintained erosion and sediment control systems – because they knew the inspector was coming regardless of rain versus ignoring the E&S controls until it looked like it would rain. It also **eliminated the regulatory issues** of documenting rainstorm activity at specific sites (i.e., thunderstorms in particular) and the operating issues of scheduling inspections based on variable weather patterns.

This new regulation now uses a very small storm event trigger (0.25 inch defined in lines 53-54), and solves the weekend/holiday problem by using normal working days – through this phrase still must be defined.

The other inspection requirements (lines 540-545 and 594-599 which are identical) are triggered for sites in impaired waters (including TMDL's) and exceptional waters. Because a large portion of construction activity occurs within the Chesapeake Bay watershed, which has a TMDL for TP, TN and TSS – just this one TMDL alone means that a majority of all VSMP permittee holders will have this inspection requirement:

- 540 (a) Inspections shall be conducted at a frequency of:
541 (i) At least once every four days; or
542 (ii) At least once every seven days and no later than 48 hours following any
543 measureable storm event. In the event that a measureable storm event occurs when
544 there are more than 48 hours between normal working days, the inspection shall be
545 conducted on the next business day.

During the RAP process, the four day requirement was not originally provided – but in the second option, the 14 day had been changed to 7. I provided an analysis of 30 years of rainfall data at Dulles Airport to show that a regularly scheduled inspection every **four normal working days** would be the equivalent of lines 542-545 and lines 596-599.

The problem is that the regulation before you is missing the phrase “normal working.”

Line 541 and line 595 should be revised to read:

“At least once every four normal working days”

¹ Referring to the 2/11/13 version Redline

To make sure that there is no confusion, this means:

If the first inspection is on a Monday,
the second inspection is on that next Friday,
and the third inspection is on that next Thursday (assuming no holidays).

If an inspection landed on a federal or state holiday, that would then defer the inspection to the first normal working day and subsequent inspections would follow four working days later.

A “*normal working day*” should be defined as Monday through Friday, excluding state and federal holidays.

Analysis

I have included a graphical summary of our analysis of rain events and inspection options to help you compare the effect of these words (the detailed spreadsheets used in this analysis are available and enclosed with David Dowling’s digital copy). The result of this analysis demonstrates that the proposed “four normal working days” option provides similar inspection frequency as the erratic 7 day/48 hour option, and likewise, the “seven day” option provides a similar inspection frequency as the 14 day/48 hour option.

I hope you will make these corrections. They will both better protect the environment and give permittees a more easily achievable regulatory requirement and regulators an easily enforceable schedule. Please feel free to contact me at (703) 679-5602 or mrolband@wetlandstudies.com.

Sincerely,

WETLAND STUDIES AND SOLUTIONS, INC.

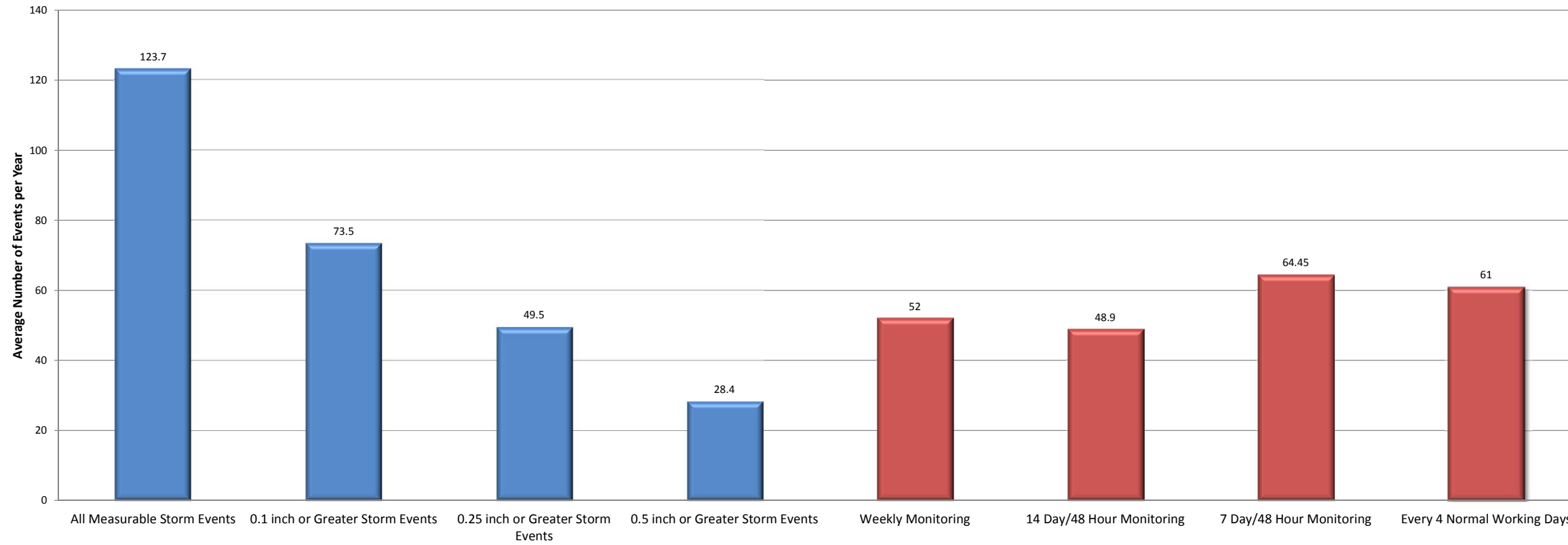


Michael S. Rolband, P.E., P.W.S., P.W.D.
President

Enclosure

cc: David Johnson, Director, DCR (w/enclosure, via email: david.johnson@dcr.virginia.gov)
David Dowling, Policy and Planning Director, DCR (w/enclosure and Excel files,
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Michael Toalson, Home Builders Association of Virginia (w/enclosure,
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Average Storm/Monitoring Events Per Year



Storm Events
(30 Year Record) ¹

Monitoring Events
(10 Year Record) ²

1. The blue columns represent the average number of storm events per year based on a 30-yr rainfall record (November 1, 1982 - November 1, 2012) at Dulles Airport. Analysis was broken down into 4 categories using different criteria for determining a "storm event":

- A) All measurable storms (excluding trace rainfall);
- B) 0.1-in or greater rainfall events;
- C) 0.25-in or greater rainfall events; and
- D) 0.5-in or greater rainfall events.

2. The red columns represent the average number of monitoring events per year based on a 10-yr rainfall record (January 1, 2001 - December 31, 2011) at Dulles Airport. Analysis was broken down into 3 categories using different criteria for determining monitoring frequency:

- A) Weekly Monitoring - once every 7 days or 52 monitoring events per year.
- B) 14 Day/48 Hour Monitoring - monitoring required at least every 14 days or within 48 hours after any rainfall of 0.25-in or greater, if it occurs sooner than 14 days unless that date falls on a weekend or holiday. In that case, monitoring occurs the next business day. Federal and State holidays utilized in this analysis: Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, the Wednesday, Thursday and Friday of Thanksgiving, Christmas Eve, Christmas Day, and New Years Day (14 Total).
- C) 7 Day/48 Hour Monitoring - is similar to the 14 day/48 Hour monitoring but monitoring is required every 7 days.
- D) Every 4 Normal working days - monitoring occurs once every four "normal working days". For this analysis a normal working day is defined as "Monday through Friday, excluding State and Federal holidays".

3. Data was taken from the National Climate Data Center's online "Climate Data Request" page (<http://www.ncdc.noaa.gov/cdo-web/#t=secondTabLink>), part of the National Oceanic Atmospheric Administration for Washington Dulles International Airport Station.

4. Due to time constraints, the analysis in #2 was limited to 10 years.