

N69118.AR.001099  
ST JULIENS CREEK  
5090.3a

LETTER AND U S NAVY RESPONSE TO U S EPA REGION III COMMENTS REGARDING  
DRAFT FINAL RECORD OF DECISION FOR SITE 2 WASTE DISPOSAL AREA B ST JULIENS  
CREEK ANNEX CHESAPEAKE VA

10/06/2010  
CH2M HILL

**Responses to Comments  
Draft Final Record of Decision, Site 2: Waste Disposal Area B,  
EPA Designation: OU-2 Landfill B  
St. Juliens Creek Annex  
Chesapeake, Virginia**

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DATE: October 6, 2010

**Comments from EPA Region III, provided 4 October 2010.**

**GENERAL COMMENT:**

Since certain of the regulations cited below contain procedural requirements as well as substantive requirements, I would recommend inserting a caveat in the heading of each table, such as: "Virginia Chemical-Specific ARARs are the substantive requirements found in the following laws and regulations."

**Response:** Edit has been made as requested.

**Chemical-Specific ARARs:**

[I have numbered each row of the ARARs sequentially for easy reference.]

- 1) Safe Drinking Water Act -- This entry is fine. See suggested edits to text in Table A-1.

**Response:** Edits have been made as requested.

- 2) VA Water Quality Standards -- This entry is fine. However, there appear to be some procedural requirements included among the substantive requirements of the sections cited. The suggestion in General Comments, above, to include the general caveat in the ARARs Table headings would be useful in this regard. See comments on Table A-2.

A) This does not seem to imply that a distinct new discharge point has been created (see Prerequisite).

B) What is the new discharge point? This comment doesn't seem to coordinate with the discussion in the Comment section.

**Response:** The remedial action will not result in the creation of a new discharge point. Therefore, the citation has been removed.

3) VA Groundwater Quality Standards -- This entry is fine. The citation is to the groundwater Antidegradation policy and not to specific groundwater standards. I edited the text in the Table accordingly.

**Response:** Edits have been made as requested.

**Location-Specific ARARs:**

4) Clean Water Act Wetlands -- The citation is fine to include. I made some edits to the text of the Table. As I understand it, the wetlands will be completely covered over and lost at this site, and a new wetland area will be developed elsewhere to compensate for the loss, right? Some of the text didn't seem to support that scenario, but rather talked about restoring the wetland.

A) Isn't this requirement more about compensation for loss of wetlands and how to reconstruct a similar habitat?

**Response:** The following sentence has been added to the requirement: "Mitigate and/or compensate for lost wetland when avoidance of adverse effects is not feasible."

B) "Guidelines" are probably not ARARs (not required in promulgated regulations).

**Response:** Although termed "Guidelines", under the Clean Water Act these guidelines are congressionally mandated and, therefore, applicable.

C) I didn't think that these wetlands would be restored; I thought that wetlands would be developed elsewhere to compensate for the loss.

**Response:** The comments column has been revised to read: "Construction of a cover will require fill material to be placed over existing wetland areas and will therefore require compensatory mitigation of wetlands. Activities undertaken entirely on a CERCLA..."

D) Change from "relevant and appropriate" to "applicable".

**Response:** Edit has been made as requested.

5) Coastal Zone Management -- This citation is fine to include. See edits in Table.

**Response:** The requirement has been revised to read: “Federal activities must be consistent, to the maximum extent practicable, with State coastal zone management programs.”

- 6) Migratory Bird Treaty Act -- This citation is OK to include, though I think the prohibition goes mainly to the killing or capture and sale of the birds or their parts/nests, etc. However, it seems that the section does prohibit killing the birds “by any means or in any manner,” which could include poisoning them at a CERCLA site. I believe that there are implementing regulations that it would be better to cite rather than the statutory section, but I don’t have the citation.

**Response:** The requirement has been revised to read: “Protects almost all species of native birds in the United States from unregulated taking.”

- 7) VA Wetlands – This citation is OK, although I think that some of the subsections cited could be deleted, since I don’t think that the Army is going to go through the process of proposing the project to the Commonwealth prior to considering whether to go through with it and whether compensation will be appropriate to replace the lost value of the original wetlands. (Subsection 10 – Definitions, is OK; 20 is policy and doesn’t contain any specific requirements; 30 is also mostly policy; 40 includes the proposal requirements, which seem not to apply here. Subsection 50 contains the specific requirements that will need to be considered/complied with.)

**Response:** ARAR has been revised to only cite subsection 50.

**Action-Specific ARARs:**

- 8) CWA Discharge of dredge-and-fill -- Subsections of 40 CFR Part 230 as follow:

230.2(b) – Applicability; OK to include.

230.10(d) – I think that the entire subsection could be included (not just (d))

230.20 – this section explains the value of aquatic ecosystem substrate and is informative as to the potential impacts of discharging dredged or fill material, but doesn’t contain any requirements or prohibitions. I guess it’s good to include.

230.25 – addresses possible loss of environmental value due to disruption of existing salinity gradients, but doesn’t contain any requirements or prohibitions.

OK to include for instructive purposes.

230.31 – this section discusses aquatic organisms in the food web and is informative as to the potential impacts of discharging dredged or fill material, though it doesn’t contain any requirements or prohibitions. Similarly, I guess it’s good to include.

230.32 – this section discusses wildlife and is informative as to the potential impacts of discharging dredged or fill material, though it doesn’t contain any requirements or prohibitions. Similarly, I guess it’s good to include.

230.41 – this section discusses wetlands in the same manner. Good to include.  
230.42 – this section discusses mudflats in the same manner. I assume there are mudflats next to the wetlands? OK to include.  
230.53 – this section discusses aesthetics. Perhaps a bit tangential?  
230.60 – this section discusses the general evaluation of dredged or fill material. Good to include.  
230.61 – this section discusses the chemical, biological, and physical evaluation and testing of fill material. Good to include.  
230.70(f) – regarding the design for the discharge of fill material. Good to include.  
230.72 – regarding maintenance of fill material after discharge. Good to include.  
230.74(a), (b), & (e) – regarding the use of appropriate technology. Good to include.  
230.75(b) & (d) – regarding actions affecting plant and animal populations. Good to include.

33 CFR 320.4(a)-(d), (h), (m), (p), and (r) – these subsections all address the permit review process. I think that the considerations for each resource are included in other citations that have been cited. I would not recommend including these sections; or, if you do, you should include explicit statements that only the substantive considerations and consultations are required, and that no permit is required.

33 CFR 328.1-.5 – these subsections provide the definition for waters of the United States, including wetlands. I'm not really sure why this is necessary, except to aid in the interpretation of where the wetland is.

**Response:** The remaining subsections of 230.10 have been added. Subsections 320.4(a)-(d), (h), (m), (p), and (r) have not been deleted; however, they have been clarified through inclusion of the general comment statement as suggested. Subsection 328 has been removed. The remaining subsections listed above are already cited.

- 9) SDWA Underground Injection – The cited subsections are all appropriate to include.

**Response:** No changes to the table have been made.

- 10) TXCA – PCB Management – Please delete the reference to the statutory section, since there are more specific implementing regulations that apply. The cited CFR subsections are fine.

**Response:** Edit has been made as requested. Additionally, the definition of IDW has been added to Table A-7.

11) VA dredging & filling – I suggest including the following subsections of 9 VAC 25-210 (the all-inclusive citation is too broad):

- 210-10 – Definitions
- 210-45 – Wetlands delineation
- 210-50 – Prohibitions
- 210-80 – The substantive provisions of the permit application
- 210-90 – Conditions applicable to all permits
- 210-110 – Establishing applicable standards
- 210-115 – Evaluation of project alternatives (maybe . . . there are no alternatives)
- 210-116 – Compensation
- 210-175 – Variance from permit conditions

**Response:** Subsections 210-45, 50, 116 have been cited. Subsection 210-10 is not substantive and, therefore, not included. Subsections 210-80, 90, and 110 describe permit application requirements and conditions and are, therefore, not included. Subsection 210-115 describes the process of evaluating alternatives for proposed work to minimize impacts. Alternative evaluation was completed as part of the FS and is no longer applicable. Subsection 210-175 describes procedures and policy for granting a permit variance and is, therefore, not included.

12) VA construction and maintenance – I suggest including the following subsections of 9 VAC 25-690:

- 690-10 – Definitions
- 690-30 – Authorization to impact surface waters (maybe)
- 690-50 – Notification
- 690-60 – the substantive requirements of the application
- 690-70 – Compensation
- 690-80 – Notice of planned changes
- 690-100 – General permit substantive requirements

**Response:** Subsection 70 and 100 has been cited. Subsection 690-10 is not substantive and, therefore, not included. Subsections 30, 50, 60, and 80 describe permit procedures and requirement and are, therefore, not included.

13) VA erosion and sediment control – 4 VAC 50-30-40, 60: The cited subsections are appropriate.

**Response:** No changes to the table have been made.

14) VA air pollution -- fugitive dust – 9 VAC 5-50-90: The cited subsection is fine.

**Response:** No changes to the table have been made.

15) VA stormwater management – I would suggest including the following subsections of 4 VAC 50-60-30 to 80, 300, 310, 380, 420, 430, 1100 to 1140, 1160, 1170, 1182 to 1188:

- 60-10 – Definitions (would seem more helpful than the applicability section 30)
- 60-50 – General
- 60-60 – Water Quality
- 60-70 – Stream channel erosion
- 60-80 – Flooding
- 60-300 – Exclusions
- 60-310 – Prohibitions
- 60-380 – Stormwater discharges (Actually, I'm not convinced about this one)
- 60-390 – Effluent sampling procedures
- 60-420 – New sources and new discharges (OK?)
- 60-430 – Conditions applicable to all permits
- 60-460 – Establishing limitations, standards and other permit conditions (substantive only)
- 60-1100 – More definitions for General permits
- 60-1110 -1140, 1160, 1170, 1182-1188 – Regarding general permits (does this duplicate the requirements above?)

**Response:** Subsection 60-10 is administrative and, therefore, not included. Per 4 VAC 50-60-1170, discharge monitoring for construction activities is not required. Therefore, 4 VAC 50-60-390 is not applicable or relevant and appropriate and has not been added to the table. Subsection 60-460 describes permit conditions for establishing limitations, standards and other permit conditions and, therefore, has not been included. The remaining subsections listed above are cited, in addition to subsection 30.

A) What does all this discussion of surface water withdrawal have to do with the selected remedy and stormwater management?

**Response:** The requirement has been revised to read: “Procedures and requirements to be followed in connection with stormwater management and erosion/sedimentation control practices for land disturbing activities.”

16) VA hazardous waste – The subsections cited from 9 VAC 20-60 and 20-80 are all OK to include. The citation that incorporates by reference 40 CFR Part 261 could be further limited by referring to subsections of 261. Also, I am not sure why the Solid waste regulations are included.

**Response:** The applicable parts of 40 CFR 261 are referenced in 40 CFR 262.11. Therefore, this citation has been removed. Because both hazardous and solid waste may be generated during the action, the requirements for managing both have been included.

17) VA monitoring well abandonment – The cited subsections of 12 VAC 5-630 are all appropriate to include.

**Response:** No changes to the table have been made.