

N69118.AR.001108
ST JULIENS CREEK
5090.3a

EMAIL AND COMMENTS FROM VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
REGARDING CHANGES TO APPLICABLE OR RELEVANT AND APPROPRIATE
REQUIREMENT TABLES FOR SITE 2 RECORD OF DECISION ST JULIENS CREEK ANNEX
CHESAPEAKE VA
10/06/2010
VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

From: [Hollis, Michelle \(DEQ\)](#)
To: [Staszak, Janna/VBO](#); walt.j.bell@navy.mil; [Jones, Adrienne/VBO](#); [Doran, Karen \(DEQ\)](#); Stroud.Robert@epa.gov; [Landin, Cecilia/VBO](#); Lukens.Elizabeth@epamail.epa.gov
Cc: katherine.will@navy.mil; timothy.reisch@navy.mil
Subject: RE: SJCA Site 2 ROD - RTCs & Changes for Discussion/Concurrence
Date: Wednesday, October 06, 2010 12:26:03 PM

Hello everyone,

I have a few comments regarding the changes that have been made to the ARARs table.

1. Water Quality Standards 9 VAC 25-260- 20 and 30, should remain in the table as Applicable. The remedy as proposed will include excavation of sediment in St. Juliens Creek as well as the potential for migration of the contaminated groundwater to the creek. 9 VAC 25-260-30 states: This policy shall be applied whenever any activity is proposed that has the potential to affect existing surface water quality.

2. Wetlands Mitigation Compensation Policy 4 VAC 20-390-10 to 50, should remain in the table as Relevant and Appropriate. Though titled or described as a "policy," 4 VAC 20-390 is a "promulgated standard," and thus eligible to be ARARs, because it is of general applicability and legally enforceable. 40 CFR 300.400(g)(4). Unlike most policies, these are enforceable through Va. Code Ann. § 62.1-44.15, specifically: Va. Code Ann. § 62.1-44.15(3a) provides that "It is the duty of the Board and it shall have authority: . . . To establish such . . . ****policies**** for any state waters consistent with the general policy set forth in this chapter, and . . . to take all appropriate steps to prevent quality alteration contrary to the . . . ****policies**** thus established . . ." (emphasis added)

Va. Code. Ann. § 62.1-44.15(8a) states "It is the duty of the Board and it shall have authority: . . . To issue special orders to owners . . .(v) who have contravened duly adopted and promulgated water quality standards and ****policies**** to cease and desist from such contravention and to comply with such water quality standards and policies." (emphasis added)

4 VAC 20-390-30 also uses mandatory language: "To determine whether compensation is warranted and permissible a two-tiered mechanism ****will**** be implemented. This dual approach ****will**** consist first of an evaluation of necessity for the proposed wetlands loss (see specific criteria below). If the proposal passes this evaluation, compensation ****will be required**** and implemented as set forth in the second phase, the Supplemental Guidelines of this policy, 4 VAC 20-390-50." (emphasis added)

Thank You,

Michelle R. Hollis
Regulatory Analyst/ARARs Coordinator
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From: Janna.Staszak@CH2M.com [mailto:Janna.Staszak@CH2M.com]

Sent: Wednesday, October 06, 2010 10:42 AM

To: walt.j.bell@navy.mil; Adrienne.Jones@CH2M.com; Doran, Karen (DEQ); Stroud.Robert@epa.gov; Cecilia.Landin@ch2m.com; Lukens.Elizabeth@epamail.epa.gov; Hollis, Michelle (DEQ)

Cc: katherine.will@navy.mil; timothy.reisch@navy.mil

Subject: SJCA Site 2 ROD - RTCs & Changes for Discussion/Concurrence

Hi all,

Please see the attached files for discussion this afternoon. I'll send a separate meeting request for a 2:30 conference call. The files included are:

- EPA Legal Draft Final Site 2 ROD RTFurtherCs.pdf: ROD text comments & responses, round 2 comments only.
- SJCA Final Site 2 ROD for signature RL 10052010.pdf: Redlines resulting from the ROD text comments. Note, the red changes were the result of the first round of comments and have been reviewed. The purple changes are the new ones from the current round of comments.
- NEW TABLE 9.pdf: The response to Comment 40 indicates Table 9 is being revised. It has not yet been inserted into the ROD file, so it is attached separately for review.
- EPA Legal RTC SJCA Site 2 ROD ARARs TABLES 10062010.pdf: ARARs comments & responses.
- EPA Legal Redlined ARARs Tables 100610.pdf: The redlined changes to the ARARs tables.

We look forward to talking through any outstanding items at 2:30. Feel free to send along any comments or concerns in advance of the call.

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-----Original Message-----

From: Bell, Walter J CIV NAVFAC MidLant [<mailto:walt.j.bell@navy.mil>]

Sent: Wednesday, October 06, 2010 9:18 AM

To: Jones, Adrienne/VBO; Staszak, Janna/VBO; Doran, Karen; Stroud.Robert@epa.gov; Landin, Cecilia/VBO; Lukens.Elizabeth@epamail.epa.gov; Michelle.Hollis@deq.virginia.gov

Cc: Will, Katherine CIV NAVFAC; Reisch, Timothy A CIV NAVFAC MID ATLANTIC

Subject: Coordination for conference call to discuss responses to comments

Good Morning!

I should have the responses to comments back from NAVFAC legal this morning and CH2MHill will forward them to the team and all concerned.

Karen is traveling and will be back in the office about 2:30. She indicated that Michelle is available this afternoon.

Betsy's voicemail indicates that she is in the office until 3:00.

I have not been able to speak with Bob this morning.

I am available anytime this afternoon.

Betsy and Bob, please call to indicate that 2:30 would be fine. Otherwise I will coordinate an alternate time with VDEQ. I will ask CH2MHill to provide the conference call number when we have agreed on a time.

Walt
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