



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178


www.deq.virginia.gov

Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

MEMORANDUM

To: All Members of the Stormwater Management Development/Design Community,
All Local Virginia Stormwater Management Program Administrators

From: Mike Rolband 

Date: June 8, 2023

Subject: Agreement in Lieu for Farm Buildings or Structures and Associated Impervious Surfaces – Effective July 1, 2023

Legislation enacted following the General Assembly's 2023¹ session amended the Erosion and Sediment Control Law (ESCL) and Stormwater Management Act (SWA) to add "*farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent*" to the definitions of "Agreement in lieu of a plan"² and "Agreement in lieu of a stormwater management plan"³ as buildings that are able to use these agreements. Per the ESCL and the SWA, farm building or structure means "*the same as that term is defined in § 36-97 and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400, and any related impervious surfaces including roads, driveways, and parking areas.*"

This memorandum, effective July 1, 2023, provides details regarding the implementation of this legislation when the Virginia Department of Environmental Quality (DEQ) is the Virginia Stormwater Program Management (VSMP) and/or Virginia Erosion and Sediment Control Program (VESCP) authority where the farm building or structure will be constructed. Localities and other entities that serve as VSMP and/or VESCP authorities may, but are not required to, adopt comparable policies or requirements in their ordinances for these structures.

¹ 2023 Va. Acts Chs. 48 and 49 (HB 1848 and SB 1376).

² Code of Virginia § 62.1-44.15:51.

³ Code of Virginia § 62.1-44.15:24.

Implementation

Land-disturbing activities related to the installation and production of crops, such as vines and fermentable grains, fall within the exemptions in the ESCL and SWA for agricultural activities (e.g., tilling, planting, or harvesting of agricultural crops).⁴ Where the construction of roads, driveways, and parking areas, and other structures associated with the farm building or structure and/or agritourism activity will result in a total impervious cover percentage, including the impervious cover from the farm building or structure and/or agritourism activity to be constructed, of less than five percent of the parcel of land, agreements in lieu may be substituted for an erosion and sediment control (ESC) plan and/or stormwater management (SWM) plan. As part of the agreement in lieu of a SWM plan, DEQ expects the owner to minimize post-construction runoff from the land-disturbing activity and parcel of land to the maximum extent practicable. This includes controls to prevent flooding or erosion damage from occurring on adjacent or downstream properties by implementing the following stormwater practices:

- a. Direct runoff from rooftops as non-erosive sheet flow to well-vegetated areas on the parcel of land to the maximum extent practicable,
- b. Direct runoff from impervious surfaces on the parcel of land (e.g., driveways, parking areas, sidewalks) as non-erosive sheet flow to well-vegetated areas on the parcel to the maximum extent practicable, and
- c. Direct runoff from lawns as non-erosive sheet flow to undisturbed, naturally-vegetated areas on the parcel of land to the maximum extent practicable.

Even if the proposed construction of a farm building or structure is less than five percent of the parcel of land, if the total proposed area of land disturbance is equal to or greater than one (1) acre, coverage under a Construction General Permit (CGP) is required pursuant to § 62.1-44.15:34 A of the Code of Virginia.

If the construction will result in a total impervious cover percentage that is or will be greater than or equal to five (5) percent of the total parcel of land, an agreement in lieu is not applicable. In these cases, the land disturbing activity may require an ESC plan, SWM plan, and/or CGP coverage.

An Agreement in Lieu of a Stormwater Management Plan for Farm Building or Structure form is available on the DEQ website (www.deq.virginia.gov/our-programs/water/stormwater). An owner or operator who plans to enter into an agreement in lieu is required to provide documentation that clearly depicts: (1) the extent of the parcel of land on which construction of the farm building or structure will take place, and (2) the total impervious cover of the parcel of land, including the impervious cover from the farm building or structure that is being constructed. The total impervious percentage cover includes all impervious areas on the parcel of land, regardless of whether they are included within the agriculture activity exemption or not.

Please feel free to contact Rebeccah Rochet (Rebeccah.Rochet@deq.virginia.gov; 804-801-2950) should you have any questions.

⁴ Code of Virginia §§ 62.1-44.15:51 (definition of “land-disturbing activities”) and 62.1-44.15:34 C 2.