



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

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Travis A. Voyles  
Secretary of Natural and Historic Resources

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

**November 22, 2023**

**Mark Fendig  
Scott's Mill Hydro  
912 Wilson Hwy  
Mouth of Wilson, VA 24363**

**Delivery Confirmation**

**Notice of Special Order Proceeding**

**DATE: December 14, 2023**

**TIME: 11:00am**

**CONFERENCE CALL INFORMATION:**

**CALL-IN NO.: 1-434-230-0065**

**ACCESS CODE: 895 270 459#**

**In re: Scott's Mill Hydro  
Virginia Water Protection (VWP) Individual Application No. 20-1005  
Scott's Mill Hydroelectric, Lynchburg, Virginia**

Dear Mr. Fendig:

You are hereby notified that, pursuant to Virginia Code ("Va. Code") §§ 2.2-4019 and 10.1-1186, a Special Order Proceeding will be held on December 14, 2023 at 11:00am regarding Scott's Mill Hydroelectric (the "Facility") located at 2 "D" Street, Lynchburg, Virginia 24501. If you are unable to attend at this date and time and wish to appear in person, please contact Eric Seavey at 804-754-6250 to arrange an alternate date and time. The Special Order Proceeding will be held via conference call or if the Permittee requests an in person proceeding at DEQ's Central Office. At the scheduled time, dial **1-434-230-0065**, and enter the Access Code **895 270 459#**

when requested. If you have any difficulty accessing the conference call, please call **Eric Seavey** at **804-754-6250**.

### **PURPOSE**

The Special Order Proceeding will determine whether Virginia Water Permit (VWP) Individual Application No. 20-1005 (application) submitted by Scott's Mill Hydro may be administratively withdrawn in accordance with 9VAC25-210-80 D 2. The determination to administratively withdraw the application are set forth in this Notice Letter. DEQ staff will be seeking a determination that the application submitted by Scott's Mill Hydro may be administratively withdrawn.

### **INFORMATION TO BE USED BY DEQ**

This letter notifies you of information upon which DEQ staff may rely to request the issuance of a determination that the application may be withdrawn. In addition to the information enclosed with this Notice Letter and labeled as "DEQ Exhibit Book," DEQ staff may also rely on other public documents in DEQ files. The enclosed information, the information in DEQ's case file, and the information presented by witnesses will be relied upon to ascertain the facts in this matter.

DEQ staff will also rely on applicable statutes, regulations, and DEQ guidance. In addition to the laws and regulations cited in this Notice Letter, DEQ may rely on other authorities. Full texts of statutes, regulations, and DEQ guidance can be obtained at <http://www.deq.virginia.gov/LawsRegulations.aspx> or <http://lis.virginia.gov/> (statutes and regulations) and <http://townhall.virginia.gov/L/GDocs.cfm> (DEQ guidance). Copies will be provided upon request.

### **ALLEGED VIOLATIONS AND LEGAL REQUIREMENTS**

On May 9, 2022 DEQ sent a letter to Mark Fendig & Scott's Mill Hydro ('applicant') requesting information necessary for the completion of Virginia Water Permit Individual Application No. 20-1005. A delineation of impacted areas, a delineation map of all surface water boundaries, potential compensatory mitigation plan, and Sections 24 and 25 of the Joint Permit Application were requested among other details. To date, the applicant has not provided this information. DEQ cannot process or finalize the permit application without this information.

Per 9VAC25-210-80 D 2 the application for an individual permit or general permit coverage will be administratively withdrawn from processing by the Department for failure to provide the required information after 60 days.

### **RECOMMENDED DECISION, RELIEF AND CIVIL PENALTY**

Per 9VAC25-210-80 D 2 VWP Individual Application No. 20-1005 (application) submitted by Scott's Mill Hydro may be administratively withdrawn as incomplete for failure to provide required information after 60 days.

## **PROCEDURES**

You may participate in the conference call yourself or by counsel or other qualified representative pursuant to Va. Code § 2.2-4019 or attend in person at DEQ's Central Office (CO) located at 1111 East Main Street, Richmond, VA 23219. At this proceeding, Scotts Mill Hydro will be able to present factual data, argument, or proof in connection with this case. DEQ staff may rely on the enclosed documents, other documents in its files, and statements of DEQ staff in establishing the propriety of the administrative withdrawal. A presiding officer will hear the evidence in this case and make a recommendation to the Director of Water. Both parties may prepare an independent Findings of Fact and Conclusions of Law and a draft Order for the Director's review. The Director will then issue a case decision in this matter.

**Be advised that if you fail to attend or appear without good cause at an informal fact-finding proceeding conducted pursuant to Va. Code § 2.2-4019, the presiding officer may issue a default recommendation regarding the subject of this notice.** A default recommendation and order may be issued is, Further, an order may be issued against you based on any admissions or other evidence without notice to you.

You will be notified of the results of the proceeding in accordance with Va. Code § 2.2-4019 and have the right to appeal any adverse decision in accordance with Va. Code § 2.2-4026.

**Eric Seavey** will represent DEQ at this proceeding. Please contact **Eric Seavey** at **804-754-6250** or **eric.seavey@deq.virginia.gov** within ten (10) calendar days of the receipt of this letter to indicate whether you will be represented at this Special Order Proceeding by counsel or if you are unable to participate by conference call or in person at the scheduled time.

DEQ encourages settlement of this matter at any time if such settlement is consistent with the provision and objectives of the applicable laws and regulations. You may request a settlement conference with DEQ staff to discuss the allegations in the notice. A request for a settlement conference or the opportunity to submit documentation will not affect the scheduled proceeding unless the parties and the presiding officer otherwise agree. If you wish to arrange an informal settlement conference or discuss the opportunity to submit documentation, please call **Eric Seavey** within ten (10) calendar days of receipt of this notice.

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In re: **Scott's Mill Hydro**  
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If you have any questions or require assistance, please contact **Eric Seavey** at **804-754-6250** or **eric.seavey@deq.virginia.gov**.

Sincerely,



**Eric Seavey**  
**Office of Water Withdrawal**  
**Permitting Manager**

Enclosure

cc: **Carla Poole, Presiding Officer**  
**Scott Morris, DBA, P.E., DEQ, Director, Water Division**  
**Lee Crowell, DEQ, Enforcement Director**