

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER PERMITTING DIVISION**

SUBJECT: Guidance Memo No. 18-2004, Procedures for Pipeline Stop Work Instruction

TO: Regional Directors

FROM: Melanie D. Davenport, Water Permitting Director



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COPIES: Regional Water Compliance Managers, Cindy Berndt

Summary:

This guidance memo establishes procedures for a pipeline stop work instruction to be issued under §§ 62.1-44.15:37.1 and 62.1-44.15:58.1 of the State Water Control Law. This guidance memo does not replace or supercede any other guidance memoranda.

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Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate or prohibit any particular action not otherwise required or prohibited by law or regulation. If alternative proposals are made, such proposals will be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Procedures for Pipeline Stop Work Instruction

Virginia Code §§ 62.1-44.15:37.1 and 62.1-44.15:58.1 provide that the Department of Environmental Quality (DEQ) may issue an instruction to stop work for land-disturbing activities related to the construction of a natural gas transmission pipeline under certain conditions. These conditions are:

1. the pipeline is greater than thirty six (36) inches inside diameter;
2. the natural gas pipeline company has approved annual standards and specifications; and
3. DEQ determines that there has been a substantial adverse impact to water quality or that an imminent and substantial adverse impact to water quality is likely to occur as a result of the land-disturbing activities.

DEQ's determination of whether there has been a substantial adverse impact to water quality or an imminent and substantial adverse impact is likely is fact specific and must be made on a case by case basis. While it is not possible to describe every factual situation that may result in DEQ making such a determination, the following describe some conditions and circumstances that will factor into DEQ's evaluation.

I. Considerations for Stop Work Instruction

A. Substantial Adverse Impacts

Examples of substantial adverse impacts to water quality include, but are not limited to:

- Discharges that cause a quantity of sedimentation in state waters that results in significant damage to aquatic life or otherwise significantly degrades water quality
- Discharges to state waters containing pollutants such as fuel, chemicals, drilling mud, construction waste or any substance that results in significant damage to aquatic life or otherwise significantly degrades water quality

B. Imminent and Substantial Adverse Impact Likely

Examples of circumstances that may indicate that an imminent and substantial adverse impact to water quality is likely to occur as a result of the company's land-disturbing activities include, but are not limited to:

- The company has failed to construct and maintain erosion and sediment control or pollution prevention measures in accordance with approved site-specific plans or the erosion and sediment control measures are not functioning effectively and the company has not proposed any corrective action
- The company has failed to conduct self-inspections in a timely manner

- The company has failed to provide or maintain temporary or permanent stabilization in a timely manner
- The company has failed to implement requested corrective action within specified deadlines

Since this determination is based on specific facts, it is possible that any one of these circumstances may result in a determination of “likely to occur” or it may be that multiple instances of one circumstance or a combination of circumstances may be the basis for finding that an imminent and substantial adverse impact is likely.

DEQ may also issue a stop work instruction when severe weather forecasts or other conditions make imminent and substantial adverse impacts to water quality likely to occur as a result of land-disturbing activities, even in the absence of non-compliance with annual standards and specifications or site-specific plan requirements.

II. Process for Stop Work Instruction

When DEQ compliance staff identifies any conditions at a pipeline land-disturbance site and determines that there has been a substantial adverse impact to water quality or an imminent and substantial adverse impact is likely, they should contact the water compliance manager to discuss the issuance of a stop work instruction. If appropriate, the stop work instruction will be issued by central office water compliance staff, in coordination with enforcement staff.

The stop work instruction will require the company to stop all or part of the land-disturbing activities on the part of the site that caused the substantial adverse impacts to water quality or are likely to cause imminent and substantial adverse impacts to water quality. The stop work instruction only applies to “land-disturbing activity” as defined in the Stormwater Management Act (“SWMA”) and/or the Erosion and Sediment Control Law (“ESCL”),¹ and does not apply to other activities related to construction of the natural gas transmission pipeline that do not involve land disturbance.

The stop work instruction should identify: (1) the land-disturbing activities that must stop, (2) the geographical part of the project to which the stop work instruction applies, (3) the nature of the substantial adverse impact to water quality, or the imminent and substantial adverse impact to water quality that is likely to occur, and (4) corrective measures that must be completed and approved by DEQ for the stop work instruction to be lifted.

¹ Va. Code § 62.1-44.15:51 of the ESCL defines “land-disturbing activity” as “any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting, and filling of land,” subject to a number of exceptions. Va. Code § 62.1-44.15:24 of the SWMA defines “land-disturbing activity” as “a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in § 62.1-44.15:34.”

The stop work instruction becomes effective upon service to the company (1) by email or other technology agreed to in writing by DEQ and the company, (2) by mailing with confirmation of delivery to the address specified in the annual standards and specifications, or (3) by delivery at the site to a person previously identified to DEQ by the company.

Upon issuance the company may request a review of the stop work instruction by the Director or his designee. If requested, this review must be conducted within forty-eight (48) hours of the issuance of the instruction. As part of this review, the Director or his designee should review the inspection report(s) and any other relevant documentation to determine whether the criteria for issuance of the stop work instruction have been satisfied and whether the corrective measures required by the stop work instruction are appropriate. The Director or his designee, in their sole discretion, may affirm, modify, amend, or cancel the stop work instruction. Intermediate review by the Director or his designee does not preclude the opportunity for an informal fact finding proceeding (IFF).

Within 10 business days of issuance of a stop work instruction, DEQ shall provide to the company an opportunity for an IFF concerning the stop work instruction and any intermediate review by the Director or his designee. Reasonable notice as to the time and place of the IFF will be provided. The IFF notice shall include the date, time, and location of the IFF and notice that a default order may be issued against the company for failure to appear without good cause. If the company fails to attend or appear without good cause, the presiding officer may issue a default decision.

A waiver of the IFF proceeding should be included with the notice letter, allowing the company to opt out of the IFF process and remain bound by the stop work instruction.

At any time after the issuance of the stop work instruction if the company completes the corrective measures specified in the stop work instruction to DEQ's satisfaction, the stop work instruction will be immediately lifted. If an IFF has been requested and the company completes the corrective measures specified in the stop work instruction to DEQ's satisfaction prior to the date of the IFF, the company will be notified that the IFF is cancelled.

DEQ shall issue a case decision affirming, modifying, amending, or canceling the stop work instruction within 10 business days of the IFF and shall promptly transmit a copy of the case decision to the company. The company may appeal the final case decision or the preliminary decision rendered by the Director or his designee in accordance with the Administrative Process Act.