VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

Division of Enforcement

Memorandum

SUBJECT: Enforcement Guidance Memorandum No. 1-2011
Access to Private Property for Inspections and Investigations, Denial of Access, and Obtaining Administrative Inspection Warrants

TO: Regional Directors and Division Directors

FROM: Melanie D. Davenport, Director
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DATE: March 3, 2011

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Summary: This guidance establishes procedure and describes limits to Virginia Department of Environmental Quality ("DEQ") staff's authority to access private property to conduct environmental investigations and inspections pursuant to applicable law, establishes what DEQ will consider a denial of access to property, and establishes general procedures for obtaining an administrative inspection warrant ("inspection warrant").

Electronic Copy:
An electronic copy of this guidance in PDF format is available for staff internally on DEQNET at http://deqnet/programs/enforce/AgencyEnfGuidance.asp, and for the public on the DEQ website at: http://www.deq.virginia.gov/enforcement/manual.html

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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 any particular action for the Department or its employees nor does it prohibit any particular action that is within applicable law. This guidance is intended only to provide a guide for policies and procedures for the Department and its employees. Facts and circumstances may dictate varying from this policy as appropriate.

I. Purpose

This guidance establishes the general policy and procedure for staff to access private property to conduct investigations and inspections. It also establishes general procedures to obtain consent prior to accessing private property, procedures to be followed if consent cannot be obtained or if access is denied, and general procedures for obtaining an inspection warrant.

II. DEQ Policy and Procedures for Accessing Private Property

General Procedures: To carry out the mission of DEQ and meet the statutory mandates to protect human health, safety, and the environment, DEQ staff ("staff") often must enter onto private property[1] to conduct inspections and investigations, or respond to environmental contamination, threats, or hazards. In order to insure that such inspections, investigations, and responses would be legally defensible in court, they should be conducted within the confines of all laws as well as DEQ's policies and procedures.

It shall be the policy and procedure of DEQ for staff to obtain consent from the property owner or an authorized representative of the property owner prior to or at the time of conducting an inspection or investigation on private property, absent urgent circumstances.

Often, permits issued by DEQ or one of its citizen boards include right of entry and inspection provisions. Staff should review these permit provisions prior to conducting an inspection or investigation at a permitted facility. Additionally, rights of entry and inspection provisions are found in several sections of the Virginia Code.[2]

Also, staff is encouraged to use public spaces such as parks and roadways to perform their duties. Staff may enter a private property in cooperation with other local, state, or federal authorities if the purpose of the site inspection or visit is administrative or civil in nature and the subject of the inspection is within the authority of DEQ or one of the citizen boards.[3]

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[1] Private property, as used in this guidance, means property that is not owned by a governmental entity but rather a private citizen or legal entity such as a company.

[2] Appendix A provides the statutory language found in the Virginia Code that allows DEQ to inspect or conduct investigations.

[3] Generally, staff is carrying out administrative or civil functions and not criminal functions. Different legal requirements and policies govern entry onto private property for criminal investigations. This guidance only covers access to private property for routine program inspections or administrative inspections and not criminal investigations or warrants obtained pursuant to a criminal investigation or criminal enforcement proceedings. These procedures should not be used to attempt to obtain criminal evidence or for criminal investigations. If a criminal investigation is underway, staff must not use a civil or administrative inspection or investigation to collect or identify information or evidence for a criminal investigation.

Inspections of Permitted and Non-Permitted Properties: Upon arrival at the site, staff must locate the property owner or authorized representative[4], present his or her DEQ credentials[5], and identify the reason for being on the property.
Staff must then obtain the consent of the property owner or authorized representative of the property owner. This step is not required if previous permission has been granted to enter the property and to conduct the inspection. Also, if staff is conducting an unannounced inspection, consent should be obtained upon arrival at the site but not in advance.

For leased properties, staff must obtain consent from the person who leases the property or authorized representative, and ensure that the representative granting consent has authority to grant consent on the lessee's behalf.

Staff should conduct the inspection during regular business or operating hours. Staff should maintain a professional, courteous demeanor while gaining access and should not threaten, harass, coerce, or otherwise act unreasonable when seeking entry.

Staff may enter upon property, even property that is marked with "No Trespassing," only to determine if the property owner or authorized representative is on-site and to obtain consent. Staff should never enter onto or remain on property where a risk to his or her safety or health is present or possible.

Upon arrival, if staff cannot locate the property owner or an authorized representative and prior permission has not been given to enter the site, staff shall not continue to conduct an inspection and must exit the property.

If staff cannot locate the property owner or authorized representative, after exiting the property, staff should discuss their findings with their immediate supervisor to determine next steps, which may include:

- searching governmental agencies' websites or databases to determine if an entity is still operating or exists
- searching local property records to determine who the legal owner of the property is
- using public access points or property to observe and document issues
- asking adjoining property owners for access to make observations from adjacent properties
- petitioning the appropriate Circuit Court for access to abandoned waste sites
- issuing a NOAV, which cites permit provisions for the Department to be able to conduct inspections or other permit requirements such as a requirement that certain individuals to be on-site

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[4] An authorized representative is an individual other than the property owner who has the authority to grant access to the site. For example, environmental managers usually have the authority to allow staff on-site to conduct inspections. Other examples would include spouses, corporate officers, managers, waste water treatment plant operators, and landfill operators. If staff is not sure if the individual has such authority, staff should inquire of the individual.

[5] Credentials are the employee's state-issued DEQ identification.

Additionally, staff may consider using the procedures outlined in Section IV to obtain an inspection warrant.

Once consent has been obtained, staff does not have to be accompanied by the property owner or an authorized representative during the inspection unless it is called for under media-specific guidance, but should be accompanied by facility personnel when possible. If the property owner or authorized representative demands to be present during the inspection but is unavailable to accompany staff at the time, then staff should consult with their supervisor and may consider returning when the property owner is available or pursuing an administrative inspection warrant using the procedures outlined in Section IV, depending upon the circumstances and urgency for the inspection.

Apparent Violations or Circumstances Requiring Immediate Action Including Fish Kills and Suspected Spills of Hazardous or Toxic Substances: If an obvious and immediate damage to human health or the environment has occurred or is about to occur and an immediate investigation or other action to determine the source and/or mitigate its effects may be warranted, such as investigating a fish kill or spill/release of a hazardous or toxic substance, staff should immediately notify their Regional Director or designee. After notification to the Regional Director or designee, staff will notify the property owner or an authorized representative and seek immediate access to the site. If the property owner or an authorized representative cannot be reached, staff may enter the property to conduct a limited investigation to determine immediate risks to human health and the environment if the violations or circumstances involve air or water violations. However, staff should make repeated attempts to contact the property owner or an authorized representative and notify the property owner or an authorized representative after exiting the site as soon as possible.

If the apparent violations or circumstances involve waste media, staff should consult with the Central Office Division of Enforcement ("DE") prior to entering the site.

Staff should not enter the property if a risk is present to the employee's health and safety. If staff has a concern about the safety of a site, they should consult with their supervisor. If appropriate, staff should notify the proper emergency or first responders, if not already present on-site, and wait for proper clearance to enter the site.

If a property owner or authorized representative objects to staff entering their property, staff should exit the property and notify their Regional Director of the hazard, threat, damage, and other observations. Staff should then follow the procedures outlined in Section IV and discuss available options with DEQ Central Office management.

III. Denial of Access

In an attempt to conduct an investigation or inspection, DEQ may consider the following a denial of access:

- Expressed denial of access to the property to conduct an investigation or inspection.
- Limiting the scope of inspection to exclude areas that are necessary to properly conduct an inspection or investigation.

- Requiring staff to sign waivers of liability or waivers limiting liability including register logs or badges which contain such language. However, staff may sign a sign-in sheet at the facility so that facility is aware of who is on-site as long as the sheet does not contain a waiver of liability or a confidentiality agreement. In this case, staff should request the ability to sign-in on a separate document or if possible strike through the waiver language and initial over the strike through.
- Requiring staff to sign confidentiality agreements.
- Denial of ability to take photographs of items that are reasonably related to the inspection or investigation or are evidence of non-compliance. Staff should check with the Media Compliance Manager and Media Enforcement Manager if a question arises as to the ability to protect information as confidential.
- Refusing or limiting staff's ability to use equipment necessary to conduct the inspection.
- Refusing or limiting staff's ability to take samples or conduct monitoring necessary to conduct the inspection.
- Refusing or limiting staff's ability to view documents necessary to conduct the inspection.
- Unreasonably delaying staff conducting the inspection. Whether a delay is unreasonable depends on the circumstances such as length, reason for the delay, urgency that the inspection needs to be conducted, and other circumstances which must be examined on a case-by-case basis.
- Making threats, intimidating, harassing, or coercing staff.
- Other unreasonable actions or conditions placed upon staff.

If an individual other than the property owner or authorized representative denies access, staff should attempt to make contact with the property owner or an authorized representative to gain access. In the case of a leased property, if a person other than the person who leases the property denies access, staff should attempt to make contact with the person who leases the property to gain access.

In the event that staff is denied access to a property, staff may ask why the individual is denying access and discuss the denial with the individual in attempt to resolve the situation. Staff should inform the individual the basis of the inspection and the Department's authority to conduct inspections. However, staff should not in any way threaten or attempt to coerce an individual who denies access. Staff should not imply any penalties, repercussions, or actions that may result against the individual or the facility if access is denied.

In the event of a denial of access, staff should note the denial and the reasons provided by the individual, and exit the property immediately. Upon exiting the property after a denial, staff should notify his or her immediate manager of the denial. In the event of a denial of access, staff should discuss next steps with his or her immediate manager, including possible actions such as using public access points or public property to observe issues of non-compliance, rescheduling the inspection, issuing an NOAV, or obtaining an inspection warrant as outlined in Section IV.

IV. Inspection Warrants

The ability to inspect and investigate regulated facilities and possible non-compliant activity is essential to DEQ's mission. On the rare occasion that a DEQ employee is denied access or unable to gain access to a property, staff may obtain an inspection warrant to conduct the inspection or investigation.

An administrative inspection warrant is a warrant issued to conduct a regulatory inspection or investigation and is not the same as a criminal warrant to search a property or seize evidence to be used in a criminal investigation or trial. [6] Outlined below is the basis for obtaining an inspection warrant and the procedure staff should follow to attempt to obtain an inspection warrant.

Basis for Obtaining Administrative Inspection Warrants: An inspection warrant may generally be obtained under two circumstances. First, an inspection warrant may be granted by a court where the inspection or investigation and actions to be undertaken during the inspection are being conducted pursuant to reasonable "legislative or administrative standards."[7] Usually, this criterion is satisfied where a facility is being inspected pursuant to routine permitting, monitoring, or federal grant commitments.

Second, an inspection warrant may be granted where probable cause exists to believe that a non-compliant activity is occurring.[8] Usually, this criterion is satisfied where probable cause exists to show a violation of one of the laws or regulations under the purview of one of the citizen boards served by DEQ.

In addition to these two circumstances, staff must have either been refused admission to the property or demonstrate to the court that facts or circumstances warrant the court issuing the inspection warrant without DEQ staff having consent to enter the property. This later condition is generally satisfied where facts or circumstances indicate that evidence may be lost or destroyed if consent is first attempted to be obtained or that other actions may occur that undermine DEQ's ability to effectively enforce laws or regulations.[9]

Procedures to Obtain Administrative Inspection Warrants: The first step in obtaining an inspection warrant to conduct the inspection or investigation is to discuss the need for the inspection warrant with the Regional Media Program Manager. The reason may be due to a

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[6] "An [']inspection warrant['] is an order in writing, made in the name of the Commonwealth, signed by any judge of the circuit court whose territorial jurisdiction encompasses the property or premises to be inspected or entered, and directed to a state or local official, commanding him to enter and to conduct any inspection, testing or collection of samples for testing required or authorized by state or local law or regulation in connection with the manufacturing, emitting or presence of a toxic substance, and which describes, either directly or by reference to any accompanying or attached supporting affidavit, the property or premises where the inspection, testing or collection of samples for testing is to occur." Va. Code § 19.2-393.

[7] Va. Code § 19.2-394 describes the circumstances under which a Circuit Court may issue an inspection warrant. These criteria must be demonstrated to the court.

[8] Va. Code § 19.2-394 describes the circumstances under which a Circuit Court may issue an inspection warrant. The court will determine if probable cause exists based upon the information provided to the court.

[9] Va. Code § 19.2-394

denial of access, as discussed in Section II, or circumstances that indicate a preemptive inspection warrant may be needed. If staff believes that, under the circumstances, an inspection warrant may be needed; staff should implement these procedures as soon as possible.

If the Regional Media Program Manager believes an inspection warrant should be obtained, staff and the Regional Media Program Manager should discuss the issue with regional management.

Upon agreement by regional management, the regional office should contact the DE in the Central Office and Central Office Media Program Managers to discuss the basis and appropriateness for the inspection warrant and next steps, including the drafting of necessary court documents.

Upon agreement that an inspection warrant should be obtained, DE will contact and coordinate with the Office of the Attorney General ("OAG").

Obtaining an inspection warrant will require the staff member who is seeking to conduct the inspection to complete an affidavit which indicates the basis for the inspection, what is to be inspected, and whether the inspection warrant is being sought due to a denial of access or circumstances where consent should not be requested prior to the inspection. [10] Template affidavits, applications for warrants, and warrants are available from the DE.

After coordination with the OAG, staff and the OAG will present the affidavit, application for warrant, and the warrant to the Circuit Court in the jurisdiction where the inspection is to occur.

Upon Circuit Court approval, staff will immediately execute the warrant. An inspection warrant only remains valid for 10 days.[11] If staff cannot execute the warrant within the time indicated in the inspection warrant, staff should notify DE, and DE will coordinate with the OAG to request an extension.

Staff may request that the warrant be served by a local or county sheriff or other law enforcement personnel. Staff may also request that a local or county sheriff or other law enforcement personnel accompany them on the inspection. Staff shall not use force to execute the inspection warrant.[12]

Staff must conduct the inspection or investigation as prescribed or limited in the inspection warrant and strictly adhere to any terms in the inspection warrant.

Staff should coordinate with DE and the OAG to file a return of service[13] after execution of the inspection warrant in the Circuit Court where the inspection warrant was obtained.[14]

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[10] Va. Code § 19.2-394 outlines what must be contained in an affidavit to the Circuit Court.

[11] Va. Code § 19.2-395

[12] Va. Code § 19.2-396 prohibits use of force to execute an inspection warrant unless specifically authorized by the court under special circumstances.

[13] A "return of service" is a document filed with the court affirming that the warrant has been served.

Appendix A

State Statutes on Right of Entry by DEQ

DEQ

§ 10.1-1197.10. Right of entry to inspect, etc.; warrants.

Upon presentation of appropriate credentials and upon consent of the owner or custodian, the Director or his designee shall have the right to enter at any reasonable time onto any property to inspect, investigate, evaluate, conduct tests or take samples for testing as he reasonably deems necessary in order to determine whether the provisions of any law administered by the Director or the Department, any regulations of the Department, any order of the Department or Director or any conditions in a permit by rule, license or certificate issued by the Director are being complied with. If the Director or his designee is denied entry, he may apply to an appropriate circuit court for an inspection warrant authorizing such investigation, evaluation, inspection, testing or taking of samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2.

Air Pollution Control Law

The Executive Director or an authorized DEQ staff member may use the following authority for air quality inspections:

Vac. Code § 10.1-1307.3. Executive Director to enforce laws.

A. The Executive Director or his duly authorized representative shall have the authority to:

1. Supervise, administer, and enforce the provisions of this chapter and regulations and orders of the Board as are conferred upon him by the Board;

2. Investigate any violations of this chapter and regulations and orders of the Board;

3. Require that air pollution records and reports be made available upon request, and require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of this chapter and regulations and orders of the Board;

4. Upon presenting appropriate credentials to the owner, operator, or agent in charge:

a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in this Commonwealth; and

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[14] Va. Code § 19.2-395

b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the Director or his representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the Director shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection;

B. The Executive Director or his duly authorized representative may pursue enforcement action for a violation of opacity requirements or limits based on (i) visual observations conducted pursuant to methods approved by the U.S. Environmental Protection Agency, (ii) data from certified continuous opacity monitors, or (iii) other methods approved by the U.S. Environmental Protection Agency.

Va. Code § 10.1-1315. Right of entry.

Whenever it is necessary for the purposes of this chapter, the Board or any member, agent or employee thereof, when duly authorized by the Board, may at reasonable times enter any establishment or upon any property, public or private, to obtain information or conduct surveys or investigations.

Virginia Waste Management Act

The Executive Director or an authorized DEQ staff member may use the following authority for waste inspections:

Va. Code § 10.1-1456. Right of entry to inspect, etc.; warrants.

Upon presentation of appropriate credentials and upon consent of the owner or custodian, the Director or his designee shall have the right to enter at any reasonable time onto any property to inspect, investigate, evaluate, conduct tests or take samples for testing as he reasonably deems necessary in order to determine whether the provisions of any law administered by the Board, Director or Department, any regulations of the Board, any order of the Board or Director or any conditions in a permit, license or certificate issued by the Board or Director are being complied with. If the Director or his designee is denied entry, he may apply to an appropriate circuit court for an inspection warrant authorizing such investigation, evaluation, inspection, testing or taking of samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2.

Va. Code § 10.1-1418.4. Removal of waste tire piles; cost recovery; right of entry.

Notwithstanding any other provision, upon the failure of any owner or operator to remove or remediate a waste tire pile in accordance with an order issued pursuant to this chapter or § 10.1-1186, the Director may enter the property and remove the waste tires. The Director is authorized to recover from the owner of the site or the operator of the tire pile the actual and reasonable costs incurred to complete such removal or remediation. If a request for reimbursement is not

paid within 30 days of the receipt of a written demand for reimbursement, the Director may refer the demand for reimbursement to the Attorney General for collection or may secure a lien in accordance with § 10.1-1418.5.

Va. Code § 10.1-1406.1. Access to abandoned waste sites.

A. For the purposes of this section, "abandoned waste site" means a waste site for which (i) there has not been adequate remediation or closure as required by Chapter 14 (§ 10.1-1400 et seq.) of this title, (ii) adequate financial assurances as required by § 10.1-1410 or § 10.1-1428 are not provided, and (iii) the owner, operator, or other person responsible for the cost of cleanup or remediation under state or federal law or regulation cannot be located.

B. Any local government or agency of the Commonwealth may apply to the appropriate circuit court for access to an abandoned waste site in order to investigate contamination, to abate any hazard caused by the improper management of substances within the jurisdiction of the Board, or to remediate the site. The petition shall include (i) a demonstration that all reasonable efforts have been made to locate the owner, operator or other responsible party and (ii) a plan approved by the Director and which is consistent with applicable state and federal laws and regulations. The approval or disapproval of a plan shall not be considered a case decision as defined by § 2.2-4001.

C. Any person, local government, or agency of the Commonwealth not otherwise liable under federal or state law or regulation who performs any investigative, abatement or remediation activities pursuant to this section shall not become subject to civil enforcement or remediation action under this chapter or other applicable state laws or to private civil suits related to contamination not caused by its investigative, abatement or remediation activities.

D. This section shall not in any way limit the authority of the Board, Director, or Department otherwise created by Chapter 14 of this title.

§ 10.1-1425.3. Inspection of battery retailers; penalty.

The Department shall produce, print, and distribute the notices required by § 10.1-1425.2 to all places in the Commonwealth where lead acid batteries are offered for sale at retail. In performing its duties under this section, the Department may inspect any place, building, or premise subject to the provisions of § 10.1-1425.2. Authorized employees of the Department may issue warnings to persons who fail to comply with the provisions of this article. Any person found guilty of failing to post the notice required under § 10.1-1425.2 after receiving a warning to do so pursuant to this section shall be punished by a fine of not more than fifty dollars.

State Water Control Law

The Executive Director or an authorized DEQ staff member may use the following authority for water inspections:

Va. Code § 62.1-44.20. Right to entry to obtain information, etc.

Any duly authorized agent of the Board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this chapter.

State Ownership of Sub-Aqueous Bottoms, State Waters, and Aquatic Life

The Executive Director or an authorized DEQ staff member may use the following authority for inspection of water features and aquatic life:

Va. Code § 28.2-1200. Ungranted beds of bays, rivers, creeks and shores of the sea to remain in common.

All the beds of the bays, rivers, creeks and the shores of the sea within the jurisdiction of the Commonwealth, not conveyed by special grant or compact according to law, shall remain the property of the Commonwealth and may be used as a common by all the people of the Commonwealth for the purpose of fishing, fowling, hunting, and taking and catching oysters and other shellfish. No grant shall be issued by the Librarian of Virginia to pass any estate or interest of the Commonwealth in any natural oyster bed, rock, or shoal, whether or not it ebbs bare.

NOTE: The statute indicates the identified bays, rivers, creeks, and shores of the sea within the jurisdiction of the Commonwealth are public property and subject to uninterrupted entry by the Executive Director or an authorized DEQ staff member. All streambeds east of the Appalachian Mountains are public property. Some streams west of the mountains, e.g. the Jackson River, are the subject of crown grants and are privately owned. To further complicate matters, the Jackson is navigable, so staff may access the river by boat, albeit they might require landowner permission to wade in that river. See Kraft v. Burr, 252 Va. 273 (1996).

Appendix B

State Statute on Administrative Inspection Warrants

Va. Code § 19.2-393. Definitions.

An "inspection warrant" is an order in writing, made in the name of the Commonwealth, signed by any judge of the circuit court whose territorial jurisdiction encompasses the property or premises to be inspected or entered, and directed to a state or local official, commanding him to enter and to conduct any inspection, testing or collection of samples for testing required or authorized by state or local law or regulation in connection with the manufacturing, emitting or presence of a toxic substance, and which describes, either directly or by reference to any accompanying or attached supporting affidavit, the property or premises where the inspection, testing or collection of samples for testing is to occur. Such warrant shall be sufficiently accurate in description so that the official executing the warrant and the owner or custodian of the property or premises can reasonably determine from the warrant the activity, condition,

circumstance, object or property of which inspection, testing or collection of samples for testing is authorized.

For the purposes of this chapter, "manufacturing" means producing, formulating, packaging, or diluting any substance for commercial sale or resale; "emitting" means the release of any substance, whether or not intentional or avoidable, into the work environment, into the air, into the water, or otherwise into the human environment; and "toxic substance" means any substance, including (i) any raw material, intermediate product, catalyst, final product and by-product of any operation conducted in a commercial establishment and (ii) any biological organism, that has the capacity, through its physical, chemical, or biological properties, to pose a substantial risk to humans, aquatic organisms or any other animal of illness, death or impairment of normal functions, either immediately or over a period of time.

Va. Code § 19.2-394. Issuance of warrant.

An inspection warrant may be issued for any inspection, testing or collection of samples for testing or for any administrative search authorized by state or local law or regulation in connection with the presence, manufacturing or emitting of toxic substances, whether or not such warrant be constitutionally required. Nothing in this chapter shall be construed to require issuance of an inspection warrant where a warrant is not constitutionally required or to exclude any other lawful means of search, inspection, testing or collection of samples for testing, whether without warrant or pursuant to a search warrant issued under any other provision of the Code of Virginia. No inspection warrant shall be issued pursuant to this chapter except upon probable cause, supported by affidavit, particularly describing the place, things or persons to be inspected or tested and the purpose for which the inspection, testing or collection of samples for testing is to be made. Probable cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting such inspection, testing or collection of samples for testing are satisfied with respect to the particular place, things or persons or there exists probable cause to believe that there is a condition, object, activity or circumstance which legally justifies such inspection, testing or collection of samples for testing. The supporting affidavit shall contain either a statement that consent to inspect, test or collect samples for testing has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent in order to enforce effectively the state or local law or regulation which authorizes such inspection, testing or collection of samples for testing. The issuing judge may examine the affiant under oath or affirmation to verify the accuracy of any matter indicated by the statement in the affidavit.

Va. Code § 19.2-395. Duration of warrant.

An inspection warrant shall be effective for the time specified therein, for a period of not more than ten days, unless extended or renewed by the judicial officer who signed and issued the original warrant, upon satisfying himself that such extension or renewal is in the public interest. Such warrant shall be executed and returned to the judicial officer by whom it was issued within the time specified in the warrant or within the extended or renewed time. After the expiration of such time, the warrant, unless executed shall be void.

Va. Code § 19.2-396. Conduct of inspection, testing or collection of samples for testing; special procedure for dwelling.

An inspection, testing or collection of samples for testing pursuant to such warrant may not be made in the absence of the owner, custodian or possessor of the particular place, things or persons unless specifically authorized by the issuing judge upon a showing that such authority is reasonably necessary to effectuate the purpose of the law or regulation being enforced. An entry pursuant to this warrant shall not be made forcibly, except that the issuing judge may expressly authorize a forcible entry where facts are shown sufficient to create a reasonable suspicion of an immediate threat to public health or safety, or where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. In the case of entry into a dwelling, prior consent must be sought and refused and notice that a warrant has been issued must be given at least twenty-four hours before the warrant is executed, unless the issuing judge finds that failure to seek consent is justified and that there is a reasonable suspicion of an immediate threat to public health or safety.

Va. Code § 19.2-397. Refusal to permit authorized inspection; penalty.

Any person who willfully refuses to permit an inspection, testing or collection of samples for testing lawfully authorized by warrant issued pursuant to this chapter shall be guilty of a Class 3 misdemeanor.