

MEMORANDUM
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER DIVISION

SUBJECT: Guidance Memorandum No. 00-2008 Notification of Acceptance for Coverage by a General Permit

FROM: Larry G. Lawson, P. E. 

DATE: May 12, 2000

COPIES: Regional Permit Managers, Regional Compliance and Enforcement Managers, Regional Water Permit Managers, Mary Jo Leugers, Martin Ferguson, David Paylor, Cindy Berndt

BACKGROUND:

The State Water Control Law requires the use of certified mail in several instances. One such instance is in § 62.1-44.15(9) that requires rulings made under §§ 62.1-44.16, 62.1-44.17 and 62.1-44.19 in response to requests or applications to the Board be mailed by certified mail to the owner(s) affected. The questions that arise are:

Does the filing of the registration statement required by a general permit constitute a request or application to the Board?

Does the notification of coverage by a general permit constitute a ruling according to §§ 62.1-44.16, 62.1-44.17 or 62.1-44.19?

Discussion:

It would seem that “rulings” by the Board relative to general permits occur when the general permit is issued and adopted as a regulation. These rulings stipulate who may be covered and under what conditions as well as establishing the requirements of the permit. Note that, at the time of issuance, there are no effected owners and thus no notification requirements. Owners register for coverage under the general permit after all rulings have been made and they believe that they can comply.

Subsequent to the issuance of a general permit, the Board makes no rulings relative to coverage. For

example, the Board cannot deny coverage to any owner who meets all the requirements of the general permit nor can the Board extend coverage to any owner who does not. Further, the terms of the general permit cannot be modified to apply only to an individual owner. All owners must comply with the same requirements.

It appears that the registration statement required by general permits is not a request or application to the Board. It is purely and simply a notification that an owner believes they meet the requirements of and will comply with the terms specified in the permit. There is nothing in the State Water Control Law that would require a response from the Board to such notifications of intent.

However, in our request to EPA for authority to administer a general permit program we set forth the proposed procedures that we would follow in processing general permits. In the submitted procedures we proposed to require the submittal of a Registration Statement, we would review it and if we believed the owner qualified we would send the owner a copy of the general permit. EPA in their authorization for the Board to administer the general permit program approved our procedures for processing general permits.

Consistent with our procedures for processing general permits we included in each general permit and each General Permit Regulation particular registration and response requirements. Briefly, they are:

- The animal waste general permit only requires the filing of a registration statement. There is no mention of an acceptance response from DEQ.
- The Car Wash, Concrete, Cooling water, Fish Culture, Petroleum, Non Metallic Mining, and the sewage facilities less than 1000 gpd general permits require an owner file and receive acceptance by the Board for the registration statement.
- The Seafood, Construction storm water, and the Industrial storm water general permits require an owner to file and receive acceptance by the Director for the registration statement.

All of the above general permits indicate that the owner should receive a copy of the general permit.

Summary:

The State Water Control Law does not require a certified mail response to registration statements relative to general permits.

The Board's procedure for processing general permits and each general permit contains language that requires a response from the Board or Director. However, such responses are informational or advisory

in nature and we do not believe they constitute rulings by the Board as envisioned by the State Water Control Law.

Thus, neither the State Water Control Law nor any of the Board's Regulations or general permits requires the General Permits to be sent by certified mail.

Recommendation:

Upon receipt of a registration statement for a general permit mail to the owner a copy of the permit and an acceptance statement. Do not send the general permit by certified mail. Send the general permit to the owner by first class mail.

DISCLAIMER

This document provides procedural guidance to the permit staff; it does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decision in any particular case will be made by applying the State Water Control Law and the implementing regulation on the basis of the site-specific facts when permits are issued.