

**VIRGINIA DEPARTMENT OF ENERGY
MINED LAND REPURPOSING**

GUIDANCE MEMORANDUM¹ No. 25-08

Issue Date: June 24, 2008

Subject: NPDES Permit and Anniversary Fees

§45.1-254 of the **Code of Virginia** was amended by Chapter 275 of the 2008 Acts of Virginia General Assembly to require, beginning July 1, 2008, the assessment of a \$300 permit application fee and anniversary fee in the same amount for each discharge outfall subject to the National Pollutant Discharge Elimination System (NPDES) permit under the Virginia Coal Surface Mining Control and Reclamation Act of 1979, as amended. This memorandum provides guidance for the assessment and payment of NPDES permit application and anniversary fees.

The procedure for determining the appropriate NPDES permit fees will depend on whether an electronic permit (EP) application is involved -

- Fees for permits in “Active” (A) status will be assessed during the EP process for new permit applications, revision applications adding new NPDES outfalls, permits applying for CSMO/NPDES renewal, and permits submitting anniversary reports.
- NPDES fees for permits in “Completed” status² will be assessed during the EP review process at NPDES Only Renewal. In between NPDES permit renewals, the MLR will notify the permittee by letter or e-mail of the applicable fee amount based on the number of discharge outfalls existing on the permit’s NPDES anniversary date.
- Fees for either of the above scenarios will be assessed by the number of outfalls listed in the permit on the anniversary date of the permit or the date fees are requested on the application (renewal or anniversary report), which ever comes first.

For EP applications, the NPDES permit fees will be determined after the application has been technically approved and will be based upon the final discharge outfalls listed in Section 5.15 of the EP. The MLR Permit Review Specialist will inform the permittee/consultant of the applicable NPDES fees, CSMO permit fees³, and performance bond amounts in a “bond and fees” letter. The letter will include the date that payment must be submitted to the MLR.

Electronic Applications

¹ This Memorandum is to be considered guidance issued under the authority of § 45.1-230.A1 of the Code of Virginia which reads:

"In addition to the adoption of regulations under this chapter, the Director may at his discretion issue or distribute to the public interpretative, advisory or procedural bulletins or guidelines pertaining to permit applications or to matters reasonably related thereto without following any of the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.). The materials shall be clearly designated as to their nature, shall be solely for purposes of public information and education, and shall not have the force of regulations under this chapter or under any other provision of this Code."

² Either completion report (CR) or completion letter (CL) submitted.

³ Fees are set out in §4VAC25-130-777.17

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Each NPDES discharge outfall listed in Section 5.15 of the EP will be assessed the NPDES fee, whether constructed or not. Therefore, if the applicant/permittee decides a particular outfall will not be constructed, that outfall may be deleted by revision application (prior to renewal or anniversary date) by designating an action code “D” beside the outfall listed in Section 5.15. The application should also include a revised drainage control plan in Section XII (12), explaining how drainage will be controlled in the area that was to be monitored by the outfall point

A constructed NPDES discharge outfall must be deleted by an Inspector’s Plan Modification once the structure it is associated with has been physically removed. The constructed outfall may not be deleted in the permit renewal application or anniversary report process. It takes a short period of time from receipt of the Inspector’s Plan Modification to delete a NPDES outfall and update the Division’s electronic records.

The outfalls deleted by Plan Modification but included in the EP data dump should be removed from the Section 5.15 listing by deleting the entire monitoring point record (i.e., an action code “D” should not be included for these outfalls). A narrative explaining deletions of “not constructed” outfalls and monitoring point record removal (due to approved Plan Modification) must be attached in Section 5.15.

An updated NPDES Application form (DMLR-PT-128) is not required for an anniversary report.

Completed Permits at NPDES Anniversary

For permits in a completed status (*see footnote #2*), no anniversary report is required. The MLR will notify the permittee by letter or e-mail of the applicable fee amount based on the number of discharge outfalls existing on the permit’s NPDES anniversary date. The letter or e-mail will list each discharge outfall being assessed.

Any outfall that has not been constructed upon submittal of a Completion Report should be deleted in the Completion Report application. This should be accomplished by including an action code “D” for each outfall not constructed at that time.

If the permittee believes an outfall was incorrectly listed⁴, a request to reconsider the listing and any documentation confirming the outfall’s deletion may be submitted to the Division’s Permit Review Specialist. Any request for reconsideration must be reviewed and approved by signature of the area inspector. Based upon the information received and verification, a revised letter or e-mail would be sent to the permittee that lists the appropriate outfalls, NPDES fees, and date payment of fees must be submitted to the MLR.

Should you have any questions regarding this guidance memorandum, please contact the MLR Manager at (276) 523-8100.

⁴ That is prior to the anniversary date; an outfall was deleted by the Inspector’s Plan Modification.