



Regulation of Ditches and Manipulated Streams in Virginia

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What is Jurisdictional?



- "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.
- "Surface water" means all state waters that are not ground water.
- This includes streams, wetlands, and open water...however not all activities are regulated...and what about ditches?

Ditch Guidance



- Guidance Memorandum No. 08-2004
- Ditches that contain surface waters are jurisdictional
- Regulation of activities based on “risk to water quality and wildlife resources”



Definition of Ditches (from GM 08-2004)



- Ditch is defined as a linear feature excavated for the purpose of draining or directing surface or groundwater. Ditches may also be constructed to collect groundwater or surface water for the purposes of irrigation.
- Channelized Stream is defined as a stream that has been widened, deepened, straightened, cleaned or paved. Where streams have been relocated into a ditch, in whole or in part, the ditch is considered a channelized stream and is regulated as a stream
- Not defined in regulation or law

Regulatory Decision Process - Wetlands



- **Ditches excavated through wetlands are jurisdictional wetlands, activities in those ditches are regulated – compensated as wetlands if vegetated**
- **Except:**
 - Normal Agricultural or Silvicultural activities
 - PC Cropland (not including abandoned PC cropland)

- **Other exempt activities in ditches:**
 - Mining operations during the life of the DMME permit
 - Maintenance dredging of existing ditches to original dimensions
 - Maintenance and construction of drainage or irrigation ditches for agricultural operations

Regulatory Decision Process - Wetlands



- Ditches constructed in uplands where hydrology is solely from ‘artificial’ sources – not regulated
- Ditches constructed in an upland AND contain wetlands and/or open water:
 - If not connected to a surface water (isolated), not regulated
 - If it is connected, determine if activity will impact upstream, downstream water quality or T&E

Regulatory Decision Process - Streams



- Streams ARE NOT ditches
- Ditches can be streams
- Streams that have been channelized, relocated, or incorporated into a ditch, wholly or in part, are still streams and regulated as streams.
- New channelizations are regulated



Regulatory Decision Process - Streams



- **However....**

- If included in an existing drainage easement, drainage system or map, or the stream has historically been channelized for the purpose of maintaining drainage, regulation will be determined on a case-by-case basis:

1. Is this a new channelization?
2. Has the channelized stream naturalized (developed stable pattern, dimension, and profile)?
3. Will the activity alter the physical, chemical, or biological nature of the stream?
4. Will the functions and values of the stream be diminished?
5. Will the activity alter the physical, chemical, or biological nature of other waters?

Regulatory Decision Process - Streams



6. Are there rare, threatened, or endangered species (i.e., mussels) that will be affected?
 7. Will the activity degrade the stream beyond the level proposed by the activity (i.e. cause new/increased instability due to inappropriate pattern, dimension, and/or profile)?
- If the answer to all of these questions is no, no permit is required for the proposed activity.
 - If the answer is yes to one or more of these questions, the VWP Project Manager should consider the type of permit and compensation required for the proposed activity.

Compensation for Ditches



- Ditches with wetlands – as wetlands
- Ditches with Open Water – rarely
- Streams in ditches or channelized streams – as streams using Unified Stream Methodology (accounts for previous degradation)

Ditch Guidance



- http://www.deq.virginia.gov/Portals/0/DEQ/Water/WetlandsStreams/VWP_Guidance_Compilation.pdf
- Or
www.deq.virginia.gov/programs/water/wetlandsstreams
 - Resources & Links
 - Virginia Water Protection Permit Guidance

Questions?



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