



COMMONWEALTH of VIRGINIA

Office of the Governor

L. Preston Bryant, Jr.
Secretary of Natural Resources

P.O. Box 1475
Richmond, Virginia 23218

March 19, 2007

Colonel Dionysios Anninos
Commander, Norfolk District
U.S. Army Corps of Engineers
803 Front Street
Norfolk, Virginia 23510

Dear Colonel Anninos:

I am glad that you and I had an opportunity to talk in person last week regarding the progress – or lack thereof – being made on resolving outstanding issues regarding a workable, enhanced State Programmatic General Permit.

As I made clear, I am not happy. And as you made clear, you also are less than pleased, though I believe it is fair to say that you are more optimistic on achieving resolution than I may be at this time. I hope to get to a point where I share your optimism. Perhaps next week's meeting between you, your staff, and officials from the Department of Environmental Quality (DEQ) will be so productive as to turn around my thinking.

When we met on November 20, 2006, with Assistant Secretary Woodley, there were a number of things all parties agreed to in order to move the ball forward. First, we agreed to the principal that we must "institutionalize" changes we are to make in our respective staffs' working relationship, as it will benefit the public and applicants. This, generally speaking, would be the overarching goal as we move forward on SPGP-related issues, as such would outlive rotating Corps District colonels, governors, natural resources secretaries, and DEQ directors. Second, we agreed to have in place by March 1, 2007, an enhanced SPGP so that we would have six months of history to assess when we determine in September 2007 whether to pursue from the Environmental Protection Agency full assumption of the Section 404 program. Last, we agreed to be in a position to present to Secretary Woodley a joint DEQ-Corps briefing at our upcoming April 2, 2007, meeting.

Let me address each of these.

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Creating and Institutionalizing Change

As I noted to you last week, I have some serious concerns (at this time) over our ability to meet our goal to institutionalize a working partnership, one that will survive you, me, and others, and which will benefit those who succeed us in our positions. It is fair to say that there are those within our ranks who have agendas different than our own. I can say that we are doing our darndest to create a culture within our state environmental agencies that focuses on collaboration and being solutions-oriented with local governments, the regulated community, the conservation community, and our federal partners. Where we detect those who do not buy into this culture change, we root them out.

I admittedly have questions, however, whether we are seeing that same level of commitment from within the Corps' ranks, despite your own concerted efforts. There are two cases in point.

First, I was more than a little concerned to learn that certain civilian members of your staff, unbeknownst to you, actively solicited comments from the general public and regulated community (during the public comment period) in opposition to recently advertised amendments proposed to the SPGP. That is underhanded, and it did not serve you well. It has tainted the process.

Second, and more seriously, I was flabbergasted to learn that a Corps civilian employee has allegedly fraudulently submitted comments for the public record on amendments to the SPGP – again, unbeknownst to you. I do not believe that the early facts as we currently understand them are in dispute – i.e., that a Corps civilian employee (one integrally involved in the Corps-DEQ collaborations on the SPGP, no less) used a pseudonym to submit public comments that were specifically designed to derail an enhanced SPGP. In my mind, this has, at the very least, tainted the process and, at worst, marginally corrupted it. To your credit, you have disqualified all individual comments that have been submitted. While I do not mean to make too much of this at this time, as I know that you are working through your internal personnel protocols to properly investigate and address the situation, I do believe this incident is indicative of the way in which bureaucratic landmines can be planted to blow up otherwise well intentioned initiatives.

We both must overcome this. If we cannot bring quick resolution and ensure a good, above-board working relationship among our staffs, I have great hesitancy to enter into *any* new partnerships with the Corps, whether Section 216 studies, environmental impact reviews, joint enforcement actions, development of GIS-based wetland resource management tools, or water supply planning.

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Nearly one year ago – long before you and I began our own collaborations – I asked DEQ to begin a broad, comprehensive discussion with private-sector stakeholders on our internal water permit regulatory processes. I was personally a part of that discussion. It was important for me to hear, first-hand, how applicants viewed our work. It was important to me to know how, from the regulated community's perspective, we could improve our processes. Equally important, however, I believed it was necessary for applicants to hear the reasons for certain elements of our processes, such as where state or federal regulation or law dictated certain protocols thereby reducing our flexibility. Applicants' understanding of this would, perhaps, shine a revealing light on things which may have been inaccurately deemed DEQ obstinance. Further, I wanted the regulated community to hear, from DEQ's perspective, how they – the applicants – could improve their own work product so that DEQ could assess permit applications without delay.

We held lengthy stakeholder meetings in Northern Virginia and Hampton Roads, which are obviously the two areas where we see the heaviest interaction with the development community. The results were phenomenal. A greater level of understanding of issues was achieved, common-sense suggestions for process improvements were made, and applicants' understanding of DEQ's constraints was enhanced. More specifically, DEQ was able to create a long list of ideas and improvements that over the past six months have been steadily put into place.

This DEQ effort has been, I believe, an unprecedented one by any of our environmental agencies to improve our programs. I would even stack this programmatic improvement effort up against any undertaken by a federal agency in terms of its comprehensiveness of scope and results achieved. It has resulted in a 50% reduction in the time it takes to obtain the necessary information and determine an application is complete as well as a 10% reduction in the time it takes for DEQ to make permitting decisions. While impressive, we are now working to push those improvements beyond these levels.

This success also has been recognized by the General Assembly. During the just-ended session of the legislature, budget-writers in the House of Delegates and Senate agreed to give DEQ an additional six full-time employees. This was no small feat. Legislators agreed to these additional employees knowing that the new positions would be dedicated to the Virginia Water Protection Program in preparation for a newly enhanced SPGP as well as the possibility of applying for full assumption of the Section 404 program.

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It is my hope that this change we have created within DEQ will indeed be "institutionalized." And it is my greater hope that it will long outlast me and those currently at the DEQ helm.

March 1, 2007 SPGP Deadline

I do not need to tell you how important it is to me – and Governor Kaine – that we have an enhanced State Programmatic General Permit. Simply put, our pending September decision on whether to pursue from EPA full assumption of the Section 404 program depends on a thoughtful, deliberative review of an enhanced SPGP.

We mutually agreed at our November 20 meeting, with Secretary Woodley's consent, to have in place by March 1 an enhanced SPGP. We do not have it.

I was disappointed to learn of your proposal to delay implementing enhancements to the SPGP. When such agreements are unraveled, it does little to move the ball down field. You made this decision based on public comments received. I must say, however, that I personally wonder, given actions by certain Corps employees, whether the larger comment pool has not been compromised – after all, those paying attention to wetlands regulations come from a small, conversant circle.

Let me be clear: what DEQ is proposing for an enhanced SPGP is nothing new. It is not radical or irrational. It is not ground-breaking. We are not seeking to take over the Corps' decision-making authority; rather, we are seeking to conduct the screening on threatened and endangered species and then call the Corps when there is a potential issue to resolve. These revisions would merely align Virginia's program with those we see being effectively carried out in Maryland and Pennsylvania. Our proposed revisions would not change environmental protection standards or regulatory requirements – they would merely streamline the process by ensuring dual agency review only for projects that may impact historic resources or threatened and endangered species.

Upcoming Meeting with Secretary Woodley

It is my understanding that you and DEQ Director David Paylor have a meeting next week to discuss the SPGP. It is my hope that the meeting will be as long as it needs to be to reach an agreement on an enhanced SPGP, which will be quickly implemented and the terms of which our respective staffs will hear loudly and clearly, will understand well, and will be committed to carrying out with maximum cooperation, without delay, and especially without subterfuge. If the meeting does not yield a mutually good result, I suggest we reconsider whether to have the April 2 meeting with Secretary Woodley.

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In many respects, the success of an enhanced SPGP will be measured by the feedback we get from applicants. If we are getting good responses, can see and measure meaningful process improvements, and if we see an unmistakable improvement in our staffs' working relationship, then that will be positively factored into our decision on whether to pursue full assumption of the Section 404 program.

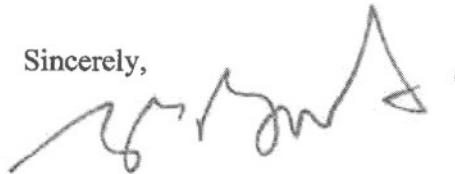
Conclusion

I realize this letter is longer than it perhaps needs to be, especially on the heels of our recent face-to-face discussion, and I also realize that it may seem harsher than necessary. It is not meant to cast a shadow over the very good, above-board, uncompromised working relationship that you and I enjoy. However, both its length and tenor reflect the seriousness with which I take these matters – and it also, I want you to know, represents the resolve I have to continue working as cooperatively, closely, and personally with you as possible to bring about outcomes that will make us all proud.

Let us continue having frank, straightforward discussions. I believe you and I both relish such.

With very high, personal regards.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Preston Bryant, Jr.", with a stylized, sweeping flourish at the end.

L. Preston Bryant, Jr.

c: The Honorable John Paul Woodley, Jr., Assistant Secretary of the Army
Mr. David K. Paylor, Director, Virginia Department of Environmental Quality