

VIRGINIA SURFACE WATER LAW

(REPRINTED FROM THE VIRGINIA DEPARTMENT OF TRANSPORTATION
STATE DRAINAGE MANUAL)

CONCENTRATION IS THE UNNATURAL OR ARTIFICIAL COLLECTION OR CONVERGENCE OF SURFACE WATERS SO AS TO DISCHARGE IN A NARROWER WIDTH, AND AT A GREATER DEPTH OR VELOCITY.

GROUND WATER IS WATER THAT COLLECTS AND/OR FLOWS NATURALLY BENEATH THE LAND SURFACE.

7.2 SURFACE WATER LAW

IN VIRGINIA, SURFACE WATER IS TREATED UNDER THE ENGLISH "COMMON ENEMY" RULE WHICH STATES THAT THE POSSESSOR OF PROPERTY CAN TAKE ANY MEASURES NECESSARY TO PROTECT HIMSELF FROM SURFACE WATER. IT FOLLOWS THAT HE MAY TURN SUCH WATER BACK UPON THE LAND OF HIS NEIGHBOR OR OBSTRUCT ITS FLOW BY CHANGING THE SURFACE OF HIS LAND OR BY THE ERECTION OF BUILDINGS THEREON. HOWEVER, THE RIGHT TO FIGHT OFF SURFACE WATER MAY NOT BE EXERCISED WANTONLY, UNNECESSARILY OR CARELESSLY, BUT IS MODIFIED BY THE MAXIM THAT ONE MUST SO USE HIS PROPERTY AS NOT TO INJURE THE RIGHTS OF ANOTHER. THE CASTING BACK OF SURFACE WATERS MUST BE A REASONABLE USE OF THE LAND FOR ITS IMPROVEMENT OR BETTER ENJOYMENT DONE IN GOOD FAITH, AND WITH SUCH CARE AS NOT TO INFLICT UNNECESSARY INJURY. IF THIS STANDARD OF CONDUCT IS MET, RESULTING INJURY IS WITHOUT REMEDY.

AN EXCEPTION TO THE ABOVE-STATED RULE IS THAT A LANDOWNER MAY NOT COLLECT SURFACE WATER BY MEANS OF AN ARTIFICIAL CONVEYANCE, I.E., EXCAVATED CHANNEL, FLUME, PIPES, ETC., AND DISCHARGE IT IN CONCENTRATED FORM ON THE PROPERTY OF ANOTHER. THIS IS TRUE WHETHER OR NOT THERE HAS BEEN AN INCREASE IN THE VOLUME WHICH NATURALLY FLOWED UPON THE PROPERTY.

ANOTHER EXCEPTION TO THE RULE IS THAT A LANDOWNER MAY NOT OBSTRUCT A WATERCOURSE TO THE INJURY OF ANOTHER.

IT IS TO BE NOTED THAT IN THE FILLING OF LAND FOR THE ERECTION OF BUILDINGS, THE LANDOWNER MAY OBSTRUCT THE FLOW OF WATER IN A DEPRESSION OR SWALE. HOWEVER, THE COURT HAS HELD THAT IN THE CONSTRUCTION OF A RAILROAD EMBANKMENT, REASONABLE CONSTRUCTION PRACTICE WOULD REQUIRE THE INSTALLATION OF CULVERTS TO PERMIT THE PASSAGE OF SURFACE WATERS. IT IS BELIEVED THAT CONSTRUCTION OF A HIGHWAY EMBANKMENT WOULD FALL IN THE SAME CATEGORY.

IT CAN BE SEEN FROM THE ABOVE THAT WHILE THE CONSTRUCTION OF A HIGHWAY MUST INCLUDE CULVERTS TO PERMIT SURFACE WATERS TO PASS, IT IS NOT MANDATORY THAT A PROPERTY OWNER PROVIDE CULVERTS WHEN FILLING HIS LAND FOR BUILDING PURPOSES. RECOGNIZING THE ABOVE POSES THE PROBLEM OF OBTAINING EASEMENTS TO GUARANTEE UNOBSTRUCTED OUTLETS FOR CULVERTS PASSING SURFACE WATERS. THIS IS NOT NECESSARY WHEN THE CULVERT IS PLACED IN A WATERCOURSE ALTHOUGH IT MAY BE NECESSARY IF IMPROVEMENT OF THE WATERCOURSE IS DEEMED DESIRABLE FOR THE CONVENIENCE OF THE DEPARTMENT.

WHEN EASEMENTS ARE OBTAINED, CARE MUST BE EXERCISED TO AVOID A DISCHARGE OF CONCENTRATED FLOW ONTO THE PROPERTY OF THE OWNER BELOW THE ONE FROM WHOM THE EASEMENT IS OBTAINED.

ATTENTION IS CALLED TO THE FACT THAT WHILE MOST STATES FOLLOW BASICALLY ONE OR TWO GENERAL LAWS, I.E., THE RULE OF ROMAN (CIVIL) LAW OR ENGLISH "COMMON ENEMY" RULE, THERE ARE MANY MODIFICATIONS. THUS, IN READING ARTICLES IN PERIODICALS, ONE CAN OBTAIN VARIOUS INTERPRETATIONS WHICH DO NOT APPLY TO VIRGINIA.

THERE ARE SPECIAL LAWS GOVERNING IMPOUNDMENTS, USAGE AND NAVIGABLE STREAMS WHICH MAY IN FACT BE, IN THE GENERAL SENSE, NON-NAVIGABLE.