

**Construction General Permit  
TAC Meeting #6  
June 25, 2018  
MINUTES**

**“JBR” refers to Jaime Bauer Robb, Manager, Office of Stormwater Management**

**“MD” refers to Melanie Davenport, Director, Office of Water Compliance**

**A full list of attendees and affiliations should be attached to the email.**

- SWCB meeting scheduled for Sept. DEQ will present GP for review.
  - JBR – By Friday close of business, she will have a new version of this available to TAC members. Requesting additional comments by July 13<sup>th</sup>.
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1. (Part I) –
    - a. JBR –We will move the TMDL inspection frequency info into the actual inspection section of the permit. This will remove it from the impaired waters and TMDL limitation section.
  2. (Part II, ‘qualified personnel’) –
    - a. JBR –There is the need to specify what ‘qualified personnel’ means. It is defined in VSMP reg... However, this definition does not give that much clarity. We do not want to create a separate definition because it already exists. We can clarify in a fact sheet.
    - b. Peggy Sanner – This might cause confusion if we do not clarify ‘qualified personnel’ in the regulation and only in a fact sheet. Since you are using the same term to carve out a special application of that term. Q – Shouldn’t we just use a different term here?
      - i. JBR – This is the terminology from the CGP permit.
    - c. Joe Battiata – Q – Is there any chance there is going to be a formal requirement for ‘qualified personnel’? RLD does not count.
      - i. JBR – There will not be a certification.
    - d. JBR – The fact sheet will talk about the person’s knowledge of SWM and what experience can qualify them.
    - e. Peggy Sanner – Wants to beef up what ‘qualified personnel’ is.
    - f. John Burke – Q – It could say as determined by the VSMP authority?
      - i. JBR – That’s generally how it is done now. Q – By having that language, would it add any clarification for the operator?
        1. Norm Goulet – No, but it gives the localities the authority to decide.
    - g. Joe Battiata – It is going to be a circular debate unless it is clarified.
    - h. JBR – Q – Would the authority be under the law that allows localities to designate the criteria?
      - i. MD – Not sure how much authority localities would have beyond what is in the regulation for implementing more stringent requirements of this type.
    - i. Phil Abraham – It should say, ‘as confirmed by VSMP authority’.
      - i. Peggy Sanner – Q – Maybe, ‘as determined’ would give locality some check?
    - j. JBR – Worries about localities requiring qualified personnel to get DEQ certifications. Would burden DEQ training division.

- k. Nick Allen – This still does not get what we really need. If it is not defined then someone can always rebut by stating that they are qualified.
    - i. Mike Vellines – Locality inspections trump contractor inspections anyways so they can tell people they are not qualified.
  - l. Joe Battiata – It would be more beneficial to break down what the permit actually requires.
  - m. Phil Abraham – The word part of the regulation means something to him. Thought it would work by a locality going to a site to confirm how the person is qualified. You cannot ever really define experience in a regulation.
    - i. Joe Battiata – Would probably only become a problem if there are issues on site.
  - n. MD – Q – Is there any opportunity to identify this in the SWPPP?
  - o. JBR – Regardless of whether or not the person meets ‘qualified personnel’, the main issue is compliance on site. If the VSMP authority goes out and does an inspection and there are compliance problems. The issues are still going to have to be corrected. Maybe we abandon any clarification here. Does not want to jeopardize the GP since we have the definition in another place.
  - p. Jimmy Edmonds – The definition cannot be too ambiguous. There needs to be something written down to enforce it.
  - q. John Burke – This can be done through guidance... Q – What can the fact sheet say? Repeat violations...
  - r. Nick Allen – Sees no benefit since it is already defined.
  - s. Mike Vellines – This is a moot point since sub-contractors could do anything while the qualified personnel is not on site. It is not going to prevent something from happening.
  - t. MD – The definition is actually different in 2017 GP. Federal permit say appropriate skills and training...
  - u. Kristin Carter – maybe should not say qualified personnel but someone with appropriate skills and training to assess conditions... (same lang from Fed GP)
  - v. Joe Battiata – seems like ‘qualified personnel’ is the weak link.
  - w. Peggy Sanner – change to federal language.
  - x. JBR – will come back to...
3. (Part II, SWPPP Inspections) –
- a. JBR – Initially thought that people were not using the measurable storm event requirement. But it appears as though they are.
  - b. Q – Should there be a change in the every 4 business days?
  - c. Nick Allen – Does not mind leaving it as every 4 business days. In the new federal CGP the inspection requirement is more stringent than every 4 days. Does not think this meets the definition in the federal GP. Because the timeframe after a storm event is 48 hours and not 24 hours.
  - d. Andrew Clark – Wants it to go to 5 days to fit builder business model.
  - e. JBR – EPA GP says at a minimum of at least once every 7 calendar days. Or 14 calendar days and within 24 hrs of storm event. Sensitive waters says – once every 7 calendar days and within 24 hrs of storm event of 1/4 inch or greater or snow melt sufficient to give a discharge.
  - f. CONSENSUS – ?
    - i. Nick Allen – Still says what we have is not meeting the Federal GP. Every 4 days is less stringent than federal requirement. The impaired water section say *and* storm events.

- ii. JBR – DEQ can also propose something that meets the intent. EPA will then comment on that. And that’s what happened last go around.
  - iii. Has the 24 hrs changed between the 2017 federal permits?
  - iv. Peggy Sanner – Q – Given where we are in terms of the climate change that we’re experiencing... is that 4 day frequency (determined on old rainfall data) appropriate? This permit is supposed to prevent discharges from storm events. Maybe we need to go back and relook at data for current climate trends.
  - v. Norm Goulet – We could strike ‘or’ to at least once every five business days. Keep rest that deals with weekend aspect. Every 4 days and within 24 hrs of a measurable storm event. In the event of a measurable storm event on the weekend...
  - vi. Toni Small – Maybe 48 hrs after storm event was to address the weekends.
  - vii. John Burke – Q – Do we need it more stringent?
  - viii. Norm Goulet – Yes, there are compliance issues. A change from 24-48 hrs just gets the inspector out there to remedy any issues.
  - ix. Mike Wills – This would cost quite a bit more money for operators who contract out the inspections.
  - g. JBR – Q – So, once every 4 business days and within 24 hrs of storm event?
  - h. Mike Vellines / Kristin Carter – Leave 4 or 5 option. With 24 hr storm event.
  - i. MD – there is a note in the federal GP – within 24 hrs of a storm event. If a storm produces 0.25 inches each day. Continuous storm events...
  - j. Bryce Miller – NC and MD do 24 hrs.
  - k. CONSENSUS – change is 48 hr to 24 hr. In TMDL and SWPPP inspection sections.**
  - l. Toni Small – Q – Is this going to change in the non-TMDL section? SWPPP inspection requirement section.
    - i. JBR – Yes, we will make the same 48 hr to 24 hr change there.
4. (Part II F.6.) –
- a. Bryce Miller – Wants to include an option to reduce inspections for safety concerns. ‘When adverse weather or site conditions would cause the safety of the inspector personnel to be in jeopardy the inspection can be delayed until the next business day. And this shall be documented in SWPPP.’
  - b. John Burke – You could document weather data.
  - c. JBR – If we go this direction we would want to make consistent with VPDES or other language from other programs.
  - d. Jerry Stonefield – This seems like an excuse for contractors to avoid doing inspections. We need to have parameters.
    - i. Andrew Clark – Q – Is there a definition in NC?
    - ii. John Burke – Do not want any indication that this is a casual thing.
  - e. JBR – Industrial permit language would have to be tweaked but would work.
  - f. JBR – Not to include travel language.
  - g. John Burke – Wants the contractor to contact authority if they are not inspecting.
  - h. Phil Abraham – If the government is closed maybe waive the requirement for the notification.
    - i. Nick Allen – Notification is not really necessary. They will be able to tell who is abusing the option.
5. (Josh Hanson – Language for GP)
- a. Move temporary suspended inspections to actual SWPPP inspection section.

- b. JBR – Proposing to be elsewhere in permit. All together in SWPPP inspection section.
- 6. (9VAC25-880-60.Termination of general permit coverage.) –
  - a. (A.1.)– John Burke – Q – Is this language going to change to ‘final stabilization’?
    - i. JBR – Yes, because that definition includes temporary stabilization for residential.
  - b. Jimmy Edmonds – Midnight termination – Q – What about corrective actions as a result of VSMP authority locality NOT inspection?
    - i. JBR – Midnight termination is only for projects with no BMP
    - ii. JBR – We need to see how the legislative update affects this. VSMP has 60 days to recommend termination to DEQ... that is more appropriately placed in VSMP authority regulation.
  - c. Nick Allen – Q – What is the recourse for not submitting an NOT within 30 days of one of the above conditions?
    - i. JBR – ‘should’ was changed to ‘shall’. 30 days applies to every permit terminating.
    - ii. MD – Really, it is the financial incentive for people to terminate.
    - iii. Kristin Carter – It is possible that people will not have record drawings in 30 days...
    - iv. JBR – Q – Is there a will to change it? From 30 to 60? The idea is that you do not want the site to transfer hands and the operator not to have notified you. EPA has it at 30 days as well.
    - v. Jimmy Edmonds – Many people do not do it.
    - vi. Joe Battiata – The issue is people cannot get a complete NOT package together in 30 days. Says to make sure that the starting of the clock is in fact linked to having a complete package in the termination section.
      - 1. JBR – Maybe add language for linking to termination section items.
      - 2. Kristin Carter – Maybe the operator has to start putting together package 30 days.
- 7. (Part II – SWPPP plan contents) –
  - a. Jerry Stonefield – A.1.b. notice of coverage would be generic coverage letter
  - b. JBR – Q – Any revisions?
    - i. Hearing none.
  - c. JBR – (Part II A.2.c. (6)) – The previous permit only said maintain natural buffers. EPA permit says 50 feet of construction activities.
    - i. Joe Battiata – It’s concerned with natural buffers around surface waters.
    - ii. Kristin Carter – Q – What if it wasn’t natural?
    - iii. Jerry Stonefield – Q – What if you do not have 50 feet?
    - iv. JBR – If a water of the US does not exist within 50 feet of the construction activity then that section is not required. “Unless unfeasible”
    - v. MD – 404 permit, water dependent structure. Appendix G – to GP – Buffer requirements.
    - vi. John Burke – Perhaps should make the wording, buffer of 50 feet or equivalent E&S controls.
      - 1. Joe Battiata – You cannot say that the E&S controls are equivalent to the 50 foot buffer.
    - vii. JBR – Unfeasible would have to be defined.

- viii. Jerry Stonefield – Sounds like a new requirement because now you are calling out the 50 feet.
  - d. Joe Battiata – You need different sizing of traps for different soil types.
  - e. Kristin Carter – SWM section does not go into that much detail. ESC should go in ESC regulation.
    - i. JBR – This buffer language is from the federal permit and they will not approve this without it.
  - f. Jimmy Edmonds – Does not see these things coming up very often on all ESC plans.
  - g. Joe Battiata – Talking about sediment controls based on soil types. Baffles, skimmers.
  - h. JBR – We need the language that is in here or we are not going to be compliant with the federal GP.
  - i. John Burke – This is almost like low impact development ESC.
  - j. Peggy Sanner – Q – With the new TAC this fall under the consolidated ESC/SWM – will this include minimum standards? Are we going to update our standards at this new TAC?
    - i. JBR – Joe was talking about the green book being outdated. This is a separate process from the TAC. That book is a guidance document.
  - k. JBR – Removed 50 foot.
- 8. (Part II – A.4. Pollution prevention items)–
  - a. Concrete waste –
    - i. (7) – Kristin Carter – Move excess concrete to section (5)?
    - ii. Mike Vellines – Keep it in section (7)
    - iii. Brian Newman-Lindsey – VDOT uses term ‘concrete waste water’
  - b. JBR - Waste container lids – Consistent from federal GP
    - i. Andrew Clark – Their construction folks said that they do not make products for closing lids on dumpsters. The stuff they are putting in the dumpsters is not anything that would have negative effectives on water quality. 40 CFR 450.21 – language where items in dumpster will not result in a risk for exposure. “Where exposure of a specific material or product poses little risk of stormwater contamination...”
      - 1. JBR – We must be at least as stringent as federal GP.
      - 2. Jerry Stonefield – We will have to define what is ‘contaminated’.
      - 3. Mike Vellines – This would mean you would have to separate contaminated material or expect inspectors to verify all dumpster’s contents.
    - ii. Joe Battiata – I’m not going in a dumpster.
    - iii. Andrew Clark – It says lids...
    - iv. JBR – Q – Maybe could tweak the language to address being out of rain?
    - v. Jerry Stonefield – You could be put a berm around it.
      - 1. Norm Goulet – But then that would be a spill issue.
    - vi. Kristin Carter – “or similarly effective practice”... it could be another practice.
    - vii. Norm Goulet – Just say, “minimizing exposure of waste materials by covering when not in use by the end of day...”
    - viii. JBR – Is guessing that they chose the word ‘minimize’ and not ‘eliminate’ to address that the dumpsters do not have to be closed when they are in use.
    - ix. Andrew Clark – Neighbors might throw stuff on top of tarps or covers. This issue is not going to be solved.

- x. Kelly Miller – It is good practice for dumpsters to be located at back of site to prevent dumping.
  - xi. Hannah Rice – Has seen dumpsters covered with tarps.
  - xii. JBR – Options – We can tweak the language to say ‘just cover’. Seems like the majority of the TAC agrees that covering the dumpsters is the appropriate way to go. The decision is to take the information and then DEQ will make the decision. Maybe put forth options for covering or separating contaminants.
  - xiii. Kristin Sadtler – Sees some potential conflict for different interpretations of “not in use”.
  - xiv. JBR – Again the language need to be at least as stringent as the federal GP. So same language or at least as stringent.
9. (Part II A.5.) SWPPP requirements for discharges to impaired waters, surface waters with an applicable TMDL wasteload allocation established and approve prior to the term of this general permit, and exceptional waters.
- a. John Burke – Q – Is it all impaired waters or just construction ones?
    - i. JBR – They are listed. Nutrient, sediment, PCB... impairments... it might be specified elsewhere but she will confirm.
10. (Part II B. SWPPP amendments, modifications, and updates.) –
- a. Peggy Sanner – Likes ‘as soon as possible’ in there.
  - b. JBR – Would still have to be within 7 days to update SWPPP.
  - c. JBR – If we are going to say as soon as possible, it needs to be for all SWPPP modifications. She will edit other modifications section to say as soon as possible but no later than seven days.
  - d. Kristin Carter – All amendments, modifications and updates shall be signed in accordance with Park IIIK. Seems like a major signature.
    - i. JBR – The reasoning is that the person who signs is ultimately responsible.
    - ii. Brian Newman-Lindsey – VDOT has experienced DEQ inspectors requiring III K signatures on all pages of modifications regardless of delegation of authority to other staff.
    - iii. Kelly Miller – Has had issues with AEP delegation of authorities.
    - iv. JBR – Q – By giving a nod to delegation of authority would this remind operators of the intent? Delegation of authority would have to be in the SWPPP document and it would have to name a position of a person.
11. (Part II C. Public notification) –
- a. Bryce Miller – Q – Can we get the coverage letter down to one page?
12. (Part II F.3.) –
- a. Brian Newman-Lindsey – Wants to combine (5) and (6) to put complete statement for final grade under one section. MS-1
  - b. JBR – She will work on that and send to TAC.
13. (Part II F.5.) –
- a. Nick Allen – Q – Thought that there was some place that said the inspection report should be provided by the next business day?
  - b. Andrew Clark – Q – Can this be changed to coincide with the next inspection? They put the last report in the SWPPP when the next inspection is taking place.
    - i. Mike Wills – They do this as well.
  - c. JBR – Would propose maybe 4 business days. Or schedule of inspections.
14. (Part II G. Corrective actions) –

- a. Andrew Clark – 7 calendar days versus business days
    - i. JBR – Will make consistent throughout document.
15. (Part III – Conditions applicable to all VPDES Permits.) –
- a. (A.) – JBR – There has been a request by a TAC member for DEQ to look at the section for reports of unauthorized discharges. It could maybe be updated to say ‘as it pertains to construction activities’.
  - b. Mona – VDOT wants confirmation on the amount of sediment that leaves the site. Q – How much is considered an unauthorized discharge?
    - i. Toni Small – Q – Is this something that can be handled in a fact sheet?
    - ii. Mona – It is not measuring sediment but it is a question of what is the threshold.
    - iii. Norm Goulet – You are looking for a threshold on something that should not have a threshold.
    - iv. Jerry Stonefield – If there is a threshold then it must be measurable.
    - v. John Olenik – He has seen different interpretations in different DEQ regions.
    - vi. MD – They have the same conditions in the federal GP. They require immediate reporting on non-compliance. They also have 24 hour reporting for unauthorized bypasses.
    - vii. Norm Goulet – Sounds like VDOT’s issue is more of a housekeeping issue and not something that you are going to be able to fix in this GP.
    - viii. JBR/MD – The fact sheet would be an opportunity to do this but it is still not going to be a bright line.
16. (9VAC25-880-45.B.1 and 2. – Applicability of technical criteria for land disturbing activities. Existing construction activities.) – going back to p.6.
- a. JBR – The general consensus is that ‘under construction’ equates to the commencement of land disturbing activity. The issue is now with what does ‘portions’ refer to.
  - b. Phil Abraham – Wants confirmation on what ‘has maintain continuous permit coverage’ means.
    - i. JBR – You could not have terminated.
    - ii. MD – Her concern is the 2024 date in the 2019 permit. And portions of the project not under construction during this permit. We should be tying new requirements to new permit terms.
    - iii. Norm Goulet – By referencing Part IIB this ties them to the 0.41 threshold... it should state ‘any new technical criteria adopted by the board’.
      - 1. JBR – She will update to ‘new technical criteria adopted by the board’. will match verbatim from -870-47.B
      - 2. Phil Abraham – Should still say IIB or new technical criteria or ‘as amended’
      - 3. Norm Goulet – Q – Can we say “shall become subject to any new requirements part IIB or as amended”?
        - a. MD – Not sure if the registrar allows us to do that.
    - iv. JBR – She is inclined to include the exact language that is in the VSMP reg.
    - v. MD – It could say ‘you can no longer utilize part IIC’. ‘Part IIC shall no longer apply.’
  - c. Peggy Sanner – Let us make it clear that Part IIC is an option and not a mandate. Maybe change ‘shall’ to ‘may’.
    - i. JBR – Will check with the registrar but she also put that in another section to address that.

- ii. Jill Sunderland – Could put exact language for projects opting to do IIB in this section. You can keep the ‘shall’. It has a ‘shall’ in the reg.
- d. Kristin Carter – Still not sure why it is continuing coverage from July 1, 2014 and not July 1, 2009.
  - i. JBR – Time limits only needed to *maintain* coverage under 2014. They already had 2009 coverage.
  - ii. John Burke – They need to have 2009 permit and continued coverage under 2014 permit.
  - iii. Norm Goulet – What about ‘maintain continuous coverage to include...’
  - iv. Phil Abraham – Q – Do we need two dates? Worries that if we make it shorter then it will be harder to write.
- e. JBR – We still need to discuss ‘portions’ but the rest is good. She will make the same changes to grandfathering sections.

17. PORTIONS discussion –

- a. JBR – Q – Should we tie this to ‘land disturbance hasn’t commenced’ or ‘post construction SWM infrastructure hasn’t commenced’?
- b. Jerry Stonefield – SWM infrastructure is a totally different phase.
- c. JBR – Q – What about ESC? Installation of Phase 1 ESC?
- d. Peggy Sanner – Wants to be clear on what it is and does not want to incentivize people to just clear.
- e. Jerry Stonefield – Q – If we are tying it to actual land disturbance and you put up perimeter controls then what if you do not work the interior of the site? Q – Is that not under construction? Q – Does that mean that it can be undisturbed but still under construction?
- f. Kristin Carter – Needs more input from phased developments such as multiphase housing developments. Thinks this was the main intent.
- g. Jerry Stonefield – Has issues with the post construction SWM infrastructure.
- h. Norm Goulet – We are trying to prevent the guy from just turning dirt.
  - i. JBR – you’re not going to be able to prevent it from all sites
- i. JBR – ‘Portions’ means that if you have started disturbance on any part of the approved plan then the whole plan is under construction.
- j. John Burke – Considers the original perimeter control installation as being under construction.
  - i. JBR – Q – What about the initiation of the ESC plan?
    - 1. Peggy Sanner – This seems more open ended than John Burke’s proposal.
- k. Peggy Sanner – They need to have done enough to prevent erosion and sedimentation.
- l. John Burke / JBR – Perhaps ‘commencement of all perimeter controls’.
- m. Brian Newman-Lindsey – Need to discuss linear roadways and other linear projects.
- n. Jerry Stonefield – Concerns about considering an ESC plan for the entire site
- o. Mona – Q – Instead of calling portions of a project... can we call it phases of the project.
  - i. JBR – No, because the regulation says portions.
- p. JBR – If you have a portion that has not turned dirt but it is on a SWM plan where other areas have moved dirt, then it is IIC.
  - i. We are really tying it to commencing land disturbance based on the plans in front of you. If it is a phased approach with multiple plans that have not yet been submitted then the areas that have not been submitted are IIB.



- q. JBR – CONCEPT – Q –Is everyone okay with the concept?
  - i. Yes, **CONCENSUS!**