

**Construction General Permit  
TAC Meeting #1  
January 19, 2018  
MINUTES**

**1. Grandfathering and Time limits of applicability**

- a. Q – What will authorities and operators be required to do June 30, 2019 (and then June 30, 2024) to confirm that ‘portions’ of their projects are ‘under construction’. (Jerry Stonefield, Chris Swanson)
  - i. Determine whether the application and installation of erosion control measures constitutes ‘under construction’.
  - ii. Determine whether utility relocation constitutes ‘under construction’. (Keith White)
- b. Q – How do Authorities document ‘portions’ or phases of projects? (Keith White, John Burke, Jerry Stonefield)
  - i. Authorities do not receive mapped ‘portions’ of projects with registration statements.
  - ii. Operators need to have a mechanism for uploading this information so that Authorities have access. (Keith White)
- c. Q - Will operators have to revise their plans if they are not under construction? (Jerry Stonefield)
- d. Q – How will minor and major modifications to the registration statements affect these projects? (John Burke, Jerry Stonefield)
- e. Q – How will grandfathering restrictions affect re-zoned portions of developments that are not under construction? Current BMP clearinghouse BMPs require larger footprints. (Jerry Stonefield)
- f. DEFINE: ‘portion’
- g. DEFINE: ‘under construction’
- h. DEQ needs to figure out how to communicate these decisions to stakeholders prior to the set dates. Proof that ‘portions’ of projects are ‘under construction’ will be the same for projects either grandfathered or those that meet the time limits of applicability.
  - i. Stormwater management plan approval date noted on the registration statement could be an option for proof of ‘under construction’. (Jaime Robb)
    - 1. Problematic due to the complete stormwater management plan not actually being approved at the time of permit issuance.
- i. Q – Is there a need to quantify how many IIC projects are still out there? (Norm Goulet, Jerry Stonefield)
  - i. VDOT has projected that all of their IIC projects will most likely be complete prior to June 30, 2019. (Chris Swanson)

**2. Reporting requirements (Part III G. and H.)**

- a. Determine what exactly DEQ considers an unauthorized, unusual, or extraordinary discharge. (i.e. How much sediment is considered reportable?) (Chris Swanson)
- b. Q – What is a *discharge* of sediment? Is there a difference between leaving the site and actually making it to the receiving water?
- c. DEFINE: ‘reportable quantity’
- d. Q – Can these reporting requirements be aligned with other media reporting requirements such as MS4? (Chris Swanson)

- e. Q – Can DEQ put out a guidance document? (Chris Swanson)

### 3. Common Plan of Development or Sale / Single-Family Home (SFH) coverage:

- a. **9VAC35-870-10.** "Common plan of development or sale" means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules."
  - i. Q – What does sale mean? (Jerry Stonefield)
  - ii. DEFINE: 'contiguous'
    - 1. Q – Does this mean adjoining? (John Burke)
- b. **9VAC25-870-10.** "Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units."
  - i. Q – What does it mean to have three residential units constitute a development? (John Burke)
  - ii. DEFINE: 'unified control'
- c. Please note that single-family homes are not entirely exempt. They are still required to obtain an "agreement in lieu of a stormwater management plan."
- d. Determine how to permit the selling off of lots within a housing development.
- e. **§ 62.1-44.15:34.C.3.** "Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures. However, localities subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) may regulate these single-family residences where land disturbance exceeds 2,500 square feet."
  - i. Q – If someone buys multiple lots do they still qualify for the SFH exemption or do they get coverage on their own? (John Burke)
  - ii. DEFINE: 'separately built' (John Burke)

### 4. BMPs located on single-family home lots.

- a. Q – At what frequency are homeowners required to inspect their BMPs? The VSMP frequency? (Jerry Stonefield)
- b. Q – What information are homeowners receiving regarding:
  - i. What BMPs are on their property;
  - ii. The design of their BMPs; and
  - iii. The specific BMP maintenance requirements.
- c. **9VAC25-880-60.A.** "1. When applicable, long-term responsibility and maintenance requirements for permanent control measures shall be recorded in the local land records prior to the submission of a notice of termination;"
  - i. This does not require the actual design of the BMP to be included in the local land records. (Jerry Stonefield)
- d. Localities are not involved in the home buying process and therefore cannot enforce the transfer of the BMP from the developer to the homeowner and then any subsequent homeowners.
- e. Homeowners are often unaware of BMPs located on their property and the maintenance associated with these BMPs.
- f. It is up to the homeowner to keep the BMP running. (Ashley Hall)
- g. Need to determine how to retain record of BMPs through transfer of property.
  - i. Potential option could be homeowner disclosure form. (Jaime Robb)

### 5. Stabilization

- a. Timeframe for stabilization to occur needs to be consistent throughout the regulations (Chris Swanson)
  - i. “achieving” vs. “initiate” vs. “completion” of stabilization
  - ii. **Part I F. Termination of general permit coverage.** “1. a. Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator is responsible. When applicable, long term responsibility and maintenance requirements shall be recorded in the local land records prior to the submission of a notice of termination”
  - iii. **Part II A.2.c.** “(8) Ensures that stabilization of disturbed areas will be initiated immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days;”
  - iv. **Part II F.3.a.** “(6) Inspect areas that have reached final grade or that will remain dormant for more than 14 days for completion of stabilization activities within seven days of reaching grade or stopping work;”
- b. SFH Stabilization Requirements
  - i. Need to make sure there is complete follow through with stabilization.
  - ii. **9VAC25-880-10.** “Final stabilization” means that one of the following situations has occurred: **1.** All soil disturbing activities at the site have been completed and a permanent vegetative cover has been established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform (e.g., evenly distributed), mature enough to survive, and will inhibit erosion. **2.** For individual lots in residential construction, final stabilization can occur by either: **a.** The homebuilder completing final stabilization as specified in subdivision 1 of this definition; or **b.** The homebuilder establishing temporary soil stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner, and informing the homeowner of the need for, and benefits of, final stabilization.”
  - iii. Q – How do you hold the developer accountable for ensuring that stabilization occurs? (Jaime Robb)
  - iv. What is the best way for the developer to ‘inform the homeowner’? (John Burke)
    - 1. Could a homeowner disclosure form work? (Melanie Davenport)
  - v. Should not hold up closing on a house. (John Burke, Jerry Stonefield)
  - vi. Q – How can Authorities document and enforce this? (Keith White)
    - 1. Maybe as part of the termination package, there could be information that the message has been communicated to the homeowners. (Jaime Robb)
  - vii. Local Authorities have no desire to be involved in the home buying process and are not involved in real estate deals. Local Authorities have no way of knowing what is being told to the homeowner. They cannot ensure that the permittee is giving any brochure to homeowner. (Keith White)
  - viii. Local Authorities have tried to pass along information but it just disappears in the process. (Norm Goulet)
  - ix. Need to address homeowner associations that expect Authorities to enforce the stabilization of their yards. (Jerry Stonefield)
  - x. Need to address developers passing along properties to homeowners as soon as possible. (Jerry Stonefield)

- xi. Once developers sell the property they have no authority to enter the property. (Kelly Miller)
- xii. Q – Do we really want each homeowner ripping out their own silt fence a 100 different ways? Local Authorities do not like putting the responsibility on the homeowner. (John Brooks)

## 6. Permit Termination

- a. Q – Are Construction Record Drawings (CRD) really required for permit termination? (Chris Swanson)
- b. If NOT packages require the CRD then the certification statement needs to be updated so that a lack of a CRD does not hold up the 60-day termination schedule. (Chris Swanson)
- c. CRD being required at termination and the concern that they were not being provided. CRD are not on the list of termination requirements in CPG but DEQ feel as though it's a necessary requirement for termination. (Jaime Robb)
- d. **Part I F.2.** *"...Termination of authorizations to discharge for the conditions set forth in subdivision 1 a of this subsection shall be effective upon notification from the department that the provisions of subdivision 1 a of this subsection have been met or 60 days after submittal of the notice of termination, whichever occurs first."*
  - i. JBR – language in permit said that upon submitting a complete submission your permits are terminated if notified by the Dept. or 60 days if you're not contacted.
- e. Q – Going back out to project to fix lingering items would cause the site to go from stabilized to unstabilized. Do they have to get another permit? They checked a box saying that they're stab? Would DEQ change the timeframe? (Jerry Stonefield)
- f. There is legislation (SB731) out there that tells DEQ to terminate a permit within 60 days of receiving a package which if passes will result in DEQ having 30 days maximum to actually terminate. (Jaime Robb)
- g. Need to distinguish between missing and incorrect paperwork. Formally returning paper to permittee would ensure that the files are off the 60-day clock. (John Burke, Jerry Stonefield)
- h. DEQ needs to better inform the operator of missing NOT elements or when information is incorrect. (John Burke)
- i. If the information is not correct then it's not complete. DEQ would accept the form and review it. If there are items found in the field that are inconsistent with the incorrect forms then the project cannot terminate. (Jaime Robb)
- j. AS&S holder termination (Mike Vellines)
  - i. Q – Should AS&S holders be allowed to handle termination record requirements themselves? They could potentially submit a statement to DEQ that they have received the CRD, etc... Perhaps you would tie this to the MS4. DEQ would still conduct the termination inspection. (Mike Vellines)
    - 1. Problematic due to the range of AS&S programs out there. If the criteria cannot be fulfilled by all then it should not be a requirement. (Jaime Robb)
    - 2. Would not work for other AS&S entities that are not MS4s. (Kelly Miller)

## 7. Annual Maintenance Fees

- a. Authorities would like a less resource intensive annual maintenance fee requirement. (Jerry Stonefield)
- b. Some authorities collect the maintenance fees up front based on the project's projected duration.

- c. DEQ is in the process of updating the reissuance letters with language for “you may owe a maintenance fee” (Jaime Robb)
- d. Need to clarify when the maintenance fees end. Especially related to NOTs. (Kristin Carter)
  - i. DEQ does not terminate if there are maintenance fees that are pending. (Jaime Robb)

**8. Increased inspection frequency in impaired waters and TMDL limitation (Part I B.4)**

- a. Q – How to operators figure out that they have an increased inspection frequency? (John Burke)
  - i. They only become aware once they receive the coverage letter.
- b. It is hard for local Authorities to keep track of who has an increased inspection frequency.
- c. SWPPP needs to include the increased inspection frequency.
- d. Yes – operators are taking advantage of the option for every 4 days. (Keith White, Mike Vellines)
  - i. VDOT has taken the non-increased inspection frequency off the table (Chris Swanson)
- e. Q – How should operators be mapping out 1-mile radii from impaired waters/TMDL. (John Burke)
  - i. Failed partially because of the loss of GIS function. (Norm Goulet)
  - ii. Operators have previously said that they don’t want to have to do that. (Melanie Davenport)