

Minutes

2024 Stormwater Construction General Permit Reissuance Technical Advisory Committee (TAC) Meeting #2

Thursday, November 3, 2022

PRO Training Room (Room 1111)
DEQ Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060

Start – 9:30 AM

Attendees:

- TAC Members
 - Andrew Clark, Home Builders Association of Virginia
 - Taylor Goodman, Balzer and Associates, Inc.
 - Lauren Faulkner, Dominion Energy
 - Matt DiBella, Greensite Concrete
 - Kay Cabe, Legacy Engineering, P.C.
 - Jon Paige, Stantec
 - Philip Abraham, Vectre Corporation on behalf of the Virginia Association of Commercial Real Estate
 - Melanie Mason, City of Alexandria
 - John Burke, Montgomery County
 - Jill Sunderland, Hampton Roads Planning District Commission
 - Scott Dunn, Chesterfield County
 - Holly Sepety, VDOT
 - Randy Hardman, Hanover County
 - David Sligh, Wild Virginia
 - Normand Goulet, Northern Virginia Regional Planning District Commission
 - Olivia Bryan, Frederick County
 - Brendan Merkler, Greensite Concrete
 - JT Scherzer, Balzer and Associates, Inc.
 - Public
 - Judson Pittman, Lennar
 - DEQ Staff
 - Scott Morris
 - Drew Hammond
 - Scott Van Der Hyde
 - Joseph Crook
 - Nelson Daniel
 - Matthew Stafford
 - Mark Remsberg
 - Kristen Sadtler
-

Welcome and Introductions- Drew Hammond, DEQ

- Drew Hammond welcomed the TAC members and had the meeting attendees introduce themselves.

Guidelines for RAP Discussion- Scott Van Der Hyde, DEQ

- Scott Van Der Hyde reviewed the rules and guidelines for conduct and discussion during the TAC meeting.

Discussion of Construction General Permit Revisions

Drew Hammond facilitated a discussion with the TAC about the changes that DEQ is considering for the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities, 9VAC25-880 (Stormwater Construction General Permit or “CGP”). DEQ’s changes to the CGP are based on EPA’s 2022 Construction General Permit (effective February 17, 2022, the “2022 EPA permit”), comments DEQ received in response to the Notice of Intended Regulatory Action (published March 28, 2022), and recommendations TAC members made during the meeting on September 22, 2022.

A summary of the discussion and the TAC’s response follows:

- **9VAC25-880-1. Definitions.**
 - DEQ is considering changes in the CGP to clarify, condense, and ensure consistency between defined terms in the CGP, the 2022 EPA permit, and other applicable Virginia regulations (e.g., 9VAC25-870, the Virginia Stormwater Management Program (VSMP) Regulation; 9VAC25-31, the VPDES Regulation; and other VPDES general permits).
 - “Construction support activity” (Line 24):¹
 - DEQ added this definition based on the 2022 EPA permit. This term is included in the current CGP, but it is not defined.
 - “Final stabilization” (Line 29):
 - DEQ’s changes are meant to create consistency across regulations.
 - TAC member raised issue with replacing “soil-disturbing” with “construction” activity in subpart 1 of the definition.
 - DEQ’s definition change is intended to be broader in order to encompass construction activities outside of soil disturbance that also have the potential to generate stormwater discharges.
 - TAC members were concerned that this is a change from the way that operators have understood this definition in the past. They also wanted to ensure the revisions to the definition would not capture construction in areas already covered by a permanent structure, such as renovations/construction in a building.
 - “Immediately” (Line 57):
 - “Land-disturbing activity” is still used instead of “construction activity,” which is a change DEQ made in other parts of the permit. DEQ will ensure that this was intentional and not an oversight.
 - “Measurable storm event” (Line 77):

¹ Line numbers correspond to the Word document DEQ used / projected at the meeting to discuss changes the agency is considering for the CGP.

- DEQ included snow to this definition based on its inclusion in the 2022 EPA permit.
 - TAC members raised concerns about how to measure the amount of snow and other factors (i.e., rate of snow thaw) that would actually create erosion and runoff. TAC members suggested tying this concept to snow melt rather than snow fall.
 - Another concern was raised about the safety of sending people out to check stormwater controls during a snow event.
 - Consider revising to specify that the inspection does not have to be done until a time when it is safe to travel.
 - Another suggestion was rather than including this as a definition of “measurable storm event,” include requirements in the permit for what an inspector is required to do in the event of a specified amount of snow.
 - “Qualified personnel” (Line 80):
 - The definition comes from the VSMP Regulation, 9VAC25-871-10.
 - A TAC member stated that Texas and Nevada are currently going through their CGP reissuance process without updating their definitions/inspection requirements to include the certification program in the 2022 EPA permit.
 - Another concern is that this definition, as drafted, is not quantifiable, which leaves the term difficult to enforce. One suggestion is to require a specific certification training in the future.
- **9VAC25-880-10. Purpose.**
 - DEQ’s proposed revisions remove unnecessary language, but do not change the intent of the section. TAC members were supportive of eliminating the unnecessary language.
- **9VAC25-880-15. Applicability.**
 - Updating to reflect the current issue (July 1, 2022) of the Code of Federal Regulations. The Registrar requires a reference to a specific publication date.
- **9VAC25-880-20. Effective Date of General Permit.**
 - Updating to reflect the new 5-year permit term: July 1, 2024 to June 20, 2029.
- **9VAC25-880-30. Authorization to Discharge.**
 - A.1., A.5., B. (Lines 120, 144, 146, etc.):
 - Here and throughout the CGP, changed “board” to “department” when the action relates to anything except promulgation of regulations. This change reflects the impact of 2022 Acts of Assembly Chapter 356 (Senate Bill 657) which limited the State Water Control Board’s authority to the promulgation of regulations.
 - A.2. (Lines 122-124):
 - Clarifies that operators must pay any outstanding permit maintenance fees before receiving coverage under the new CGP.
 - C. (Line 163):
 - Removed language that is now included in the definition of “construction support activity.”
 - C.4. (Lines 176-178):

- DEQ made changes that reflect conversations from the first TAC meeting and added language to clarify when modifications to the registration statement must be reported.
 - TAC members expressed concerns about not knowing where a support activity would be located when an operator submits a registration statement and subsequently needing to modify the registration statement. Of particular concern is how this relates to off-site disposal of fill material.
 - One suggestion is to have operators report this on the SWPPP, possibly by using a standardized form.
 - DEQ will consider this in relation to Va. Code § 62.1-44.15:03 (added in 2020) which requires the agency to notify localities about disposal of fill.
 - D. (Lines 185-192):
 - DEQ made changes that reflect conversations from the first TAC meeting. This allows for the possibility of moving material to another location that also has a stormwater permit.
 - F. (Starting at Line 202):
 - DEQ will check the updated Small MS4 General Permit to ensure consistent language throughout this section and the CGP.
 - F.2. TAC members discussed whether “instream impact” needed to be more specific to provide guidelines for inspectors.
 - F.6. DEQ added language to ensure consistency with the 2022 EPA permit.
 - A TAC member asked whether “biodegradable” solvents should be specified here. DEQ will look at whether “biodegradable” solvents should be listed separately.
 - F.10. DEQ added “contaminated groundwater” to ensure consistency with the 2022 EPA permit.
 - H.1. (Starting at Line 242):
 - DEQ proposed changing the time for submitting a completed registration statement from 60 days to 90 days.
 - Local government TAC members support the extended timeline.
 - Alternatively, TAC members discussed having a set date (suggested March 30, 2024) rather than a length of time for submitting the registration statement.
 - TAC members voiced concern about the language currently tying continuation of permit coverage to paying all permit maintenance fees.
 - The main concern is the potential of a short turn around for when these bills go out, and a request was made to add language to address this issue.
 - DEQ will consider this in relation to the requirement to pay outstanding permit maintenance fees in 9VAC25-880-30 A.2. (Line 122).
- **9VAC25-880-50. Registration statement.**
 - A. Deadlines for submitting registration statement:
 - A.1.a. and A.1.b.(1) (Lines 280 and 287):
 - DEQ will confirm if “land disturbance” should be changed to “construction activity” for clarity and consistency.
 - A.2.a.(1) (Line 299):

- A TAC member raised a question about what to do with waters that have not yet had a TMDL assessment. This creates an issue where you may not know what a water is impaired for.
 - A request was made to explore adding additional pollutants that are not currently included.
 - B.4.b. (Starting at Line 625):
 - EPA has the same requirements for Tier 1, Tier 2, and Tier 3 waters. Tier 1 is impaired, Tier 2 is better than minimum water quality standards, and Tier 3 is what VA calls exceptional waters.
 - There was discussion around the value of these Tier distinctions based on the number of waters that fall in the different tiers. The TAC requested additional data on the percentage of CGPs that allow discharge to water bodies that fall into each of the tiers.
 - DEQ will pull numbers to identify what water bodies are considered to meet each of these Tiers.
 - D. Prohibition on nonstormwater discharges. DEQ will consider whether biodegradable solvents should be listed separately (consistent with 9VAC25-880-30 F. above).
 - E. Authorized nonstormwater discharges. DEQ will review the Small MS4 GP revisions to ensure consistency. See 9VAC25-880-30 F.
- **9VAC25-880-70. General Permit. Part II: Stormwater Pollution Prevention Plan (SWPPP)**
 - B. Contents of a SWPPP:
 - B.1.e. (Lines 810-811):
 - DEQ included new language from the 2022 EPA permit.
 - TAC members suggested defining “treatment chemicals.” Without definition, this term is overly vague.
 - B.2.c.(6) (Lines 840-842):
 - DEQ added language from the 2022 EPA permit to provide detail rather than having to interpret the meaning of “infeasible.”
 - B.2.c.(8) (Line 845):
 - TAC member requested that the CGP specify that “contaminated topsoil” does not need to be preserved.
 - B.2.c.(9) (Line 850):
 - As discussed in the Definitions section of this permit, DEQ will consider adding an exact timeline rather than using “immediately” as a defined term.
 - B.4.e.(4) (Lines 907-911):
 - DEQ added additional terms that are included in the 2022 EPA permit.
 - B.4.e.(5) (Line 918):
 - Based on conversations from the last TAC meeting, DEQ added language from the 2022 EPA permit making clear that liquid concrete wastes and wash water cannot be disposed of through infiltration or otherwise disposed of on the ground.
 - TAC member suggested providing additional details on how to construct a concrete washout pit. DEQ will consider this, but noted that it may be better addressed through agency guidance, possibly the Stormwater Handbook, rather than being spelled out in the CGP.

- B. Turbidity Monitoring (Line 984):
 - The 2022 EPA permit includes turbidity benchmark monitoring. Drew asked TAC members to provide suggestions for this requirement. DEQ is also looking at how other EPA Region 3 states have incorporated this new requirement in their stormwater construction general permits and will look at what Texas and Nevada did with this requirement.
 - A few ideas were discussed about how to incorporate this into Virginia's CGP:
 - DEQ suggested sampling within a certain amount of time after beginning pumping (at the beginning). If benchmark not met, operator must take corrective action and may begin pumping again.
 - TAC suggested requiring soil type assessment to be part of the SWPPP so that there is less trial and error. Operators should know their soil type prior to beginning the dewatering and have a plan in place to filter for the type of soil on the site.
 - TAC supports recording the number collected in the field after each sampling rather than reporting an average over a week of sampling.
 - Another outstanding issue is what kind of corrective action is required. EPA's current requirements set a benchmark but do not specify any corrective action that must be taken if the benchmark is not met. This makes it difficult for inspectors to know what to look for.
- B.8. Stormwater Team (Line 989):
 - Section 6 of the 2022 EPA permit includes more detailed and specific requirements for the Stormwater Team.
 - Drew asked TAC members to provide suggestions for this requirement.
 - DEQ will look at the current responsible land disturber program to see how it compares to the requirements in the 2022 EPA permit.

Public Forum

- Members of the public attended this meeting and were provided an opportunity to provide comments. No comments were provided by the public.

Next Steps

- DEQ will follow-up with TAC members about scheduling our third meeting.

The meeting ended at 4:00pm.