

**General Virginia Stormwater Management Program (VSMP) Permit for Discharges
of Stormwater from Small Municipal Separate Storm Sewer Systems (4VAC 50-60-
1200 et seq.) [Part XV] Regulatory Advisory Panel (RAP)
House Room D, General Assembly Building, Richmond**

Thursday, September 6, 2012

Regulatory Advisory Members Present

Will Bullard, Department of Defense/U.S. Navy
Aislinn Creel, Timmons Group
Michael Crocker, City of Waynesboro
Dan Frisbee, City of Charlottesville
Normand Goulet, NVRC
L.J. Hansen, City of Suffolk
Tracey Harmon, VDOT
Steve Hubble, Stafford County
Adrienne Kotula, James River Association
Jesse Maines, City of Alexandria
Roy T. Mills, VDOT
Tim Mitchell, City of Lynchburg
Doug Moseley, GKY and Associates, Inc.
Lisa Ochsenhirt, Aqualaw
Steve Plante, Loudoun County
David Powers, Williamsburg Environmental Group, Inc.
Jeffery Sitler, University of Virginia
Michelle Virts, City of Richmond

Facilitator

Kristina Weaver
Institute for Environmental Negotiation

Staff Present

Ginny Snead, DCR
Michelle Vucci, DCR
Michael Fletcher, DCR
Doug Fritz, DCR
Burt Tuxford, DEQ

Others Present

Chip England, Hanover County
Fran Geisler, James City County
Glen Telfer, DAA

Morris Walton, VDOT
Christine Watlington, VDOT
Randall Williford, Loudoun County

Welcome and Introductions

Ms. Snead welcomed members to the fifth and final meeting of the RAP.

Ms. Weaver reviewed the ground rules for the meeting. She said that she would be doing consensus tests throughout the meeting to see where the RAP was with various components of the regulations. She noted that this was the last opportunity before the revised regulation went before the Board. She said that comments would be noted for the record but would not necessarily be reflected in the regulations.

General Discussion of Meeting Materials, Expectations and Comments

Ms. Snead reviewed the agenda and expectations. She reviewed the charge to the RAP as noted in previous meetings. She noted that once the regulations had been adopted by the Board there would be an additional public comment period and a series of public hearings, likely in December.

Proposed Regulations

Ms. Vucci reviewed the changes to the proposed regulations. She walked through the draft provided to members. A copy of this draft is available from DCR.

4 VAC50-60-10 Definitions

Ms. Vucci noted the following:

Line 152: The definition of “illicit discharge” was changed to include references to general permit changes. This is a technical change.

Line 601: Language was added regarding the SWPPP.

Mr. Hansen said that concern came from the fact that the SWPPP under the VSMP for construction activities had elements of erosion and sediment control as well as other items specific to construction activities. He said the reference in this document caused confusion.

Mr. Fritz said that SWPPP was used in federal language and the intent was not to create another term.

Mr. Hansen said that his concern was taking the SWPPP with as specific purpose but making it generic.

Mr. Plante said that there needed to be a definition of physical interconnections.

Mr. Fritz said that would be addressed in Section 1200.

Ms. Vucci continued the review.

Mr. Frisbee said that he was unable to locate the Code sections cited in reference to illicit discharge.

Mr. Fritz noted that this was Section 14 of a 15 section document. The references cited are earlier in the regulations and are noted correctly. He said that Section 380 and 360 are in documents that are not currently open for regulatory review. Nothing has changed with regard to those sections.

4VAC50-60-1200 Definitions for Small MS4 GP

Line 715: The definition of municipality has been added.

Line 719: Ms. Vucci noted the definition of “physically interconnected.”

Lines 730 and 731: Language was added regarding school districts.

Mr. Mills asked about the definition of the term “public.”

Mr. Fritz said that staff chose not to define public. He said that the most important part was to distinguish that this section did not apply to everyone.

4VAC50-60-1210-1220

Line 787: The July 1, 2013 is no change from prior drafts.

Mr. Powers asked if the submission date of April should be in the reference.

Mr. Fritz said that with the last permit the Board gave an extension on the required submission. Including the April date could cause a conflict if that happen again.

Line 811: Prior stricken language was deleted.

Mr. Frisbee questioned the language on line 808. There were no categories listed.

Mr. Fritz said that staff would clarify that section.

4 VAC50-60-1230 Permit Application

Line 912: “by the principle executive officer or ranking elected official” was stricken.

Line 920: The DCR address was changed to reflect the new location.

Lines 876/877: Mr. Moseley noted that this was talking about the submission of the permit as currently implemented. As the current permit expires will documentation be provided regarding what will happen in the interim regarding the new permit.

Mr. Fritz said that the intent was to set up the program to operate for five years and the last year would be while the plan is being updated for the next permit cycle.

Mr. Moseley asked if the regulations need to specify what needs to be continued.

Ms. Weaver called for consensus regarding the sections reviewed up until this point. For the purpose of consensus testing “3” means approve as is. “2” means generally approve and “1” means there are still objections.

For this section the consensus vote was as follows:

3 - 14

2 - 3

1 - 0

Ms. Weaver noted that represented a fairly strong consensus on these sections.

4VAC50-60-1240 General Permit

Line 931: No change. The date changes were reflected at the last meeting.

Line 948: The words “specific” contract “language” were added.

i. Special Conditions for Approved TMDLs other than Bay TMDL

The special conditions were cited in the previous draft. A number of lines were stricken.

Mr. Mills said that because VDOT is located in ever TMDL in the Commonwealth there is a lot of work to be done. He said that in lines 968, 976 and 982 where BMPs and steps to address he would like to see flexibility added with regard to meeting the timetable requirements.

Line 959: Mr. Frisbee asked if the reference to TMDL should be clarified to reference a TMDL approved by the State Water Control Board or EPA.

Mr. Fritz said that the reference was for an approved TMDL and that this was based on stormwater management regulations that are in the process of being finalized.

Ms. Kotula asked about the deletion of the text on lines 987 and 988.

Mr. Fritz said that was a legal clarification because future changes are unknown.

Line 989: Ms. Vucci noted the changes at line 989.

Line 1002: Ms. Ochsenhirt said that she had previously commented regarding enhanced public education and employee training programs. She said that her understanding was that this would be removed.

Mr. Fritz said that he would note that concern and review that section.

Ms. Vucci continued with changes at line 1005. Language was added referencing the assessment of all facilities that are owned or operated.

Mr. Goulet asked about the definition of facility on line 1009. Did this refer to facilities and equipment?

Ms. Snead said that was the intent.

Mr. Maines said on line 1035 new language regarding characterization of facilities had should not reference language that was stricken.

Mr. Fritz said that in the section reference the characterization was made. He said that there had been significant discussion regarding the sampling approach. He said the intent was to provide ability for the MS4 to establish what is best.

Mr. Bullard noted that the language had not been changed, but asked about the difference between the locality and the operator. He said that an MS4 owner could own properties outside of the infrastructure of the MS4. This is possible on a federal installation. He said that would mean all facilities could be interpreted that way.

Mr. Fritz said he would review that language.

Ms. Kotula said that the timeline appeared to have been stricken from this section. She asked if it were added to Table 4.

Mr. Fritz said that it was in Table 4. He noted that the Table would likely be renumbered.

Line 1055: There was a technical edit to remove the "shall be submitted" which was redundant.

Mr. Goulet asked why the document referred to the next permit term in this permit.

Mr. Fritz said that the application for the next permit would be due during this term. He said that the continued problem with the permit cycle is not having the necessary year to update. He said the intent was to give a time frame to look at something for the next permit cycle. The intent was to note what would be part of the reapplication process.

On line 1054 Mr. Moseley asked Mr. Fritz to elaborate regarding the requirements of the TMDL WLA.

Mr. Fritz said that was directly from the federal language.

Mr. Hansen said on line 1061 that it would be difficult for localities to commit to the next permit cycle before it comes out.

Mr. Mills agreed with concerns about something in the current permit for the next permit.

On Line 1058 concern was expressed regarding monitoring.

Mr. Powers said he was concerned regarding the issue of consistency with assumptions and requirements.

On line 1056 Mr. Mills noted that for operators with multiple plans, the annual reports would be huge. He asked about the possibility of an electronic signature.

Mr. Fritz said that DCR currently had issues with the EPA requirements for an electronic signature.

Ms. Weaver called on a consensus test for the sections on special conditions.

For this section the consensus vote was as follows:

3 - 3
2 - 14
1 - 0

Ms. Weaver said that while there was consensus, it was not as strong as for prior sections.

ii. Special Conditions for Chesapeake Bay TMDL

Ms. Vucci continued at line 1064.

Mr. Frisbee asked about the definition of pollutants of concern at line 1074. He said that he wanted to be sure regarding the rate use.

Line 1077: Mr. Maines suggested just referencing the table.

Mr. Bullard said that he had previously expressed a concern that the method did not give credit to an MS4 that had installed BMPs to address stormwater runoff after 2009. He said this was a continuing concern.

Ms. Ochsenhirt noted that she had submitted a comment suggesting that local data be used for the purposes of acreage as well as for calculating the loading rates per acre.

Ms. Vucci continued at line 1091. She noted that the table had not changed from the prior version.

On line 1103, Mr. Hansen said that he was curious to know how this would affect expanding MS4 areas.

Mr. Fritz said that this referred to the existing areas served by the MS4. The areas outside of the existing area as of 2009 were not included.

Mr. Hansen asked if the areas would be regulated in the coverage of the permit.

Mr. Fritz said that the existing loads were calculated on 2009 numbers. He said that it was still the intention of DCR that outside loads would need to be addressed but would not require reduction in this permit cycle. He said that would have to be clarified in the 2nd permit cycle.

Mr. Hansen said that if numbers were going back to 2009 for existing loads on areas that were not regulated that perhaps the threshold should be 2014.

Mr. Goulet said that if an area was not regulated in 2009 it has no associated waste load.

Line 1113: Ms. Vucci said the table remained the same.

One line 1145, Mr. Mitchell asked when that would take place since the permit year was removed.

Mr. Fritz said he would look at that.

On line 1150 Ms. Kotula asked if in addition to the estimate of expected costs there could be a proposal as to how each permittee would approach meeting those costs.

On line 1172 a member asked how the 5% reduction would be met if the new organized areas were not included.

Mr. Fritz noted that the new urbanized areas will not have a waste load allocation until the TMDL is modified. Currently they do not have requirements.

On line 1159, Mr. Hansen asked if the word "urban land" needed to be included. He asked if it could be listed as "non-regulated" land.

Mr. Fritz agreed to look at that language.

Mr. Bullard asked for clarification for the timing on the offset of a new construction project.

Mr. Fritz said that was currently not addressed but that staff would review.

Ms. Vucci moved on to line 1200 for the annual reporting requirements.

Mr. Goulet said that on line 1214 he would prefer the term “are expected” to be replaced with “may.”

Mr. Sitler asked if the annual reporting was a separate report or the same as the MS4 report.

Mr. Fritz said the intent was to include the information in the same report. He said DCR was developing an electronic reporting format.

Ms. Weaver called for a consensus test on the TMDL section. The numbers were as follows:

3 - 2
2 - 10
1 - 4

Ms. Weaver said that there was not strong consensus on the section. She asked those who disagreed with section to voice their concerns.

Do not have consensus on this section. Turn to those that have ones.

Mr. Sitler said that one of his biggest concerns was regarding the work that the University of Virginia had done over the last 8-10 years. He said that the University slate was being wiped clean and they were being required to start at square one not receiving credit for work already done.

Mr. Bullard echoed those comments and said that he shared that concern.

Mr. Hansen said that this did a great disservice to those who have already invested significant time and resources.

At this time the RAP recessed for lunch.

Following lunch the discussion returned to the minimum control measures.

iii. Minimum Control Measures

Ms. Vucci began the review at line 1230.

Mr. Mills said that VDOT had an issue with the timeline of 36 months to implement the plan of action. He said that VDOT would have over 20 projects at the beginning of the permit cycle. He said that VDOT had previously requested that they be allowed to have the entire permit cycle to address those TMDLs. He noted that VDOT was willing to accept the 36 month timeframe for any TMDLs added to the program. He said that VDOT is active in every TMDL in the Commonwealth.

Mr. Bullard noted that a concern with the SWPPP locations and the need to identify them in twelve months.

Mr. Fritz said that was just to identify the facilities, not the specific BMPs.

1. Public Education and Outreach

On line 1323 Mr. Mills asked if the phrase “expect to be conducted” could be added so that there was not a risk of a non-compliance issue.

Mr. Fritz said that the language needs to say “will be conducted” but noted that there was a process within the document that allowed for modification.

Mr. Frisbee noted that Table 4 allowed 12 months to develop a public education and outreach plan. He asked how that would sync with annual requirement for outreach.

Mr. Fritz said that the operator would already have public outreach program and that it should just continue while the permit is being updated.

Ms. Weaver called for a consensus test on MCM 1.

3 - 3
2 - 14
1 - 0

Ms. Weaver noted that there was consensus on MCM 1.

2. Public Involvement/Participation

Mr. Plante noted that the date in Line 1332 should be July, not January 1.

Mr. Frisbee asked about the process in lines 1336-1342 about reapplying for coverage and notifying the public regarding the proposed plan. He asked if the plan for the next five years wouldn't be just putting out the information on what was already implemented.

Mr. Fritz said that the next plan would have already been developed. He said that the problem had been that 20% of each permit cycle had been lost because of the delay in implementing new plans. This was designed to address that.

Mr. Goulet asked if annual activities were strictly based within the MS4 jurisdiction or if that could be regional.

Mr. Fritz said that if local funds were expended that would be considered local implementation.

Ms. Weaver called for a consensus test on MCM 2.

3 - 16

2 - 2

1 - 0

Ms. Weaver noted that there was a strong consensus on MCM 2.

3. Illicit Discharge Detection Elimination

Mr. Hansen noted on line 1359 that there had previously been a discussion of outfalls and points of discharge. He said that he thought there would be significant language changes to this section. He said that points of discharge should be more clearly defined.

Mr. Fritz said that the requirement for outfalls was to include all outfalls. He agreed to look at the wording.

On line 1393 Mr. Sitler noted that the language needed to be clarified.

Mr. Powers said that there were references to the 8 digit HUC as well as the 6 digit HUC. He said that the references should be consistent.

Mr. Mills said that VDOT had a concern with discharge points being added to the permit. He said that VDOT currently had 8000 outfalls and that this language would require identifying 6000 other points of discharge.

Ms. Weaver called for a consensus test on MCM 3.

3 - 5

2 - 11

1 - 1

Mr. Mills said that he would need to see the revised language to be comfortable with this section.

4. Construction Side Runoff

Mr. Frisbee said that he still had a concern about bringing language regarding the local ordinance into the federal permit.

Ms. Ochsenhirt asked why the local requirement had to be in a federal permit.

Ms. Weaver called for a consensus test on this section.

3 - 10

2 - 7

1 - 0

Ms. Weaver noted consensus for MCM 4.

5. Post Construction

Ms. Vucci noted that most of this language had not changed from the prior draft.

Mr. Mills noted that with regard to line 1616 that VDOT had not control over runoff that came from offsite that was not from VDOT property.

Ms. Weaver called for a consensus test on MCM 5.

3 - 12

2 - 4

1 - 1

Mr. Mills said that he had the same concern with controlling offsite areas and facilities. He said that until that was addressed, VDOT would have the same concerns.

6. Pollution Prevention/Good Housekeeping

Ms. Ochsenhirt said that she remained concerned with the requirement in line 1723 with regard to written procedures. She said that this was setting too high a bar and noted there was no reference to phosphorous. She said that this could be creating a risk for the operator that was not reasonable.

Mr. Mitchell said that the concern over who had jurisdiction on schools and buses had not been addressed.

Ms. Weaver called for a consensus test on MCM 6.

3 - 4

2 - 12

1 - 1

Ms. Vucci reviewed the remainder of the document beginning at line 1860.

Mr. Hansen asked about the removal of the 60 day window on line 1973.

Mr. Fritz said that there would need to be some clarification. He said that it should be done in a manner so that the operator would know that DCR had received the information.

Mr. Mills said that he would have the same concern and would like to see a time frame mentioned and a note that if the operator had not received a response from DCR in a certain period of time the permit would be automatically approved.

Ms. Weaver called for a consensus test on the remainder of the document.

3 - 15
2 - 2
1 - 0

Mr. Mills said that he remained concerned that the process had been done in three months. He noted that it took seven years to get the Stormwater Regulations completed. He said that this permit would actually have a greater impact.

Ms. Weaver then called for a consensus test on the document as a whole.

3 - 2
2 - 14
1 - 1

Regulatory Process After RAP

Ms. Snead reviewed the next steps for the process.

September 28: The proposed regulations presented to the Soil and Water Conservation Board

October 17: The proposed regulations will be filed with the Virginia Register.

November 5 (approximately): The proposed regulations will be published.

November 5 through January 4: Public comment period, EPA will review during this time.

December: Two public hearings.

March 2013: Soil and Water Conservation Board takes final action.

July 1, 2013: Effective date.

Mr. Mills asked if the RAP would be able to see the revised regulations.

Ms. Snead said those would be made available and that the RAP would be kept up to date throughout the process.

Public Comment

There was no public comment.

Adjourn

Ms. Snead thanked RAP members for their participation.

The meeting was adjourned.