

## Minutes

### 2024 Stormwater Construction General Permit Reissuance Technical Advisory Committee (TAC) Meeting #1

Thursday, September 22, 2022

3<sup>rd</sup> Floor Conference Room  
DEQ Central Office  
1111 East Main Street  
Richmond, Virginia 23219

Start – 9:30 AM

#### Attendees:

- TAC Members
    - Andrew Clark, Home Builders Association of Virginia
    - Dawson Garrod, University of Virginia
    - Taylor Goodman, Balzer and Associates, Inc.
    - Joseph Faudale, Bay Companies, Inc.
    - Lauren Faulkner, Dominion Energy
    - Matt DiBella, Greensite Concrete
    - Kay Cabe, Legacy Engineering, P.C.
    - Jon Paige, Stantec
    - Melanie Mason, City of Alexandria
    - Joe Wilder, Frederick County
    - Jill Sunderland, Hampton Roads Planning District Commission
    - Scott Dunn, Chesterfield County
    - Holly Sepety, VDOT
    - Randy Hardman, Hanover County
    - David Sligh, Wild Virginia
    - Derek DiDonato, Van Metre Homes
    - Patrick Fanning, Chesapeake Bay Foundation
    - Normand Goulet, Northern Virginia Regional Planning District Commission
    - Olivia Bryan, Frederick County
    - Brendan Merkler, Greensite Concrete
    - Linnea Saby, Wild Virginia
  - Public
    - Carrie Campbell, Lennar
  - DEQ Staff
    - Melanie Davenport
    - Drew Hammond
    - Scott Van Der Hyde
    - Joseph Crook
    - Nelson Daniel
    - Matthew Stafford
    - Mark Remsberg
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**Welcome and Introductions:**

Melanie Davenport (Director, Division of Water Permitting) welcomed the TAC and provided a brief overview of the purpose of the TAC – to revise and reissue the General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880, the “Stormwater Construction General Permit” or “CGP”) so that it is consistent with [EPA’s Construction General Permit](#)<sup>1</sup> (issued in February 2022, the “EPA general permit”) and effective July 1, 2024.

**Guidelines for RAP Discussion:**

Scott Van Der Hyde (Guidance and Regulations Coordinator) reviewed the rules and guidelines for conduct and discussion during the TAC meeting. TAC members and DEQ staff introduced themselves.

**Discussion of Construction General Permit Revisions:** Facilitated by DEQ

Drew Hammond (Water Permits Division Manager) started the discussion by providing some background on why the DEQ is initiating a regulatory action to reissue the Stormwater Construction General Permit at this time, and DEQ’s desired timeline for this action.

- The current CGP has a 5-year term. It became effective on July 1, 2019. It will expire on June 30, 2024. There is a provision in the current CGP for continuing coverage for permitted activities; new construction will not be covered under the current CGP after June 30, 2024. DEQ’s objective is to reissue the CGP so that it becomes effective on July 1, 2024.
- DEQ would like to take an initial draft CGP (i.e., proposed regulation) to the State Water Control Board (Board) at its summer 2023 meeting (generally in June) for approval. If the Board approves the proposed CGP, it will be published in the Virginia Register, which initiates a 60-day public comment period. DEQ will hold one or more public hearings during the public comment period. Based on comments received during the public comment period and hearings, DEQ intends to prepare a final regulation to present to the Board for approval at its meeting in late 2023 (generally in December). Following Board approval, publication in the Virginia Register, and a 30-day public notice period, the reissued CGP should become final in early 2024 and effective on July 1, 2024.

DEQ published a Notice of Intended Regulatory Action for the CGP on March 28, 2022. During the 30-day comment period following publication, DEQ received a number of comments which Drew reviewed with the TAC to get their feedback on each issue. The discussion of these key topics is captured below:

- Electronic submittal of records:
  - Operators are required to do self-inspections of project sites. DEQ received a request to consider allowing electronic signatures on self-inspection documents.
  - The EPA general permit (effective February 17, 2022) allows for electronic signatures. DEQ will review the EPA general permit and look to add equivalent requirements to the CGP the agency is developing for 2024. Because many operators continue or prefer to use paper/wet signatures, DEQ plans to continue that option for signatures.
  - VDOT currently does a lot of their reports electronically and allows electronic signature, so it may be useful to look at their process.
- Maintenance fees:
  - A comment requested DEQ to set up a website that would allow payment of annual permit maintenance fees electronically.

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<sup>1</sup> <https://www.epa.gov/npdes/2022-construction-general-permit-cgp#2022cgp>

- DEQ recognizes the benefit of doing this. The primary question is whether DEQ has the necessary technical capability/resources for billing and accepting fees electronically.
- Registration statements:
  - The current CGP requires registration statements to report on both total land area of development and estimated area to be disturbed. TAC members said there is some confusion about what to report for these two requirements.
  - They asked DEQ to explore ways to clarify and better distinguish between the terms, possibly by adding more explicit instructions in the registration statement.
- Termination of General Permit Coverage:
  - A comment requested that DEQ update instructions to provide more clarification on reporting conserved open space.
    - Local government representatives on the TAC feel like this type of clarification would be helpful for them in processing Notices of Termination.
    - Other TAC members voiced concern that this could create additional confusion when trying to distinguish between the type of open space (for example: “conserved open space” vs. “managed turf”).
    - Local governments’ primary interest is finding a better way to track conserved open space. This is especially a problem in nutrient credit trading.
    - DEQ suggested updating the instructions for the Notice of Termination form to better clarify this issue.
  - Another request is to set a specific timeline for when DEQ will notify operators of a Notice of Termination’s completeness (a 14-day timeline was suggested). A legislative change addressed termination of CGP coverage (§ 62.1-44.15:26.1 of the Code of Virginia, added in 2018) in the current CGP by adding a provision saying that a Notice of Termination is considered complete 60 days after a completed application is received. This requirement is in DEQ’s regulations at 9VAC25-880-60 B.2.
  - A TAC member requested that the reissued CGP use the phrase “long-term best management practice” (instead of “permanent best management practice”) to create consistency with the language that will appear in the Virginia Erosion and Stormwater Management Program regulations.
- Off-site support activities:
  - This comment is related to stockpiling and moving material off-site – the problem is that when an operator files a registration statement, information about stockpiling and/or moving excess material off-site may not be known; once project starts, then it becomes cumbersome to report.
  - The comment requested that reporting of stockpiling off-site not be required if material is being transported to another site and being used as fill where land disturbing activity at the other site is covered under a stormwater permit.
  - This issue was directly addressed by the General Assembly in 2020 (Acts 2020, CH565), and DEQ updated the current CGP to incorporate those changes. The legislation was meant to solve the issue of material originating on a permitted site, but ultimately deposited in an unpermitted location.
  - One of the problems is tracking where the material ultimately ends up. TAC members suggested looking at creating another mechanism for reporting this.

- DEQ will explore the possibility of alternative mechanisms to collect this information. Currently this is in registration statement – would it be better to include as a SWPPP requirement? If information is recorded in the SWPPP, it raises the issue of how the VSMP authority will be notified, when, and how the VSMP authority will report it to DEQ.
- DEQ currently keeps this information updated in a central location that local governments can access. One TAC member requested that DEQ regularly send this information to local governments rather than ask them to get it themselves.
- Reporting Requirements (9VAC25-880 Part II.H; Part III.H; Part III.G; and Part III.J)
  - Corrective actions (Part II.H)
    - The comment requested clarity on reporting discharges outside the limits of disturbance that don't reach a surface water body.
    - DEQ suggested dividing subsection 2 into multiple subsections to better highlight requirements. This may also require further clarifying some of the language in this section.
  - Reports of Unauthorized Discharges (9VAC25-880 Part III.G and Part III.H)
    - This comment that DEQ further clarify who is supposed to be notified and under what timeline for unauthorized discharges.
    - DEQ may need to make changes to clarify that reporting for unauthorized discharges should go to both the local VSMP Authority and to DEQ.
  - Notice of Planned Changes (Part III.J)
    - Request for clarifying language in instances where the permittee has requested a planned change and is awaiting a response from the DEQ.
    - This issue is covered in EPA's general permit, so DEQ will need to look at that permit and EPA's fact sheet to see how to best incorporate that language.
- Concrete Washout
  - This comment requested stricter requirements and consistent implementation of stormwater regulations pertaining to concrete washouts and water/waste material that is collected in washouts.
  - A TAC member requested that DEQ more clearly define the requirements for a leak proof basin. Current permit allows concrete washout to be stored in a leak proof basin if it does not overflow. There is an issue of leak proof basins being cut open and allowing the water to drain into the ground. The TAC member's suggestion is to require metal storage vessels and pumping water out so it can be treated at an appropriate location.
  - DEQ suggested adding language making clear that this water cannot be cut loose on the ground and needs to be pumped out and treated. EPA's general permit (at part 2.3.4) says, "Do not allow liquid wastes to be disposed of through infiltration or to otherwise be disposed of on the ground[.]" DEQ noted EPA will review the proposed (reissued) CGP and it will need to include language comparable to or the same as EPA's general permit.
  - This was also identified as an area where inspectors may require additional training.
  - A TAC member identified the 2022 Caltrans Concrete Washout Report as a good resource on this issue.
- One comment spoke broadly to the need to ensure that the right analysis is done to ensure that water quality standards are protected by the permit.
  - The concern is that even though specific elements of the current permit are being met, they are not enough to protect water quality.

- DEQ staff is currently allowed make an assessment about whether water quality standards are reasonably expected to be met.
- During previous permit processes, specific numeric requirements were not included because EPA and Virginia have relied on BMPs used rather than numeric requirements.
  - The TAC shared a concern that in some instances BMPs do not achieve water quality standards and would like to see numeric standards applied in those situations.
- Turbidity monitoring
  - EPA's general permit includes numeric turbidity benchmark monitoring, which DEQ will need to add to the reissued CGP. EPA's general permit sets narrow circumstances for turbidity monitoring.
  - Virginia currently has turbidity criteria under a NOIRA, and a TAC member requested that this be taken into consideration if possible.
  - EPA's general permit requirements:
    - EPA includes a provision for benchmark monitoring for turbidity for dewatering activities.
      - This is not based on an in-stream water quality standard that must be achieved. Instead, it outlines controls to be used and requires monitoring at the end of the controls and comparing that result to the set benchmark number.
      - If the testing results show turbidity above the benchmark, the operator is required to implement additional controls.
    - These requirements apply to dewatering activities into sensitive waters (listed as impaired for sediment), Tier 2, Tier 2.5, and Tier 3 waters.
    - Virginia's current permit has additional nonstructural controls for discharges to Tier 3 waters.
  - A question was raised about why EPA's general permit only applies to dewatering rather than any type of discharge.
  - TAC members asked:
    - Does this apply to stream restoration activities or stream crossings that redirect a stream around a work area?
      - DEQ will consider based on EPA definitions
    - An implementation issue was raised for projects that are dewatering for only one day. This is not enough time to test for turbidity, but don't want this to cause an issue of people ignoring the issue.
      - Need to set guidelines on what triggers the need to monitor.
      - May need guidance about who is allowed to test samples. Turbidity is a field test, so don't need to send off to a third party.
  - What happens if you cannot get below EPA benchmark limits?
    - EPA's corrective action requires the operator to continue trying additional controls, but there is no requirement to meet standard. Requirement is to implement all reasonable controls.
    - EPA also allows for alternative benchmarks depending on the numeric background in the receiving stream.
  - Issues and potential solutions raised with EPA's turbidity benchmarking:

- The timing requirements in EPA’s general permit create an issue for inspections and enforcement. DEQ may look at alternatives to improve on that process.
      - TAC members supported DEQ looking at alternatives rather than directly following EPA’s testing requirements.
    - DEQ will also look at our existing handbook for anything that currently expected for dewatering controls.
    - It may also make sense to add the turbidity monitoring into the SWPPP section of the reissued CGP.
    - The TAC supported making these requirements simpler to understand and more implementable in the reissued CGP. One option is to list the reasonable steps that someone needs to go through in their effort to achieve the turbidity benchmark.
  - DEQ requested that the TAC members who are involved in site-construction do research on control manufacturers and what products are most successful.
  - DEQ will look at other states in EPA Region 3 to see what they are doing to implement this requirement.
  - DEQ will also talk to the Virginia Department of Energy about where the 50 NTU benchmark came from. They may have an idea of what technology was used to achieve this benchmark.
- Use of flocculants and other treatment chemicals
  - The current CGP does not authorize the use of flocculants and other treatment chemicals, but there have been questions about including this in the past.
    - Flocculants would be used in situations where traditional BMP controls are not enough.
  - Should DEQ consider adding a section about this in the reissued CGP?
    - One comment was that if we are including the turbidity benchmark monitoring, then it would make sense to include this in situations where other controls are not achieving the benchmark.
    - This has been used in industrial stormwater, but not construction.
      - The industrial stormwater permit has a process to ensuring that there are not stream impacts.
    - This may require additional training to ensure the proper use of chemicals.

**Public Forum**

- An opportunity for public comment was provided, but no comments were offered.

**Next Steps**

- DEQ will begin creating a draft of the reissued CGP for the TAC to see at prior to the next meeting. The next meeting is tentatively planned for November. DEQ will send out a poll for meeting dates.
- DEQ will send a technical bulletin to the TAC when the meeting minutes are sent out.

**The meeting ended at 3:00.**