

Minutes

2024 Stormwater Construction General Permit Reissuance Technical Advisory Committee (TAC) Meeting #3

Thursday, December 15, 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.
 - Ashley Hall, Stantec
 - John Burke, Montgomery County
 - Jill Sunderland, Hampton Roads Planning District Commission
 - Scott Dunn, Chesterfield County
 - Jacob Bauckman, VDOT
 - Holly Sepety, VDOT
 - Michael Cartwright, VDOT
 - Randy Hardman, Hanover County
 - Normand Goulet, Northern Virginia Regional Planning District Commission
 - Olivia Bryan, Frederick County
 - Brendan Merkler, Greensite Concrete
 - Dawson Garrod, University of Virginia
 - Public
 - Carrie Campbell, Lennar
 - DEQ Staff
 - Drew Hammond
 - Scott Van Der Hyde
 - Joseph Crook
 - Nelson Daniel
 - Matthew Stafford
 - Kristen Sadtler
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Welcome and Introductions: Drew Hammond, DEQ

- Drew Hammond welcomed everyone, had the meeting attendees introduce themselves, and reviewed our potential schedule following this meeting. We will pause the TAC meetings during the 2023 General Assembly Session. DEQ intends to have our fourth TAC meeting in early Spring 2023 to go over any final revisions we have made. DEQ hopes to present the permit to the State Water Control Board at their June meeting. Once approved by the Board, DEQ aims to hold public meetings in the Fall 2023 and have the Board provide final approval by December 2023.

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: Facilitated by DEQ

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 November 3, 2022.

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

- **9VAC25-880-1. Definitions.**
 - “Qualified personnel” (Lines 80-88)¹:
 - EPA included an expansion of their stormwater team concept in the 2022 EPA permit. DEQ reached out to other states that are currently reissuing their CGPs to learn how they are addressing the stormwater team language from the 2022 EPA permit. Other states are not adopting one consistent approach, and none are following exactly EPA’s approach. EPA has shown flexibility in incorporating the stormwater team concept into state permits.
 - DEQ’s proposal is based on the definition of “qualified personnel” in 9VAC25-870 and adds the requirement that by July 1, 2025, qualified personnel are required to have a certificate of competence for Erosion and Sediment Control and Stormwater Management.
 - TAC members voiced support for this approach but had concerns about the availability of training classes to allow qualified personnel to become certified within the one-year timeframe. DEQ is discussing this issue with training staff, and several suggestions were made to provide more flexibility for receiving the appropriate training or demonstrating certification.
 - One suggestion was to expand the responsible land disturber (RLD) certification to include some of the pieces that are required for stormwater and erosion control competency. This would allow the RLD to exist in lieu of the ESC/SWM certification. This could be used as another pathway to compliance to provide more flexibility.

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

- Another suggestion to ensure compliance was to allow EPA’s certification to serve as a stand-in for Virginia’s state certification.
 - Another discussion focused on ensuring that contractors on the ground have a clear understanding of what they are looking for in order to provide a more proactive approach to monitoring stormwater controls rather than having to wait for a third-party inspector to conduct an inspection.
 - TAC members suggested that all contractors or subcontractors that are responsible for the land-disturbing activity be required to have appropriate knowledge of the permit, erosion and sediment control, and stormwater requirements.
 - TAC members would like to see language that makes clear that subcontractors are responsible for all of this, but do not want to create something that is overly rigid.
 - The pollution prevention plan requirements (line 940) may be a good place add language that could address this issue.
- “Measurable storm event” (Line 77):
 - Following comments from last TAC meeting, DEQ changed language around snow to clarify that a measurable storm event from snow is any storm event producing enough snow melt that results in a discharge from the construction site.
 - The group discussed changing “discharge” to “runoff” since 9VAC25-870-10 defines “discharge” as “discharge of a pollutant” when used without qualification. “Runoff” is also defined in 9VAC25-870-10 and generally more understandable to most people.
 - One concern with the proposed definition is that the previous definition was more quantifiable because it measured an amount of snow fall. Some TAC members prefer this approach because it is easier to measure snow accumulation than know when sufficient runoff from snow melt occurs to trigger action by the operator.
 - TAC members suggested to combining these two like it is written in the 2022 EPA permit (4.2.2). “Discharge that occurs from snow melt from a snow event that produces 3.25 inches or more of snow.”
- **VAC25-880-30. Authorization to discharge.**
 - Reporting material from off-site support activities (Line 179):
 - Following up on TAC comment to allow reporting of off-site material in the SWPPP. Drew explained that this is required to be done through the registration statement because the authorization and fees are based around the total land area disturbed, which is recorded in the registration statement.
 - DEQ is keeping language that allows this to be reported in a modified registration statement rather than requiring all of this to be known and reported in the initial registration statement.
 - Continuation of General Permit Coverage (Line 244):
 - DEQ is keeping the 90-day language in the permit but will put a specific date in the fact this. This is in response to a question raised at the last TAC meeting.
 - At the last TAC meeting, members raised an issue about the timing for paying maintenance fees. DEQ added language to clarify that this only applies to past due fees.

- **9VAC25-880-50. Registration statement.**
 - Transfer of ownership (Line 316):
 - A question was raised at the last TAC meeting about including how to deal with co-permittees. DEQ will not include co-permittees in this permit. Virginia is not set up to implement this concept.
 - Site map (line 356):
 - TAC members asked whether this requirement is still necessary or if it can be removed. This information is submitted through other means and creates extra paperwork for the regulated community.
 - Local government TAC members want to discuss this with their localities to determine if this will cause any issues.
 - DEQ will also look at this.
 - Land area to be disturbed (B. 15., line 402):
 - DEQ has changed “land area to be disturbed” to “area of the construction site” and will continue to think about the best language for this requirement.

- **9VAC25-880-60. Termination of general permit coverage.**
 - Notice of Termination (NOT) (lines 457-465):
 - DEQ added language to incorporate requirements from 2018 legislation that caused DEQ to amend this section of the CGP in 2019.
 - DEQ will need to take another look at subsection B.3. Currently deleted, but we may need to keep this.
 - Consider rewriting this section to more closely match the requirement in 880-60 A.4.
 - A TAC member proposed changes to B.2: “if the VSMP authority or department does not notify the permittee within 90 days of receiving the NOT, then the NOT will be deemed accepted.” DEQ asked the member to submit the proposed language.

- **9VAC25-880-70. General permit.**
 - Turbidity monitoring for construction dewatering discharges (Part II B 8, Line 990):
 - This is a new requirement meant to address turbidity monitoring in the 2022 EPA permit. DEQ reached out to other states to see how they have incorporated turbidity monitoring requirements in their CGPs – their approaches varied. The proposed language is intended to open a discussion with TAC members and generate feedback. 355 NTUs come from footnote 77 in the 2022 EPA permit.
 - TAC comments/questions and discussion:
 - What qualifies as a dewatering discharge? This is defined in the 2022 EPA permit and will need to be inserted into Virginia’s CGP.
 - Can we implement a technology-based criteria rather than the NTU measurement benchmark? EPA has said that they are not mandating any one approach, so this could be possible.
 - Several TAC members voiced support for this approach.
 - DEQ will look at specifying types of control technology when we redraft.

- TAC members sending reports and studies that may help with developing this language.
 - DEQ’s current approach also has a corrective action section. This will likely be removed if we move to the technology-based approach.
 - Concern was raised about only requiring one turbidity test and having it occur within the first 15 minutes of the construction dewatering discharge. TAC members felt the proposed requirement does not demonstrate whether corrective actions achieve the benchmark. They also thought samples of dewatering discharge taken in the first 15 minutes would be the least turbid water.
 - TAC members suggested changing the word “documentation” in Part II B 8 b to “clear direction” of something comparable rather than just “documentation.”
- SWPPP implementation:
 - Part II F 2, Line 1109: Added language from the 2022 EPA permit (2.1.4.b) to include routine maintenance and setting the timeline for corrective action or routine maintenance being performed.
 - Concern about this timeline being set at “the close of the next business day.” TAC members requested to extend that timeline to no later than five business days.
 - DEQ suggestion to strike “by the close of the next business day” language and go back to what we currently require, “as soon as practicable” because EPA did not change its timeframe/language in the 2022 EPA permit.
 - Line 1118: Repeated maintenance to the same issue in the same location.
 - This section was pulled directly from the 2022 EPA permit (2.1.4.c).
 - Suggestion to change “routine maintenance” to something that suggests more of a repeated failure of the control in the same location.
 - If a control fails three or more times in the same location, then this should trigger a “corrective action.”
- SWPPP Inspections:
 - Part II G 1, Line 1141: DEQ added clarifying language that qualified personnel can be a member of operator’s staff or a third party.
 - Part II G 2 b (2) a and b, Lines 1163-1171: DEQ added language based on section 4.2.2 of the 2022 EPA permit. DEQ will update this language based on TAC discussion around measurable snow events – so that it is consistent with the definition of “measurable storm event.”²
 - Part II G 3 k, Line 1266: Requirement to inspect all stormwater discharge locations. The requirement comes from 4.6.2 of the 2022 EPA permit. TAC members discussed incorporating these requirements in Part II G 3 b and deleting G 3 k because the reporting requirement seems duplicative.

² Section 4.2.2.b of the 2022 EPA permit, Frequency of inspections, has the following requirements for snowmelt: “A discharge caused by snowmelt from a storm event that produces 3.25 inches or more of snow within a 24-hour period. You are required to conduct one inspection once the discharge of snowmelt from a 3.25-inch or more snow accumulation occurs. Additional snowmelt inspections are only required if following the discharge from the first snowmelt, there is a discharge from a separate storm event that produces 3.25 inches or more of snow.”

- Line 1270: Requirement to inspect all construction dewatering discharge locations.
 - Suggestion to change “discharge” to “stormwater runoff”
- DEQ will consider requirements in Part II G 3 b to ensure they are not confusing with proposed requirements in subsections k and L (lines 1266 and 1270).
 - TAC members voiced support for the more general language that currently exists in subsection b.
 - Suggestion to report only locations where control failures are occurring rather than report all discharge locations.
- Part III K. Signatory requirements (line 1519):
 - DEQ added that signature requirements also apply to Notices of Termination.

Public Forum

- Members of the public were given the opportunity to provide comment and no public comments were offered.

Next Steps

- DEQ asked TAC members to send any additional feedback they have based on the current draft of the CGP and meeting. DEQ will continue to make revisions and circulate a revised draft of the CGP to TAC members in early 2023. DEQ is planning to hold the fourth TAC meeting after the General Assembly Session ends.

Meeting ended at 3:20pm.