

Virginia Soil and Water Conservation Board
General Permit for Discharges of Stormwater from Construction Activities Regulations
Technical Advisory Committee (TAC)
Tuesday, August 19, 2008, 9:00 a.m. – 4:00 p.m.
Patrick Henry Building
Richmond, Virginia

General Permit Technical Advisory Committee Members Present

Charlie Armstrong, Southern Development
Nicole Bennett, U.S. Marine Corps
Eric Capps, Virginia Department of Conservation and Recreation
John Carlock, Hampton Roads Planning District Commission
Chuck Frederickson, James Riverkeeper
Mike Gerel, Chesapeake Bay Foundation
Jeffrey T. Hancock, Williamsburg Environmental Group
Kelly Henshaw, City of Winchester
C. Andrew Herr, Terry/Peterson Residential
Carolyn Howard, Draper Aden Associates
Steve Hubble, Stafford County
William Johnson, Virginia Community College System
Jeff Kelble, Shenandoah Riverkeeper
Roy Mills, Virginia Department of Transportation
Rick Thomas, Timmons Group
Kelly Vanover, Virginia Department of Conservation and Recreation

General Permit Technical Advisory Committee Members Not Present

Tom Chervenak, Paradigm Engineering
David Cotnoir, Naval Facilities Engineering Command

Facilitator

Frank Dukes, Institute for Environmental Negotiation

DCR Staff

Ryan J. Brown	David C. Dowling
Michael R. Fletcher	Jack Frye
Doug Fritz	Lee Hill
Ved Malhotra	Holly Sepety
Christine Watlington	

Others Present

Chris Dodson, Timmons Group
Steve Kindy, VDOT
Larry Land, VACO

Welcome and Opening Remarks

Mr. Dowling opened the meeting and welcomed members and guests to the second of three meetings. He said the review of the draft would begin with Section II, Subsection D on page 43.

Mr. Dowling noted that some of the comments received were reflected in the draft. He said that emails and comments that were received have been provided in the member's packets.

Mr. Dowling again reminded the TAC that this process would not result in major revisions of the permit but was more of a technical edit to clarify issues.

Review and Discussion of Draft Regulations [beginning at Section II (Stormwater Pollution Prevention Plan), subsection D (Stormwater pollution prevention plan contents)]

Mr. Brown began the review of the August 13, 2008 DRAFT on page 43, line 1244, subsection D. A copy of this DRAFT is available from DCR.

In subsection g, line 1261 a member suggested the use of "state waters" and not "surface waters." DCR made a note to look at that usage.

In subsection i, line 1280 a member asked about the viability of record keeping and how the agency would envision the implementation.

Dr. Dukes said that may need clarification.

Mr. Dowling said that in most cases, where large blocks of text were added, they came from the federal General Permit.

A member asked if in subsection 8, line 1276 it would be appropriate to add washout areas.

Mr. Capps said that should be added in line 1277.

Mr. Brown continued on line 1283. A large section of text was stricken and the document continued on page 47, line 1361

On line 1374, a member asked why this language was necessary. He said he was not certain how sediment leaving the site was addressed in the Erosion and Sediment Control Regulations.

A member said that the Erosion and Sediment Control regulations specifically speak to tracking on the streets.

A member said that he had envisioned the requirement being an end of the day requirement to remove the sediment.

A member said that the language of minimizing the offsite impact was consistent with the technology based reduction approach.

Mr. Capps noted that different approaches require different maintenance.

A member said that it maybe more appropriate to say within 72 hours of a runoff producing event.

Mr. Capps said that DCR would check on that provision. He noted that the Erosion and Sediment Control regulations say at the end of the day.

A member said that the certainty of knowing it was done was more important than arguing over the time frame. He said that the end of the day for roads made sense.

A member said that it should be consistent with the Erosion and Sediment Control regulations. He said that if the sediment is going into a stream there should be immediate action to address the runoff.

A member suggested that “stable” should be defined.

Mr. Brown said that it would basically mean restating the first paragraph.

A member said that he agreed with that point and that it looked like the intent was to refer back to the Erosion and Sediment Control Handbook. He thought that should cover the items.

A member said that he did not believe that reference covered those items sufficiently. He said that this was an attempt to bring language into the general permit.

Dr. Dukes asked if the language was different than what was in the Erosion and Sediment Control standards.

Mr. Capps said there is no specific time frame noted.

Mr. Dowling asked if the handbook included mechanisms for stabilization.

Mr. Capps said that it includes several mechanisms.

A member said that he would like to go beyond that to keep the stabilized area.

Another member said that he would keep the first sentence about preserving vegetation. He was comfortable with striking the remainder of the paragraph.

A member said that if he had to choose one thing that contributed to erosion of sites in the Valley, it is the issue of stabilization.

Mr. Frye addressed the concern about the provision for existing vegetation. He said there was no concern about the concept but was concerned about who would interpret whether or not this was a possibility.

Mr. Dowling said that the paragraph in question did exist in the General Permit. He noted that staff determined it to be duplicative of concepts embodied in the handbook. He suggested retaining the one sentence.

A member asked if the sentence was consistent with the General Permit or the regulations.

It was noted that there is similar language in the Bay Act, but that only applies to the eastern half of the state.

It was agreed that DCR would review this section and has noted member concerns.

Mr. Brown continued on line 1378 with stormwater management.

A member asked the purpose for striking the “and/or” after local on line 1387.

Mr. Brown said the intent was to add the federal provision.

A member said that one of the other issues related to water quality. He said that a lot of localities are reviewing plans outside of the Chesapeake Bay Area, looking at quantity, but not quality. He said there was no initial review with DCR, and that once DCR inspects, the developer has to retrofit the project. He said this was just a disconnect in the regulation as written and with the localities. He said that should be clarified.

Mr. Capps said that the permit authority currently rests with DCR. While the locality may or may not have a stormwater program, the authority rests with DCR.

A member said that information is not making it back to the locality. He said the inspection is occurring late in the process and that does not resolve the engineer or consultant not having met state standards throughout the project.

Mr. Brown said that DCR understood the difficulty. He said that the first step is an education of the engineering community.

Mr. Brown said that another TAC was working on expanding the stormwater program. He said that the first place that would be noted was in the Bay Act areas. However, over a period of time plan review will be phased in statewide. He said with regard to the action before this TAC, the best action would be to make clear that water quality is a requirement.

Mr. Brown continued on line 1388. There were no comments.

Mr. Brown continued on line 1400.

A member suggested adding, "and is consistent with any TMDLs established for receiving water for stormwater pollutants of concern from construction activities."

Mr. Capps asked if he was looking at a wasteload allocation for pollutants relating to construction activities.

The member said the language would say pollutant of concern for construction activity.

A member said there was a need to fix the language with regard to how TMDLs are used. He said putting stormwater in the load allocation specifically addresses controls.

A member asked for clarification regarding TMDLs and what the processes were.

Mr. Capps said that DEQ handles the development of TMDLs. There are usually wasteload allocations. He said that the load allocation was not something the stormwater program can regulate.

Mr. Brown said that this language was a Clean Water Act requirement. He noted that a later section in the permit dealt specifically with a wasteload allocation.

A member suggested adding washout areas to the list in subsection (4) on line 1425.

A member suggested that the language regarding trash and solid materials should be tightened up. He said that was a common issue on construction sites.

A member suggested from a practical perspective, at the end of each day the site should properly dispose of trash.

It was suggested that requirement may be too specific for the SWPPP.

A member noted that in subsection (2) sanitary sewer or septic systems were not specific to construction sites. He said there needs to be something additional in the SWPPP. He said that a reference to the health quality does not cover every scenario at a construction site.

Mr. Brown continued on line 1437, maintenance of controls.

A member asked if this applied only if the operator was unable to implement changes before the next storm.

Mr. Brown said that if the operator could not implement the controls before the next storm they should be applied as soon as possible.

A member noted that what is being done on site would not necessarily match the SWPPP.

Mr. Brown continued on line 1453, inspections.

A member asked about the seven day requirement.

Mr. Capps said that requirement was from the federal regulations.

A member said that with regard to the inspections language, there needs to be some type of quantifiable action to ensure the BMPs are working.

Dr. Dukes asked if that issue could be addressed at this point or if it should be deferred to the end of the meeting.

Mr. Dowling said that it could be discussed at the end of the meeting. He noted it had been previously discussed. He said that DCR appreciates the concept, but the issue of turbidity standards are really water quality issues and are being addressed in Part II by the other TAC. He said that went beyond the realm of what this TAC could address, but that DCR would welcome comments at the end of the meeting.

A member asked if the inspections would be done by the holder of the SWPPP.

Mr. Brown said the permit holder would perform the inspections.

Mr. Brown continued on line 1468.

On line 1474, a member asked if the language “effective in preventing significant impact to receiving waters” would be confusing to an inspector given that the language elsewhere used the term “minimize.” He said there was a lot of subjectivity.

On line 1502 a member suggested a need for alternative language. He suggested looking at discharge and appropriate offset language.

A member said he could not envision how a discharge would be inaccessible and suggested the deletion of that section.

A member said he would be concerned with the concept of the inspection of offsite properties.

A member responded that he would just like to see something reasonable to address tracking offsite. He said that the inspection should not stop at the perimeter.

Mr. Capps said that DCR would review that section. He said a concern about inspecting downstream was access to the land.

On line 1493, a member asked if the language needed to be specific with regard to who had the authority to modify the SWPPP.

A member said he was concerned with the overstepping of authority.

Mr. Capps said that DCR had started to address that in a previous section. He said that it may be best to include a reference to that section that the revision to the SWPPP must be completed.

Mr. Brown continued on line 1529. There were no comments.

At this time the committee took a short break.

Following the break, Mr. Brown continued on line 1535. There were no comments regarding this section.

Mr. Brown continued on line 1547. Total Maximum Daily Loads.

A member said there should be a line about what constitutes a control measure. He said there needed to be a “should” statement stating that the measures have been done.\

He noted that the language came from the EPA, but felt that it was not explicit enough.

Mr. Capps said that DCR would review that section and the EPA language.

A member said that he would have a problem with the term “should.” He said that the permit clearly indicates the maintenance requirement.

Mr. Dowling said that the language could possibly be tightened up by saying “in accordance with installation or maintenance practices.”

A member said that was all that was intended, but that the current language was awkward.

A member said on line 1585, there needed to be language that covered discharge to impaired waters and TMDLs.

A member said that he was not sure that could be required from the perspective of the land developer. He said that would change the rules in the middle of the game. He said that if the developer had done due diligence and designed a plan, then this would allow a change in the game for a new requirement and would involve additional cost.

A member said that the TAC should consider denying permit applications for impaired streams. He suggested the possibility of a tiered system.

A member said that he had a concern regarding benthic impairments caused by agricultural activity. He said that this appeared to be directing the requirements to the development community while not having any authority to deal with the agricultural issue.

A member said that his was not asking the development community to fix the problem, but to not contribute to the impairment.

Mr. Brown said that DCR would review that section.

A member suggested the section would require a legal analysis.

A member suggested on line 1560 that if TMDLs are in play this should be addressed when the permit becomes valid, not within 30 days. He said that was a duplicative effort.

DCR staff will review that section.

Mr. Brown continued on line 1564. Impaired waters. There were no comments.

Mr. Brown moved on to Section III.

Mr. Dowling said that many of the changes in Section III were basically identical to what was approved by the EPA in the MS4 permit. The changes were to bring the permit into compliance with what EPA has already approved.

Dr. Dukes directed member attention to the definitions beginning on Page 24 of the draft.

4VAC50-60-1100. Definitions

Mr. Brown said that Part I of the Stormwater Regulations covered definitions. This section contains additional definitions that are specific to the General Permit.

Mr. Brown began on line 685.

A member said that in line 695 “inhibit erosion” should be defined.

Mr. Capps said that the full definition would mean something that is not going to wash away.

A member said that he had sites that have been improved, but that he was uncertain they were inhibiting erosion.

Dr. Dukes asked if the intention was to slow erosion.

Mr. Capps said that erosion is a natural state. Even a well established turf has erosion occurring. He said the intent is to minimize erosion.

A member said that some definitions should be included specific to the sections where they apply.

Mr. Gerel addressed several definition changes and edits submitted to DCR staff prior to the meeting.

Mr. Hill asked if all the standards were being met, if cloudy water from the basin was still a problem.

A member said he had spoken with numerous engineers and had asked if there was some sort of expectation for a certain storm. He said that in terms of water quality, there is a substantial amount of subjectivity. He said that it may be reasonable to include language about a major storm or a certain storm event, but that a basin designed as outlined, should not discharge cloudiness.

Mr. Hill said that if the soil was sandy or clay, the sediment would not settle out prior to discharge.

Mr. Kelble said that the soils in the Valley were clay and that he would maintain that cloudiness would indicate that the basin was not functioning properly.

A member said that this had been his concern at a previous meeting with shifting from technology to performance-based standards. He said that the erosion and sediment BMPs are only so effective, and that he was not sure they could perform to the expected levels. He said that he was not saying that was philosophically okay, but that he was uncertain as to how to get from point a to point b.

A member said he would argue that if a sediment basin is putting out cloudy water, then it is not operating properly. He said that the process was not cheap, but that it could be done. He said that the technology exists but that it is a matter of the will to do so.

A member said that he understood this was doable, but that from a developer standpoint there are budget limitations.

A member said that he was hearing a lot of discussion about water quality and said that his main concern was that certain standards were being expected from temporary sites compared to permanent sites. He asked if that was practical.

A member said there were studies and sufficient information looking at the Erosion and Sediment Control Practices. He said the numbers can be met. He said there is variability in the size of the storm.

The member said the question is whether what is being done on the site was working. He said if there was sediment going beyond the site, then something was not working.

The member noted that other states have dealt with this issue.

DCR agreed to look at this section and see what language might make it more viable.

A member said that he wanted to do everything possible to prevent the continued impairment of streams. He said that was the basis for his concern. He said that all of the permits could be followed and the water quality standards could still be violated.

Mr. Capps said the question would be addressing the water quality standard for siltation. He asked what DEQ had done for receiving waters.

A member said that DEQ had a general criteria for quality, color and turbidity.

A member noted that DEQ has a clarify standard and that a formula has been developed.

A member said that he thought the purpose of the permit was to allow for certain discharges because they cannot comply with some of the criteria. He said also that floating solids and sediment are two different issues. He said he had a concern with the suggested language.

A member said that this type of subjectivity could lead to problems.

A member said there was a visual aspect in terms of what the regulation design parameters are. He said that just because there was discoloration that did not mean that the design was not functioning. He suggested that another Technical Advisory Committee could look at the Erosion and Sediment control manual.

A member said that Part II addressed some of the concerns, but that looked at post construction. He said the permit was the opportunity to get at the site during construction. He said that he would submit suggested language and provide a written justification.

Mr. Capps said that the intent was to address both TMDL and impaired waters in the permit. He said that he thought much of what was being proposed was already being addressed.

Mr. Capps said that he was not certain if a visual stormwater pollutant would be accepted by EPA. He noted that water can be flowing clear and still contain a large amount of phosphates.

Mr. Dowling said that DCR had heard the concerns and would consider them. He said that it was a difficult concept and was not sure that it would fit within this regulation.

Mr. Fritz noted that California put together a panel and did a study on numeric limits and turbidity. He said that was a good summary on construction activities.

A member said that some of the subjectivity came from an unwillingness to do monitoring. He said that with monitoring requirements came removal.

Mr. Capps said that DCR would see what EPA said with regard to this section.

4VAC 50-60-1110. Purpose.

Mr. Brown continued with the review.

Members noted concern regarding the language in line 731.

It was noted that this language came from the EPA permit.

Mr. Dowling said that when he reviewed the terms design, implement and maintain that it meant to maintain during construction.

A member noted a concern about the definition of minimize. He noted that line 719 said reduce or eliminate.

It was noted that the term minimize is used in Part III.

A member said that definition sounded like the Maximum Extent Practicable (MEP), which applies to MS4 discharges.

A member said he had no problem with the definition of minimize as long as it meant to minimize discharge in the meeting of water quality standards.

A member asked if there was a separate permit for industrial discharges.

Mr. Brown said that, by definition, construction charges are industrial under the Clean Water Act. Municipal discharges are separate.

Mr. Brown said this is handled differently from a permit basis. He said that stormwater for construction was more of a management-type approach.

4VAC50-60-1120. Effective date of the permit.

A member suggested that a 2-year, as opposed to five-year permit be considered.

Dr. Dukes asked if that was an option.

Mr. Dowling said that DCR would prefer the 5-year permit with an internal expectation that when changes are necessary, the permit can be reopened and changed again. He said that the revision of the permit was not a simple process and that it was a costly process.

At this time the committee recessed for lunch.

4VAC50-60-1130. Authorization for discharge.

Mr. Brown continued on line 734.

A member suggested that this section not just relate to TMDLs, but should include anything that violates water quality standards.

Mr. Fritz said that a permit cannot be issued that is not protective of water quality standards.

Mr. Capps said that DCR staff would evaluate the concerns in this section. He noted that it had been discussed on several occasions.

Dr. Dukes asked if there were other comments on this section.

A member noted that enforcement was not mentioned here.

Mr. Dowling said that enforcement is set out in the *Code of Virginia*. An enforcement manual has been adopted.

A member asked if that was in the context of the permit or the Erosion and Sediment Control Regulations.

Mr. Hill said that it was in the context of the permit and that it was available on the DCR website.

Mr. Dowling said that enforcement did not need to be brought into this section.

Staff agreed to provide the link to the enforcement manual to members.

4VAC50-60-1140. Qualifying state, tribal and local programs.

A member asked the thought behind the statement “is approved by the Board.”

Mr. Capps said that Erosion and Sediment Control programs are approved by the Virginia Soil and Water Conservation Board. He said that as qualifying local programs are authorized down to the locality level, Board approval would be required.

4VAC50-60-1150. Permit application (registration statement).

A member asked if for coverage under the General Permit there was guidance that describes the review process. He asked if DCR planned to review applications/registrations for accuracy.

Mr. Capps said that DCR does review applications. He said that written guidance has not been established. He said that would eventually be provided through the website.

A member asked if there was a provision for any kind of grandfathering.

Mr. Brown said that depended on the use of the term grandfathering. He said that with respect to the permit, the existing one expires and that a new permit must be obtained.

A member noted a concern that a federal facility would still have to obtain a permit through DCR.

Mr. Capps noted that small construction activities must submit applications at least 90 days prior to beginning the project.

Mr. Brown noted that the permit holder would have the legal ability to set a different time frame.

A member asked about notification to permit holders.

Mr. Brown said that as a part of the action, DCR or the permit holder is required to notify the permittees.

A member expressed concern regarding the 90 days requirement. He said there was a timing concern.

Mr. Capps said that DCR would look at the timing issue.

Mr. Brown continued on line 866 with the registration statement.

A member asked if there was a way to make this more consistent with the idea that the contractor is the operator.

A member said that, in some cases, the owner is not responsible for the SWPPP. However, he noted that the ultimate liability rests with the owner.

Mr. Capps said that DCR would look at the issue but that it may be difficult to resolve.

It was noted that enforcement would be directed toward the holder of the permit.

4VAC50-60-1160. Termination of permit coverage.

A member noted that he thought “construction activity” had been changed to “land disturbing activity.”

Mr. Fritz said that land disturbing activity was consistent with the Erosion and Sediment Control law.

Mr. Brown said DCR would clarify the usage.

Mr. Capps noted that construction activity refers to clearing and grading.

Additional Comments

Dr. Dukes asked for additional comments from members.

A member noted a concern on Page 42, line 1233. He said he appreciated the revision but that it did not address his concern that the project be allowed to keep moving forward for minor plan changes.

A member said that, as written, this could cause potential financial harm for the operator and developer.

DCR staff agreed to look at the language with regard to bigger issues and more substantive plan modifications.

A member said that he would like to place in the parking lot the nature of a letter submitted. The letter regarded the ability of the public to review an NPDES permit. He noted that this could possibly be addressed through the Enterprise Database.

A member said that he did not think the availability of the SWPPP was a requirement. He said that providing plans would cause a host of problems for the person who is responsible.

Mr. Dowling said that, from a state perspective, DCR could not be a part of that process.

A member noted that with industrial permits the Clean Water Act very clearly encourages public participation. He said that was due to a recognition by Congress that historically it was not being done.

A member said that because there was no provision for monitoring, the accessibility of the SWPPPs was very important. He said that he understood the challenges but that he hoped there would be away to make them available.

Dr. Dukes said that this may be more than an administrative issue.

A member said that he had reservations about this. He had no opposition to sharing the SWPPP, but noted that there are sites where the SWPPP could be substantial. He said that as suggested, the implication was that the operator must make a duplicate copy for anyone wishing to review the plan.

A member asked if the SWPPP could be retained electronically.

Mr. Dowling said that it would be difficult for DCR to manage that type of file network.

A member noted that updating a construction site could occur every day.

A member suggested that digital copy of the original SWPPP could be held at the regional office.

A member asked if the new Stormwater Regulations would address this issue.

Mr. Hill said that the new regulations would not solve this issue. He said that the SWPPP would not be turned in to the locality.

Mr. Dowling noted that on Page 42, DCR included a provision for at least posting the contact individual. He said that will make sure the SWPPP is on site or is available.

A member noted that interested parties visiting construction sites could be a significant safety issue.

A member said that he would not be concerned with viewing the SWPPP if there was monitoring occurring on the site. He said that there is currently no performance base.

A member said this is the problem when there are technology-based requirements and nothing that can be checked.

A member asked if the SWPPP could be obtained under the Freedom of Information Act.

Mr. Brown said only if it is in the custody of a governmental body.

A member noted that the EPA seemed to have specifically considered this and that it is not included in their requirements.

A member said that the same arguments were made during the establishments of the Clean Water Act. He said that these were public waters and that the citizens had a right to review the documents to ensure compliance.

Mr. Hill said that if the concern is water quality and a violation is suspected that should be turned over to DCR.

At this time the committee took a break.

Dr. Dukes asked if there were other items of concern.

Mr. Brown noted that when this permit expires, all permit holders will have to reapply. He noted that an expressed concern was if the site was almost complete.

Mr. Brown said that the practice in the past had been to hold the operator to the requirements of the first permit.

A member suggested the allowance of a grace period.

A member noted that building permits are based upon the applicable code at the time of building.

Mr. Fritz said that the program is young and the permits are developing. He said there would be many changes.

A member gave the example of a development project with 500 residential units. He said the process could conceivably go through several permit cycles.

A member said that it would be fair to grandfather projects in at a certain point.

A member suggested that an alternative would be to grandfather in specific requirements.

Dr. Dukes asked if EPA had guidance regarding this issue.

A member said that design elements could be grandfathered in as well as the SWPPP.

Dr. Dukes suggested the committee turn to Section III on Page 54.

Mr. Dowling noted that there was a section on impaired waters that asks the operator to evaluate the control measures.

Mr. Dowling said that DCR would review the impaired waters language.

A member noted that this section might be where guidance outside the regulations would be helpful.

Dr. Dukes asked if there were other issues the TAC would like to address at or by the next meeting.

A member noted some of the language was vague.

Mr. Dowling said that some of the language in question was directed from the federal requirements.

Mr. Brown said that Virginia could clarify and be specific as long as the substance is not changed.

Mr. Capps noted that EPA would have final approval.

A member said that it would be important to put more science behind the standards.

Mr. Brown said that from an agency perspective, DCR is heading in that direction. He noted that it took a year to address the phosphorus issue.

Mr. Brown said that TAC had not discussed Part III, but that he felt it was most important to go through Part II, as Part III was mostly boilerplate language.

Mr. Dowling said that DCR would appreciate TAC comments regarding any definitions germane to this permit. He said that the next agency drafting day was August 27th. He said any thoughts or comments from TAC members would be most helpful if received by that point.

Close and Plans for Next Meeting

Dr. Dukes said that the next meeting would be held on Tuesday, September 9 in the Pocahontas Building. He asked that members inform Ms. Watlington if they would not be in attendance.

The meeting was adjourned.