

**General Virginia Stormwater Management Program (VSMP) Permit for Discharges
of Stormwater from Construction Activities (4 VAC 50-60-100 et seq.) [Part XIV]
Regulatory Advisory Panel (RAP)**

Patrick Henry Building, West Reading Room, Richmond, VA
Wednesday, September 19, 2012, Meeting #2

Regulatory Advisory Panel Members Present

Doug Beisch, Williamsburg Environmental Group
Barbara Brumbaugh, City of Chesapeake
Will Bullard, Department of Defense/U.S. Navy
Pat Calvert, James River Association
Ann-Neil Cosby, Sands Anderson
Normand Goulet, Northern Virginia Regional Commission
Jenny Johnson, Joyce Engineering
Jeff Kelble, Shenandoah Riverkeeper
Roy T. Mills, VDOT
David Nichols, Town of Bridgewater
David Nunnally, Caroline County
John Paine, Hampton Roads Planning District Commission
Jonét Prévost-White, City of Richmond
Peggy Sanner, Chesapeake Bay Foundation
Cabell Vest, AquaLaw, PLC

Regulatory Advisory Panel Members Not Present

Philip Abraham, Virginia Association of Commercial Real Estate
Corwin Chamberlain, Dominion Power
Chris Lannin, American Infrastructure
Mike Toalson, Home Builders Association of Virginia

Facilitator

Tanya Denckla Cobb, Institute for Environmental Negotiation

Agency Staff Present

Michael Fletcher, DCR
Doug Fritz, DCR
Matthew Gooch, Office of the Attorney General
Drew Hammond, DEQ
Mike Lee, DCR
John McCutcheon, DCR
Ginny Snead, DCR
Debbie Switzer, DCR
Christine Watlington, VDOT

Others Present

Chip England, Hanover County
Todd Flippin, Augusta County
John Fowler, CBF
Ryan Murphy, CBF
Chris Swanson, EEE

Welcome and Introductions

Ms. Snead welcomed members and guests to the second meeting of the General Permit RAP. She thanked members for their participation.

Regulatory Action Overview, Committee Charge and Regulatory Timeline

Ms. Snead explained the regulatory action under consideration, the charge of the panel, and the timeline for regulatory action. Ms. Snead also explained that the construction general permit must be revised because of legislation passed by the 2012 General Assembly (House Bill 1065 and Senate Bill 407) that allows for Virginia's Stormwater Management Program services to be delivered at the local level. DCR is working with localities toward a July 1, 2014 implementation date for this transition.

A full copy of the overview, charge and regulatory timeline is contained within the minutes of the August 29, 2012 meeting of the RAP.

Construction GP

Mr. Fritz reviewed the Construction General Permit. He said that the document distributed by email was the full document that contained some of his initial thoughts.

Mr. Fritz said that this regulator action pertained strictly to the General Permit and that it related only to operators during construction activities.

Ms. Denckla Cobb clarified that how local government would implement their program would be part of the guidelines, but not part of the regulation.

Mr. Fritz said that on line 149 language referencing qualifying state and local programs states that DCR authorizes VSMP authorities upon approval by the Soil and Water Conservation Board. He said that was the only specific section in the permit dealing with localities. The remainder of the permit is specifically related to construction projects.

Mr. Bullard asked if federal programs would have similar opportunities.

Mr. Fritz said that the means for working with federal agencies was not currently in the language. He said that a decision needed to be made regarding adding federal agencies

into the permit. He said that there were multiple factors with the EPA as well as the Integration Bill being factored into the permit.

Ms. Snead said that this section was the only section referencing local programs, but there were things that could be included in a local ordinance.

Ms. Brumbaugh said that the term VSMP authority was confusing. She said that while the term qualified local program was clear, she was not sure about authority or agent.

Mr. Fritz said the term VSMP authority was used specifically in the Integration Bill.

Ms. Snead said that would be one of the terminology changes throughout the regulations.

Mr. Fritz noted that there would be multiple exempt actions that will also factor into the language.

Mr. McCutcheon said that the authority would be the local government that gets the approval of the Soil and Water Conservation Board.

Ms. Brumbaugh said that those terms need to be clearly defined.

Mr. Beisch noted that the standards and specifications for wetland stream restoration were not referenced in the Integration Bill.

Mr. Fritz said that that would still go through DCR.

Mr. Kelble asked if there was a need to reference the authorities of EPA or DCR in this.

Mr. Fritz said that this regulatory action was only looking at the construction general permit and how it will be implemented. The other authorities are addressed elsewhere in the regulations.

Consensus Building

Ms. Denckla Cobb reviewed the concept of consensus for the process.

RAP members expressed concern that this definition of consensus did not allow for members to reserve the right to not be in agreement with the final regulation.

Members stated that they have always reserved the right to disagree.

The discussion was tabled until the next meeting.

Simplifying the Permit

Mr. Fritz reviewed the permit with regard to the stated goal. A full copy of his presentation is available from DCR.

Simplify?

- Simplify does not mean weaken.
- Big words on paper does not equal compliance or protect water quality.
- With the change in the permitting strategy, we need to rely more on the State's existing programs.

Perhaps, it's clarify...

Line 1128 – A stormwater pollution prevention plan (SWPPP) shall be developed

Line 1132 – The SWPPP shall:

Line 1159 – The SWPPP shall identify all properties

Line 1207 – The operator shall amend the SWPPP

Line 1210 – The SWPPP must be amended

Line 1227 – A stormwater pollution prevention plan (SWPPP) shall be developed prior

Line 1231 – The SWPPP shall include:

The permit should follow the keys to protect water quality

- Design a good SWPPP
 - Erosion and sediment control plans reviewed and approved.
 - Stormwater plans reviewed and approved.
- Implement the BMPs identified in the SWPPP.
- Inspect the site and maintain the BMPs.
- As the site evolves, modify the SWPPP to address unforeseen issues.

The permit should follow the keys to define compliance

- Design a good SWPPP.
 - Erosion and sediment control plans reviewed and approved.
 - Stormwater plans reviewed and approved.
- Implement the BMPs identified in the SWPPP.

- Inspect the site and maintain the BMPs.
- As the site evolves, modify the SWPPP to address unforeseen issues.
- Document your activities in the SWPPP.

And should assist in determining compliance

- Unless there is evidence to the contrary as the result of an inspection, an approved erosion and sediment control plan or an agreement in lieu of plan approved by a VESC authority without exception or an erosion and sediment control plan approved by a VESC authority adequately...
 - Minimizes sediment discharges from the site in a manner that addresses the amount, frequency, intensity and a duration of precipitation, the nature of resulting stormwater runoff and soil characteristics, including the range of soil particle sizes expected to be present on the site;

Evidence to the contrary

- Concentrated flows of stormwater such as rills, rivulets or channels that cause erosion when such flows are not filtered, settled or otherwise treated prior to discharge.
- Sediment laden or turbid flows of stormwater that are not filtered or settled to remove sediments prior to discharge.
- Deposits or sediment in areas that drain to unprotected stormwater inlets or to catch basins that discharge to surface waters. Inlets and catch basins with failing sediment controls due to improper installation, lack of maintenance, or inadequate design are considered unprotected.
- Deposits of sediment from the construction activity on any property (including public and private streets) outside of the construction activity covered by this permit.

Using existing programs.

- Deposits of sediment in areas that drain to unprotected stormwater inlets or to catch basins that discharge to surface waters. Inlets and catch basins with failing sediment controls due to improper installation, lack of maintenance, or inadequate design are considered unprotected.
- Erosion and Sediment Control Minimum Standard 10.
 - All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.

- Deposits of sediment from the construction activity on any property (including public and private streets) outside of the construction activity covered by this permit.
- Erosion and Sediment Control Minimum Standard 17.
 - Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking on the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area.

This permit is only applicable during construction

The water quality and quantity design criteria are implemented in conjunction with the VSMP General Permit for Stormwater Discharges from Construction Activities. These criteria are based on separate State regulation from federal requirements.

Post Development Stormwater Management

- A stormwater management plan approved by a Board-approved Virginia Stormwater Management Program authority (VSMP) authority) or, where appropriate, in accordance with annual standards and specifications approved by the Board.
- Prior to permit termination:
 - Stormwater management controls must be implemented as approved.
 - Provisions for long term responsibility and maintenance must be provided.
 - A construction record drawing must be submitted to the VSMP authority, where applicable.

Implementing the Federal Effluent Limitations (ELG)

Mr. Fritz reviewed the sections in the permit relating to the Federal Effluent Limitations. A copy of the draft language is available from DCR.

Mr. Fritz said that the federal language was required to be in the permit.

Mr. Fritz said that the language was the mechanism for knowing these were controlled under the Erosion and Sediment Control program.

Mr. Fritz said the intent was to utilize the programs already in place to comply with the federal language.

Mr. Kelble said that he would like to see language that addressed temporary stabilization.

Mr. Kelble asked if the language allowed rills and rivulets in the streambank.

Mr. McCutcheon said that rills and rivulets are a red flag and not considered acceptable.

Mr. Fritz agreed to look at that particular language.

Ms. Sanner said that there were possible edits to the language that would address Mr. Kelble's concern. She said that she would submit comments to address that. She also noted that the language should say that these were not the only examples of evidence. There are others that are not specifically identified there.

Mr. Nunnally said that perhaps the general permit was not the place to address the stabilization concerns. He said those should be addressed within the Erosion and Sediment Control program.

Mr. Fritz said that the items shaded in yellow on the document were strictly federal language that is required to be in the permit. He said that while he did not disagree with the need to address stabilization the general permit was not the appropriate place to do so.

Mr. Fritz said that ideally an approved plan would address these concerns, but that has not typically been the case.

Ms. Brumbaugh said that it could be simplified by saying that the plan is in compliance with the Erosion and Sediment Control minimum standards using language from the approved Erosion and Sediment Control plan.

Mr. Fritz said that the intent was to avoid having a locality plan approved and a third party asserting that the plan is not being followed.

Ms. Sanner said that she agreed with the idea of not wanting to have inconsistency between the permit and the existing Erosion and Sediment Control standards. She asked if the permit had to include EPA requirements even if Virginia standards still need to be updated.

Mr. Goulet expressed a similar concern.

At this time the committee recessed for lunch.

Mr. Fritz returned to the discussion of the Federal Effluent Limitations. He said that DCR had to make sure that the guidelines align in the correct order. He said there may need to be some edits but the concepts will remain the same.

Mr. Fritz said that he would like for RAP members to submit suggestions on how best to incorporate the guidelines into the permit.

Mr. Nunnally said that the eastern part of the state had mandatory RPA buffers that would satisfy the guidelines. He asked how localities without the requirement would comply with the guidelines.

Ms. Denckla Cobb suggested that RAP members speak with their individual localities to submit language for addressing the issue.

Mr. Goulet said that the issue would not be a problem for the Chesapeake Bay areas, but would for other parts of the state.

Ms. Prévost-White asked if the federal government allowed localities to include language that is more restrictive.

Ms. Brumbaugh noted that the people in the field implementing the SWPPP are not the same that are designing the project or reviewing the plans.

Ms. Denckla Cobb summarized the issues that required feedback.

- Minimum standard for a natural buffer
- Do feasible and infeasible need to be defined

Mr. Paine asked if on line 697 instead of the term maximize the term “minimize stormwater runoff” could be used.

Mr. Fritz said the term “maximize stormwater infiltration” was in the federal regulations.

Mr. Kelble asked where street washing was addressed.

Mr. Fritz said that street washing was a minimum standard in Erosion and Sediment Control and was not addressed in this standard.

Mr. Fritz said that staff would get revised draft language back to the RAP as soon as possible.

The next meeting was scheduled for Thursday, October 4. RAP members were requested to submit comments by September 26.

Ms. Snead said that at the next meeting DEQ would give a presentation regarding TMDLs and Mr. Seeley would address ePermitting.

The meeting was adjourned.