

**Construction General Permit
TAC Meeting #3
March 23, 2018
MINUTES**

Sections from the proposed 9VAC25-880 regulations are displayed like this. Sentences within these sections have been disconnect and comments have been placed below the sentence(s) to which they are referring.

“JBR” refers to Jaime Bauer Robb, Manager, Office of Stormwater Management

A full list of attendees and affiliations should be attached to the email.

As of 3/23/2018, there are 3,285 part IIC previously permitted projects under time limits of applicability. DEQ does not know how many of these are active in the field.

HOMEWORK – JBR will send IIC time limits of applicability list to localities so they can reply with which sites are actually believed to be active. Please respond within two (2) weeks so that the information can be presented at next CGP TAC meeting.

9VAC25-880-1. Definitions.

“Portions of the project under construction” means those sections of a project for which land disturbance commences no later than 18 months after this permits effective date that are included in an erosion and sediment control plan approved by the VESCP authority as authorized under the VESCP regulation (9VAC 25-840) or by a certified plan reviewer for projects authorized under annual standards and specifications for erosion and sediment control and:

1. JBR – It is odd that DEQ tied these provisions to “under construction” rather than “commence land disturbance or construction”
 - a. Kristin Carter – “commence construction” might be less stringent
 - b. Mike Vellines – commencement of construction could cause the stripping of plots
2. Chris Swanson – Likes that [under construction] is tied to the ESC plan. Some projects you might not see until construction.
 - a. Q – Is it really appropriate to make projects change from IIC to IIB during the middle of construction?
 - b. There are projects out there that once they are awarded to a builder you know they will be built.
 - c. Jerry Stonefield – For a locality and a private developer they do not have the same confidence. The operator should have to commence something by a certain date in order to maintain the technical criteria.
 - d. Ashley Hall – Q – Would Chris Swanson’s issue be better placed in an obligation of funds section?
 - e. JBR: The qualifying criteria between 48 B & D are different.
3. Philip Abraham – Q – Is the building permit issued as a part of the overall approval?
 - a. Jerry Stonefield – Some projects you do not need a building permit. Ex: soccer field
 - b. Philip Abraham – Q – what about those projects that do require a building permit?

- c. JBR – Q – Where does building permit fall in the grand scheme of the project?
 - i. Keith White – They cannot issue a building permit on a lot that does not exist. Typically after construction has started. Can occur at any stage or 12 months after construction starts...
 - d. Jerry Stonefield – Need to put time limits on how long you have just have raw land sitting there.
 - i. JBR – DEQ does have provisions on ‘frozen months’... anything that we tie to ‘active’ construction... must be consistent with these other pauses in land disturbance.
 - e. Chris Swanson – Q – What about continuous land disturbance... to show that things are moving forward? That if it is disrupted for any reason...
 - f. Jerry Stonefield – Someone can just move a bulldozer once a week to meet whatever “continuous” means
4. Norm Goulet – They put grandfathering in place so that they were not pulling the rug out from under the active development projects. We are spending a lot time on projects that are not going to start.
 - a. Chris Swanson – For 48B it’s a big deal for government funding
 - b. JBR – The grandfathering applies if you were not under 09 coverage. She agrees that this was not supposed to go on forever. This was a temporary fix to bridge people over and should not go on forever. The bounds that were established prior were not clear.
 5. Peggy Spencer – Q – How many of these IIC projects are out there?
 - a. JBR – Would be hard to determine how many are grandfathered. Could get a number for those covered under time limits of applicability.
 6. Jerry Stonefield – A lot of the zonings have enough SWM info prior to 2012 to be approved. These are detailed plans with calculations. Any zoning submission submitted after their date met the requirements for grandfathering. Re-zoning does not expire.
 - a. Jimmy Edmonds – There is no guarantee that the permit will not change.
 - b. Andrew Clark - ... agrees that that would be an issue for a lot of people
 7. John Burke – The first thing you do when you start work is to establish your ESC controls. Even if they permanently stabilize because it is not active for over a year.
 - a. Mike Vellines – State funding is different
 - b. John Brooks -There are some private design build projects
 - c. JBR – We all agree that every project has to have ESC approval for that
 8. John Burke – You are only really starting your work if you have ESC controls. Even if they just strip the site, they still have to do some minimum standards.
 - a. Jerry Stonefield – He fears that if that is what required then people will clear the whole site for as long as they need crated more environmental harm than allowing continued coverage under IIC.
 - i. John Burke – they do not necessarily have to clear the whole site.
 9. Jerry Stonefield – they tied it to permit issuance, and now they tie it to land disturbance. State regulations require a LD permit issued. New requirements are if a CGP is issued. Must be consolidated for ESC and SWM permit. If CGP coverage is required. They issue one combined permit number
 - a. JBR – DEQ only issues CGP.
 - b. Keith White – The code does not dictate that there be a land disturbance permit
 - c. John Burke and Jerry Stonefield – their localities have land disturbance permits.
 - d. (Different interpretations of land disturbance requirements)
 - e. JBR – Everything is tied to plan approval and not land disturbance permit.
 - f. Jerry Stonefield – “consolidated permit” – the existing state law has the provision for this consolidation. Ordinances for ESC and SWM.

- i. Peggy Sanner – the word approval was chosen in the existing code was put there to capture all variations that localities have (land disturbance permits, plan approval)
 - g. JBR – We cannot issue permits that reference something that will occur in the future that has not been approved (VESCP & VESMAP)
- 10. John Burke – People signed a registration statement saying they have a SWPPP but there is no ESC plan with an approval.
 - a. JBR – DEQ issued permit coverage with the expectation that people would get the SWPPP together within 60 days.
 - b. Peggy Sanner – Consider excusing someone who has certified that he has a plan and then continue on forward in a way that allows use of SW criteria that we've all abandoned anyways... why are we allowing continuation on through this outdated criteria.
 - c. Jimmy Edmonds – If that were to happen they would get a lot of backlash in Loudoun
 - d. Jerry Stonefield – His locality would also have backlash... you can't just go back and enforce something that wasn't previously communicated. The perception that is out there is that if you get your permit in 2009 then you don't have to start the project for 10 years.
- 11. Jerry Stonefield – maybe put July 1, 2019 as the date for continued operation under IIC.
 - a. JBR – If we do something like that, we need to be clear that there will be no more IIC after that date.
 - b. Philip Abraham – Agrees with some of this but it really just mentions obtaining a permit. He has concerned about a retroactive requirement that was not stated initially. Perhaps, deal with land disturbance commencing within 18 months after July 1, 2014 / 2019... he is also concerned when people are required to complete certain requirements under this permit period or the last. Also wants grandfathering and time limits requirements to be the same.
 - i. Keith white – Q – What does [portions of the project under construction] apply to?
 - 1. JBR – [portions of the project under construction] applies to Part IIC – DEQ will be applying the same requirements for grandfathering and time limits of development since phrase is used in both parts of the regulation
 - ii. JBR – Q – Would the group want to define what is not covered?
- 12. JBR – Q – Do we want to tie it to ESC plan approval? This could be the common denominator.
 - a. Jerry Stonefield – Q – What about updating the SWPPP to comply with any new requirements?
 - i. Mike Vellines – Updating the SWPPP does not mean they need a new plan approval.
 - ii. Jerry Stonefield – If we want to set it to having an ESC plan approved June 30, 2019 it will cause a lot of submissions coming in at the last minute.
- 13. **JBR – PROPOSAL – “In order to qualify under IIC grandfathering or IIC time limits of applicability you have to have ESC plan approval prior to July 1, 2019.”** (to address items #1 and #2 of this definition)
 - a. We need to end this concept of perpetual grandfathering. Once you get to 2024... what is going to happen then?
 - b. Peggy Sanner – People have had so much time to get this updated criteria on the ground. We should be very careful to the extent that we make any clarifications now... so that they can be the last clarifications. We should not continue to perpetuate the situation.
 - c. Jerry Stonefield – it just says start by July 1, 2019. If we want to put an end date, you have to put an end date.

- i. JBR – Unclear as to whether DEQ has the authority to [set an end date] under this regulation process because grandfathering is allowed under the VSMP regulation.
- 14. **JBR – Q – Is everyone okay with tying the ESC plan approval to July 1, 2019?**
 - a. John Burke –Q – Does this mean approval and not just submission?
 - b. Keith white – Q – If you get an ESC plan approved July 1, 2019 but not a SWM plan what happens then?
 - c. Kristin Carter – It seems like it needs to also include the SWM plan.
 - d. Keith White – Their locality does not separate the ESC and SWM plans.
 - e. JBR – Q – Do we want to say for grandfathering you are required to have both an ESC and SWM plan and for time limits it’s only an ESC plan?
 - i. Philip Abraham – for grandfathering they have always assumed that it is tied to SWM... so maybe focus time limits on ‘under construction’. He does not think it is fair to require SWM for time limits.
 - ii. Kristin Carter – Suggests SWM plan approval for grandfathering
 - f. Jerry Stonefield – Agrees that some of this is not written down, but at some point ESC and SWM plans need to be approved.
 - g. JBR – Q – What about those projects that are actually under construction? Would you not expect them to get the SWM time limits plan approved?
 - i. Jerry Stonefield – Was not actually thinking about the projects that are actually under construction... will have to clarify if they need to come back in and review these plans. If they are genuinely under construction...
 - ii. JBR – the IIC (time limits) requirements were for those projects that were under construction...
 - iii. Philip Abraham – The task is to come up with an under construction definition at the end of the second 5 years. We need to come up with something of a commitment. People sign a deal to get something built within a timeframe.
 - 1. Jimmy Edmonds – Some people just submitted a registration statement to DCR and got the permit.
 - h. JBR – Q – Instead of tying it to a plan *approval* date, should we tie it to the plan *submittal* date? DEQ would have to figure out a new tracking mechanism for this. It could be, “Any plan submitted prior to July 1, 2019.”? We are trying to avoid getting a bunch of plans in at the last minute if we tie it to an approval date.
 - i. Keith White – Localities will get sketches on napkins if all they have to do is submit it.
 - ii. Jerry Stonefield – These people have had at least 5 years notice. If DEQ says ESC plan is required then the locality has to require a land disturbance permit. It would be hard for them to enforce because the state does not have a land disturbance permit.
 - 1. Kristin Carter – Q – Maybe let the locality set the date?
 - a. JBR – This would not work because it is a state permit.
 - i. John Burke – Q – Can we put in a hard sunset clause on IIC?
 - i. JBR – Allowance for IIC is in -47 and -48 of VSMP and that exceeds our authority.

1. For projects meeting the requirements of 9VAC 25-870-47 B, erosion and sediment control plans are approved by the VESCP authority as authorized under the VESCP regulation (9VAC 25-840) prior to January 1, 2015;

1. Keith White – Q – Is this just ESC? Why are the dates different? What about SWM plan approval?
 - a. Jerry Stonefield – If you have a permit prior to July 1, 2019 you should have a SWM plan because it had to be approved prior to 2012.
 - b. Keith White – Both should be tied to plans and have the same date.
 - c. JBR – Under the old requirements, they have to put calculations and documentation in the SWPPP... would fulfill requirement.
2. JBR – The concept behind the January 1, 2015 date: Projects covered under time limits of applicability were supposed to develop a SWPPP 60 days after the July 1, 2014 reissuance, which includes approved ESC plans.
 - a. Jerry Stonefield – Has problems because there was no specific requirement that requirements be completed. It was only expected that in 60 days they would have a SWPPP approved.
 - b. JBR – this date is tying to ESC plan approval
2. JBR – Q – Should people still be grandfathered if they never complied with July 1, 2014 project requirements?
 - a. Jerry Stonefield – The only requirement was that they maintain coverage. The expectation was there.
 - b. Kristin Carter – But part of signing the RS was to have complete plans.
 - c. Jerry Stonefield – They still have not shown anyone that they have a SWPPP... and people have not checked. They have many projects that are still in the entitlement process. People are proving that they have coverage and are maintaining that coverage... they have been saying that they are grandfathered and [the locality] has not asked for the SWPPP.
 - d. JBR – Permit requirements say: the ESC plan approved by the VESCP authority as authorized under the ESC regulations.
 - i. If people didn't have their ESC plan in place by Jan 1, 2015 then they haven't fulfilled the obligations
 1. (Jerry Stonefield) – fears that the perceptions will be that we are putting into place a retroactive requirement.

2. For projects meeting the requirements of 9VAC 25-870-48 A or B, stormwater management plans for the project have been approved by the VSMP authority as authorized under the VSMP regulation (9VAC25-870) prior to July 1, 2019 or for projects authorized under department approved annual standards and specifications for stormwater management, stormwater management plans are stamped and sealed by a certified plan reviewer prior to July 1, 2019; or

1. Chris Swanson – Stamped and sealed by a certified plan reviewer may not be the process for everyone. Maybe go back to provisions approved prior to July 2019.
 - a. Kristin Carter – Or just make it consistent with everyone else's requirements.
 - b. As long as this does not change funding issues.

3. For single family residential detached structures covered under an "agreement in lieu of a stormwater management plan" as defined in 9VAC25-870-10 from the VSMP authority, a signed agreement in lieu of a stormwater management plan is dated prior to July 1, 2019.

1. JBR – Include a fourth section to clarify state, local, and federal bonding projects.
2. Mike Vellines – Need to add of a federal and state funding section.

AFTER LUNCH DISCUSSION:

1. Keith White – After Lunch PROPOSAL – “For purposes of this permit “portions of a project not under construction” means those portions of a project not covered by an ESC and SWM plan approved by the VSMP/VESCP Authority.”
 - a. This does not push them to disturb land but still obligates them to have the approvals in place.
 - b. If you do not have an approved plan by July 1, 2019 then you have to start over.
 - c. Localities will lose a few to modifications later on and that is fine.
 - d. JBR – Should include additional language to clarify that “portions of the project not under construction will be subject to any new criteria adopted by the board”
 - e. Jerry Stonefield – Q – What about basing it on all permit approvals?
 - i. JBR – This could be an issue if the VESCP and VSMP authority are different.
 - ii. Keith White – There might be other local requirements that will also need to be fulfilled.
 - f. Jimmy Edmonds – Q – Are we talking about a real plan?
 - i. JBR – Under the current permit under the SWPPP requirements for 2009, they did not have to have SWM plan approved.
 1. Keith White – Q – How does a project occur if they don’t have a SWM plan?
 2. JBR – “a SWM plan consistent with the SWM act and regulations. Must be designed and implemented during construction activities. Must be reviewed and approved.”
 - ii. Jimmy Loudoun – Q – How do we address the issue of lots that are covered under regional SWM plans that were designed under old criteria? They are relying on that plan for future development.
 - g. Kristin Carter – Q – Would this definition allow a site that has no shovel work to be covered?
 - h. Jerry Stonefield – Once you are under construction there is no end date.
 - i. John Burke – We need some sort of sunset clause for IIC.
 - ii. Jerry Stonefield – We are trying to protect those people who are serious about their projects. Not people who are playing the game.
 - iii. Philip Abraham – is against leaving it open ended... in some cases that may require the building permit... if they can specify some of the things required then he would feel more comfortable.
 - iv. JBR – Q – At what point in the process do people post their bond? Can we tie this to a monetary piece?
 1. Jerry Stonefield, Keith White, others – After plan approval.
 2. Andrew Clark – Developers are not just trying to sit on raw land.
 3. Peggy Spencer – Q – How does bonding work for the home builders?
 - a. Philip Abraham – Depends on what type of bond you’re talking about.
 - b. Jimmy – There are different types of bonds. Some of them are performance bonds.
 - c. Keith White – Bonds can be required as a condition of plan review. The code says that it can be done as a condition of the plan approval.
 - d. Jerry Stonefield – Still tied to plan approval
 - e. Philip Abraham – Q – Perhaps ‘obtaining bonds required by the VESCP Authority’ language is appropriate?

4. Andrew Clark – Q – How close to actually starting construction can they get?
5. JBR – Q – Is it fair to the person who is trying to get the project done versus those who are playing the game?
- i. Jerry Stonefield – Portions not under construction must meet the new criteria. Q – How do we handle these portions of the projects?
 - i. JBR – Let’s use the phased subdivision example – Phase 1 begins, Phase 2 decides to move forward within 2025. If Phase 2 was not part of the original plan it would need to use the new criteria.
 - ii. Joe Battiata – You may not be building the third phase... but they have to look at the whole project. He thinks plan approval is a good way to do it without getting into the weeds of bonds, etc...
 - iii. JBR – What about the example of when someone comes in and gets ESC and SWM plan approved before June 30, 2019. They get CGP coverage. As long as they maintain coverage and plan approval, they can meet IIC grandfathering criteria.
 1. Kristin Carter – It is right to look at ESC plans again after 18 months.
 2. Norm Goulet – The intent of IIC is not to go on forever.
 3. JBR – There is another component to tying this to plan approval. Believes tying it to actual land disturbance is appropriate.
 4. Jimmy Loudoun – They do have an issue of people wanting to grade fast.

9VAC25-880-45. Applicability of technical criteria for land disturbing activities.

1. JBR – The language in this section is proposed as part of the base regulation to explain the technical criteria applicable to projects seeking coverage (initial issuance or reissuance). Please note this language is meant to resemble the stormwater management requirement in the SWPPP section (Part III) of the CPG with the addition of the applicable VSMP technical criteria regulatory citations.

Any operator seeking coverage under this general permit shall comply with the technical criteria of the VSMP regulations in 9VAC 25-870 as described below:

1. New construction activities. Any operator proposing a new stormwater discharge from construction activities shall be subject to the requirements of 9VAC25-870-62 through 9VAC25-870-92.

2. Existing construction activities.

a. Any operator that obtained authorization to discharge under the general permits effective July 1, 2009 and July 1, 2014 for projects meeting the requirements of 9VAC 25-870-47, that has maintained continuous permit coverage since July 1, 2014, and obtains coverage under the general permit issued in 2019, shall complete portions of the project under construction as of July 1, 2019 in compliance with the requirements of 9VAC25-870-93 through 9VAC25-870-99, including but not limited to the water quality and quantity requirements.

1. JBR – Real similar to what exists in the SWPPP portion of the general permit.

Portions of the project not under construction as of July 1, 2019 shall comply with the requirements of 9VAC25-870-62 through 9VAC25-870-92.

1. Philip Abraham – For each regulation maybe put parentheses for (time limits) or (grandfathered).
2. Jerry Stonefield – This is actually what’s saying whether you’re IIC or IIB. The requirements should not be set forth in the definition. It should go here. Establish the requirement in the body of the regulation.
 - a. JBR – Q – What then would you expect to be under the definition’s section? We’re trying to show what under construction looks like.

The SWPPP shall include a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed prior to the completion of the construction activity to control pollutants in stormwater discharges after construction operations have been completed.

1. JBR – Q – Should we remove the SWPPP language?
 - a. Ashley Hall – Does not need to be here since this language is in the permit.
 - b. Norm Goulet – Can be kept in. It is not hurting anything.
 - c. JBR – The alternative would be to make sure that the GP language has this info. Q – Maybe the registration statement should detail what is required?
 - d. Jerry Stonefield – But 2009 SWPPPs do not need a SWM plan... maybe differentiate SWPPP requirements for IIC 2009 and IIC projects. We need to clarify the different types of SWPPPs for these projects.
 - i. Ashley Hall – Q – SWPPPs are different?
 1. JBR
 - a. IIC grandfathered and IIB SWPPP are the same
 - b. IIC time limits – SWPPP with no approved SWM plan (just calculations to supposed the design of the IIC facility)
 - e. JBR – Okay – We will remove the SWPPP language because it is in the permit.
 - f. Jill Sunderland – Q – How is it worded in the EPA GP?
 - i. JBR – SWPPP language may be quite different because of the technical criteria in Virginia’s CGP and not EPA’s CGP
 - g. Jerry Stonefield – Q – Was the intent by putting [the SWPPP language] in here to address it?
 - i. JBR – No.
 - ii. Jerry Stonefield – Then [the SWPPP language] does not need to be here.
2. JBR – Q – Should we include information for projects that are treated by a regional facility?
 - a. Kristin Carter – NOT has language for being treated by regional facility
 - b. JBR – this language is identical to the language in the current permit.

Structural measures should be placed on upland soils to the degree possible. Such measures shall be designed and installed in accordance with applicable VESCP authority, VSMP authority, state, and federal requirements, and any necessary permits shall be obtained.

1. Peggy Spencer – Q – Should “should” be “must” or “shall”?

2. Philip Abraham – Mike Rolband said this sentence should be removed for varying reasons, among them that there is no definition of uplands.
3. John Brooks – This is a duplicative sentence. The corp or the locality will ensure this anyways.
4. Jerry Stonefield – The location of BMPs will be determined way before then. If this sentence stays then it needs to include the construction of BMPs as well.
5. Chris Swanson – This language should be laid out in -870 not the permit.

b. Any operator that obtained authorization to discharge under the general permit effective July 1, 2014 for projects meeting the requirements of 9VAC 25-870-48 and that obtains coverage under the general permit issued July 1, 2019 shall complete portions of the project under construction as of July 1, 2019 in compliance with the requirements of 9VAC25-870-93 through 9VAC25-870-99, including but not limited to the water quality and quantity requirements. Portions of the project not under construction as of July 1, 2019 shall comply with the requirements of 9VAC25-870-62 through 9VAC25-870-92;

1. JBR – Projects will be considered existing grandfathered projects.
2. Jerry Stonefield – Break out 48D (public projects with bonds) and clarify that this paragraph is only for 48A and 48B.
 - a. JBR – Yes, We will address those separately.
3. Philip Abraham – Also include 47A in the section above.

c. Any operator of existing construction activities meeting the criteria of 9VAC25-880-45 2 a or b above may choose to comply with the requirements of 9VAC25-870-62 through 9VAC25-870-92; and

d. Any operator that obtained authorization to discharge under the general permit effective on July 1, 2014 and obtained stormwater management plan approval consistent with 9VAC25-870-62 through 9VAC25-870-92 shall continue to be subject to the requirements of 9VAC25-870-62 through 9VAC25-870-92.

1. Philip Abraham – Q – Do we need to say for portions of projects under construction?
 - a. JBR – This is just for projects that qualify for IIB.
2. Chris Swanson – Q – What if someone opts to do IIB and then wants to go back to do IIC?
 - a. Mike Vellines – If they obtain a permit then they can't go back and be grandfathered. No having a permit is a condition of meeting the grandfathering.
3. Chris Swanson – Maybe add clause, “that did not qualify for 47 or 48.” to address IIC that chose to go IIB.

3. Except as allowed under 9VAC 25-880-45 2 a above, the SWPPP as required in Part III A 3 of this general permit shall include a stormwater management plan approved by the VSMP authority as authorized under the VSMP regulation (9VAC25-870), an "agreement in lieu of a stormwater management plan" as defined in 9VAC25-870-10 from the VSMP authority, or a stormwater management plan prepared in accordance with annual standards and specifications approved by the department.

1. Jerry Stonefield – Q – Is this not the same issue of why are we including this SWPPP language here? Leave [the SWPPP language] somewhere else and try not to duplicate it.
 - a. Everyone seems to agree on this.

Meeting concluded.