

**Construction General Permit
TAC Meeting #4
April 23, 2018
MINUTES**

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

“MD” refers to Melanie Davenport, Director, Office of Water Compliance

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

1. Results from last TAC meeting – Active IIC projects across stakeholders
 - a. Henrico County – 134 – 1/3 have initiated construction
 - b. UVA – 4
 - c. Isle of White – 50% active
 - d. VRO – 50% active
 - e. BRRO – 49% active
 - f. NRO – 83/132
 - g. Arlington County – 7 active, 22 nearing completion (34 total)
 - h. Montgomery County – 4 active, 1 near completion
 - i. ~30-50% range of 3,285 projects for IIC projects that are active and under construction right now.
2. Keith White – How many of these have just gotten permits as a placeholder and have not made an effort to move forward? What does initiated construction mean for the other localities?
 - a. Jerry Stonefield – There are 293 listed with Fairfax County. Only 146 actually got plans approved. They do not know who has actually started construction. It’s going to be the people who have gotten coverage that are going to be the most vocal if anything is changed.
 - b. JBR – We need to solidify the definition of what it means to be under construction.
 - c. Philip Abraham – Still does not want the definition to look backward or tied to a date in the past.
 - i. JBR has previously suggested tying ‘under construction’ to plan approval.
3. Toni Small – Q – What about the phasing of projects? They will not have approved plans for every section of the project.
4. John Burke – Q – Do we all agree that we want to end the IIC technical criteria?
 - a. JBR – If we tie it to plan approval it could be forever if there are no other requirements.
 - b. Jimmy Edmonds – does not know how legally having an approved plan can mean the same thing as commencing land disturbance. We are finding a way out.
 - i. JBR – the problem with relating it to actually turning of soil was there was some concern that the operator would just go out and disturb land for no good reason except to maintain applicability of old technical criteria.
 - ii. Jerry Stonefield – well the reason would be to maintain coverage.
 - c. Jerry Stonefield – wants people to either actually start or redesign to new criteria
 - d. MD – let us leave phasing out of this for now and focus on ‘under construction’. It is more than just paperwork.

- i. Keith White – there are projects that can proceed under IIC if they meet whatever we come up with for ‘under construction’. If we tie it to the plan approval then that is fine. If we say that they have to start then they are going to go clear the site. Two cases. In one of these cases, at least they are not trashing the land. Maybe bonding or financing associated with plan approval.
 - ii. John Burke – MS-1, they cannot just leave it bare.
 - 1. Norm Goulet – Stabilized is not always stabilized.
 - 2. John Burke – if we can tie it to a bond...
 - 3. Jerry Stonefield – Q – Is there a definition of plan approval? Moreover, does this definition include bonding?
 - 4. Keith White – Prior to issuance of any approval the locality may also require a financial hook prior to plan approval.
 - 5. Jimmy Edmonds – Many localities do their bonding in different ways.
 - 6. Peggy Sanner – Let us say plan approval AND bonds.
 - 7. JBR – If we do not tie anything to bonds... there is still the concept of financial commitment...? DEQ does not require bonds to be posted.
 - a. Question as to whether DEQ is authorized to collect bonds.
 - b. MD – So much of this was drafted before the opt-out was an option.
 - c. Norm Goulet – Recommends a letter to the AG office to ask if you could potentially collect bonds.
- 5. JBR – Q – What are other ideas to get at these IIC projects?
 - a. Mike Vellines – Getting under construct takes 6 months after the contracts have been approved.
 - b. Kristin Carter – Q – What about re-reviewing plans after 18 months if no work has begun?
 - i. JBR – That comes from ESC... and you would not necessarily review it for the new criteria.
 - 1. Mike Vellines – but you could... because it would be inadequate.
 - c. John Burke – So you need plan approval, you need a bond... we need to think about the difference in pollutant results between IIC and IIB. On the ground effects on the health of the bay and the local waters.
 - i. JBR – Remember with IIB you also have energy balance. It is not just a pollutant loading issue.
 - ii. Peggy Sanner – This is an important aspect of VA’s code.
 - iii. John Burke – This all goes back to needing a sunset date.
 - iv. Jerry Stonefield – MS4 localities have to make up the difference in pollutant reductions?
 - 1. JBR – It is not the old and the new. It’s when land covered greater than 16% was used under IIC.
 - d. Philip Abraham – Q – What about the building permit being issued after the second permit period?
 - i. JBR – Some projects do not involve building permits.

- ii. Philip Abraham – Q – What percentage of those opt outs are not going to require a building permit? You cannot come up with anything more real than a building permit.
 - iii. MD – Q – How long does a building permit last?
 - 1. Jerry Stonefield – 6 months
 - iv. Jerry Stonefield – You cannot just let building permits expire... you have to be doing work.
 - 1. Does not really solve the problem but shifts it to another area of debate.
 - 2. Peggy Sanner – gives them another option.
 - 3. JBR – This is the permit going to the permittee and isn't the regulation implemented by the authorities. This should say 'permittee you shall...'. Cannot be 'depending on what the locality chooses'.
 - 4. JBR – DEQ has approximately 360 IIC projects that are active. (opt-out projects)
 - a. Philip Abraham – So under 200 projects statewide for DEQ. Suggests doing bonding for opt-ins and require building permits for opt-outs.
 - b. JBR – Do you have to have a building permit to move dirt?
 - If no, then not appropriate to tie to building permits.
 - c. John Burke – Montgomery County does not issue building permits until all other permits are given.
 - d. Jerry Stonefield – They issue land disturbance permits prior to building permits. They can start land disturbance before having a building permit.
 - i. Kristin Carter – Q – What if you have early phasing or utility work?
 - ii. Jerry Stonefield – Unless it is under the building code they cannot hold up the building permit issuance.
 - iii. Jimmy Edmonds – They require something else in Loudoun. Their ESC and SWM are located within zoning.
 - iv. (continued discussion on how their localities do things differently)
 - v. Regardless bonding occurs prior to any permit issuance.
6. Jerry Stonefield – His bigger concern is approved rezonings. They have enough information to receive grandfathering. Projects can be grandfathered without having to submit ESC/SWM plans.
- a. Norm Goulet – IIC was never supposed to go on forever and ever
 - b. Jerry Stonefield – Approved re-zonings last forever.
 - c. John Burke – They have rezoned but they have not worked out a plan.
 - d. JBR – Jerry is saying that some zoning show SWM.
 - e. Jerry Stonefield – His locality does require a very specific amount of SWM based on the information at the time. People do not realize that grandfathering expires if they do not start construction in a year.

7. MD – We are struggling to move on to the next step... maybe DEQ needs to update website to tell stakeholders that grandfathering is going to end. We need to start outreach when we have approach nailed down.
- a. Jerry Stonefield – People are going to ask what the next step is...
 - b. Philip Abraham – Does not think that people think ‘commencing construction’ means something that has happened years ago. Cannot just be a paper exercise. Does not want to do anything that encourages grading land.
 - c. Kristin Carter – Could be a reminder that you have to be under construction... stating that there is a regulation that is proposed.
 - d. Keith White – DEQ has all the contact info for these IIC projects.
 - e. John Burke – Q – Do we want to say now you have to do something while you could still work under the old criteria?
 - f. JBR – Q – Do we want to tie it to something in the past or something in the future?
 - i. Jerry Stonefield – the guidance was the “expectation” that they should submit something. Not that they were “required” to.
 - ii. JBR – If we tie plan approval to a date in the future then there will be a mad rush.
 1. Keith White / Jerry Stonefield – There will always be a rush at some point.
 2. Jerry Stonefield – Q – As far as the localities that are entering the info in the registration statement... currently they cannot process the reissuance application... how will this be updated?
 - a. JBR – DEQ will be relooking at the registration statement and database updates are a result of the permit regulation updates.
 - b. JBR – DEQ is potentially looking to tie plan approval numbers or dates in the database. Registration statement may contain a place to indicate that the plans have been approved.
 - i. Jerry Stonefield – That would be great if they could put in their plan review tracking number. And then plan approval date. If we have a window of time for applying for continuation of coverage... The earlier it is then hopefully people will be proactive and people will not all come in at once.
 - ii. JBR – DEQ tries to give 3-6 months. There are provisions in the permit for administrative continuance. We agree that the earlier the better. Sometimes we will send out a reissuance reminder to people.

AFTER BREAK

8. -870-48B grandfathering
- a. JBR – *see* Proposed language for addressing locality, state, federal projects from C. Swanson..
 - i. Mike Vellines – VT requires contractors to get permit coverage.

- ii. Brian Newman-Lindsey – VDOT develops a set of plans and then VDOT gets the permit and then the permit goes out to bid. When they have a project, once it is budgeted and a contract is awarded the project is going to be competed. VDOT develops the initial AS&S plan.
 - 1. Mike Vellines – VT is not the operator for any of their projects.
 - 2. Nicholas Allen – Arlington County gets the permit and then they transfer it.
 - 3. Kristin Carter – Either way you should have an approved plan prior to permit issuance. This language kind of makes it sounds like you are tying it to permit issuance and plan approval comes after.
 - a. JBR – DEQ equates permit issuance with approved plans.
- b. JBR – Q – From a process standpoint does this look problematic?
 - i. Kristin Carter – No
 - ii. Keith White – Finds it interesting that now we are looking at defining portions of construction under construction and not land disturbance.
 - 1. JBR – Regardless of what we tie the deadline to we are going to have a surge. We were talking about when plan approval should have been approved... we are a little bit tied to the obligation of funding for these projects.
 - iii. Philip Abraham – Q – is the 18 months applicable to the contract award or construction?
 - 1. JBR – The intent is that the contract is awarded no later than 18 months.
 - 2. Norm Goulet – Just end it at 2019.
 - 3. Jerry Stonefield – does not define commence construction... we are trying to redefine -47 and -48...
 - a. MD – when you look at the regulation the definition of grandfathering differs in A and B. however, paragraph c brings them back together. And it's those two sections together where it says 'portions of the project not under construction'. Concerned with providing two different definitions of under construction between the two A and B.
 - i. JBR – maybe there needs to be a different standard for non-private projects.
 - 4. Andrew Clark – Does not like how we have now shifted to just allowing plans for non-private projects.
 - 5. Keith white – Q – Why not say plan approval by July 1, 2019 for private and obligation of funding for non-private?
 - a. Jerry Stonefield – Moot point because if you have a permit then you have plan approval.
- c. JBR – If the project had the 2009 permit coverage then they came in and got the 2014 permit coverage. They were supposed to get a SWPPP within 60 days. Everyone provided some level of flexibility. There was not anything in that July 2014 permit tying everything to plan approval. We could say that ESC and SWM plan approval, initial permit coverage prior to July 1, 2019.

- i. Keith White – Q – Those permits that were given coverage July 2, 2014... who checked the plan approval? Did DEQ issue any permits that did not have approved plans or plans submitted for review?
- ii. Jerry Stonefield – It is not worth it to emphasize plan approval since you have to have plans approved to get the permit anyways. To get reissuance you have to demonstrate that you have an ESC and a SWM plan when you reapply prior to July 1, 2019. It is a date in the future and it covers both grandfathering and time limits and a SWPPP development. Should clean up all these plans that are in the motions.
 - 1. JBR – It technically says ‘portions of the project not under construction’
 - 2. Jerry Stonefield – You are actually under construction or you have permit coverage. If permit coverage then they have to get permit coverage and they have to have approved plans (SWPPP). Q – How do we build in that step of someone checking?
 - 3. JBR – This type of language puts IIC on the table in perpetuity... if you have plans approved for IIC.
 - 4. Jerry Stonefield – Maybe put in language that you need to complete your construction in a set amount of time. The best solution is in -870 and not in this. We cannot do the best fix so maybe we do not do anything at all.
 - 5. JBR – One way or another there’s going to have to be some sort of determination of what ‘under construction’ means. Ignoring the problem is not going to fix it.
 - 6. Peggy Sanner – We should not build into the regulations the idea that IIC should continue on forever.
- d. TO SUMMARIZE – JBR – Perhaps public and private projects should not be treated different in regards to portions of project not under construction.
 - i. JBR – Q – Is there anyone opposed to setting up plan approval by July 1, 2019?
 - 1. Philip Abraham – What is the difference between how time limits and grandfathered are treated?
 - a. JBR – it does not treat anyone differently.
 - 2. Jerry Stonefield – there is no end date to Part IIC coverage if you have ‘commenced construction’.
 - 3. Philip Abraham – you’re treating grandfathered out of the definition and time limited as both having to do the same thing...
 - a. Mike Vellines – He is saying time limits should be 2024.
 - ii. Jerry Stonefield – Has an issue with continuous. Continuous means you have the 2014 and you are maintaining permit coverage.
 - 1. Mike Vellines – You cannot get 2014 permit and not apply for 2019 permit. It just means you do not terminate it.
 - a. JBR – There are cases where people have terminated and then want IIC when they come back to get permit coverage.
 - iii. JBR – Proposed revisions to the permit reg to add initial permit coverage and continuous coverage (see edited language on Jaime’s doc)

AFTER LUNCH

9. JBR – Just a reminder for time limits of applicability you have to have permit coverage under the 2009 and 2014 permit. Unless you can show that you are under construction as of July 1, 2024 then you have to move on to IIB.
 - a. Jerry Stonefield – Does not exactly get to the portions of projects not under construction.
 - b. JBR – DEQ assumes that the plans that have been approved are for the permitted area as stated on the RS. This may not necessarily include all portions or phases of a development.
10. Jerry Stonefield – Did we get to a decision on “approval”? Is it the bonding or the letter of the plan?
 - a. JBR – DEQ considers it the approval of the plans.
11. MD – Whether or not be were truncating the two terms for the time limits of applicability and grandfathering. We should be focusing on -48. They are not the same date.
 - a. JBR – both sections state ‘portions of the project not under construction’ and we plan on defining that the same.
12. Brian Newman-Lindsey – VDOT – there are a lot of VDOT projects that have phasing. A design build project that the contract winner is doing could be phased. Could be an issue with VDOT because they do not always do the whole development in sequence. Could be an issue with fulfilling state funds if requirements change.
 - a. John Olenik – VDOT sometimes pull multiple permits for one project.
 - b. VDOT does not always know the exact phasing of projects.
13. Kristin Carter – Was reading back through the baseline regulations that define what portion of a phased project is. Definitely was meant to be read that construction has actually begun. If you have initiated land disturbance by July 1, 2019 / 2024. Seems clear that they are commencing construction.
 - a. JBR – Q – What is the consensus to getting back to the original intent of commencing land disturbance?
 - i. Jerry Stonefield – People will go out there and start moving dirt..., which will be in violation if they do not have an ESC plan. It is an additional burden on everyone.
 - ii. Peggy Sanner – Wants to tie to actual land disturbance assuming ESC/SWM plans have been approved, however recognizes the potential environmental issues with land left disturbed, untouched, and unprotected.
 - iii. Philip Abraham – Thinks this is reasonable and goes back to what looks like the intent of the ‘under construction’.
 - b. JBR – Q – Is everyone okay with tying under construction to commencing land disturbing activities?
 - i. Jimmy Edmonds – They are concerned that people will just level out areas.
 - ii. Philip Abraham – Does not care which way we go, just cares about the dates.
 - iii. JBR – Time limits prior to July 1, 2019 / Grandfathering prior to July 1, 2024.
 - iv. John Burke – This is where we started at the beginning of the first meeting
 - v. John Burke – Q – Can we put some language in that has to do with sunseting? Or would it have to be through changing -870?

1. MD – We would have to revise 870 (VSMP) and this process is not to change -870.
- vi. In order to continue or begin under IIC through June 30, 2024 you must do this... Be explicit that it is our intent to end IIC at 2024.
 1. MD – We cannot put anything in this permit to require anyone to do anything beyond the timeframe of this permit.
 2. JBR – We can talk about what under construction means. Can see getting a lot of resistance from sunseting.
 3. MD – When they did the original stakeholder advisory group they did not touch -47 or -48. There was agreement that we were going to leave it alone.
 - a. Norm Goulet – When they were working on it it was at a time when there were updates to the water quality standards. However, time has passed and at some point, you have to cut your losses.
 - b. Peggy Sanner – Yes, this was the fundamental understanding at those meeting.
 - c. John Burke – They cannot say anything outside of June 30, 2024. Through guidance, we could say that that was the intent to end IIC at this date.
 - d. MD – The goal was to just fold in changes in the regulations.
 - e. Kristin Carter – Localities could provide incentives for switching to IIB. (Expedited plan review, etc.)
- vii. Brian Newman-Lindsey – is still concerned about the changing of the timeline from what we had previously discussed without Chris Swanson present.
- viii. JBR – other than VDOT, is everyone in consensus?
 1. Peggy Sanner – under construction versus portions
 2. Jerry Stonefield – does under construction mean turning dirt (Peggy Sanner – plus ESC/SWM plan review) Still goes back to the concern for going on to the next step.
- ix. Norm Goulet – Is there any way we can push it to the next step.
- x. Andrew Clark – The home building industry does not want to let land just sit.
- xi. Multiple people – Still have to maintain controls, and inspect, and put in traps etc. they have invested quite a lot.
- xii. JBR – By tying land disturbance equal to commencing construction it was problematic to local government because of all the hoops that have to be jumped through to get projects going.
 1. VDOT wanted to tie the contract language to commencing construction.
 2. Kristin Carter – At this point we don't care if it's problematic because the regulations have been in place for a long time.
 3. Jerry Stonefield – Does not know how many are depending on part C and D of grandfathering. For A and B, he thinks that we have to be consistent. Hesitant of the consequences of telling people they have to

start turning dirt. Does not see a lot of flexibility without having to go back and change -47 and -48, which we cannot do.

- c. **JBR – There are some reservations from VDOT, but from the other folks in the room: Tying under construction to the commencement of LDA is the will of the group. We are also assuming this means the ESC and SWM plan have been approved.**

14. JBR – Do we want to tackle the definition of “portions of projects”?

- a. Jerry Stonefield – Q - Does establishing perimeter controls on one portion count for all portions?
- b. Keith White – If you do a road improvement project, one of the first things that you do is the utility relocation project. Portions of the project could be the actual road itself.
 - i. Could be interpreted that portions of projects as portions of the same area... utility work before road.
- c. Mike Vellines – If it’s one plan and you have commenced it to relocate utilities then that’s the portion.
 - i. Jerry Stonefield – Is saying that you can’t just do the utilities and not clear the rest of the project.
 - ii. Keith White – Q – Will there be portions guidance from DEQ?
 - iii. JBR – Believe that portions was for common plans on development...
 - iv. Jerry Stonefield – As written and how we are now defining construction as land disturbance is means that you have to disturb all the land.
 - v. Philip Abraham – The key needs to be about commencing land disturbing activity.
 1. JBR – If you have plans approved for a project that requires utility relocation. Part IIC would be applicable for all land disturbance associated with the approved plan.
 2. Keith White – If any part of the project has been disturbed then all of the project is IIC.
 - vi. Jimmy Edmonds – Q – What about phasing of regional SWM plans?
 1. JBR – If their plans only include the first phase then no. We have situations where people are using regional IIC SWM ponds.
- d. Peggy Sanner – Q – Do we all understand what a phase of a project is?
- e. Keith White – Maybe we need to write down what we are talking about. As long as you disturb something on a project for which plans have been approved then the entire project is IIC for what has been approved. (Jimmy Edmonds asked this previously)
 - i. JBR – Yes, if they have plan approval for the entire thing.
 - ii. Jimmy Edmonds – Individual contractors have to get their own SWPPP for their own portion of the project.
 - iii. Keith White – The important condition then is that it is on the approved plan and under a permit. Q – How is that any different and then just waiting 10 years and doing the project?
 - iv. Jerry Stonefield – They still have to do bonding. Avoids the confusion of localities requiring different things.

- v. Jerry Stonefield – You commence construction prior to a specific date that is it. They do not have an end time of completing construction.
 - 1. JBR – We *can* define initiating LDA to mean plan approval and permit issuance. If you have a 5 acre plan and you want to get IIC then you need to have 5 acres on the RS and that’s all the area that’s covered.
 - 2. Norm Goulet – Still a fairly small amount of projects in the state. At least the owner is doing something.
 - 3. JBR – Goes back to the process of having an approved plan.
- f. Jerry Stonefield – What does portions *not* under construction mean?
 - i. JBR – Without previous plan approval or permit coverage.
 - ii. Philip Abraham – Q – But you wouldn’t tie it to LDA? Thinks that we should define portions as phases or segments of projects.
 - iii. Jerry Stonefield – Fairfax has the issue of approved rezoning. That qualifies for grandfathering. He would suggest that the portions of not under construction in the zoning plan.
 - iv. Keith White – Just wants it to be implementable.
 - 1. MD – And every VSMP to be able to implement it (DEQ and localities).
 - v. Philip Abraham – They have grandfathered status but they have to do stuff to be able to maintain that status.
 - vi. JBR – Q – Define portion as being anything on the approved plan?
 - 1. JS – one plan for three different phases or 3 plans for 3 different phases. Does it make a difference?
 - 2. Kristin Carter – Why would you split up a project...?
 - 3. John Brooks – It is more expensive to break it up at the end.
 - 4. Philip Abraham – If you are going to have the LDA aspect it has to apply to the whole thing.
 - a. JBR – It would have to be demonstrated on the plan that there’s some sort of phasing.
 - vii. Keith White – let’s break this down
 - 1. Q – What is the project?
 - 2. Instead of portions of a project not under construction...
 - 3. Portions of a project... if you have four buildings and you don’t get to 1 then that last one is under IIB.
 - 4. John Burke – Q – What about a contract with project schedule and financial obligations. (reads language of contractual obligations under legal discussions of contractually)
 - a. Peggy Sanner – We should be working to give life to “portions of project under construction”
 - b. JBR – We need to be realistic about implementation. Going through contract language.
 - c. JBR – If we want to define portion of project to mean something else then we can do that. I suggest we be careful about going down a road of contractual obligations with putting us a position to argue with an engineer about their obligations.

- i. Norm Goulet – It was good to hear what people define in their contracts. At this point, let us take the language and put it down on paper.
- viii. Brian Newman-Lindsey – None of the words we are throwing around have a legal definition. There are phases or portions within phases or portions. Tying the word phase to a definition could be problematic because people in the industry have many definitions of this. Maybe we should look at what people don't consider a phase or part of that project. Do you submit ESC plan for different phases? VDOT has design build projects within one physical space with different phase. We need to define what projects clearly fall under this boundary and what projects are clearly outside this boundary.
 - 1. JBR – Q – What about one phase subdivision as part of a common plan of development? Think about in terms of where we go in defining this.
- 15. JBR – We will take the notes and try to write up something. We will look at contractual language and portion definitions.
- 16. JBR – Next meeting in May. We need to discuss other items in regulations. Will start with these at next meeting. Plan is to go to the SWCB in Sept.