

**Virginia Soil and Water Conservation Board
General Permit for Discharges of Stormwater from Construction Activities
Regulations Technical Advisory Committee
Pocahontas Building
Richmond, Virginia
July 22, 2008**

General Permit Technical Advisory Committee Members Present

Charlie Armstrong, Southern Development
Nicole Bennett, U.S. Marine Corps
Will Bullard, Naval Facilities Engineering Command
Eric Capps, Department of Conservation and Recreation
John M. Carlock, Hampton Roads Planning District Commission
Tom Chervenak, Paradigm Engineering
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
Steve Hubble, Stafford County
Carolyn Howard, Draper Aden Associates
William Johnson, Virginia Community College System
Jeff Kelble, Shenandoah Riverkeeper
Roy Mills, Virginia Department of Transportation
Rick Thomas, Timmons Group
Kelly Vanover, Department of Conservation and Recreation

General Permit Technical Advisory Committee Members Not Present

Paul Julian, Countryside Services Company

Facilitator

Frank Dukes, Institute for Environmental Negotiation
Jenny Marone, Graduate Student, University of Virginia

DCR Staff Present

Ryan J. Brown
David C. Dowling
Michael R. Fletcher
Jack E. Frye
Doug Fritz
Holly Sepety

Christine Watlington
Elizabeth Andrews, Office of the Attorney General

Others Present

Hunter Allen, Office of the Attorney General
Jason Beeler, Wetland Studies and Solutions, Inc.
Tyler Craddock, Virginia Chamber of Commerce
Barrett Hardiman, Home Builders Association of Virginia
Larry Land, Virginia Association of Counties
Leon Szeptycki, UVA Environmental Law Center
Roy Van Hawken, WSSI
Mike Wills, Wetland Studies and Solutions, Inc.

Welcome and Opening Remarks

Mr. Dowling welcomed members and attendees to the meeting on behalf of DCR and the Virginia Soil and Water Conservation Board (SWCB).

Presentation of Agenda and Delegation of Charge to TAC

Mr. Dowling read the charge to the TAC.

The State Water Control Board (Department of Environmental Quality) issued the existing 5-year Construction General Permit on July 1, 2004 thus necessitating the promulgation of a new General Permit by the June 30, 2009 expiration date by the Virginia Soil and Water Conservation Board, [Program transferred to the Virginia Soil and Water Conservation Board and DCR from the State Water Control Board and DEQ effective January 29, 2005]

This TAC is charged with refining and developing where necessary, in coordination and cooperation with the Department of Conservation and Recreation (DCR) and the Environmental Protection Agency, amendments to the Virginia Soil and Water Conservation Board's Virginia Stormwater Management Program (VSMP) Definitions and Construction General Permit Regulations (Parts I and XIV) in order to have a new permit in place by July 1, 2009.

Mr. Dowling said that, in addition to this action that will amend Part XIV, DCR currently had stormwater actions going on that will modify Parts II (Water Quality and Quantity Technical Criteria) and III (Local Program Criteria). An action to modify Part XIII (fees) is also underway.

Part I, definitions, are updated as necessary to address issues directly related to each regulatory action.

Mr. Dowling said that revisions to the MS4 General Permit became effective on July 9, 2008.

Mr. Dowling reviewed the general intent for this regulatory action.

This general permit regulates the discharge of stormwater from construction sites that disturb 1 acre or more of land (2,500 sq feet in Bay Act areas), and from smaller sites that are part of a larger common plan of development. This permit requires operators of such construction sites to implement stormwater controls and develop stormwater pollution prevention plans (SWPPPs) to prevent sediment and other pollutants associated with construction sites from being discharged in stormwater runoff.

While the NOIRA has been constructed broadly to allow the TAC to consider a number of issues, this action is not intended to be a major revision. This is predicated on a number of points:

- 1) The fact remains that updating this General Permit to incorporate the work of the other stormwater TAC (particularly that related to the new water quality and quantity criteria) will be a two step process, as this permit needs to be in place by July 1, 2009 and the other body of regulations (Parts II, III, and XIII) will not be final until after that time. As such, issues associated with that action will not, for the most part, be able to be addressed in a Construction General Permit until later.
- 2) EPA is in the process of developing a national regulation (called an Effluent Limitations Guideline) for the construction and development industry. Upon completion of the Effluent Guideline, the EPA will develop and issue an updated Construction General Permit that incorporates the provisions of the Effluent Guideline by July 2010. Once finalized, NPDES permitting authorities (including EPA and 45 authorized states) will be required to incorporate the provisions of this Effluent Guideline in their Construction General Permits when they are next reissued. (NPDES permits are typically issued for five-year periods, which is the maximum allowed by law).
- 3) The EPA's Bay TMDL is due out by May 2011, although Bay partner states have indicated their desire to have it prepared by the end of 2010.
American Canoe Association, Inc. and the American Littoral Society v. EPA and EPA – Region III, No. 98-979-A.
In this case (filed July 9, 1998), plaintiffs and EPA signed a consent decree which the district court entered on June 11, 1999. The consent decree sets out an 11-year schedule for establishment of TMDLs for all water quality limited segments (WQLS) on Virginia's 1998 Section 303(d) list as amended by EPA on May 10, 1999, including certain waters which may be included on Virginia's next Section 303(d) list. The decree provides that EPA will ensure the TMDLs are established if Virginia does not establish the TMDLs.

- 4) DEQ may develop water quality standards for pollutants (such as sediment) that might be found in construction site runoff.

Mr. Dowling reviewed the materials provided in member packets. Copies of these materials are available from DCR.

- 1) Agenda
- 2) TAC Member List
- 3) NOIRA
- 4) Virginia Stormwater Management Act
- 5) Virginia Stormwater Management Program (VSMP) Permit Regulations
- 6) Stormwater Part I and XIV draft Construction General Permit regulations
- 7) Copies of comments received during the NOIRA
- 8) Copies of comments received during phone interviews by facilitator
- 9) Committee charge and regulatory process discussion document

Mr. Dowling said that the hope was to complete the work of the TAC in three meetings. He said DCR intends to move these regulations forward to the Board at their September meeting along with the remainder of the stormwater actions.

Introduction of the Facilitator

Mr. Dowling introduced Dr. Frank Dukes from the Institute for Environmental Negotiation (IEN), University of Virginia. Dr. Dukes will serve as the facilitator for the Technical Advisory Committee.

TAC Member Self-introduction and Expectations

Dr. Dukes said that he would be looking to the TAC to drive the discussion. He said the intent of the process was not an absolute consensus. He noted that the TAC is an advisory group to DCR. He asked members to introduce themselves and asked for their general expectations from the process.

Member comments included:

- The impact of sediment on resources is putting people out of work. Expectations would be to see some serious and open discussion on things that could be done to make the permit stronger.
- Trying to improve the permit and have more involvement as a citizen group.
- Hopefully to have clarity with the regulations so that there aren't questions pertaining to federal facilities.
- Make sure federal facilities know where they stand, along with all the localities. Interest in how TMDLs relate to this.
- Working out good operations procedures with DCR. The biggest impact is enforcement. There aren't enough people in the field.

- Interest in seeing how the VSMP program will affect local government.
- Help in the implementation of the NPDES permit.
- Help to ensure that the permit will be more understandable. Clients have a lot of questions.
- Designing BMPs to protect water quality and looking at long term maintenance for facilities.
- Improvement in the process.
- Enforcement needs to be tightened up.
- An understanding of the regulations. What are the actual rules?
- Making sure the permit fosters responsible development without unnecessary burdening of those involved in the permit. Simplicity of the permit.
- Clear understanding from the point of a developer.
- Improving clarity

Dr. Dukes said that part of the challenge was looking at the issue of clarity, simplifying the language and allocating responsibility.

Ground Rules/Guidelines for Discussion

Dr. Dukes reviewed general guidelines for participating in the discussions. He said that there would be a parking lot for issues or questions that needed to be discussed. These will be reviewed by DCR. He said that there may be issues of concern not directly related to this regulatory action. Those would also be captured for future discussions.

Regulatory Process and Timeline Overview

Mr. Dowling reviewed the regulatory process and an overview of the projected timeline.

The Construction General Permit is a regulation of the Virginia Soil and Water Conservation Board.

This is the first amendment to this permit since the EPA approved the transfer of program administration authority from the State Water Control Board (DEQ) to the Virginia Soil and Water Conservation Board (DCR) effective January of 2005.

On June 30, 2009 the current Construction General Permit expires (became effective July 1, 2004).

On March 20, 2008, the Board gave DCR authority to initiate a regulatory action to amend the Construction General Permit.

Regulatory actions are comprised of three primary steps: the Notice of Intended Regulatory Action, the Proposed Regulations, and the Final Regulations.

Routinely under the Administrative Process Act (APA) this takes about 2 years.

Amendments to this General Permit are exempt from the full APA (§2.2-4006 subsection A9 of the Code of Virginia).

An abbreviated APA-like process is still required (Public input remains, Administrative review is reduced).

The General Permit shall be exempt from the APA if the Board:

- Provides a Notice of Intended Regulatory Action (NOIRA)
- Forms a technical advisory committee composed of relevant stakeholders to assist in the development of the General Permit.
- Provides notice in the Virginia Register of the Regulations and receives oral and written comment.
- Conducts at least one public hearing on the proposed General Permit.
- Publishes in the Register both the proposed and the final regulations.
- At least two days in advance of the Board meeting where the regulation will be considered, a copy of the regulation shall be provided to members of the public that request a copy.
- A copy of that regulation shall be made available to the public attending the Board meeting.

DCR will need to follow federal procedures associated with general permit development, such as newspaper noticing.

The EPA will also require review of the proposed and final General Permit regulations.

Mr. Dowling reviewed the proposed timeline.

On March 20, 2008, the Board gave DCR authority to initiate a regulatory action.

On March 24, 2008, the NOIRA was posted to the Regulatory TownHall and filed with the Registrar of Regulations.

The 30-day public comment period opened on April 14, 2008 and closed on May 14, 2008.

The TAC has been developed and the Institute of Environmental Negotiation has been selected to provide facilitation services. (Frank Dukes)

First meeting – July 22nd
Second meeting – August 19th
Third meeting – September 9th

DCR will post information from each meeting on the Policy, Regulations and Public Comments portions of DCR's website at <http://www.dcr.virginia.gov/lawregs.shtml>.

Proposed regulations to the Board on September 24th or 25th. (File by October 8, 2008 with the Registrar; Publish on October 27, 2008 in the Register)

60-day public comment period – October 27, 2008 through December 26, 2008.
[EPA will also review during this time period]
[DCR also has newspaper publishing requirements (federal) during this time period]

Final unofficial and official drafts of the final regulation to the EPA (Feb./March)

Final regulation to the Board – March 19, 2009.

File on TownHall and with Registrar by April 8, 2009; Printed in the Virginia Register of Regulations on April 27, 2009.

30-day public comment period ends and the regulations are final on May 27, 2009 with an effective date of July 1, 2009.

Review of the Notice of Intended Regulatory Action (NOIRA)

Mr. Brown gave the following presentation:

What is the NPDES program?

- In 1972, Congress amended the Clean Water Act (CWA) to prohibit the discharge of any pollutant to waters of the United States from a point source unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit.
- Although we often think of a stormwater runoff as a “nonpoint source,” for purposes of the CWA, stormwater runoff from construction activities is considered to be a point source.

What is the Virginia Stormwater Management Program (VSMP)?

- Virginia's administration of the Clean Water Act's NPDES stormwater program.
- Administered by the Virginia Soil and Water Conservation Board.
- House Bill 1177 (2004) gave the state law authority for the VSMP program.

- EPA authorized the VSMP program to administer NPDES permits in January 2005.

What laws govern the VSMP?

- This is the administration by Virginia of the federal Clean Water Act (33 U.S.C. § 1251 et seq.) program:
 - Federal (NPDES) regulations are found at 40 CFR (various parts, ind. 122 and 123).
- Governed by Virginia's Stormwater Management Act § 10.1-603.1 et seq.
 - State (VSMP) regulations are found at 4VAC50-60 et seq.

What does the VSMP construction stormwater program regulate?

- Land disturbing activities that:
 - Are one acre or greater in size §10.1-603.4(6);
 - Are 2,500 square feet or greater in size in areas designated as subject to the Chesapeake Bay Area Designation and Management Regulations (9VAC10-20 et seq.)(§10.1-603.8(B)(4)); or
 - Are a part of a larger plan of common development or sale that is one acre or greater (§10.1-603.8(B)(4)).

What is a NPDES/VSMP permit?

- A permit is a license:
 - Issued by the government;
 - Granting permission to do something that would be illegal in the absence of the permit.
- There is no right to a permit and it is revocable for cause.
- A NPDES (VSMP) permit is a license to discharge.
- A permit is developed based on the underlying governing law and regulations.

What are the types of NPDES/VSMP permits?

Individual permits:

- Cover a single permittee;
- Developed with conditions specific to that permittee's discharge.

General permits:

- Cover a category of permittees with similar discharges;
- Developed with conditions that are generally applicable to those discharges.

What is the VSMP General Permit for Discharges of Stormwater from Construction Activities?

- A permit regulation of the Virginia Soil and Water Conservation Board.
- The permit under which regulated land disturbing activities are covered.
- It is a Clean Water Act NPDES permit.
- It is governed by the underlying VSMP regulations.

What may be considered in this regulatory action to amend the General Permit?

- Amendments to Parts I and XIV of the VSMP regulations.
- Like an individual permit, it is still governed by the remainder of the VSMP regulations.
- It cannot change the basic “rules” contained in VSMP regulations, which must be accomplished by a separate regulatory action.
- It can implement those basic rules, and make them effective against permittees.
- NOIRA (Notice of Intended Regulatory Action) also describes what may be considered in this action.
- NOIRA drafted broadly to allow many issues to be considered.

NOIRA Review

- The NOIRA is an initial step in the regulatory process.
- Placed on the Regulatory Town Hall on March 24.
- Describes the purpose, legal basis, and the scope of the regulatory action.

NOIRA: Purpose

To amend the General Permit for Discharges of Stormwater from Construction Activities.

NOIRA: Legal Authority

Federal Clean Water Act
(33 U.S.C. § 1251 et seq.)

Virginia Stormwater Management Act
(Va. Code § 10.1-603.1 et seq.)

NOIRA Scope

- Issues permitted (but not required) to be considered include (but are not limited to):
 - Requirements for compliance with Part II (technical criteria), III (local programs criteria), IV (state projects), VI (general requirements), VII (permit applications), and VIII (permit conditions).

- Requirements for consistency with other laws and regulations, including Erosion and Sediment Control.
- Requirements for impaired waters with an EPA-approved TMDL.
- Timing of permit coverage and registration statement requirements.
- Procedures for permit termination and transfers of permit coverage.
- Natural resource protection consideration.
- Monitoring processes.
- Amendments to definitions contained in Part I
- Amendments to forms.
- Amendments to SWPPP requirements.

Mr. Capps said that Mr. Brown gave a thorough overview of how the NPDES relates to the VSMP general permit. He noted that the permit was brought over from DEQ and that some of the items in the permit were more specific to DEQ and their regulatory authority.

Mr. Capps said that many of the draft recommended changes provided to the TAC are for clarity.

Mr. Capps said that there was confusion in that some do not recognize that water quality is required under the permit. He said that water quality was contained in Part II of the existing regulation. He said that this permit would be operating under the current Part II requirements for water quality.

Review and Discussion of Draft Regulations [Part XIV]

Mr. Capps began on Page 34, line 975 of the July 11, 2008 draft. A copy of this draft is available on the DCR website. He noted that the effective dates and permit number had been modified.

Mr. Capps said that in addition to the permit changes, EPA is also looking at effluent limits in the future. He said that the permit may be opened again should EPA adopt those changes and the dates would be revised.

Mr. Capps reviewed the changes beginning at line 978.

A member asked if there had been discussion regarding reducing the limits from one acre to something less.

Mr. Capps said not at this time. He said the law spells out that one-acre is regulated except for in the Chesapeake Bay area, where it is 2,500 sq. ft..

A member asked if the 2,500 sq. ft. standard was up for discussion.

Mr. Capps said that was established in the law.

On line 986 a member asked the change of “surface” to “state” waters. He noted that EPA says surface waters only. He asked if this would be a conflict with the EPA program.

Mr. Capps noted that in western parts of Virginia, karst features were often considered discharge areas. He said that DCR needed to have control or regulatory authority over those areas which are covered under the “state” waters.

A member asked if, like the Chesapeake Bay Local Assistance Board, the policies and guidance would be submitted for Board approval.

Mr. Dowling said the intention would be to seek approval from the Virginia Soil and Water Conservation Board for any guidance that may be developed.

On line 998, Mr. Capps said that the change from permittee to operator was to bring consistency and to use the same term throughout the general permit. The operator is the entity obtaining the permit. He said that the operator is defined as the person who has day to day control.

A member asked if a definition of operator could be in the registration statement.

Mr. Capps said that DCR would look at the registration statement for consistency.

A member noted that the permit states that it is for construction activities but that there had been discussion regarding the permit including water quality criteria. The member said there was confusion between the use of BMPs and control measures in the context of sediment control for construction activities versus a water quality feature and how they relate. He said that typically a water quality feature would be in the context of a complete site.

Mr. Capps said the permit is for construction, but there are also post-construction water quality requirements.

A member asked if the post-construction water quality and quantity components of Part II must be met under this permit.

Mr. Brown said that there were two competing ideas. There is the construction project, with erosion and sediment control practices. Then there are requirements and regulations that say a completed site must contain other practices targeted at phosphorus removals.

Mr. Brown noted that they do not all need to be in place during the construction activity, but by the time of permit termination, the post construction BMPs should be in place.

A member clarified that there are requirements to check at the end of the permitting process to ensure that the post-construction BMPs were installed.

Mr. Capps continued on page 35.

A member asked if section 2C could say “appropriate control measures” as opposed to “appropriate controls and pollution prevention measures.”

Mr. Capps said that should be changed to control measures and that staff had been trying to use control measures throughout the permit.

A member asked if the “e.g.” in line 1000 was all-inclusive, or if there could be other activities outside the list.

Mr. Capps said that the intent was that those were examples and that there could be other activities outside the specific list.

A member asked if on line 1000, the term “may authorize” did not mean “must authorize.”

Mr. Capps said the language on 768 said that this permit “may also” be used to authorize.

A member asked if the term “may” was included, if everything would require formal approval.

Mr. Capps said that currently, any activity would have to be in the registration statement if it is an offsite activity.

A member asked if it was problematic under the general permit to include “may” be authorized.

Mr. Capps said that DCR would review that issue.

A member asked, if there were off-site support activities included in the Erosion and Sediment control plan, would they be part of the permit.

Mr. Capps said that it would be included in the registration statement, but not part of the permit.

A member noted that it needed to be clarified whether a support facility will need a separate permit.

Dr. Dukes said DCR had the intent of the concern and would come back with revised language to address the issue.

A member asked what the term “floating solids” on line 1012 referred to and whether that meant trash or suspended solids. The member said “zero” seemed unrealistic on a construction site.

Mr. Capps said that this was word for word from the Clean Water Act.

A member said that taking this very literally, not knowing the definition of “trace amount” in the context of trash makes this an enforceability issue. There are many things that would make that limitation impractical. Something more along the lines of mitigating or controlling consistent with sediment control in the context of a construction site would be more appropriate.

A member asked if the definition of trace amounts or other language could allow for a reasonableness.

Mr. Brown said there was a difference between sediment entering a basin and the sediment leaving the site.

A member noted that the inspection and monitoring section later on may address this.

Mr. Capps continued on line 1014, limitations on coverage.

A member said that perhaps it would be clearer to say final water quality measures were operational.

A member asked if general permit coverage could be issued if the SWPPP does not include how the post-construction activity will be managed.

Mr. Capps said that the SWPPP should include this information. The request for permit for coverage should not be submitted if these issues are not addressed.

Mr. Capps said that the SWPPP is site specific. It must address erosion and sediment control and stormwater. That must be prepared prior to the submission of the registration statement.

Mr. Fritz said that, as this was an NPDES permit, it looked at post-development water quality. However, water quality standards must be met throughout land disturbing activity.

A member said there was an opportunity to clarify some of this on Page 25. He said that the language speaks of a construction activity.

Mr. Dowling noted that DCR would work to clarify the above concerns.

A member asked if the term “final stabilization” was defined in the regulations or the guidance. Is there a percentage of vegetative cover?

Mr. Capps said there was no percentage but that the regulations spoke about the majority of the site.

A member said it would be good to have a definition of final stabilization.

Mr. Dowling said that there was a full definition of final stabilization in the definitions on Page 24.

A member inquired how it compared to what is in the Erosion and Sediment Control regulations.

Mr. Capps continued on line 1020.

One line 1028, a member asked if the assumption was that if there was not a specific TMDL requirement, that coverage under this permit was sufficient.

Mr. Capps said that was correct as long as there was no TMDL.

A member asked if the TMDL was addressing sediment, but does not specifically address a construction site, would that site then need to update their SWPPP to address sediment? Is it a pollutant or is it identified as a pollutant from a construction site?

A member asked about the language in lines 1028 through 1036. In a situation where there is a site discharging into TMDL waters, do they have to do something if the TMDL does not give a specific wasteload allocation for construction?

Mr. Brown said that this applies to wasteload allocations assigned at the time of coverage. The same concept was used in the MS4 general permit. The intent was that permittees are required to address WLAs made to construction activities.

Mr. Brown said that if the TMDL does not make a wasteload allocation for construction activities, then this section would not apply to that construction activity.

A member noted that if the water is impaired without a TMDL, there should be a requirement consistent with that impairment.

Mr. Dowling noted that on pages 52 and 53 there was additional information on TMDLs and a specific section on impaired waters.

The member said that he wanted to make clear that just because there was not a wasteload allocation assigned to a construction site, there were still actions that would be required in the SWPPP.

Mr. Capps continued on line 1042.

On line 1054, item e, a member asked how zero discharge would apply to the washing of vehicles on a construction site. The member expressed a concern about language being removed that would indicate some actions could not be performed at all.

Mr. Capps said that DCR would take a look at that section. He noted that most construction vehicles should go through a controlled wash down area.

Mr. Capps continued on line 1072.

Mr. Capps said that the reportable amounts referenced in the regulation come from DEQ and the federal regulations.

At this time the committee recessed for lunch.

Following lunch, Mr. Capps resumed the discussion on Page 38.

A member asked if there would be an opportunity to review the definitions.

Mr. Dowling indicated that there will be opportunities for the TAC to provide their comments on the definitions.

Dr. Dukes said that if a definition were germane to this section, members should note that.

On line 1090, a member asked if post-construction controls installation could be clarified in this section.

A member said that final stabilization may not be needed to control sediment.

Another member said that the concept of final stabilization needed to remain in this section.

Mr. Capps continued on line 1092.

A member said this did not seem to allow for a phased project. In the case of a subdivision where a portion of the land was developed, is there a way for a developer to terminate the portion he no longer owns?

Mr. Capps said that section D on line 1096 covered that. If the lot is conveyed or sold, the owner would update their SWPPP and the purchaser would have to obtain necessary coverage.

A member said that to be released from liability, the owner would need to get a new permit that did not include those lots and terminate the permit that did include the lots.

It was noted that land transfers happen on a daily basis in residential developments.

Mr. Capps said that this section was not looking to terminate the permit, but that the provision was to update the SWPPP and identify what was sold and to whom it was sold.

A member asked for more clarity in this section.

Mr. Capps said that this section addressed the complete termination of the permit.

A member said it appeared that this was saying that the prior owner does not terminate the permit until the new owner obtains a permit. However, the prior owner has no control once the parcel is sold.

Mr. Capps said that either the permit must be transferred or this requirement must be met.

Mr. Dowling said that this section was based on federal language.

A member asked what the difference would be in transferring a permit to the homeowner versus transferring the permit to the builder.

Mr. Capps said there was a separate section that dealt with transfer.

Mr. Capps said DCR would look at those issues.

A member asked if language could be included to address partial termination or partial transfer.

Mr. Capps said there was no partial transfer of a permit. The transfer is usually the transfer of the entire permit.

A member asked if there was a way to sell portions.

Mr. Fritz said that mechanism is available through modifying the SWPPP.

The issue was put on the parking lot for further research and clarification.

Mr. Capps continued on line 1098.

A member asked about the requirement that notice of termination must be within 30 days.

Mr. Dowling said that this assumes 30 days would be ample time.

Mr. Capps continued on line 1104 and noted that this language was from the federal permit.

A member said that, while he recognized that the language came from the EPA permit, it needed to be clarified.

Mr. Capps said the intent was to make the language consistent with the federal language.

A member said he would like to see some additional effort in the SWPPP to make sure discharges do not contribute to an impairment.

The member said that it would also be important that BMPs be monitored and repaired if not working.

A member said that some states monitor the stream both up and downstream.

A member said this went beyond a visual monitoring and included the development of a turbidity standard. He said this would be a way to determine that the BMPs were working.

A member noted that DCR did not have sufficient staff to conduct such monitoring. He noted that most inspections take place under the Erosion and Sediment Control program.

A member said that BMPs should be verified.

A member asked if there was any required monitoring of BMPs in their final configuration.

A member said that monitoring needed to be measurable and quantifiable.

Mr. Brown said that DCR had been working on the stormwater water quality criteria for two years and had received a lot of input. He questioned whether in this short process there would be time for an exercise that specifically related to turbidity monitoring. He said there needs to be justification for any number included.

Mr. Brown said that DCR would have continued discussion with regard to this section.

At this time the committee recessed for a break.

Mr. Capps continued with Section II: Stormwater Pollution Prevention Plan (SWPPP).

Mr. Capps said that land disturbance cannot begin until the plan is approved, the SWPPP is developed, and the permit issued.

Mr. Capps continued on line 1138.

On page 40, a member asked about a situation where the local requirement was different than the state ordinance.

Mr. Dowling said that a locality may be more restrictive.

Mr. Capps said that the Erosion and Sediment Control guidelines allow for a variance. In the Stormwater regulations there is an exception process.

Mr. Capps continued on line 1152.

On line 1080 a member asked about a situation where the SWPPP was not on site.

Mr. Capps said the plan must be kept readily available.

Mr. Capps continued on line 1192.

Mr. Capps said the problem was the lack of availability of SWPPPs to the public.

Mr. Dowling said that the draft language was brought forth from the federal language.

A member asked if there was a rationale for the privacy of the SWPPP.

A member noted that the Clean Water Act might state that citizens have the right to review the plans. He suggested that portion of the Act be referenced.

Mr. Mills noted that the plans at VDOT are covered by anti-terrorism laws that prohibit public access.

Dr. Dukes asked if there was a way of balancing legitimate interests.

A member said that, as a citizen, the Commonwealth is holding the interests of the James, the Rappahannock, etc. in trust. He said that anytime there was potential harm, citizens have a stake in that. He said that from a philosophical standpoint there should be access to the SWPPP.

A member asked about requiring the locality to retain a copy.

A member noted that the military would have issues with disclosure of information as well.

Dr. Dukes asked members to submit specific language suggestions to DCR.

Mr. Capps continued on 1198.

A member asked if SWPPPs would be discoverable in court.

Mr. Brown said that they would.

Mr. Capps continued on line 1208.

A member asked if there were opportunities for a more consistent language with regards to eliminating, minimizing pollutants, etc.

Mr. Capps said DCR staff would review that.

Mr. Capps continued on line 1228. He noted the addition of “narrative” in the description.

Noting the time, Dr. Dukes asked if there were other general issues or questions members would like addressed prior to the August 19 meeting.

A member asked if the registration statement was in the package.

Mr. Capps noted that it was not, but that it would be provided to members.

A member said that it would be helpful if a representative from EPA could be at the meetings.

Mr. Dowling said that EPA had been invited but that it was difficult for Region III staff to travel from Philadelphia.

Mr. Dowling said that he appreciated the discussion and said that the TAC had established a good foundation. He asked members to familiarize themselves with the permit as written. He asked for specific language suggestions to be sent to staff.

Close and Plan for Next Meetings

Future meetings were scheduled as follows:

August 19th – Patrick Henry Building
September 9th – Pocahontas Building

Dr. Dukes thanked members for their attendance and adjourned the meeting.