

Virginia Soil and Water Conservation Board
General Permit for Discharges of Stormwater from Construction Activities Regulations
Tuesday, September 9, 2008
The Pocahontas Building
Richmond, Virginia

General Permit Technical Advisory Committee Members Present

Eric Capps, Virginia Department of Conservation and Recreation
John Carlock, Hampton Roads Planning District Commission
David Cotnoir, Naval Facilities Engineering Command
Chuck Frederickson, James Riverkeeper
Mike Gerel, Chesapeake Bay Foundation
Jeffrey T. Hancock, Williamsburg Environmental Group
Kelly Henshaw, City of Winchester
C. Andrew Herr, Terry/Peterson Residential
Carolyn Howard, Draper Aden Associates
Steve Hubble, Stafford County
William Johnson, Virginia Community College System
Jeff Kelbe, Shenandoah Riverkeeper
Roy Mills, Virginia Department of Transportation
Rick Thomas, Timmons Group
Kelly Vanover, Virginia Department of Conservation and Recreation

General Permit Technical Advisory Committee Members Not Present

Charlie Armstrong, Southern Development
Nicole Bennett, U.S. Marine Corps
Tom Chervenak, Paradigm Engineering

Facilitator

Frank Dukes, Institute for Environmental Negotiation

DCR Staff

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

Others Present

Jason Beeler, Wetland Studies and Solutions, Inc.
Tyler Craddock, Virginia Chamber of Commerce
Steve Kindy, VDOT
Rich Parrish, Southern Environmental Law Center
Marirose Pratt, Southern Environmental Law Center
Roy Van Hawken, Wetland Studies and Solutions, Inc.

Dr. Dukes called the meeting to order and welcomed attendees to the third and final TAC meeting. He asked for comments from DCR staff.

Mr. Dowling said that one item not explained in the materials sent was that at the end of Part III, language is included concerning water quality and water quantity criteria. He said that what was included is existing language in the current stormwater regulations. He said the purpose for including this was that the permit will go into effect on July 1, 2009 and be effective for 5 years. When the new Part II Stormwater Regulations become effective after this date, they will repeal the existing Part II. Including the existing Part II language in the body of the General Permit will allow those receiving coverage to remain subject to the existing Part II and not the revised Part II.

A member asked if the permit would be modified in less than a five-year term.

Mr. Dowling said that DCR would likely proceed with a new permit once the stormwater regulations become final.

A member asked if projects currently open would have to renew their permits or if they would be grandfathered in.

Mr. Capps said that as the permit expires on June 30, 2009, a new permit coverage would be needed.

A member asked if entities would have to pay the fees a second time.

Mr. Capps said that a final decision had not been made although several methods had been discussed. He said one possibility is that if an application is made prior to the expiration date, a fee may not be required. However, if the June 30 date is not met and the application is submitted at a later date, the fee may be required. He said that the process would require DCR to notify the permit holder of the process and the expiration date.

A member asked that if a project is under the current permit until June 30, 2009 and under the new permit beginning on July 1, 2009, how would DCR require the permit holder to adjust to the new permit? He asked how the permit holder could be legally required to redo what had been done to that point.

Mr. Dowling said that he did not see anything in the new permit that predicated a significant change. He said the water quality and quantity requirements were basically the same. He noted that there may be changes in reporting and administrative procedures.

A member asked if the TMDL language had been changed.

Mr. Dowling said that he was not aware of substantive changes to that language.

Mr. Brown began a review of the September 1, 2008 draft language. A copy of this version is available on the DCR website.

Mr. Brown began on Page 24 with Definitions.

4VAC50-60-1100. Definitions

Mr. Brown began with a review of the definitions.

A member said on page 25, the definition of “minimize” needed to include “economically practical.”

Mr. Dowling said that the language was straight from the federal permit.

The member asserted that the federal permit was in error. He said that this definition brings MEP (Maximum Extent Practicable) into the permit where it is not appropriate.

A member noted that he had asked for the inclusion of the definition of “minimize.” He said if the permit was to be technology-based, that definition should be removed.

A member noted that the TAC was using EPA guidance on a fairly consistent basis. He noted that there were other issues with EPA language, but the use should be consistent.

A member asked who would determine what is economically practicable. He said that it should be quantifiable.

A member said that the Clean Water Act makes a distinction for MS4s and excludes industrial. He noted that Maryland was having difficulties with trying to extend the MEP concept to construction.

Mr. Brown said that the intent was not to bring MEP into this permit.

A member said that he did not want the permit to indicate that something was too expensive. He said that debate should take place at the local level.

A member said that the standards were outlined, but the reference to economically practicable was not clear.

A member said that a counter argument pointed back to effluent limitations.

Mr. Capps said that there was a concern that if the permit is not being met for Erosion and Sediment “economically practicable” could be used as an excuse to not do more.

A member said these were interrelated. He said that every measure is not applicable to every site. He expressed a concern that when owners inspect their own sites, they do not always determine whether the control measures are functioning properly.

Mr. Brown said that DCR would take a look at that section. He said that staff would review the permit for uses of the term “minimize” to determine whether the uses were appropriate.

A member said that if there was a desire to use different language, it should be consistent with the regulations.

4VAC50-60-1110. Purpose.

There were no comments regarding this section.

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

There were no comments regarding this section.

4VAC50-60-1130. Authorization to discharge.

A member asked if the language on line 765 had been revised. He said it appeared different from the previous version.

Mr. Dowling said that the language was from the federal permit, but that staff would review that section.

A member said that he had circulated an email expressing concerns about visible pollutants. He said the concern was about the ability to add a performance measure to the permit.

Mr. Dowling said that he did not see those concepts embodied in this language.

A member said that he thought those concerns were already addressed. He cautioned against using inconsistent language. He expressed a concern that a reference to the Clean Water Act might change the permit.

Mr. Dowling noted that under Erosion and Sediment Control, the language says control measures shall be designed, installed and maintained in accordance with minimum standards.

Mr. Capps said that if the plan is inadequate or not doing the job there is nothing that limits the permitting authority from requiring more. He said that the permitting authority can require that the site be repaired.

A member suggested striking the reference to the Clean Water Act and saying as approved by the permitting authority.

Mr. Brown questioned whether there was a better way to amend the language to address this concern.

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

There were no comments regarding this section.

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

A member expressed a concern over the reference to “No more than one operator” in line 875. The member said that with some projects there are two operators. He asked if a fee had to accompany each registration statement. He asked that consideration be given to a single registration statement or a single fee.

Mr. Capps said there should only be one permit for each project.

The member said that in some cases the operator owns the site, but the contractor is doing the work and would be the sole operator.

A member noted that this language was changed so that the contractor could be the operator.

Mr. Capps said that it was the owner’s choice to determine who receives the permit. Either way, only one entity needs to obtain a permit.

A member noted that this was changed at the previous meeting. He said the language was written so that the certificate holder could be the operator.

Mr. Capps said that it was the owner's choice to determine who obtains the permit. He said that the person with control over the specifications has the day to day control.

A member suggested that, in the registration statement, the applicant be required to name the receiving water and list whether the segment into which they are discharging has an existing TMDL or is listed as an impaired water.

A member said he shared the concerns that projects that will remain in progress on July 1, 2009 will experience difficulty complying with the new permit. He expressed a concern about having to modify the projects.

Mr. Brown said a new registration must be submitted regardless, but that if it was determined that the new General Permit were going to significantly affect existing projects, there is a way for the Board to continue the existing permit for those projects.

Mr. Dowling said that the preference would be to have one permit. But he said that there would be a second one later and that the current permit may be extended.

A member suggested putting in the registration statement a statement that says the discharge into impaired streams has been evaluated. He said it could be a yes or no question.

A member said that he would have a problem with the language in a registration statement. He said the SWPPP already addresses these issues.

Mr. Dowling said that DCR could add that to the registration statement.

A member asked if DCR thought that was required.

Mr. Brown said that it was not currently in the registration statement.

A member said there was nothing being done to analyze whether sites being issued permits will actually be able to achieve the permit.

A member said that there was no reason for a construction site to evaluate for bacteria.

A member said that in the Valley, most of the benthic impairment was bacteria. He said he had seen no evidence of an evaluation.

A member said that the problem was not with the language but perhaps with the location.

Mr. Brown said that it seemed to make sense that the registration statement would say whether or not the operator is discharging into an impaired stream or a TMDL.

At this time the TAC recessed for a break.

A member addressed the need to inform citizens that a permit application has been filed.

Mr. Dowling said that had been discussed. He said that under the Enterprise website, there may be an opportunity to address that.

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

A member noted that in Section A, the use of the term “appropriate control measures” might be preferable.

On page 35, line 1028, a member said that this section should include a statement that says there is no authorization to discharge pollutants unless the operator has followed the best industry practices.

A member asked if the language in line 1042 matched the language in EPA’s recent construction general permit section.

Mr. Capps said that he believed it did, but noted that DCR would verify the answer.

Mr. Brown continued with Section II on page 40.

On line 1162, it was suggested that the reference to tribal be removed.

On line 1192, a member expressed concern over the concept of public review. He said that this was an unfair burden to private industry.

A member noted that in other states, such as Maryland, their version of the SWPPP is available for 60 days, but is no longer available after the land disturbance begins.

A member said that after the land disturbance begins, the SWPPP is a living document.

It was noted that FOIA refers to documents obtained by state agencies.

Mr. Dowling said that DCR heard strongly at the previous meeting that there was a desire by the environmental community to have the SWPPP available. He said that DCR determined to make this provision available for discussion.

Dr. Dukes noted that members were expressing two different viewpoints on this issue.

Mr. Brown said that there were two differing options. He said that staff would continue to review this and work to negotiate a solution.

A member said that the EPA language would be a more level playing field.

Mr. Brown said that would involve providing the SWPPP to DCR and that DCR would be housing the documents.

Mr. Dowling said that was problematic because of the day to day changes in the SWPPP.

A member asked how registration statements would be a part of this.

Mr. Dowling said that DCR is trying to remain compliant with the federal permit and the federal language.

A member asked what would be gained in looking at the SWPPP from a practical perspective.

A member said that it was a philosophical issue since the SWPPP was the background of the permit.

Dr. Dukes said that the agency would likely move this forward to public comment.

Mr. Brown continued on line 1229.

On line 1395 a member asked why post construction controls and requirements were in a construction permit.

Mr. Brown said that the Clean Water Act specifies that post construction must be considered.

On line 1494 a member said that he had trouble with the concept that a discharge would be inaccessible.

A member said that there could be a situation where a site is inaccessible because of a fill area that is saturated.

At this time the TAC recessed for lunch.

Following lunch, Mr. Brown continued with Endangered Species on line 1547.

A member asked why this was included.

Mr. Capps said this was a requirement of the EPA permit.

Mr. Brown continued on line 1559 with Total Daily Maximum Loads (TMDL).

A member said that this seemed to make the assumption that there would be a wasteload allocation. The member asked what if there was not.

Mr. Brown said in that case, this section would not apply.

On line 1574 a member said that it should be clarified that water quality standards should be met for non impaired waters as well.

Mr. Brown continued with Section III.

A member asked about the “not required” reference to monitoring in line 1580 and said that could be confusing.

Mr. Brown said that the basic intent was that other programs would do monitoring to gauge compliance. This language is utilized in other permits as well.

Mr. Capps said that much of this language had already been vetted through the MS4 permit.

4VAC50-60-1180. Applicability.

Mr. Brown noted that, as Mr. Dowling had indicated earlier, this section was taken from the existing Part II of the regulations. That applied to the remaining sections in the draft document.

A member said that he did not believe the federal permit regulated post construction activities.

Mr. Dowling said that DCR did envision that there would be overlapping permits. He said that DCR understood the concern regarding existing projects.

Dr. Dukes asked Mr. Dowling to review the remaining steps in the process.

Mr. Dowling said that anyone wishing to submit additional comments should forward them to DCR as soon as possible. He said that the intent remained to take the regulations forward to the Virginia Soil and Water Conservation Board on September 24-25, 2008.

Dr. Dukes asked for final comments from TAC members.

A member said that he thought in general the regulations were in good shape.

A member asked if there would be further guidance regarding the format of the SWPPP.

Mr. Capps said there was no required format.

A member asked about the registration statement.

Mr. Dowling said a revised registration statement would be going forward to the Board.

A member asked DCR to carefully consider the inclusion of the endangered species section.

A member said that he would like to have had more input from the private sector.

A member asked that a draft be provided to TAC members prior to the Board meeting.

Mr. Brown said that there would be many opportunities to make additional edits as the process moved forward.

A member expressed a concern about the continuance of the permit.

Mr. Brown said that DCR would have to review the distinctions between this permit and the old one to see if they were significant.

A member noted that it would have been helpful to have EPA represented on the TAC.

Mr. Dowling thanked members for their participation and Dr. Dukes for facilitating.

The meeting was adjourned.