

**General Stormwater Management Program (VSMP) Permit for Discharges of  
Stormwater from Construction Activities (4 VAC 50-60-1100 et seq.) [Part XIV]  
Regulatory Advisory Panel  
Tuesday, November 13, 2012, Meeting #6  
Richmond, Virginia**

**Regulatory Advisory Panel Members Present**

Phil Abraham, Virginia Association of Commercial Real Estate  
Doug Beisch, Williamsburg Environmental Group  
Barbara Brumbaugh, City of Chesapeake  
Wade Bullard, U.S. Navy/Department of Defense  
Ann-Neil Cosby, Sands Anderson  
Normand Goulet, NRVC  
Jenny Johnson, Joyce Engineering  
Adrienne Kotula, James River Association  
Roy Mills, VDOT  
David Nunnally, Caroline County  
John Paine, HRPDC  
Jonét Prévost-White, City of Richmond  
Mike Rolband, Wetland Associates  
Peggy Sanner, Chesapeake Bay Foundation  
Joe Tannery, Dominion  
Mike Toalson, Home Builders Association of Virginia  
Cabell Vest, Aqualaw

**Facilitator**

Tanya Denckla Cobb, IEN

**Agency Staff Present**

Michael Fletcher, DCR  
Doug Fritz, DCR  
Drew Hammond, DEQ  
John McCutcheon, DCR  
Liz McKercher, DEQ  
Ginny Snead, DCR  
Christine Watlington, VDOT  
Michelle Vucci, DCR  
Elizabeth Andrews, Office of the Attorney General

**Others Present**

Troy Tignor, Spotsylvania County  
Craig Pennington, Spotsylvania County

Ms. Snead called the meeting to order and welcomed attendees to the 6<sup>th</sup> and final planned meeting of the RAP. She reviewed the charge and timeline.

Ms. Snead said that the goal was to send the proposed regulations to the Soil and Water Conservation Board on November 27 with anticipated Board action at the December 11 meeting.

Future key dates include:

- January 9, 2013: file by noon with the Registrar's Office.
- January 28, 2013; publish in the Virginia Register of Regulations
- January 28, 2013 – March 29, 2013, 60-day public comment period
  - EPA official review during this time period
  - Publish a notice twice in 10 newspapers (federal requirement) 30 days in advance of the close of the public comment period.
- March 5, 2013 and March 7, 2013 (target dates), hold at least two Public hearings in early March 2013.
  - Review Comments and Coordinate general permit approval with EPA.
- May 1, 2013, send draft final regulation to EPA for unofficial review and comment.
- June 1, 2013 target for EPA to respond to DCR with its unofficial comments on the final regulations
- June 11, 2013, send final regulation to EPA for official review and concurrence
- June 12, 2013, mail package to Board
  - Prepare Town Hall filing discussion forms and regulation in RIS
- June 20, 2013, target for EPA to provide verbal concurrence with the final regulations
- July 10, 2013, file on the Town Hall and with the Registrar
- July 29, 2013, published in the Virginia Register of Regulations
- August 28, 2013, public comment period ends and regulations are final
- July 1, 2014 effective date

Ms. Denckla Cobb reviewed the guidelines for the meeting.

Mr. Mills said that he would like to make comments before the review of the draft began. He said that his comments were not directed to anyone in particular at DCR and that he understood that the agency was under pressure to get the permit approved.

Mr. Mills said that the document to be reviewed was sent out at 5:00 p.m. on a Thursday meaning most did not receive it until Friday. That allowed four days and a holiday for review. He said that was not enough time for a thorough review. He said that he had about an hour to review the document and was already seeing areas where he would have questions.

Mr. Mills said that the process did not lend itself to the goal of gaining consensus. He said that, at the time of the meeting, he could not fully support the draft regulations.

Ms. Denckla Cobb noted that there was a lot at stake for VDOT. She said that she appreciated the candor. She noted that Ms. Snead had said from the beginning that the timeline was established to meet the deadline.

Mr. Toalson asked Ms. Denckla Cobb to poll the RAP to see how many agree with the comments from Mr. Mills.

About 12 of 15 RAP members said they agreed with Mr. Mills' assessment of the process.

Ms. Denckla Cobb asked Ms. Snead to comment.

Ms. Snead said that she could not offer specific comments from the agency perspective. She said that for the purposes of this meeting the RAP needed to review the document as presented and determine where the concerns were before moving forward.

Ms. Snead said that a lot of what came out in the draft was discussed over the past five meetings of the RAP. She said that it was important to remember that the goal was to establish the General Permit not evaluate the whole realm of stormwater management regulations.

Mr. Rolband said that he believed everyone was willing to work toward consensus. He asked what was driving the deadline.

Ms. Snead said that localities needed up to a year to adopt the necessary local ordinances. They need that time to work through their internal processes to have ordinances in place by the permit deadline of July, 2014.

Mr. Abraham noted that the draft copy did not appear to have all of the changes highlighted in red.

Ms. Snead said that as the document was reviewed, changes would be noted.

### **Discussion of 11-8-12 Permit Regulations**

Ms. Vucci reviewed the draft document. Ms. Vucci noted that the format was different from earlier drafts because previous meetings focused on selected sections of the regulations and the November 8 draft includes all language discussed in prior meetings. She said the format shown is the format that would be presented to the Board.

Ms. Vucci said that she would walk through the document and highlight changes from the last version presented to the RAP. She reviewed the draft dated November 8, 2012.

#### 4VAC50-60-10 Definitions

Ms. Vucci noted that the general definitions for the stormwater regulations are in Section 10 of the Virginia Stormwater Management Program (VSMP) regulations. This general definitions section was discussed in prior meetings but the focus of this RAP has not been on this section and consequently, no changes to this general definitions section are proposed. Changes to definitions discussed in the RAP are specific to just the Construction General Permit, which is addressed in section 1100 of the November 8 draft.

Ms. Vucci then began with a review of the entire draft.

#### 4VAC50-60-1100 Definitions

Line 56 – Mr. Rolband suggested removing the phrase “or eliminate.” He said that was avoidance and not minimization. He said that would be more similar to the Clean Water Act.

Ms. Sanner said that she thought the language in the Act did include the word “eliminate.” She said removing the word would weaken the provision.

Mr. Rolband said that “eliminate” did not make sense from an engineering standpoint.

Mr. Fritz said that the language was consistent with the current EPA general permit.

Mr. Rolband said that he would defer to the group.

Mr. Toalson noted that the language did include the phrase “to the extent possible.”

Line 59 – Ms. Vucci note that the definition of qualified personnel had been removed. She distributed the definition as it exists in the general Stormwater Management Regulations (4VAC50-60-10).

#### 4VAC-50-60-10 Definitions.

“Qualified personnel” means a person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity. For VSMP authorities this requires the use of a person who holds a certificate of competency from the board in the area of project inspection for ESC and project inspection for SWM or combined administrator

for ESC and combined administrator for SWM as defined in 4VAC50-50-10 or a combination of ESC and SWM qualifications in these two areas.

Ms. Sanner asked if there was text in 4VAC-50-60-10 that said the definitions apply to the entire set of Stormwater Management Regulations.

Ms. Vucci said that was correct unless the context indicated otherwise.

Mr. Rolband noted that in the original definition Professional Engineers (PE) and other professionals were included, but were not in this definition.

Ms. Brumbaugh noted that change was made in the Integration Bill.

Mr. Beisch said that it was clear for VSMP authorities, but not clear for regulated entities.

Mr. Rolband said that it was illogical to have the PE required to seal the document but not be allowed to inspect.

Mr. McCutcheon noted that provision was in the law.

Ms. Sanner said that with respect to PEs most would agree that they are knowledgeable.

Mr. Rolband said that this would require that PEs take the Erosion and Sediment Control class from DCR. He said that it required the person to hold the certificate from the VSMP.

Ms. Snead said the language was consistent with the law.

Ms. Denckla Cobb noted that more clarity was needed on this section.

Mr. McCutcheon said that trying to clarify and list roles would lead to a never ending list. He said that not every PE would be qualified. He said that he would prefer to have a general open ended interpretation that would allow someone with no formal certification but with twenty years of experience to still be qualified.

Ms. Denckla Cobb restated that the agency was opting for a broader, less restrictive definition.

Mr. Fritz said that he would recommend this be addressed in guidance or policy. He said that qualified personnel was a federal term.

It was noted that staff would review this section.

Ms. Sanner said that the language tracked pretty closely with the federal permit.

Ms. Denckla Cobb recommended that members share suggested changes with staff by email.

Line 65 – Mr. Toalson suggested that this line say at the site or at the construction site.

Ms. Snead said that this may belong in the section that addresses the rain gauge.

Mr. Abraham noted that the clarification of the definition of discharge to an impaired water was shown in the last section as new.

Mr. Hammond said that staff reviewed the permit and defined impaired waters instead of defining what a discharge is. He said that if a site was discharging stormwater to an impaired water it needed to be determined what needed to be done inside the general permit to maintain coverage.

Ms. Denckla Cobb asked for a consensus test on the definitions. She noted that there was consensus but that it was not strong.

#### 4VAC50-60-1110 Purpose

Ms. Vucci noted that nothing had changed from the previous version.

Mr. Fritz said that lines 74-75 should read surface waters and not state waters.

#### 4VAC 50-60-1120 Effective date of the permit

Nothing was changed in this section.

There was consensus on sections 1110 and 1120.

#### 4 VAC50-60-1130 Authorization to discharge

Mr. Fritz said that these changes were to make sure that appropriate entities were covered.

Ms. Sanner asked if it the language could refer to federal entities that operate in Virginia.

Line 106 – Mr. Mills noted that the section said prior to land disturbing activities that items a and b were required. He asked if that would leave out emergency work.

Mr. Fritz said that was in the permit, but that he would review that section.

It was noted that an exception was needed for emergencies.

Mr. Mills asked if entities would have to file on ePermitting as well as providing a paper copy.

Mr. Fritz said that the EPA would not allow electronic filing but required an actual signature.

Ms. Vucci moved to lines 121-139.

Mr. Hammond said that #3 consolidated special condition 3 and 4 into special condition 3.

Mr. Mills asked if “observed” on line 131 was the correct word.

Ms. McKercher said that an impaired section was referred to as an observed impairment.

Mr. Rolband said that this section now included impaired waters and TMDLs. He asked who would approve the TMDLs.

Ms. Sanner said that the conclusion was made with DCR and DEQ to include both State Water Control Board TMDLs as well as Chesapeake Bay TMDLs with EPA approval.

Mr. Rolband asked why the section wouldn't say EPA and State Water Control Board.

Ms. Sanner said that the regulations in many cases refer to EPA approved TMDLs.

Line 128 – Mr. Rolband asked if a site discharged to a stream that was a tributary of an impaired water if that was included.

Mr. Hammond said that would be covered in the general permit section.

Ms. Vucci moved to lines 140 – 162. There were no comments.

Ms. Vucci noted that at line 164, Section D, changes were included in the previous draft reviewed by the RAP.

Ms. Vucci noted that the language on line 175-179 was new language.

Mr. Toalson asked for clarification regarding antidegradation.

Mr. Hammond said in Virginia there were three different tiers of waters. Tier 1 does not meet one of the water quality standards. Tier 2 meets or exceeds the standards. Tier 3 would be exceptional waters where no new or expanded discharges were allowed, except for intermittent discharges that could be permitted.

Mr. Toalson asked if there was a good analysis of where the TMDLs apply.

Mr. Rolband asked if DCR could provide a map of TMDLs.

Ms. Snead said that would be reflected in the ePermitting that shows the watersheds. DCR is working with DEQ to get a TMDL GIS layer into ePermitting.

Mr. Rolband asked if people could learn about watersheds before they purchase land.

Mr. Fritz said that exceptional waters were listed.

Ms. Denckla Cobb noted that there had been several requests for graphics to help with understanding.

Ms. Sanner said that sections 3 and 4 were great improvements but suggested that 4 be retained.

Mr. Hammond said that he was agreeable to leaving that section in.

Ms. Snead said that staff would work that out through the details of ePermitting.

Ms. Vucci continued with the review at line 187.

Mr. Toalson asked if the Department notified existing permit holders that they needed to reapply.

Mr. Fritz said that at the end of the permit cycle, DCR sends out letters explaining the necessary actions.

Mr. Toalson asked for clarification of Section D beginning at line 195.

Mr. Hammond said that the permit went into effect on July 1, 2009. The TMDL was approved for the watershed between 2009 and July 1, 2014. When an applicant reapplies for coverage if the TMDL has identified construction activities as a source of pollutants and established a waste load then the contractor would need to make sure the SWPPP was consistent.

Ms. Denckla Cobb asked for a consensus test on the authorization to discharge section. Consensus was not achieved as there was an objection.

Mr. Toalson said that he was concerned about providing coverage for TMDLs that were not approved by the State Water Control Board.

Mr. Hammond noted that the Chesapeake Bay TMDL was not approved by the State Water Control Board but by EPA.

Mr. Toalson said that the basis of his objection was that the state was losing control of its own waters.

4VAC50-60-1140. Delegation of authorities to state and local programs.



Ms. Vucci noted that the name of this section was changed to provide clarity. There were no further comments.

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

Mr. Mills said there needed to be a way to get around having to file an electronic copy and a print copy.

Mr. Fritz said that the information could be entered once and printed, but that DCR had to have an original signature.

Ms. Brumbaugh said that she had been asking throughout the process if there was a paper option and was told there would not be. She noted now that the draft was saying electronic and paper submissions were required. She said that localities and contractors need to have an option to file by paper or electronically.

Ms. Snead said that currently that wasn't possible under federal regulations.

Mr. Fritz said that the local subcommittee discussed this matter. He said that this had been discussed repeatedly.

Mr. Nunnally said that he thought it would be extremely challenging for localities to understand and interpret this information and to explain this to constituents.

Ms. Vucci continued with lines 264-290.

Mr. Mills said that it seemed contradictory to require a SWPPP prior to obtaining permit coverage.

Mr. Fritz said that the authorization speaks to the authorization to discharge.

Ms. Denckla Cobb noted that staff would work to clarify that paragraph.

Ms. Vucci moved to lines 291-314.

On line 298 Mr. Toalson questioned the requirement to note the latitude and longitude. He said most contractors would not have access to that.

Ms. Snead noted that information would be available through ePermitting.

Ms. Vucci noted that lines 315 to 325 contained new language.

On line 323 Ms. Sanner noted that the word should be "obtained" instead of "prepared."

On line 313 Ms. Brumbaugh noted the reference to common plan of development. She asked what would be done with single lots that are part of common plans.

Ms. Snead said if those lots did not have a permit they would be in violation.

Mr. Rolband asked if common plan of development as defined elsewhere.

Ms. Brumbaugh noted that EPA has issued guidance regarding the common plan of development but that it was not clear.

Ms. Snead said that DCR would be issuing guidance with regard to the common plan of development.

Mr. Toalson said that the Homebuilders Association planned to work with DCR for a major educational movement. He said that he had come to understand that as many as 70% of builders are in violation. He said that one of the reasons to move the programs to local governments was to gain better compliance.

There was general consensus on section 1140 but not on 1150.

Ms. Brumbaugh and Mr. Mills said their concerns with section 1150 remained with the ePermitting process. Mr. Mills said that his specific concern was the requirement for both paper and electronic filing.

Mr. Goulet said that he believed the common plan of development would still be a problem for local governments.

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

Ms. Vucci moved to lines 346-411.

A member asked if notification and epermitting would use identical forms.

On lines 392-394 Mr. Abraham asked why instruments being submitted to the VSMP authority had to be certified.

Mr. Fritz said that was for verification of the BMPs.

Ms. Snead said that the VSMP authority needs to be able to track the BMPs.

Ms. Brumbaugh asked how that applied to lots within the common plans. She said this would place the burden on someone who could not verify that the condition had been met.

Ms. Snead said that staff would look at deleting or clarifying this requirement.

Mr. Mills asked if ePermitting would automatically generate a termination notice.

On items 6 and 7 Mr. Beisch noted that item 6 referred to a regional stormwater plan. He said that the language should be clarified.

On lines 357-361, Mr. Nunnally asked why the reference to temporary stabilization and the notice of termination must be submitted within 30 days. What happens when the project is terminated and additional work needs to be done?

Mr. Beisch noted that there are localities that allow temporary stabilization.

Mr. Fritz said that the permit cannot provide access to property the contractor does not own. He said that DCR could not give authority for land disturbance or stabilization once the property ownership is transferred.

Mr. Nunnally said that it should be clarified that if repair work or minor corrections were needed the permit would not be required.

Mr. Fritz said that could be considered maintenance.

Ms. Denckla Cobb noted that the agency would review item #8.

There was no consensus on section 1160.

Mr. Rolband said that his concern was that temporary should be changed to permanent stabilization. He believed at that point there would be consensus.

#### 4VAC50-60-1170. General permit.

Line 457 – Mr. Rolband asked why the wording “public safety” was deleted from the section related to emergency-related construction activities. Mr. Fritz said that the language in state law changed.

Ms. Brumbaugh said that she would suggest line 462 be changed to say state permit coverage was requested through the filing of the registration statement.

Ms. Sanner suggested on line 482 the term “applicable” be used instead of “additional.”

Mr. Hammond noted the changes on lines 484-485 were made to be consistent with the stormwater regulations.

Line 487 – 494 – Mr. Toalson asked the purpose of this language.

Mr. Hammond said that was to reinforce to the operator that the permit did not grant post construction authorization to discharge.

Mr. Toalson said that was confusing as there would always be a limited amount of discharge.

Mr. Fritz said that the permit applied only to the construction activity.

Mr. Beisch asked why line 490 referenced only temporary support activity.

Mr. Fritz noted that the term temporary was for residential construction only.

Ms. Vucci moved to lines 495-503. There were no comments.

Ms. Vucci moved to lines 504-522.

Line 515 – Mr. Bullard asked if this reference to discharge applied only to pollutants related to construction activities.

Ms. Snead said that staff would clarify that this related to construction activities.

Mr. Abraham said that unless the impaired waters were shown on the ePermitting system that it could not be assumed the operator would now they were discharging to an impaired water.

Ms. Snead said that would be covered in ePermitting. She said that DCR was hesitant to specify that in the regulations.

Mr. Abraham expressed a concern about upstream waters.

Mr. Hammond said that this was clarified with “direct discharge.”

Mr. Abraham said that he thought the language should be reworked.

Mr. Rolband said that it was still unclear with regard to which impairments were being addressed.

Mr. Hammond said that the wording was for an observed source for the TMDL. He said that would typically be sediment, nitrogen and phosphorus.

A member said that ePermitting would not solve what goes into an impaired water.

Mr. Hammond said that staff had been working to grasp what can be done to have ePermitting address impaired waters. He acknowledged that this section needed additional review.

Mr. Nunnally said that DCR needed to be prepared for criticism. He said that many of the details did not provide significant benefit.

Mr. Goulet said that there needed to be a clear differentiation between impaired and not impaired.

On line 525, Ms. Sanner suggested that 48 hours be changed to 24 hours.

Mr. Mills said that he supported the 48 hours but noted that a run-off producing event could last several days.

Mr. Fritz said that staff would look at language to account for holidays and weekends.

Ms. Brumbaugh asked about the definition of run-off producing event (0.25 inches of rain or greater) in the November 8 draft and the definition as stated in current DEQ regulations.

Mr. McCutcheon said that a rainfall event can be identified, but with the difference in rainfall over a given area, a standard of producing runoff over the site is really unverifiable for the authority.

Mr. Fritz said that the intent was to produce a mechanism for compliance.

Mr. Nunnally said that he did not see a benefit if inspection frequency was tightened.

Mr. Mills said that he thought every seven days would catch most rainfall.

Ms. Sanner asked staff what EPA would say regarding a schedule of seven days.

Mr. Fritz said that the EPA requirements were in the permit.

Mr. Toalson said that it was important to note that the conversation would not be completed by the end of this meeting.

Ms. Snead noted that there were many different opinions regarding this section. She said that staff would submit new language to the RAP.

Mr. Rolband said staff should consider increasing the design goals.

Ms. Snead said that specific BMPs have been discussed. She said that any requirements would need to be included in the Erosion and Sediment control regulations.

Ms. Denckla Cobb noted there was a common interest in increased compliance with differences regarding what would be the most effective. She said that ultimately the agency would make a decision to move forward because there would not be consensus within the RAP. She said that in the absence of consensus the agency would figure out what would work and what would be acceptable to the EPA.

Mr. Toalson suggested suspending the activity and allowing the RAP to send comments directly to the Board.

Ms. Snead noted that there was not consensus on the issue. She acknowledged that at some point this would need to move forward to the Board for deliberation.

The discussion moved forward to the remainder of the document.

Ms. Sanner asked on line 573 what constituted representative inspection. She asked if there were parameters for acceptable representation.

Ms. Vucci moved to lines 577-596.

Mr. Toalson asked if the term exceptional waters was required by EPA.

## SECTION II Stormwater Pollution Prevention Plan

Mr. Beisch said that the SWPPP template prepared by the Department left a lot of concern with the common plan of development. He said that stormwater planning is not normally done on individual construction activities that are part of the common plan of development. There was no need to provide a separate stormwater plan.

Mr. Mills noted previous comments regarding updating the SWPPP on ongoing construction activities. He said that continually updating the SWPPP would add to the cost and affect potential right of way issues for the project.

Mr. Fritz said that the SWPPP can be modified during construction.

Mr. Mills said the SWPPP could be updated if there was a list of items to be updated. He said that would be difficult if items on the contract needed to be renegotiated.

Mr. Fritz said that he could not provide a list until the final language was developed.

Mr. Mills said that he could not agree with the provisions until the final language was available.

Lines 823-828 – A member said that it was a huge issue for the development community to bear the burden for training. He said he was not aware of another environmental program that required the general contractor to train people who were not their employees.

Mr. Mills said that he would like to see a grandfathering provision that would allow an operator not to have to update the SWPPP just because of a new permit.

Mr. Fritz said that DCR could not include a grandfathering provision.

Mr. Nunnally said that training and documentation was important due to the previous discussion about the increase in inspection frequency. He noted that if the focus was on the administrative side, that would not address enforcement.

Mr. Goulet said that training was not the answer. He noted that there was no clear history on enforcement.

Ms. Snead noted that enforcement was not part of the permit.

Mr. Abraham said the focus should be to provide awareness rather than training.

Mr. Toalson asked if public notice was required for the permit. He said that no other permit requires notice.

Mr. Fritz said that it was a matter of posting coverage in the same way a building permit was posted. He said that coverage needed to be shown under the provisions of the Clean Water Act.

On line 1239 Mr. Toalson said that if the public makes a request for a copy of the SWPPP it would be reasonable to expect they provide compensation for necessary expense of providing that document.

Mr. Fritz said that he did not disagree, but that it could not be required within the permit.

It was suggested that it be clear that the SWPPP would be available for review by hard copy or electronically, but not that a copy would be provided.

It was noted that there was not consensus on Section II. RAP members were asked to send comments to staff by November 27. Concerns were expressed by RAP members at the end of the meeting that there was not sufficient time for review of the current regulatory draft and that there were proposed changes by RAP members that were not addressed.