

## Meeting Notes

<b>General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities (4 VAC 50-60-100 et seq.)</b>	 11658338
<b>19 September 2012</b>	▪ See sign-in sheet (to be provided by DCR).
<b>Regulatory Advisory Panel (RAP) Committee Meeting # 2</b>	

### Executive Summary of this Meeting

This was the second of five scheduled Regulatory Advisory Panel meetings to develop a new Construction General Permit (CGP) for the Commonwealth of Virginia. The meeting was held in the West Reading Room of the Patrick Henry Building in Richmond.

DCR (mostly Doug Fritz) has begun the process of revising and inserting language into the existing VSMP General Permit for Discharge of Stormwater from Construction Activities (see HANDOUT 2). Much of this meeting involved discussion of the suggested language, as noted below.

Hampton Roads localities should be aware:

- **DCR is requesting comments on the proposed language, and on any language suggestions, to be submitted to DCR (to [Michael Fletcher](#) with copies to [Doug Fritz](#) and [Ginny Snead](#)) by Wednesday, September 26<sup>th</sup>, 2012.** (See item 42 below for specifics.)
- Much of the suggested language comes directly from the Federal Effluent Limitation Guidelines (ELGs) that were discussed during this meeting. Virginia has no choice but to include the ELG requirements. Doug Fritz highlighted specific language that must be included from the ELGs in yellow in HANDOUT 2. The wording can be changed, and so can the placement, but the yellow text represents Doug's best understanding of how to incorporate the ELGs into this permit.
- The timeframe to get local ordinances and programs in line with requirements and expectations (by 1 July 2014).
- Key issues discussed at this meeting were:
  - How to simplify the permit;
  - How to incorporate the ELGs;
  - Describing the specifics for “evidence to the contrary” clauses—the general consensus is that being more specific about what constitutes evidence to the contrary will be helpful to everyone;
  - Who should be able to determine when something is ‘infeasible’—federal guidelines are unclear on this issue;
  - How to use existing Virginia regulations and standards (e.g. E&S Minimum Standards) to satisfy this permit (without reinventing, redefining, or undoing those standards).

### **10:00 Regulatory Action Overview, Committee Charge, and Regulatory Timeline**

After a round of introductions, Ginny Snead briefly reviewed the NOIRA, consensus process, and proposed schedule for this RAP.

### 10:10 Construction General Permit

Doug Fritz facilitated a discussion of the Construction General Permit.

SEE HANDOUT 2, Virginia Administrative Code

Line 149 and following

1. Doug Fritz reviewed the authority for "VSMP Authorities" to implement this permit and conduct certain (as listed) activities. The rest of this legislation deals with construction activities. Barbara Brumbaugh (City of Chesapeake) questioned different localities having different authorities.
2. Doug Fritz acknowledged differences between federal and local facilities.
3. Barbara Brumbaugh mentioned that "VSMP Authority" and "VSMP Agent" definitions need to be clarified. Norm Goulet (NVRC) agreed. Doug said the Integration Bill introduced this terminology. The scope of terms is now broader than previously understood.
4. Roy Mills (VDOT) raised the issue of local programs not having authority over state agencies.
5. Anne-Neil Crosby (Sands Anderson) requested alternate, simpler language about the use of the term 'agent'. Peggy Sanner (CBF) agreed there could be confusion from common law regarding this term.
6. Doug Beisch (Williamsburg Environmental Group) raised the issue of banks and who would have authority in specific situations.
7. DCR ASKS THAT SPECIFIC LANGUAGE SUGGESTIONS BE SENT TO MICHAEL FLETCHER, WITH COPIES TO DOUG FRITZ AND GINNY SNEAD.

### 10:40 Consensus Building

Tanya Denckla Cobb facilitated a discussion for consensus building,

SEE HANDOUT 1, The Basis for Consensus

8. Barbara Brumbaugh and Norm Goulet disagreed with the handout definition of consensus, wishing to reserve the right to disagree—they cannot agree to the definition of consensus as stated; because they cannot agree to material they have not yet seen.
9. Jeff Kelble (Shenandoah Riverkeeper) noted difficulties with a prior RAP that he served on where his concerns were not adequately addressed—DCR just made the language more difficult to challenge. Jeff feels there was a breach of trust.
10. Tanya Denckla Cobb said that if consensus cannot be reached, DCR will attempt to balance comments, concerns, and issues in the final product.
11. John Paine raised the issue about lag time between when language appears or is introduced, the ability to get input from the member jurisdictions of HRPDC, and the ability to adequately vet their feedback given the proposed schedule. Ginny Snead said the process should allow for review time prior to seeking consensus support, which will only be an issue at the last RAP meeting. (Consensus will not be asked for at all meetings and points along the way.)
12. Norm Goulet says he reserves the right to change things that he does not agree with, and he reserves the right to comment—Norm says this would be a significant change from many other RAPs he has been on in the past. Peggy Sanner said it is very important when it gets to the point of consensus, to be very clear how consensus is represented and what are the specific areas of consensus. Barbara Brumbaugh said we should move on; “There may not be consensus on the definition of consensus.” Norm Goulet and others agreed.
13. Roy Mills said the VSMP RAP went on for 7 years and there was no consensus. Roy highlighted the need to get the review material out to the RAP committee well ahead of the meetings.

## 11:15 Simplifying the Permit

Doug Fritz facilitated a discussion on how to simplify the permit.

DOUG SPOKE FROM PREPARED SLIDES, BUT NO HANDOUT WAS PROVIDED.

14. Doug Fritz said:

- a. 'Simplify' does not mean 'weaken'.
- b. We need to rely on existing State programs that are already in place.
- c. "Big words on paper" does not equal compliance, or protect water quality.
- d. This permit should follow the keys to define compliance, such as: design a good SWPPP, implement the BMPs, etc.
- e. The permit should assist in determining compliance, e.g. "evidence to the contrary" should be spelled out if/where that term is used.
- f. We need to use existing programs, e.g. the E&S Minimum Standards.
- g. This permit is only applicable during the construction activity. Post-development is after his permit is terminated, and is regulated elsewhere.
- h. For post-development stormwater management, prior to termination:
  - i. SWM controls must be approved.
  - ii. Long-term provisions for maintenance must be provided.
  - iii. A construction record drawing must be submitted of the VSMP Authority.

15. John Paine (HRPDC) asked about getting record drawings into the new ePermit program, and Ginny Snead said DCR had discussed that capability, but was told it would be cost prohibitive.

SEE HANDOUT 2, Virginia Administrative Code

Line 668 and following

16. David Nunnally (Caroline County) commented that this language may be creating a whole new standard for E&S. Doug Fritz said this is a water quality permit, and we can no longer just rely on E&S standards. David Nunnally said he is concerned after all the work to get the E&S the standards should be incorporated by reference.

17. Doug Fritz noted that yellow highlights in the handout are items that are required to be in the permit to meet the federal ELG guidelines. Doug says we will discuss more this afternoon.

18. Jeff Kelble said the new language to clarify "evidence to the contrary" is a breath of fresh air, and is really needed.

Lines 708-719

19. Jeff Kelble noted that BMPs are intended to work together. E.g. silt fences on slopes are intended to keep sediment out of sediment basins. Doug Fritz thinks that the language is adequate to prevent problems. Doug is OK with the language as listed in HANDOUT 2, but is willing to listen to new language.

20. Jeff Kelble is concerned that there will be a loophole created here when we get to the issue of protecting impaired waters.

21. Doug Beisch interprets this language as being additive to other standards and requirements.

22. William Bullard (DOD/Navy) thinks there could be a contradiction in interpretation, particularly where there is a sediment basin at the downstream end of the construction site.

23. Tanya Denckla Cobb suggested that language changes be submitted to DCR.

24. David Nunnally said he thinks this permit is the wrong place to get the E&S standards straightened out. He thinks there should be a simplifying and clarifying statement put in here that says if the plan and site are in compliance with the E&S standards, they meet the criteria for this permit. Doug Fritz thinks the local program plan approval process has led to problems. Barbara Brumbaugh agrees with David Nunnally and thinks the "evidence to the contrary" language is good. In Chesapeake the inspector is generally not the same person who approved the stormwater and E&S plans.

25. Doug Fritz noted that items in yellow in this handout are verbatim from federal effluent guidelines.

26. Jeff Kelble likes the idea of defining the "evidence to the contrary." He wants to ensure that we don't create another level of interpretation that has to be worked out in the field, "Because things never get resolved in the field."
27. Jeff Kelble is in favor of putting numeric limits in the permit to ensure compliance with water quality standards, although everyone else seemed to think this suggestion is out of reach for this permitting process.

## Lunch Break

### 1:00 Implementing the Federal Effluent Limitation Guidelines (ELGs)

Doug Fritz facilitated a discussion on how to incorporate ELGs into the permit.

SEE HANDOUT 2, Virginia Administrative Code

Lines 489-499

28. This language is straight from the federal guidelines (in yellow).

Lines 529-531

29. We need to watch for inconsistency with other parts of this permit.

Lines 622-626

30. Pulled straight from Part II of the permit.

31. Permittees will need to mark (at the site) those areas that will not be disturbed.

32. If natural buffers cannot be maintained or are not in place, Doug Fritz asks, "What is the equivalent treatment that can be done."

Lines 663-786 regarding buffers

33. Yellow highlights are straight from federal guidelines.

34. David Nunnally noted that eastern part of Virginia is subject to CBLAD regulations, so buffers are already addressed in CBLAD—so we have different standards for different parts of the State. Doug Fritz acknowledges the situation, but CBLAD was promulgated ahead of this regulation.

35. Doug Fritz is looking for language suggestions here. Particularly regarding who should be able to determine if a situation is "infeasible." (He did not get many suggestions, probably because the draft language was so late being sent out.)

36. Doug Fritz wants to know if there is an applicable minimum standard that can be employed—he also cautioned that if we add language, it may go beyond what is required in the ELGs. Doug is not suggesting any particular approach, but is wondering how to move forward. For example, should the design engineer determine what is 'infeasible' or should that be up to the locality, or to someone else?

37. Barbara Brumbaugh thinks that it is not appropriate to have additional design elements in the SWPPP language of this permit. Design should be addressed in the SWM and E&S plans, not in the SWPPP. (The E&S and SWM Plans are part of the SWPPP.)

38. Jonét Prevost-White (City of Richmond) suggested moving these requirements (lines 692-704) to a more appropriate portion of this permit (such as where there is currently no specific language).

39. Barbara Brumbaugh does not like the term 'design' in this portion of the permit because it implies some sort of review and approval process. John Paine suggested using the term 'provisions' instead of 'design'.

Line 697

40. John Paine suggested changing "maximize stormwater infiltration" to "minimize stormwater runoff" because the permit should not stipulate how to do this—infiltration is only one measure, infiltration may become unfavorable in the future under the Chesbay TMDL regulations, and (logically) infiltration is only one way to increase sediment removal. For example settling tanks and basins are other means. Doug Fritz reminded that this language is

*20 September 2012—DCR has not yet provided the official minutes from this meeting. When available, these meeting notes will be crosschecked with those minutes.*

straight from the federal guidelines. John said the change makes more sense than the federal language.

## **2:10 RAP General Questions**

41. David Nunnally asked for training from DCR on new water quality requirements related to this permit. John McCutcheon (DCR) said DCR is already planning on doing that type of training.
42. Ginny Snead wants comments from this committee by Wednesday, September 26, 2012 on the material provided to date. Comments are OK after 9/26, but there may not be enough time to process late comments in time for committee review. Track changes capability should be used in the Word Document (with comments and changes in the margins). Comments should be sent to Michael Fletcher with copies to Ginny Snead and Doug Fritz.
43. EPA has fact sheets, guidance documents, and federal register citations online at their web site.

## **2:15 Public Comment**

No one came forward to speak during the public comment item.

## **2:20 Next Steps, Next Meetings**

The next meeting dates for this CGP RAP committee are: 4 October 2012; 17 October 2012; and 1 November 2012. The next meetings will be in this same room (West Reading Room, Patrick Henry Building, Richmond).

DCR's Construction General Permit Information is now available online at <http://www.dcr.virginia.gov/lr4.shtml>. (This address was listed incorrectly in prior documents.)