

**Virginia Department of Conservation and Recreation
Public Hearing on Proposed General Permit for Discharges of Stormwater from
Construction Activities Regulations
(4 VAC 50-60-10 et seq.)**

December 10, 2008 in Williamsburg, Virginia

Meeting Officer: Christine Watlington
Policy and Budget Analyst
Department of Conservation and Recreation

Opening:

Ms. Watlington: Good evening, I would like to call this public hearing on the Virginia Soil and Water Conservation Board's proposed General Permit for Discharges of Stormwater from Construction Activities Regulations to order. I am Christine Watlington, Policy and Budget Analyst for the Department of Conservation and Recreation. I will be serving as the meeting officer this evening. I welcome you to this hearing.

I would like to thank the City of Williamsburg for allowing us to use this facility.

Introduce DCR Staff assisting with the meeting.

With me this evening I have Eric Capps, DCR's Erosion and Sediment Control and Stormwater Permitting Manager, and Ryan Brown, our Policy and Planning Assistant Director, who will serve as our technical presenter. This meeting will be recorded.

I hope that all of you have registered on our attendance list. If not, please do so. Those wishing to speak should note that on the attendance list. Please also make sure that your contact information, including your name and address, is legible and complete as we will be utilizing it to keep you informed on the status of the regulatory action.

Purpose of the public hearing:

The purpose of this hearing is to receive input from interested citizens on the Board's proposed General Permit for Discharges of Stormwater from Construction Activities during the 60-day public comment period which closes on December 26th.

The Department used the participatory approach to develop the proposal. Following the publication of the Notice of Intended Regulatory Action regarding these regulations in April of this year and the public comment period on the NOIRA, the Department formed a Technical Advisory Committee to assist in the development of the proposed regulations. The TAC

included representatives from localities, consulting firms, environmental organizations, state agencies, colleges and universities, planning district commissions, and federal agencies. The TAC met three times during the months of July, August, and September. Following the completion of the TAC's work, the Soil and Water Conservation Board proposed these regulations at its meeting held on September 25, 2008. Copies of the proposed regulations are located on the table near the attendance list.

It is of note that there are two other regulatory actions currently being undertaken by the Soil and Water Conservation Board affecting the stormwater program. These are the actions to amend the technical criteria (including water quality and quantity), to establish criteria for locality-administered stormwater programs, and to amend the fees associated with the stormwater program. These actions will be subject to a later public comment period and separate public hearings will be held on them in the future. Today's General Permit action will not implement any of the provisions of those regulatory actions.

This concludes my introductory remarks. I would like to introduce Ryan Brown, DCR's Policy and Planning Assistant Director, who will explain in more detail what the proposed regulations do.

Mr. Brown: Thank you Ms. Watlington.

This regulatory action amends the General Permit for Discharges of Stormwater from Construction Activities. This action is necessary, as the existing general permit is good for 5 years and is set to expire on June 30, 2009.

All Virginia Stormwater Management Program permits, including this draft General Permit, are composed of terms developed pursuant to the greater body of stormwater regulations. As Christine noted, as the current regulatory processes to amend the technical criteria (Part II of the regulations, including water quality and quantity), local stormwater management program requirements (Part III), and fees (Part XIII) associated with the VSMP program are not final, the provisions of these proposed regulatory actions will not be implemented in this General Permit. We are aware that there may be some confusion over this point; I would note that a handout is provided near the back of the room explaining the three different regulatory actions that are ongoing that will affect the stormwater program. The actions affected technical criteria (including water quality and quantity), local programs, and fees will be the subject of separate public comment periods and public hearings in the future, likely during the Spring of 2009.

Still, important updates are proposed to be made to the General Permit in order to enhance program administration and promote clarity for the regulated community. The key proposed revisions to the permit include:

- 1) Updating and adding needed definitions such as "control measure", "linear development project", "qualified personnel", "stormwater pollution prevention plan", "Virginia

Stormwater Management BMP Clearinghouse website”, and “minimize”. These new definitions are contained in section 10 and section 1100.

- 2) Specifying in section 1120 that this general permit shall become effective on July 1, 2009 and expire on June 30, 2014.
- 3) In sections 1130 and 1170, adding a statement that discharges to waters that have been identified as impaired on the 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under the permit unless they are addressed consistent with the terms of the permit, and that all control measures be protective of impaired waters.
- 4) Adding requirements in section 1170 that stormwater discharges from construction activities not cause or contribute to an excursion (i.e., a violation) above any applicable water quality standard, and that all control measures be employed in a manner that is protective of water quality standards.
- 5) Updates to section 1150 affecting the registration statement (i.e., application) for coverage under the general permit, including:
 - a. A requirement that a complete registration statement be submitted prior to “the issuance of coverage under the general permit that authorizes the commencement of land disturbing activities...”, and that the “operator of a construction activity is authorized to discharge...only upon issuance of coverage under the general permit...” Currently, land disturbance is permitted to begin upon submittal (usually, mailing) of the registration statement; this new language changes that practice to require that coverage under the permit actually be issued by the Department prior to the time that land disturbing activities begin.
 - b. A requirement that current permit coverage holders reapply for coverage under this new general permit by July 1, 2009. As the current general permit will expire on June 30, 2009, there are only two options in order to ensure continued coverage for active projects—either the existing general permit must be administratively continued, or all permit coverage holders must receive coverage under this permit. As either process requires reapplication by current coverage holders, and as it is believed that changes to this draft proposed permit will not detrimentally affect active projects, it is proposed that all projects receive coverage under this draft proposed permit.
 - c. A specification that only one construction activity operator may receive coverage under a single registration statement.
 - d. A requirement that each registration statement note direct discharges to any receiving water identified as impaired on the 2006 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL WLA has been established for stormwater discharges from a construction activity.

- 6) Updates to the notice of termination referred to in section 1160, which ends permit coverage and becomes effective at midnight on the date that it is submitted (previously, it had been effective seven days after submission).
- 7) Updates in section 1170 to the requirements for and contents of a Stormwater Pollution Prevention Plan (SWPPP) for the construction site, including:
 - a. A requirement for the SWPPP to be made available to the public. Access to the SWPPP could be arranged at a time and location convenient to the operator (permittee), but no less than twice per month and during normal business hours.
 - b. A direct requirement that all operators implement an Erosion and Sediment Control plan for the site in accordance with the Erosion and Sediment Control Law and Regulations. Previously, the SWPPP had been required to address Erosion and Sediment Control through specific language in the permit; however, as a practical matter, operators simply followed their approved E&S plans. This change aligns the permit language with that practice.
 - c. Clarification that water quality and quantity requirements must be met by the operator. Under the current permit, there has been confusion at times as to whether or not water quality measures are required on every site statewide. The draft proposed language makes it clear that water quality is required on all sites.
 - d. The addition of an option for inspections of the site to be conducted every seven days by the operator. The operator can still choose the current inspection schedule of every 14 days and within 48 hours following a runoff producing event if desired.
 - e. A requirement that the operator report if there has been any correspondence with federal officials regarding endangered species on the site, and a description of any measures necessary to protect such species.
 - f. Requirements that TMDL wasteload allocations made to construction activities be addressed through the implementation of control measures and strategies contained in the SWPPP.
- 8) Again in section 1170, general updates to the basic Conditions Applicable to All VSMP Permits section that appears in every VSMP permit.
- 9) The inclusion of new sections 1180, 1182, 1184, 1186, 1188, and 1190. These sections are direct copies of the currently-effective (again, not the proposed) Part II (water quality and quantity) of the stormwater regulations. When the version of Part II that is currently undergoing development becomes effective, it will repeal the existing Part II. This would mean that all permittees at that time would then immediately become responsible for meeting the new Part II requirements, even though their plans were developed to meet the existing (currently effective) Part II requirements, and even though construction of the project under those plans may be well underway. In order to avoid that inequity, the permit specifically references the water quality and quantity requirements of these copied sections, which will prevent the changes to Part II from affecting persons holding

coverage under this general permit. A new general permit will then need to be developed to incorporate the changes to Part II on a going-forward basis for new projects.

- 10) Updates to forms associated with the General Permit, including the registration statement (DCR 199-146), notice of termination (DCR 199-147), transfer form (DCR 199-191), and permit fee form (DCR 199-145).

This concludes the summary of key provisions contained in the proposed regulations.

Ms. Watlington: Thank you Mr. Brown.

Before we begin receiving testimony on the proposed regulations, I would like to stress that this is an information-gathering meeting. Everyone wishing to speak will be heard. If necessary, we may ask speakers questions concerning their testimony or request additional information concerning a subject believed to be important to the process in order to help the clarify and properly capture your comments. Staff will be available after this hearing to take any individual questions you may have.

PUBLIC COMMENT PORTION

We will now begin the public comment portion of the hearing. When I call your name, please come to the front and use the podium. Please state your name and who you represent. If you have an extra copy of your comments, we will be happy to accept it. The first person I will call is Robert Duckett.

Robert Duckett
Peninsula Housing & Builders Association

Good evening. I am Robert Duckett, Director of Public Affairs with the Peninsula Housing and Builders Association. I am speaking on behalf of our members tonight. Our Association is comprised of more than 450 member companies across the Hampton Roads region, employing approximately 11,000 people.

We wish to express our strong objections and concerns to parts of the proposed stormwater regulations.

Our members object to the proposed language that would require stormwater pollution plans to be available to the public. We strongly recommend that paragraphs 4 and 5 or Part B in Section II, referring to the public availability of stormwater pollution prevention plans, be removed. Requiring this document to be publicly available creates a hardship for the permit holder because it then necessitates that either a project manager or an engineer will have to spend valuable time in a public place answering questions about the pollution plan. These professionals are highly skilled and they need to be present either on the job site or working to provide the professional services that the job demands.

We agree that it is altogether proper to answer public questions on pollution plans, but that is the role of public agencies and not private employees. This requirement creates a financial and logistical burden on the permit holder while not providing any significant environmental benefit.

Supporters of this provision may say that making stormwater plans available to the public is necessary for citizen enforcement of the general permit. This is not quite right. The staff at DCR acts on behalf of all citizens of Virginia when it enforces regulations to ensure that only permitted discharges are allowed. Making stormwater pollution plans available to the public also, in our view, inserts DCR staff into controversial local land use decisions. We contend that this is not DCR's responsibility, and probably not your desire.

Our members also strongly encourage the Board to remove language that would require identifying all endangered species on a development site in the stormwater pollution plan. The stormwater pollution plans are designed to protect water quality. As listed in the regulations, the two purposes of stormwater plans are 1) to identify potential sources of pollution that might contaminate stormwater and 2) to describe control measures that will be used to minimize those pollutants. The listing of endangered species is a worthwhile goal but that's a worthwhile goal under the appropriate and separate state and federal regulations. Including the listing of endangered species here does nothing to accomplish the goal of stormwater pollution plans. It does nothing to either identify potential sources of pollution that might contaminate stormwater or describe control measures. We would ask the Board to delete the language at Section 2, Part D, paragraph 6.

At present, permit holders can rely on data from web sites to document rainfall and we encourage the Board to continue to allow permit holders the ability to do this. Under the proposed regulations, site rain gauges would be required and rainfall data must be documented. This increases cost and the cost would be passed on to home buyers and cause delay while not providing significantly more accurate data.

Finally, we would note that under the proposed regulation, there is no timeline to issue a permit. Conceivably it could take nine months or up to a year to obtain a permit. The proposed regulations also provide no recourse for the delay in issuing a permit. From our perspective, there has to be a some type of surety in that process.

Richard Costello
AES Consulting Engineers

Good evening, thank you for this opportunity. I'm Richard Costello, president of AES Consulting Engineers, a regional engineering firm that does work for general developers.

These regulations have good and bad and I will speak to the bad tonight. I see these regulations as not being business friendly and having what I call on many occasions a dance on the table prior to getting approval. They place responsibilities on operators for certain items that they can't control.

I also disagree with the plans being available to the public. My firm deals with the public a lot through planning commission meetings, boards of supervisors, and city council meetings and there are many technical things, that I hate to say, ordinary citizens do not understand and I believe you are marching these plans into the same arena where people, the general public, will not understand what is going on. I believe the general public will believe that these regulations stop sediment and pollution leaving the site, which we all know when there is a major storm like Hurricane Isabel or Floyd, sediment does leave the site. These sediment and erosion control measures are not guarantees, but a reasonable way of stopping most sediment from leaving the site.

I am also worried about changes. We currently have sites where, once construction gets underway, the field inspectors from localities often want changes. Once you stop the project, the developer and engineer get caught between dueling bureaucrats. I don't see what this accomplishes except more delay and cost for business. I see that other state agencies receive plans without review. This agency seems to be going backward in holding permits until a notification of coverage is received. This has not been done in the past unless there are a lot of documented abuses. I can't see a reason to enact this regulation. I don't see in many cases where this delay and extra cost is benefiting anyone.

Henry H. Stephens

My name is Henry Stephens, and I represent myself, but in the spirit of full disclosure I am a land developer and builder. At this point, I have several active permits and I have several points that I wanted to point out.

First is the issue of reapplying for permits as of July 1st. I have active permits and to the best of my knowledge we have not had any problems with them. The issue is that if we have to reapply we are reapplying under a new set of rules. If those rules require changes, in some cases, that may be very difficult to do. Projects are nearing completion, the facilities and controls were developed in good faith under existing rules. We need some method, and I am sure there is a way for the grandfathering of existing permits, so that those permits are automatically extended as long as they are active. I can understand that if we cease operations and come back wanting to do something else in the future we should meet the rules at that time. Just the structure of the facilities that we've built is often times difficult to change and we would not be able to meet them. Rather than taxing your staff by going through and reviewing all of these changes and trying to figure out what the exceptions are, it seems to me that the simplest and best thing to do is take existing permits and automatically provide a way to extend them under the rules which they were issued.

Secondly, I will echo a little about the endangered species provision. Nobody wants to protect endangered species more than me, particularly since most of the endangered species are probably the builders and developers in this economy. We already go through an endangered species assessment for all the other agencies. And while it is simple to say if you are already doing it just

file it with us; it just becomes another layer of paper and it doesn't seem to me that it serves a purpose in a stormwater permit to add that.

I realize you are in the process of reviewing more technical changes, and that's not the purpose of this hearing. I do want to mention the fact that when one is trying to look at ways to protect the environment from degradation, it seems to me that with the limited amount of dollars you have available you have to prioritize. There are not enough dollars to do everything and the priority needs to be placed on the areas where you get the most bang for your buck. At this point as you look through these technical changes, the real bang for your buck in cleaning up stormwater runoff as it pertains to the waters of Virginia is in looking at sewage treatment plants and agricultural activity. Modest changes, dollars spent and regulating runoff from farms and fertilizers would have a much more dramatic effect than applying another more detailed, more stringent regulation on an industry that's fairly well regulated now in this regard. It is likely if we keep going in this direction at some point the best policy for cleaning up the Chesapeake Bay will be for us to develop every acre of farm land that's left because we would be controlling runoff at such a greater extent than the farms; we would actually be reducing pollution from farming activity by developing it. I don't think we need to get to that position.

Finally, couple of people pointed out public access, I don't object to the public coming and talking to me about what I'm doing. We are very open and try to have an open dialogue with the public in all our projects. However, putting in a requirement that we have routine and open inspection of plans that are technical in nature where we have to have someone available to explain what they mean is really not the right place for that. All these plans are available at the localities and if people need to take professional time to review the plans, then the plans need to be reviewed at the locality rather than putting the burden on the developer to have an engineer available to go through plans or have someone come to my office and have me try to go through it

I appreciate your time and support the idea of the new regulations and think we need to stay on top of cleaning up the environment, but we need to do it with some balance.

Ms. Watlington: That completes the list of those individuals who signed up to speak. Are there other individuals who would wish to comment or leave written remarks?

Closing:

Ms. Watlington: A handout is provided on the table outlining the public comment submittal procedures I am about to cover.

Persons desiring to submit written comments pertaining to this notice and this meeting may do by mail, by the internet, or by facsimile. Comments should be sent to the Regulatory Coordinator at: Virginia Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219. Comments also may be submitted electronically to the Regulatory TownHall. Or comments may be faxed to the Regulatory Coordinator at: (804) 786-

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(4VAC50-60-10 et seq.)
December 10, 2008
Page 9 of 9

6141. All written comments must include the name and address or email address of the commenter. In order to be considered, comments must be received by 5:00 PM on December 26, 2008.

With that announcement, I would like to thank each of you for attending this meeting and providing us with your views and comments. This meeting is now officially closed. Staff will be available afterwards to take any individual questions you may have.

I hope that everyone has a safe trip home.