

**General Virginia Stormwater Management Program (VSMP) Permit for Discharges
of Stormwater from Construction Activities (4 VAC 50-60-110 et seq) [Part XIV]
Regulatory Advisory Panel (RAP)
Thursday, October 4, 2012, Meeting #3
West Reading Room, Patrick Henry Building, Richmond, Virginia**

Regulatory Advisory Members Present

Phil Abraham, Virginia Association of Commercial Real Estate
Doug Beisch, Williamsburg Environmental Group
Barbara Brumbaugh, City of Chesapeake
Will Bullard, U.S. Navy/Department of Defense
Pat Calvert, James River Association
John Fowler, Chesapeake Bay Foundation
Normand Goulet, NVRC
Jenny Johnson, Joyce Engineering
Jeff Kelble, Shenandoah Riverkeeper
Roy Mills, VDOT
David Nichols, Town of Bridgewater
David Nunnally, Caroline County
John Paine, Hampton Roads PDC
Jonét Prévost-White, City of Richmond
Mike Rolband, Wetland Studies
Mike Toalson Home Builders Association of Virginia
Cabell Vest, Aqualaw, VAMSA

Facilitator

Tanya, Denckla Cobb, Institute for Environmental Negotiations

Agency Staff Present

Michael Fletcher, DCR
Doug Fritz, DCR
Drew Hammond, DEQ
Kevin Landry, DCR
Craig Lott, DEQ
Charlie Lunsford, DCR
John McCutcheon, DCR
Liz McKercher DEQ
Joan Salvati, DCR
Gerry Seeley, DCR
Ginny Snead, DCR
Burt Tuxford, DEQ
Michelle Vucci, DCR

Christine Watlington, VDOT
Matt Gooch, Office of the Attorney General

Others Present

Chip England, Hanover County
Ian Frost, EEE Consulting
James Ericson, Dominion
Jack Frye, Chesapeake Bay Commission
Lee Hill, Joyce Engineering

Welcome and Introductions

Ms. Snead welcomed members to the 3rd meeting of the RAP.

Regulatory Action Overview, Committee Charge, and Regulatory Timeline

Ms. Snead gave the Regulatory Action Overview, Committee Charge and reviewed the Regulatory Timeline. This information is provided with the previous meeting minutes.

Consensus Building

Ms. Denckla Cobb reviewed the process of consensus. She said that the goal was to give an opportunity for all to participate.

Ms. Denckla Cobb said that following the last meeting she had conversations with staff and members of the RAP regarding their concerns with the definition of consensus.

Ms. Denckla Cobb said that the basic definition of consensus was as follows:

- Everyone can live with the final agreements without compromising issues of fundamental importance. (3)
- Individual portions of the agreement may be less than ideal for some members, but the overall package is worthy of support. (2)
- Participants will work to support the full agreement and not just the part they like best. (1)

Ms. Denckla Cobb said that the intent is to have member agree to live with decisions and not work actively outside the process. She said that if consensus testing was done and there was a section a member could not agree to they should indicate that with a "1." That would mean there is no consensus and more discussion may be warranted.

TMDLs – DEQ Presentation

Liz McKercher of DEQ gave a presentation regarding the Total Maximum Daily Load (TMDL). A full copy of Ms. McKercher's presentation, as well as other materials for this meeting, is available at: <http://dcr.virginia.gov/lr4.shtml>

Presentation Outline

- Definition and background
- TMDL development process
- Incorporating Construction Stormwater Discharges: Past and Present
- TMDL-Stormwater Universe in Virginia

Presentation Goal: Provide the RAP with sufficient information to construct regulatory language.

TMDL

- Maximum load of a specific pollutant that a water body can assimilate and attain water quality standards
- Includes a wasteload allocation (point sources), local allocation (non-point sources) and a margin of safety.

Regulatory Basis

- Federal Clean Water Act, Section 303(d)
 - List impaired waters, develop TMDLs
- 40 CFR Section § 130.7
 - Water Quality Planning and Management
 - TMDLs shall take into account critical conditions for stream flow, loading and water quality parameters
- Code of Virginia
 - §62.1-44 15 (10) & (23) and §62.1-44, 19:4 and 19:8
- Water Quality Management Planning Regulation (9 VAC-25-270)

- 40 CFR '122.44 (d)(1)(vii)(B), "Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both are consistent with assumptions and requirements of any available WLA for the discharge prepared by the State and approved by EPA pursuant to 40 CFR '130.7."

"Benthic" TMDL

- Benthic Impairment
 - Water body not fully supporting its uses due to water quality violations of the general aquatic life (benthic) standard.
- Aquatic Life Standard

- Based on the aquatic, benthic (or bottom-dwelling) macro invertebrates (organisms without backbones that can be seen with the naked eye) that form the foundation of a stream's food chain.
- The aquatic life water quality standard states that all state waters should support a healthy and diverse community of bugs and fish.

TMDL Development

- Model framework:
 - General Watershed Loading Function (GWLF) or Hydrologic Simulation Program Fortran (HSPF)
- Source Assessment:
 - Quantify Construction Storm Load from permits queried and stakeholder input
- Waste load allocation

TMDLs: Then

- Construction loads – not clearly distinguished as a point source (~2004)
- Future activities not explicitly discussed

TMDLs: Now

- Identify Construction Stormwater as a point source
 - Some TMDLs aggregate the construction load with that of the MS4
- Allow for future growth in Construction Stormwater permitted activities (~2011)
- Differentiate between in-stream loads and land-based
- Often differentiate between activities within and outside of MS4 boundary
- By 2011, 48 TMDLs for sediment, 9 for Phosphorus, plus the Bay watershed

Example WLA – Developed Area

- Many point source permits listed
- Some point sources given an individual WLA (e.g. waste water treatment plant)
- Others given an aggregated WLA by source category (e.g. construction)

TMDL Universe for Construction Stormwater

- Benthic TMDL Watersheds Sediment, Nitrogen, Phosphorus, including TSS for the Chesapeake Bay
- Local watershed TMDLs in Virginia where the equation address TSS and TDS have addressed mining sources
- pH TMDL studies to date result in recommendation for swamp waters designation, or there are co-pollutants

Mr. Toalson asked if DEQ had developed a database, mapping or other material that those doing construction can reference with regard to the location of TMDLs.

Ms. McKercher said that DEQ produces a map every two years that shows the TMDL boundaries.

Ms. Snead said that the intent was to work a GIS layer into the ePermitting system.

Mr. Rolband said that the industry and consultants need access to that map. He said that there also needed to be clear instructions regarding what to do in the SWPPP. He said that post construction had not been mentioned.

Ms. Snead said that would be a separate conversation. She said that this RAP was dealing only with what was in the permit going forward.

Mr. Toalson said that if the parameters cannot be defined, they should not be in the permit.

Mr. Beisch said that more specific guidance was needed.

Mr. Toalson asked if individual notice was given to landowners with regard to TMDLs.

Ms. McKercher said the notification process was different for every TMDL.

Mr. Fritz said that the purpose of this RAP was to specifically look at construction activity. He said that the purpose was to develop the requirements for the general permit.

Mr. Rolband suggested that DEQ or DCR provide a bulletin to local governments and industry to outline where they could review this information.

Ms. McKercher said that she would be available to come to future meetings for further discussion.

At this time, the committee recessed for lunch.

Federal Effluent Limitations (ELG) Draft Language

Mr. Fritz reviewed the draft language. A copy of the draft is available from DCR. He noted that on the draft, the sections in gray were not considered a part of the ELG.

Mr. Fritz said that the intent was to clarify what was already in the regulations.

Mr. Fritz turned to Line 489. Prohibition of non stormwater discharges. He said that this language was from the federal ELGs.

Ms. Hammond asked if equipment washing was excluded for a specific reason.

Mr. Fritz agreed to review that section. He said that he hoped to have a final draft within the next week.

Mr. Fritz noted that on line 607 the VSMP authorities needed to be included in the plan.

Mr. Beisch said that some of the language was both too inclusive and exclusive. He said that some of the areas protected do not apply to state or local activities.

Mr. Rolband said on Line 629 that he was concerned that steep slope was not defined.

Mr. Bullard said that it was important to make sure that definitions clearly applied to federal activities. He said that a reference to local zoning would not be addressed at the federal level.

Mr. Nunnally said that he was not concerned about dealing with steep slopes. He said that he was more concerned from a regulatory standpoint that someone would disagree with the locality definition of steep slope.

Mr. Bullard suggested that the language say “any slopes deeper than” a certain amount.

Mr. Fritz agreed to review this section. He said that the idea was that steep slopes erode and have the potential to cause more pollution into the receiving water.

Mr. Fritz said that he would review the language.

Mr. Nunnally said that opportunities to get water back in the ground had been lost because they were told not to look at upstream water coming into a ditch.

Ms. Denckla Cobb noted that there should be flexibility at the local level.

Mr. Nunnally asked what was the local role with regard to the PPP.

Mr. Fritz said that was still being discussed with staff. He continued with the review of the language.

Mr. Rolband said that he thought the language on lines 754-757 would create a lot of paperwork but not have significant benefit.

Mr. Fowler asked what was intended by the word protection on lines 749-751.

Ms. Brumbaugh noted that on line 757 that there should be a reference to state fire codes. She said that most localities adopt the state fire codes.

A member said that in #8, line 761 that the types of spills should be identified.

Mr. Kelble asked about the language on line 764-767. He asked if the operator was responsible for having the plan available.

Mr. Fritz said that the responsibility is with the operator. He noted that in some situations the subcontractors must also sign onto the permit.

Mr. Mills said that he was concerned this was an exercise that would do nothing to actually improve water quality.

Ms. Snead said that this language would be revisited. She asked for members to submit specific suggested edits.

Ms. Denckla Cobb said that she was hearing that DCR understands that documentation will be a sticking point and will be burdensome. Staff will review and attempt to address this concern.

ePermitting Presentation and QandA

Mr. Seeley gave an overview of the ePermitting process. He said that the program is still being developed and that an alpha version should be available soon.

Mr. Seeley said that ePermitting would be accessible through the DCR website.

Ms. Brumbaugh asked about a situation where the locality was going to retain their current fee structure. She noted that they would not be in the system.

Mr. Seeley noted that the public will have access to data reports but not able to directly access the system.

Mr. Nunnally said that he did not see why DCR needed to track the local inspection when the locality is responsible for the site.

Ms. Snead said that was a requirement from EPA.

Ms. Denckla Cobb suggested that language be submitted regarding tracking the inspections.

Public Comment

There was no public comment.

Next Step/Next Meetings

The next meeting was set for October 17, 2012.