

VWP General Permit TAC Meeting Notes
September 30, 2005

Attendees:

John Bailey, Lynwood Butner, Rene Hypes, Catherine Harold, Bettina Rayfield, David Mergen, Sam Hollins, Todd Herbert, Tracey Harmon, Bruce Williams, Tony Watkinson, Pat O'Hare, Brenda Winn, Robin Wilder, Beth Sprenkle, Andy Zadnik, Mike Rolband, Bert Parolari, Tony Cario, Ricky Woody, Joan Crowther, Dave Davis, Ellen Gilinsky

Introductions and Review

Perennial/Nonperennial Designations/Thresholds

- General concurrence to change language to stream bed for WP1 (review)
- For WP2, 3, and 4 was still in question after the last meeting.
- Make terminology in Sections 50 A1 and A2 consistent, which would increase the total authorized acreage
- Harmon – Intent of TAC was not to include the acreage of stream in the 1/10 acre total. Would like interim guidance to change this back.
- Hypes – needs to know what type of stream it is (perennial/nonperennial) for NHR considerations. For example, they wouldn't request mussel survey for intermittent streams.
- Harold – we could still require it (distinctions between perennial/nonperennial) as an informational requirement. Information is also needed because stormwater ponds in perennial stream are not authorized under GPs.
- Williams – SPGP didn't want to argue about intermittent or perennial but it is a case by case basis, if determination is needed.
- Complete application requires Cowardin Classification.
- Mergen – from local perspective, there is a lot of coordination from City to make the original determination, there are a lot of implications.
- Wilder – she has classified 80% of streams as intermittent or perennial in Henrico County, and she is seeing some permits where DEQ has called it differently.
- Gilinsky – changing this would get us out from the argument.
- What about for mitigation purposes (perennial/nonperennial)?
- The stream assessment manual will handle in kind mitigation in guidance.
- Gilinsky – there is no ecological benefit to separating them out in the GP.
- Watkinson – what is the smallest stream that DEQ regulates? VMRC cuts their jurisdiction off at 5 sq. mi. drainage area. (note: DEQ does not have a drainage area cut off for jurisdictional purposes)

Thresholds

- Rolband – keep at 2,000 feet (consistent with SPGP)
- Gilinsky – only difference between GP and IP is formal public comment

- Rayfield – GPs also have the perception that they are minimal impacts, less Avoidance & Minimization
- Hypes – concern of the perception of minimal impact. Leave as is, not separating.
- Rolband – doesn't matter on a workload standpoint, Likes 2,000 lf included in acres.
- Harmon – 2,000 stream limit not counting toward acreage, VDOT had 4 projects that was between 500-2000 for perennial streams.
- Cario – if you raise it up people will aim for that limit to get the GP
- Parolari – Our staff thinks that 2000 feet of perennial is not a minimal project. We are losing agency review and but what are we gaining?
- Gilinsky – we want one number that is protective of the environment but not a regulatory burden.
- Crowther – DEQ does look at A&M on GPs and even impacts <1/10 acre.
- Zadnik – Can DEQ change conditions of general permits? (Note: DEQ can add conditions to the GP as long as they are not in conflict with standard conditions)
- Gilinsky – can not change conditions. More locked in than IPs.
- Bailey – Utility perspective – comments on single and complete: If all impacts were to be considered cumulative, then they need more than 300 lf. They also use NW 12.
- Watkinson – Impression of what the GP is for and what it does. No public notice, times for review, establishes minimum conditions. Administrative review suggests beefing up purpose statement in regs.
- Rolband – DEQ has ability to change it to IP from GP.
- Parolari – doesn't want to see GPs with a lot of special conditions, and if it needs that then it should be an IP
- Zadnik – then it says that a 2,000 lf is a minimal impact?
- Gilinsky – disagrees that a GP is minimal impact. Public rarely comments when given a chance.
- Zadnik – it is the agencies responsibility to protect the environment. Recommends 500 lf.
- VIMS recommends 500 lf.
- Harold – looked at code and regs. They don't speak to thresholds as a minimal impact, but rather the GPs reflect categories of activities.
- Butner - From user side, they are not seeing GP as minimal review. We need uniformity in definition.
- Parolari – conceptually he thinks we can agree, but from personal experience that it should be as much review because it is a GP. Beef up the purpose section of the regs.
- Cario – agrees! Majority of projects don't have additional A&M after application, they use it as a target.
- Gilinsky – use this as a target of 500 lf. Increase in fees. No environmental benefit.
- Herbert – suggested 1,500 LF
- Hypes – recommends that there be no change at all.

- Harold - 20 permits in 2 years (except VDOT) whereby perennial impacts fell between 500 LF and 1,500 LF
- Zadnik - No better way to A&M.
- O'Hare – as long as we can elevate GPs to IPs then the threshold is not as important.
- Rolband – There is a perception that there are not enough resources to handle the workload. There could be a backlash against the program.
- Harold – loss is due to fill largely from expansive parking lots and development complexes
- Watkinson – what is the function that is lost?
- Rolband – degraded streams in agricultural areas are the typical impact. Some residential.
- Harold – Agriculture is not the situation state wide. Unlike with wetlands that can be compensated with replacement elsewhere (PC cropland), the stream is lost.
- Gilinsky – Talked with Ann Jennings, who is not present, but she agreed we should get rid of the distinction between perennial and intermittent. Ann was not asked about the threshold limits

Section 50 A2

- Harmon - count acreage of wetland separate from stream length.
- No one has argued to include them together.
- VIMS – they should be the same

Section 60 #1

- Consider adding new language to include assessment of impacts to T&E species
- Gilinsky - DEQ is required to review this anyway themselves (conduct db search)
- Hypes – Acknowledges that there are tight timeframes for GPs
- Parolari – we do it within the timeframes, onus is on DEQ to address this issue.
- Bailey - Applicants do it ahead of time. System works as is.
- Williams – Corps staff looks at it themselves and there doesn't seem to be a problem.
- Zadnik – Perhaps include a paragraph to encourage coordination. (note: This could be added in Section 50C).
- VIMS – save staff time concern for thresholds (extra permits for lowered thresholds), why don't we just have applicants do it.
- Cario – something to encourage in JPA.
- Watkinson – add informational requirement and shelf life on information.
- Parolari – each fact sheet must supply a finding of fact. DEQ must review data anyway.
- Harold – leave as is.

Section 60#2

- Consider adding a maximum period that a permit can remain suspended i.e., 1 year.
- Parolari – give support to this.

- Harold – sometimes there have been overlapping applications when the old application hasn't been withdrawn
- Parolari – permit writer has 15 days to review, but applicant may get the response back within 1 day or 2 years and DEQ still has to review within 15 days.
- O'Hare - wants a 6-month tickler that the drop dead date is coming.

Section 60#3

- Recommendations for any changes in requirements for conceptual stream mitigation.
- Harold – Questioned Michael Keeler (DEQ) and no changes needed.
- Really no change is needed here.

Section 60#4

- Reporting only, need for location map.
- Gilinsky – no need for USGS topo specifically (although preferred), just a location map
- Harmon – DEQ gets the latitude and longitude, why is a map needed?
- Rayfield – would like to have #11 (project plan view) included for <1/10 acre projects.
- Williams – they would not have a confirmed delineation for <1/10 acre.
- Cario – DEQ doesn't require confirmed delineation for <1/10 acre.
- VDOT does not have drawings for <1/10, sometimes there are standards.
- Gilinsky – agrees full plan view sketch, is too much
- Parolari – Need some type of documentation verifying project impacts are less than 1/10 at least for projects other than VDOT. If we are not comfortable with impacts and we want documentation, we can't get it.
- Mergen – You can't move forward without authorization.
- We need to think of the minimal data set to ensure it is <1/10.

Notice of planned change – Section 80

- Consider increasing lf of stream to more than 50 lf for submitting notice of planned change.
- VDOT supports that.
- Crowther – such a small increase, requires stacked permit, with new coordination.
- Williams – These types of changes are usually time sensitive for the permittee.
- Rolband – Three specific examples where this may come up: Stream channel may have moved since time of delineation (erosion), running water line under riprap for outlets but Loudoun County needs to have it outside of riprap, encouraged to use conspan and county and VDOT gets concerned about scour problem.
- Parolari/Cario – not a real problem in TRO or PRO
- Cario – thinks the ¼ acre wetland limit should remain as is.
- Rolband – 100 or 200 lf would be preferable .
- Harmon – has had a problem with these situations that arise, so an increase would be supported.
- Rolband – NOVA has highly erodible soils and changes happen more often there.

- Gilinsky – DEQ wanted to provide for a legitimate change in plans but to discourage piece-mealing. Use should be limited to changes directly related to project that was permitted.
- Woody – For VDOT he recalls this provision was created originally to address erosion control matting.
- Crowther – it will be mitigated for so as long as they don't go above threshold.
- Rayfield – Can we deny a request for notice of planned change?
- Parolari – it says if 'they deem necessary' not if DEQ agrees.
- Hypes – do you review T&E again? (Note: VWP permit manual states that T&E databases do not need to be reviewed prior to approving a notice of planned change.)
- Hypes – to protect resource may need to review for T&E spp again depending on extent or change location.
- Gilinsky – impacts should be related to original impacts, within original project boundary.
- Parolari – subsequent to the permit, an adjacent parcel was purchased and included in the project. The new project was not under the original review. Also they could change the entire purpose. Speculative permits.
- O'Hare – just allow up to the permit limit.
- Zadnik – Then they can go from 100 to 1000 lf.
- Gilinsky – 1000 LF would be too much, piece mealing too prominent. We'd be doing the full review for no permit fee. Perhaps remove size but say DEQ doesn't have to approve request.
- Parolari – there are legitimate changes but there is also the other case. The intent of the general permit was not to permit a concept and then to have to change the permit after final design.
- Williams – (asked by Ellen) – SPGP – most things under SPGP and DEQ takes lead. If it's a Category 3, then there would be a modification.
- Gilinsky – would feel more comfortable if there was new language to protect against piece-mealing.
- Zadnik – reword it but keep limits.
- Rolband – increase to 200 lf.

Termination of authorization by consent

- Confusion of termination by consent and the notification that project is complete.
- Winn – They are different, in the permit it states that when the project is done, you notify DEQ, and then if the project is not done, you can terminate by consent.

Compensation

- A is specific to wetlands and B is specific to streams. Format change to a list in proposed revisions – more easy to read/understand.
- Harmon – does DEQ want to review sequencing to change from creation vs banking?
- Harold – restoration, creation, then banking.

- Gilinsky – can't change it in here because that would be against the main reg. We can't change this in the main reg because it is not administrative.
- Harmon – creation is often one of the last options (comment withdrawn)
- Harold – thinking of reiterating mitigation sequencing stated in requirements in main reg (that in-lieu is last)
- O'Hare – need to keep it to be a combination of options.
- Gilinsky – we need to match the statute.
- Rolband – might want to consider having an out of kind option.
- Parolari – it refers to the regulation so adding out of kind here is not necessary.
- Rolband – we may want compensation like floodplain pipes.
- Woody – if the applicant wants to debate mitigation they should get an IP.
- Rolband – D. Open water impacts – mitigate with open water, wetlands or streams.
- Harold – 95% of stormwater ponds are not properly designed.
- Parolari – fundamental problem with accepting stormwater pond for open water impacts. Man-made vs non man made is not an argument when it comes to function.
- Gilinsky – we don't typically require mitigation for open water. All options are on the table.
- Cario – don't typically require mitigation but it'd be nice to have some outline.
- Williams – retrofitted farm pond to BMP requires no mitigation.
- Parolari – in this instance its typically self mitigating – But TRO sees real open water impacts: 650 acres of open water impact (EIS on his desk). Mitigation has to optional. Keep language as is.
- Zadnik – why would the filling of farm pond not require mitigation?
- Rolband – his experience is that they have to mitigate for open water either with open water or emergent.
- Gilinsky – leave open water section as is.

Include HUC and Location Map in final mitigation plan

- Harmon – if its in the application , why does it need to be on the final plan
- Gilinsky – leave as is.

Sequencing

- Parolari – agrees it should be there. Preservation of wetland and upland buffer onsite that were avoided included as compensation should not be approved.
- Gilinsky – there are exceptions to this for the 'back 40' which is more than avoidance.
- Davis – has been discussed in joint subdivision guidance but that has not been completed.
- Rolband – they have gotten it in some cases, put the area in a separate parcel of land with buffers, and deed restricted, created park, and at 20:1.
- Williams – if someone goes to the extent of putting restriction then they should get some credit.
- Gilinsky – this belongs in guidance.

- Hypes - Preservation in sequencing – in main regulation.
- Preservation is a separate sentence in the main regulation – in conjunction with other mitigation forms. Need to add this as separate sentence after sequencing if that is added. [note from BW: this would only apply to WP2,3,4]

Definitions – Conversion

- Definition only defined conversion as forested to emergent.
- Harmon – the only type of conversion considered regulatory.
- Bailey – Dominion: they don't go to emergent. Gas and underground utilities: they need to go to emergent.
- Parolari – how can you say that going from PFO to SS doesn't alter the functions and values?
- Cario – DEQ acknowledges some difference in function in the mitigation ratios.
- Gilinsky – this is not “significant”, in IP it needs to be negotiated.
- Parolari - if there is no mitigation, then we should include it as an exemption, why go through a permit review.
- Crowther – surface water to another type of surface water. Forested to open water or stream to open water. We should take out and close the loophole.
- Woody – definition of conversion was needed for transportation and utilities.
- Hype – there is a change of habitat
- Rolband – WSSI has had request to cut down trees to protect habitat for a threatened species.
- Gilinsky – two different things: we want a statement for GPs but we don't want this to affect IP decisions. DEQ must develop guidance and when you'd want to develop

Definition of Phased Development

- Relates to Section 40 – Page 10 #21.
- To prevent a developer from coming in quick succession and it is not speculative.
- Gilinsky – requested O'Hare prepare definition.
- Rolband – look at COE regs. There are reasons that people can't permit them all together.
- Harold – delete section 30,a.2,
- Williams – we have a definition for this. The COE person gets it in writing whether it is cumulative.
- Cario – issue a GP for subdivision, and then a single home owner wants to fill in their lot, it's a different owner and would not be cumulative under our regs now.
- Person definition is in the statute.
- Rayfield - Can we change the definition of single and complete to eliminate person?

Can GP be used to authorize impacts to deed restricted wetlands?

- We don't have anything that says this.
- Watkinson – our permit doesn't invalidate any other document.
- Harmon – no reason a GP can't be used for this.

- VIMS – shouldn't be allowed for reporting only. And need to get double mitigation.
- Wilder – deed restrictions are the biggest problem. Need to be in HOA managed project.
- Davis – without HOA, who owns the lot with the wetlands.
- O'Hare – most developments require developer to borrow money and that requires a certain level of research.
- Harmon – check single and complete definition as compared to COE.