

VWP General Permit Technical Advisory Committee Meeting September 16, 2005

Attendees:

Catherine Harold, Tony Watkinson, Andy Zadnik, Tracey Harmon, Jay Roberts, Ron Burkhead, Lynwood Butnar, Carl Hershner, Bettina Rayfield, David Davis, Brenda Winn, Michael Rolband, Burt Parolari, Tony Cario, Beth Sprengle, Rene Hypes, Ricky Woody, Patrick O'Hare, Robin Wilder, Phil Abraham, Bruce Williams

- Introductions
- Role of the TAC
- 1, 2, and 4 expires fall 06, 3 expires August 1, 2006, Accelerated process, we'll try to meet the December WCB Meeting.
- NOIRA review [Note: NOIRA should have stated perennial and non-perennial (not perennial and intermittent)]
- June Board Meeting for Final Regs, then 30day comment period

Permit Thresholds

WP1 Section 50 – Issue: The threshold for WP1 is 125 linear feet of perennial stream however, Section 50 states that mitigation is not required until impacts = ½ acre + 300 linear feet.

- Harold - 145 Reporting Only's and 53 full permits.
- Rolband – He never uses WP1 since mitigation is more than WP4. It's the same amount of work to apply for WP1 or WP4.
- Cario – with <1/2 acre VWP doesn't push toward onsite or offsite mitigation.
- Harold - WP1 was mandated as a quick and dirty permit. No mitigation feasibility is required – You only go to bank or TF
- Rolband recommends combining
- O'Hare – doesn't know if we can combine it given the way the law is written
- Watkinson – change the thresholds or make WP1 for wetland only.
- Cario requests info on how often there has been creation for <1/2 acre vs going to bank. Rolband said he's done this but only for wealthy clients.
- Harold asked for comments regarding reducing the threshold to WP1 to 300 for all stream beds.
- All WP1's are applied for using JPA, so VMRC would still see the application.
- VDOT doesn't use WP1
- Rayfield suggested using WP1 as the reporting only permit.
- O'Hare – not compliant with law – it requires a ½ acre permit
- Cario – WP1 <1/2 acre of wetlands only?
- Rolband – Wetlands were the concern, and streams weren't really considered.
- Harold – 'Surface waters' definitions. Open water, wetlands, streams
- Harmon – Clarify that open water is not streams.
- Rolband – uses POW and 6.6 feet Cowardan classification. But NVO requires 1:1 mitigation for shallow water with OW mitigation.

- Harold – probably don't want to dispense with streams in WP1
- Rolband – streams vs streambed vs stream channel. For Ches. Bay Program intermittent and perennial is very important.
- Harold – very difficult to make distinction between intermittent and perennial. Would like to see the distinction eliminated.
- Roberts – Their region uses NC form and use regional biologist to help determine perenniality.
- Roberts - Need to grapple with stormwater pond in stream, current regulations prohibit ponds in perennial streams for GPs.
- Cario – PRO doesn't put much effort into making a determination. Rely on what submitted by applicant and rely on CBLAD regs and determinations
- Parolari – they need to determine not what it is or what it was. Was it a nonperennial stream that has been straightened?
- Rolband – for stormwater we should be consistent with county regulations. Perennial vs Intermittent.
- Wilder – agrees
- IP/GP, Stormwater, cost – all issues associated with this question
- Is open water acreage added to wetland acreage for ½ acre threshold.
- Harold – internal thought is to have the language be ½ acre of wetlands/open water and up to 300 linear feet of stream. Not: ½ acre surface waters including up to 300 lf.
- Rolband – keep consistent with stream bed (SPGP)
- Harold – Sounds like we don't have any opposition to the WP1 changes discussed.

Item # 2 Stream channel vs Stream Bed

- Harold thinks it (SPGP language) says stream bed.
- Butner- how is it currently defined.
- Harold- stream bed – OHW to OHW. Anything above this is not regulated. From a practical standpoint is make it the same.
- Rene H – what about ephemeral
- Rolband - it is regulated. Wilmington does not regulate ephemeral. Hume said that they regulate it. Bruce Williams said that they do it.
- VDOT questioned this.
- Harold – defined bed and bank with alluvial sediment would be field indicators.
- Harold - would like to see language that defines what we are talking about.
- Need clarification on COE call
- Tony – wants consistency among regulatory agencies.
- VDOT - asks for caution when defining a stream. Their concern is with making distinctions between ditches and streams.
- SPGP definition page 17, enumerated number 6, 2/3 way down in paragraph. DEQ is checking on federal definition in the federal definition.
- Lynwood B - requested we come up with a definition of stream or stream bed.
- Check Code of VA for definition.

- Text of 2002 NW permits:
 - Stream Bed: “The substrate of the stream channel between the OHW marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside OHW mark, are not considered part of the stream bed.”
 - Rene – what about ephemeral per this definition–
 - Rolband – no established channel, no stream. But it may be a wetland swale.
 - May consider altering definition of vegetated shallows.
 - Carl Hershner - Tidal wetlands streams are inorganic with high organic content. How critical is it to define its substrate. Definition says ‘may’ and that is enough. Consistency is important.
 - Consensus – to keep definition in ’02 NWP’s.
 - Rolband thinks we should add definition of OHW. Not in 87 manual. But we should be consistent with COE regs.

Extension of expirations. Can make it 10 years, and have interim TAC if necessary.

- Winn - we should extend it. Proposed minor water withdrawals GP – ten years.
- Watkinson saw no problem. We can open up the reg and only discuss one part of it, just like DEQ did last time and same with the Water supply TAC.
- O’Hare- subsequent changes doesn’t change previously issued permits.
- Parolari – We should extend to 10 years since if we extend to 15 and need to temporarily extend it, we can’t.
- Interim: covered under 130 G of main reg.

Issue #5 Single and Complete

- Rolband asks that we be consistent with COE on “single and complete” terminology.
- Burt P – says that COE isn’t always consistent, which makes it difficult to be consistent with them.
- Harold compared that whereas linear projects deemed to be a separate project for each crossing, development crossing are aggregated – is this fair.
- Rolband – developers will build a road that serves a lot of developments and then that developer builds development and one agency thinks they are separate and the other things they are connected.
- Rene H- Pointed out that different landowners and single and complete is a problem.
- Burt P says each linear foot of road has independent utility. We should NOT follow the COE just because they are the COE.
- Davis – definition of person comes into this.
 ** PARKING LOT ISSUE - SINGLE AND COMPLETE (may need to revisit this issue)

Raise GP threshold to 2000 LF to be consistent with COE

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- VDOT supports 2000 LF
- Homebuilders support 2000 LF
- Parolari - concerned since it is a jump from 500 lf of perennial stream to 2000 lf of stream.
- Harold - 5 projects fell between 500-1500 LF but NRO, TRO, and PRO did not respond.
- Watkinson – if you rarely get public comment then make it a GP.
- Zadnik – DGIF gets opportunity and ability to be more progressive.
- Rayfield - Resource agencies see all IPs, but only see GPs that have T&E spp hits.
- R Hypes – Concern that increasing the threshold to 2000 higher potential for impact to natural heritage
- Harmon – reg only cover's T&E
- Parolari – Corrected that VWP protects all wildlife resources.
- Harold - we could have guidance or regulation to have staff send any applications to DGIF/DCR-NH if there are impacts above a threshold limit
- Hypes – Concerned about the implication of a 2000 lf threshold – that it may be thought of that the impact is minimal.
- Butner – we won't finish this today. If it is such a small amount of permits coming in with perennial impacts between 500-2000 then we should make it a GP. It would be consistent.
- Parolari – gut concern - that if we do something that we think is streamlining really makes it really harder. For example with TOY you have to comply with ANY TOY restriction.
- Harold – There's already a time crunch now to issue GPs in 45 days.
- Rayfield – 2000 feet is up from 1500 and 500. 2000 gives the impression that it is a minimal project, that it requires less than review and less A&M, less mitigation.
- Watkinson – what kind of impacts are there, impoundments, crossings, channelization?
- Harold –VA has lost 100 miles of streams in the last 4 years. Much of this has been the complete obliteration due to streams being paved over by vast parking lots and incorporated into the storm sewer system.
- Parolari – we need to look at the data. The law does not require us to get a GP for a subset of data of how many permits we have.
- Harmon– streamlining was also a requirement. If development is the problem, then keep upper limit for VDOT.
- Harold – think about these issues for the next meeting (eliminating the distinction between perennial/nonperennial and use “streambed” and adjust the thresholds up or down i.e., 2000, 1,500, 1,000 LF). We can address in guidance or SOP for how T&E issues are reviewed
- Roberts – DEQ can decide if it is an IP or GP.
- Parolari - DEQ already has this authority to elevate projects to an IP.

- R Birkhead – Give us any number just a hard number. This would be confusing for regulated community.

Item # 3 Separate wetland and streams for acre threshold – Section 50 A1 and A2

- Winn remembers that the previous TAC intended to separate these.
- Zadnik – Clarification - 0.09 acre and 299 lf of stream impact would not require mitigation (correct)
- O’Hare – we need to keep track of impact <1/10 acre for no net loss
- Harmon – original TAC talked about reviewing VIMS data.
- Davis – if we change surface waters to wetland/open water and/or stream, we’ll need to check every reference to surface waters in the regs.
- Winn said we cannot use “and/or” in regs – suggests ___ or _____, or both.

Item #4 Compensation anytime you exceed either threshold.

- Roberts - we need to clarify this in the regulation.
- No other concerns/objections were noted.
- Roberts, Cairio and Parolari said their regions require mitigation of all impacts once thresholds exceeded

Item #6 – Coal Mining

- Winn - NW21 is now unconditionally certified. Did DEQ issue letter? DEQ should look into it. Did we issue the letter? We PN’d it.
- Zadnik – T&E is not a condition of DEQ’s certification.
- Davis – we handled state species in our MOA with MME.
- Zadnik and Hypes – Concerned that there is no condition for State listed T&E for NW’s
- Harold - We may need to change our certifications for NW to change stream reference and then we would then need to change the T&E omission.
- Winn – (after researching it) - NW21 is unconditionally certified and the letter was sent. We can eliminate coal from WP4. Section 20
- Parolari - What is the benefit if we change our certification?
- Harold – Leave it in – no harm in leaving it in.

Melding WP2 into WP4

Issues – Threshold for WP2 is 1 acre and for WP4 is 2 acres. Very little activity in WP2. We would have to create a whole new section in WP4. Limitations on WP4 when you impact histosols and phased development

- O’hare – what is the benefit
- Harold – we won’t have to maintain the reg.
- General consensus is to keep them separate
- Roberts – Most utility projects go to NW 12, doesn’t matter.

- Parolari - doesn't matter
- Ron Burkhead said that if the conditions don't change then he doesn't care.
- Harold – Leave WP 2 as a stand alone GP.

Agenda for September 30th meeting.

- TAC should submit comments on melding streams (perennial and nonperennial > “streambed” and on the upper threshold (2,000, 1500, 1,000 LF).
- Brenda may get to meld the changes into the regs by the next time. She may just go through all of them.

Stormwater Ponds in Perennial Streams

- Roberts - Exclusions for stormwater ponds in perennial streams – don't want to lose this current restriction. If we combine stream types then how do we handle that?
- Davis – omit exemption
- Rayfield – exempt ponds from all streams
- Zadnik – DGIF may need to know if it is a perennial or intermittent for surveys.
- Rayfield – we could ask for this (perennial or nonperennial) as an informational requirement and track it, but it wouldn't be that weighted for purposes of meeting thresholds for GP coverage.

End of Meeting