

CGP TAC Meeting 2  
Minutes  
2-16-2018

1. 880-1. Definitions –

- a. Identify “must”s and determine whether they should be “shall”s
- b. Further clarify “stabilized” vs. “Temporarily stabilized” definitions (John Burke)

**"Final stabilization"** means that one of the following situations has occurred:

1. All soil disturbing activities at the site have been completed and a permanent vegetative cover has been established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform (e.g., evenly distributed), mature enough to survive, and will inhibit erosion.
2. For individual lots in residential construction, final stabilization can occur by either:
  - a. The homebuilder completing final stabilization as specified in subdivision 1 of this definition; or
  - b. The homebuilder establishing temporary soil stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner, and informing the homeowner of the need for, and benefits of, final stabilization.
3. For construction projects on land used for agricultural purposes, final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters, and areas that are not being returned to their preconstruction agricultural use must meet the final stabilization criteria specified in subdivision 1 or 2 of this definition.

- i. “achieving” stabilization or “initiating” (Kelly Miller)

**"Initiation of stabilization activities"** means:

1. Prepping the soil for vegetative or nonvegetative stabilization;
2. Applying mulch or other nonvegetative product to the exposed area;
3. Seeding or planting the exposed area;
4. Starting any of the above activities on a portion of the area to be stabilized, but not on the entire area; or
5. Finalizing arrangements to have the stabilization product fully installed in compliance with the applicable deadline for completing stabilization.

This list is not exhaustive.

- c. “Immediately” stabilize. Q – Should we remove the definition of “initiation of stabilization activities”? (Kristin Carter)

**"Immediately"** means as soon as practicable, but no later than the end of the next business day, following the day when the land-disturbing activities have temporarily or permanently ceased. In the context of this general permit, "immediately" is used to define the deadline for initiating stabilization measures.

- d. “Immediately” is from EPA’s ELG. (Chris Swanson)
- e. Next meeting DEQ will propose some definitions to address part IIC requirements:
  - i. “portions”, “under construction”

2. 880-30. Authorization to discharge.

- a. **A.1.** – Q – Can we change ‘board’ to “Authority” (Kristin Carter)
- b. **C.** and **D.** “Support Activities” –

**C.** This general permit also authorizes stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

The support activity is directly related to a construction activity that is required to have general permit coverage for discharges of stormwater from construction activities;

The support activity is not a commercial operation, nor does it serve multiple unrelated construction activities by different operators;

The support activity does not operate beyond the completion of the last construction activity it supports;  
The support activity is identified in the registration statement at the time of general permit coverage;  
Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity areas; and  
All applicable, state, federal, and local approvals are obtained for the support activity.

- i. Define: “ multiple unrelated construction activities by different operators” (Toni Small)

**D.** Support activities located off-site are not required to be covered under this general permit. Discharges of stormwater from off-site support activities may be authorized under another state or VPDES permit. Where stormwater discharges from off-site support activities are not authorized under this general permit, the land area of the off-site support activity need not be included in determining the total land disturbance acreage of the construction activity seeking general permit coverage.

- ii. **D.** – Determine what “another state permit” means. (Mike Vellines)
  1. Q – Can this be ESC only?
- iii. EPA CGP is identical to D. (John Burke)
- c. Need to clarify registration statement instructions on support activities. (JBR)
  - i. Not clear on forms and paperwork for support locations. Q – If the support area is not disturbed do they still need to list it? (Toni Small)
- d. **F. Authorized nonstormwater discharges –**
  - i. Q – Do we want to be consistent with MS4 permit for ‘dechlorinated’ water (Kristin Carter)
  - ii. This whole list is repeated in the actual permit. Is it redundant? (Kristin Carter)
    1. Sometimes there is a need to be very clear in the permit itself. So that the permitted operator knows what exactly is covered (JBR)
    2. Just remember to change it in both places (Kristin Carter)
  - iii. EPA CGP list is the same as this one. Therefore should be consistent. (Jill Sunderland)
  - iv. Doesn’t want to see dechlorinated in there. (Keith White)
  - v. There is a potential water quality problem with chlorinated water being discharged to streams (JBR)
  - vi. Q – What actions will DEQ require to enforce and ensure dechlorination? (Keith White)
  - vii. Define or define parameters for dechlorination if you’re going to put it in. (Joe Badiata)
  - viii. Q – Do we need to burden ourselves with trying to match construction requirements with MS4 requirements? (Chris Swanson)
  - ix. We will compare to what is in the MS4 GP. (JBR)
  - x. Differentiate between potable water with drinkable chlorine levels versus water that had an increase in chlorine to sterilize a line. (Kristin Carter)
  - xi. Look at the preface of the federal permit. (John Burke) Has language for dust control or irrigation. Make a point to look at it.
- e. **G.** – DEQ needs to figure out a way to clarify to operators that the approval of SWM plans does not mean that they meet all other requirements. (JBR)

- f. **H.** – specifically addresses administration continuance. Does not have to do with continuation of applicability under part IIC.
  - i. Q – Do we need to clean up the state permit language in this? (MD)
    - 1. A – No. (JBR). State permit is actually defined in the VSMP Reg.
    - 2. Will be addressed when the updates are done to the VSMP regs.
  - ii. Q – Perhaps change submission of RS date to “June 1<sup>st</sup>” and not ‘June 30<sup>th</sup>’?

### 3. 880-40 – Delegation of authorities to state and local programs

- a. Will be addressing what technical criteria will be applicable (JBR)
- b. 60 days of coverage for time limits of applicability. If folks did not fulfill that criteria whether they should be covered under IIC.
- c. This will provide the background and determination for how it related from the VSMP regs to general permit coverage.
- d. Backlog in June 2014 to get permits in (Toni Small)
  - i. If after 5 years, they haven’t proceeded with getting their plans approved then it may be enough is enough.
- e. We’ll be looking at what was the criteria under the vsmp regs and what was the requirement under the permit. Proposing to add information to RS to get some of this information (JBR)
  - i. Jaime hopes to get this all out two weeks ahead of time.
- f. Complying with the technical criteria and having a SWPPP (John Burke)
- g. Whatever criteria there is that it needs to be black and white. Nothing subjective. If there’s a date it has to meet that. (Keith White)
- h. Odd part of process – DCR was apparently issuing permits with any review of esc or swm plans. The folks that had gotten an approved plan only got one extra cycle and the people that didn’t get their plans together they got two cycles. Seems backwards. (Jimmy Edmonds). Specifically 60 day problem

### 4. 880-50 – General permit application (registration statement)

- a. Q – Are SFH submitting RS to local authorities? (John Burke)
  - i. No, they don’t have to (JBR)
- b. Updating of SWPPP not necessarily tied to plan approval. (JBR)
- c. **A.3 –**

**3.** For stormwater discharges from construction activities where the operator changes, the new operator must submit a complete and accurate registration statement or transfer agreement form to the VSMP authority prior to assuming operational control over site specifications or commencing work on-site.

- i. The idea behind this is when permits are transferred the new holder is aware of maintenance requirements. (JBR)
- ii. Seems like it shouldn’t just be maintenance (Kristin carter) you also want to make sure that they follow through with the approved plans.
- iii. New operator, once the permit is terminated, they might not be responsible for the maintenance. (Keith white)
- iv. Long term BMP maintenance probably isn’t the transfer operator’s (Keith white)
- v. OVERALL –

1. The permit needs to address the change of ownership of land when the permit is also not transferred.
  2. The permit needs to have a mechanism for ensuring that stabilization and BMP maintenance occur despite the permit being transferred or modified.
  3. The permit needs to ensure that if a permit is transferred then the new operator is aware that they are responsible for the entire permitted area. They are not just responsible for specific phases. (John Burke)
  4. Q – What mechanisms can be used to support this effort?:
    - a. Q – What about local bonding? (Toni Small) there are two different entities overseeing the same project. Would bonding help DEQ?
    - b. Discussing enforcement under CWA usually works. (Joe Badiata)
    - c. Q – What about the maintenance agreement recorded during the termination process? (Joe Badiata, JBR)
- d. **B. Registration statement – (RS)**
- i. Determine if the “if available” language is appropriate – there may not be an address
    1. VDOT uses lat/long (Chris Swanson), some projects use beginning and end points (Toni Small)
  - ii. It would be beneficial to have the ability to attach documents, such as maps, to RS (John Burke)
  - iii. **B.1** - As if relates to State / Federal AS&S permit fees:
    1. If it’s a state funded job why does it matter who the operators is? (Mike Vellines)
    2. VT and UVA want to qualify for the lower fee even if they do not list themselves as the operator (Kirstin Carter)
    3. Q – Why is this language in the permit anyways? (Mike Vellines)
  - iv. Determine whether the registration statement should be updated to include the information on AS&S Entity Info Form. Then the AS&S Entity Info Form can be retired. (Toni Small, Mike Vellines, Kristin Carter)
  - v. Q – Is there some guidance on what names for HUCs DEQ uses? (Keith White) Is there a resource to reference that determines whether a tributary is named or unnamed? And if so, this should be added to the RS directions.
  - vi. Determine if and under what conditions portions of linear projects can be considered the same project.
    1. “one-hundredth” of an acre. – if they’re within one mile of separation then they can be considered the same project? (Toni Small). Wants more guidance clarification.
  - vii. Determine whether it is a good idea to move BMP information to the front end of the CGP permitting process. In RS versus NOT. (JBR)
    1. It’s better kept in the NOT (Keith White)
    2. Ask for IIC or IIB. Not actual BMPs. (Kristin Carter)
    3. Wants approved plan to call out specific BMPs (John Burke)
    4. Things change over the course of the project, including type of BMP.

5. What's the gain of knowing it up front if it changes mid construction?  
(Mike Vellines)
  6. Determine what information and documents need to be submitted at the time of RS submission.
    - a. Perhaps require documents (all or some) at the beginning.  
(Kristin Carter)
    - b. Concerned with duplicate information (Phil Abraham)
  7. Are you required to buy the credits up front? Letter of availability? (John Burke, JBR) affidavit of sale.
    - a. Could have the issue of buying too few or too many credits.
- e. **B. 10. and 11.** – Need to ensure that SWPPPs are actually being prepared for projects and that those certifying that the SWPPP has been prepared are held accountable for its completeness.
- i. SWPPP needs to be complete with signature. (John Burke)
  - ii. Q – If the RS did not require it would it ever be done? (JBR)
  - iii. Need to differentiate between a SWPPP and a site specific SWPPP. (John Burke)
  - iv. You always have a complete site but it is their responsibility to update it. (Keith white).
  - v. Keith White gives them the SWPPP to be completed.
  - vi. Some localities have the SWPPP brought to the preconstruction meeting.  
(Kristin Carter)

**5. 880-60 – Termination of general permit coverage**

- a. **A.1.** “...on all portions of the site for which the operator is responsible.” Need to clarify if there is ever an option for an operator not to be responsible for some parts of the permitted areas (Jerry Stonefield)
  - i. As an operator I could have transferred part of my site. Modification of permits to reduce areas you're responsible for. (Keith White)
    1. No, you can't do that. (JBR)
    2. Sections 9VAC25-870-620, 630, 640 lay out transfer and modification guidelines for the CGP. You cannot reduce the acreage of permit coverage.
  - ii. Q – How do you handle the overlap of permit areas? Double coverage (Toni Small)
  - iii. Q – What's more legally binding, the areas noted on the registration statement or the information updated in the SWPPP? (HGZ)
- b. **Section to be discussed later in full (-880-70, Part II. B.4. d.)** – SWPPP amendments, modification, and updates: “All properties that are no longer under the legal control of the operator and the dates on which the operator no longer had legal control over each property;” (Toni Small)
  - i. Final termination of the whole thing... would still fall on the original operator for the whole site. (Jerry Stonefield)

- ii. Federal permit says 'operational control', ours says 'transfer of ownership' (John Burke)
- a. **A.4.** – WILL COME BACK TO THIS WHEN ALL STAKE HOLDERS ARE PRESENT.
  - i. OVERALL –
    - 1. The permit needs to address the transfer of SFH's to the homeowner and the establishment of final stabilization consistent with the approved plans.
    - 2. The permit needs to ensure the homeowners are aware of what they're getting into. (John Burke)
    - 3. The permit needs to address the maintenance responsibility of permanent BMP's built on SFH lot in developments.
  - ii. Q – Is there something else that needs to occur with the transfer of the property to the single-family homeowner?
  - iii. Q – How to best inform homeowner? (JBR)
  - iv. Q – How is it binding when you transfer the stabilization responsibility under the home owner? (Jimmy Edmonds)
  - v. Q – Should we word it 'so that the homeowner ACCEPTS' the responsibility of stabilization? (John Burke)
  - vi. Q – Who do you go after if there is erosion from the site? (JBR)
  - vii. When it's a residential situation perhaps we could get a signature from the homeowner? (JBR)
  - viii. Submit a statement of the condition that the builder is leaving it the SF in and that the homeowner agrees to finalizing it. (JBR)
  - ix. If they're putting in permanent controls on the individual lots... it should not be going in until the rest of the site is final stabilized. (Jerry Stonefield) Homeowner may not allow developer to come in and build the BMP on his lot when it's time to.
- b. **A. ¶ at bottom** – Change to "a complete notice of termination". Your termination does not terminate just because you have submitted a form. (JBR)
  - i. There may be differences of opinion between the operator and the locality in terms of the definition of stabilization (Jerry Stonefield)
  - ii. Need to look at construction record drawings (CRD). If the CRD doesn't match what's supposed to be there. then it's not a complete package. (JBR)
  - iii. DEQ rejects termination when the site is not stabilized.
  - iv. If the package is not deemed complete what does the 60 day timeframe mean? (Chris Swanson)
  - v. If you don't reject their request for termination is it automatically approved? (Jimmy Edmonds)
  - vi. Just because the 60 days has passed doesn't mean DEQ is not pursuing the retrieval of information to properly close out the projects. (JBR)

- c. Legislation is still active out there (SB 741) – VSMP authorities have 60 days to recommend to the DEQ termination. Then DEQ has 30 days to do their NOT inspection. (JBR)
- d. Operator ‘shall’ submit an NOT when they have met one of these conditions (John Burke)
  - iii. ‘Should be submitted’ in 30 days (Jerry Stonefield) Should and shall be consistent.
- e. Re-organize the separate paragraph below option 1-4 so that it’s easier to understand what is required for each.
  - i. Separate 60 days from the submittal of the NOT. (John burke)
  - ii. 2 and 3 – maybe put a space to record the new permit number (Kristin Carter)
- c. **B.**
- d. Might want to keep in, if available, for location of construction activity. (toni small)
- e. Lat and longitude – do we want to make decimals consistent? (Jerry Stonefield) (100<sup>th</sup>, 10<sup>th</sup> ?)
- f. **B.5.** – Q – What is DEQ using the lat/long for and as a result how accurate does it need to be? (jerry Stonefield)
  - i. 3 uses. (JBR)
  - ii. System says you have to put in at least 4 decimals. (Keith white)
- g. **B.6.** – Q – one electronic and one paper? (Joe Badiata)
  - i. Does the CRD have to be signed and sealed? (Jerry Stonefield)
  - ii. Would it be easier to reference VSMP regulations? (Chris Swanson) [870-55]
    - 1. Do we want to see licensed professional instead of engineer? (John McC)
    - 2. It could be taken that clarifying the professional certification here by saying engineer would make the requirement more stringent... (Jerry Stonefield)
  - iii. Determine whether “a format as approved by the VSMP Authority” would be appropriate to fulfill record requirements. (John Burke)
  - iv. Q – What’s a CRD for a SFH? (jerry stonefield)
  - v. CRD have to be approved prior to termination by locality. (jerry Stonefield)
    - 1. There’s no place in the regulations that says that the CRD has to be approved by the VSMP. (Chris Swanson)
    - 2. VDOT details what the CRD has to include (Chris Swanson)
  - vi. Find the email that DEQ sent out about what’s required on a CRD.
  - vii. You cannot just rubber stand the SWM plan calling it an as-built. (Jerry Stonefield)
  - viii. Would be good to put out a guidance document for permit requirements for everyone (Joe Badiata). Should include information for putting BMPs in the ground and maintaining them. Everyone seems to be doing things differently.
    - 1. DEQ tried to draw a fine line in our role as a VSMP authority and the localities running their programs. (JBR) trying to strike that balance.

- h. AS&S project termination
  - i. Q – Is there a way for AS&S holders to process the termination themselves. They want to receive CRDs. (Mike Vellines)  
Q – Responsibility could be tied to AS&S and MS4? (Mike Vellines) A dual submission seems impractical.
    - 1. VDOT certifies their own drawings (Chris Swanson)
    - 2. If we're trusting the AS&S holders to do their own plan review then DEQ should trust them to certify them. (JBR)
  - i. Q – Should the maintenance agreement be recorded? (Keith White)
    - i. If it's not recorded and you buy the property then it's hard to assign responsibility (Keith White)
    - ii. They require the Maintenance agreement to be recorded on the front end. (Keith White)
      - 1. What happens if the BMP changes? (JBR)
        - a. The maintenance agreements that they have are not specific to the actual type of facility that is on the property. (Keith White)
      - 2. Maintenance agreement references a plan and not an as-built. (John Burke) Q – How do they ensure that they have the right BMP?
      - 3. They have standard agreements that say maintain the attachments... if they change the facility then theirs would have to be re-recorded. (Jerry Stonefield)
        - a. Maybe do it after plan approval and before permit issuance? (Jerry Stonefield) If they change it during construction then the locality has to make sure that the maintenance agreement is updated.
  - j. Q – How do we get the message through to the homeowners? (JBR)
    - i. Two signatures on it (Keith White) But they're not going to do anything with it.
      - 1. Should it get notarized? (John Burke)
    - ii. Either way you sign it it's going to be a he said she said situation. (Keith White)