

**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 3, 2008 in Roanoke, 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 afternoon. I welcome you to this hearing.

I would like to thank the City of Roanoke 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

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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.

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 Joel Shepherd.

#### PUBLIC COMMENT PORTION

Joel Shepherd  
Roanoke Valley

I am a developer and business owner in the Roanoke Valley and currently have a grading operation underway for about a 45 acre site in Franklin County that covers and will include about 300,000 square feet of office/retail space. The changes in the regulatory environment are creating significant angst in terms of trying to get clear guidance. With the permit that I currently have in place, I understand that I can reapply 90 days prior to the expiration of the current permit. My question is will it be renewed for another five years, and will it be renewed under the old or new regulations? I thought I had gotten clear on that from statement 9 within the agency statement. However, with Mr. Brown's comments tonight, we would be subject to the new regulations when they went into effect.

It is very difficult not knowing what regulations we have to design to.

Mr. Brown commented that it was very important that the regulations are communicated clearly. The expressed intent, moving forward with this general permit, which would be good for five years, did not change the rules on existing projects, similar to statement 9 from the agency statement.

Phillip Nester

I am involved with Mr. Shepherd on his project and we are here tonight because we are lost and little bit confused, although I feel much better after hearing Mr. Brown's comment regarding the intent.

I question how you will be able to keep the current water quality standards for projects receiving this permit. In order for that to become a valid possibility, are you then going to create a second set of regulations that deal with a second permit? This is something you can't do administratively. Your general permit is going to have to match what's in the Administrative Code section. So, eventually what we are going to have for this 5 year period is permits that will be effective July 1; anyone that applies before July 1 for renewal or a new permit will be under these sets of rules until the new change happens. If the new rules become effective on July 1, 2011, anyone who applies for a new permit and I'm also assuming for an amendment, would then have to meet the new rules.

In doing that, it might be more appropriate if these new sections are specifically referenced and called for in the general permit regulations. A clarification statement should be included at the beginning of 1170 that says what was said tonight so that it becomes codified and that there is absolutely no question that a project that meets this permit will be able to go forward through 2014 without having to meet the updated changes.

There is conflict between Section 1 and Section 3. First, you must submit a complete and accurate registration statement by July 1 in order to continue coverage. But then paragraph B says that you must update your plan to comply with the new rules. That is different from what agency statement, which says there won't be any significant impacts. That could significantly impact a project, if once you get your registration statement you have to come back and change your plan.

Also in Section 3, Paragraph M, it specifically states that you must reapply at least 90 days before the expiration date. That is in the proposed changes and also in the current regulations. It would seem to me that there is conflict in the timeframe on when you have to apply.

Last but not least, I am a licensed land surveyor; I'm not a professional engineer. As a licensed land surveyor I'm qualified by education, training and experience to be a responsible land disturber, as is any engineer. I would ask that the wording be reconsidered for "qualified personnel" because intentional or otherwise, the perception is that you are excluding the other licensed professions and including professional engineers as being qualified personnel. It would be seem to be more appropriate to consider changing that wording and replace "licensed professional engineer" with "qualified professions licensed by the Commonwealth". By doing this you aren't giving preference, and you as an agency aren't taking away the responsibility that DPOR has for deciding which professions can provide which services.

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Bob Flynn  
Project Manager  
Fralin & Waldron Incorporated

I would like to comment on the DCR regulation at Part XIV of the VMSP regulations relating to the general permit for construction activities. Specifically, I would like to recommend that paragraphs 4 & 5 of Part B, Section 2, referring to the public availability of the stormwater pollution prevention plan, be removed. The SWPPP contains much information that can change on a regular basis. As we know, it is a very technical document and interpretations and understanding requires someone with specific engineering and industry knowledge. Making the SWPPP available in a public place and requiring the permit holder to answer questions from the public creates a financial and logistical burden on the permit holder that would provide no environmental benefit to the public. These permits and applications held by DCR, the permitting authority, are available to the public. The SWPPP document, however, is an internal working document reviewed by the authority but not obtained by the authority. It remains in the possession of the permittee at all times. It's an agreed upon internal document that provides a blueprint to the permit holder on how to comply with the provisions of the general permit. The only interest that the public has in the runoff discharge is the quality and quantity of the water at the point of discharge into a public waterway which is enforced by the general permit. Permit holders, for good reason, restrict access to construction sites for safety and security reasons, along with logistical, practical and economic reasons. So I would ask you to balance the perceived public benefit against the added cost of conducting business concerning the availability of the SWPPP reports to the public.

John Burke

One of the new provisions of the new general permit is applicable to impaired waters. On page 26 it says, if it is determined there is a reasonable potential to cause or contribute to an excursion above any water quality standards you may not be covered under the general permit. I just think with the number of impaired waters and TMDL's being developed that opens a huge number of waters and associated drainage areas to potentially not be covered under the general permit. I request that the general permit make it as clear as possible the requirements for development and construction activity in these kinds of impaired waters.

Brent Wills  
Environmental Erosion Control

Some of the main things that I wanted to bring forward tonight and have on record; Mr. Flynn already mentioned the fact of having the SWPPP available to the public. Being in the profession that I am, and doing quiet of bit of inspections on projects, it is hard to enough to coordinate with site superintendents and project managers, grading and excavating contractors as well as agency personnel (whether state or local) to go over issues as they come up. There are a lot of people who don't like development and they can figure out very quickly that this could be a real bur on the saddle of developers.

One of the other major comments relates to significant changes under Part A, Number 5 regarding the registration statement. My main concern is, as it stands now, the minute that the registration statement is postmarked land disturbing activities can commence. The way it would be worded is that the operator would have to wait for confirmation from DCR. First, I would like see that deleted from the regulation. Second, if that does stay, I would like to know that the turnaround time is going to be guaranteed to operators in parts of Virginia that are further away from Richmond.

Being a erosion control contractor, I do a lot of seeding and stabilization. I find it hard to understand how the entire water quality parameter for the Commonwealth of Virginia is going to be based on phosphorus when the current erosion and sediment control manual as well as standards and specifications require me to apply phosphorus as I am stabilizing the project site. Literally from the Greenbook Standards, the specifications that they are requiring right now is 200 lbs. to the acre for stabilization in the Piedmont and Appalachian region. I've worked on sites now where we've had to go back and retrofit for water quality where we've had to remove one and two pounds of phosphorus per year and it has cost a lot of money to retrofit basins, infiltration areas and retention areas to remove a couple of pounds of phosphorus per year when we've been told to put down 200 pounds per year.

I hope the technical advisory committee takes this into consideration.

**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 and the dates and locations of the remaining public meetings.

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) 786-6141. 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.