



## Virginia Environmental Law

### State Review of General Construction Permit Regulations Underway

**By: Ann Neil Cosby. Wednesday, September 5th, 2012**

Last week, the Regulatory Advisory Panel (RAP) appointed to review the state's current requirements for its General VSMP Permit for Discharges of Stormwater from Construction Activities met for the first time. As a member of this advisory panel, I, for one, am interested in seeing how these regulations will be revised to account for the far-reaching changes that have occurred recently related to stormwater regulation in Virginia.

The RAP will be working to streamline the current General Permit requirements to account for recent changes to other sections of the Stormwater Regulations and the new Integration Bill recently adopted by the 2012 General Assembly. Other issues that will be addressed include implementation of federal Effluent Limitations Guidelines (ELGs), defining a Common Plan of Development, ensuring compliance with Total Maximum Daily Loads (TMDLs) where they exist, and clarifying the roles and authorities for construction activities that occur in more than one VSMP authority's jurisdictional boundary.

While the RAP may be constricted by legal definitions and judicial interpretation related to some issues (such as what constitutes a common plan of development), its charge in other areas is quite broad. For example, the federal ELGs are general in scope and subject to interpretation (using words like "minimize," "maximize" and "unless infeasible.") With the varying interests represented in the RAP, this will certainly be an area where negotiation and working together will be key.

Getting the word out as to who is subject to regulation under the General Construction Permit will also be key. For example, individual lots that are part of a common plan of development are required to obtain permit coverage. This means that even after they are sold, small projects (less than one acre) and single family dwellings will still need coverage if they were approved as part of an overall subdivision or development plan. That means local program administrators will need to require a Stormwater Pollution Prevention Plan from even these very minimal construction projects. Whether, or how the RAP can clarify this regulation remains to be seen. We certainly have our work cut out for us.

The next meeting is scheduled for September 19, 2012. Other meetings will follow in October and November. It is a significant amount of work in a short amount of time, a reality that was not lost on many members who will also be busy in the 2013 General Assembly.

If you have questions about the permit process, the Virginia environmental lawyers at Sands Anderson may be able to help. Are there areas of the General Construction Permit that you think need to be addressed by the RAP? Let me know what you think.

ELGs were published in the Federal Register, Vol 74, No. 229, on December 1, 2009

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