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SUBJECT: MRGP Comments

Thank you for the opportunity to comment on the revised Municipal Road General Permit (MRGP) rules. What follows are higher-level policy comments from VAPDA, followed by technical recommendations. The latter were developed by our collective staff with considerable experience assisting our municipalities with the implementation of the MRGP.

Comments on MRGP policy:

1. There are some good changes in the proposed MRGP permit. We particularly think stating that the standards are not required if it would render the road unsafe for travel is a good change and addresses many concerns of local highway departments.
2. Continued funding commitments for REIs and technical assistance is critically important to provide guidance for municipalities to meet the requirements in the proposed MRGP permit. Each municipality will be required to complete a second road erosion inventory on every hydrologically connected road segment. In the first permit cycle, 191 of the 250 municipal inventories were funded through the Better Roads Program which allocated \$1,311,432 for FY 18-FY 22 through its Category A grants. It is our understanding that a significant portion of this funding was redirected from other efforts and may not be available for a second round of inventories. A conversation was organized between ANR and VTrans staff working on the MRGP rules update about funding assumptions, and an email was sent by VAPDA and VLCT regarding funding assumptions. Secretary Moore replied that funding decisions, “is a bit premature since the Better Roads funding hasn’t been determined yet. My understanding is that VTrans and DEC staff believe approximately \$2M will be needed to complete the inventories over the next 5 years. To the extent VTrans and the Better Roads program come up short, we will work together to identify other funding sources to supplement any shortfall, appreciating this could require amending the MOA we (ANR) have with VTrans which governs the funding.” This is a fundamental question that should be resolved sooner rather than later as it has direct bearing on the efficacy and fiscal sustainability of the proposed rule.
3. With changes to Grants-in-Aid, RPCs are not on the ground as much with municipalities at this point. This will leave a gap in knowledge. We recommend additional training including in-person

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field training and technical assistance for municipalities. RPCs have significant knowledge in this area and are willing to partner with DEC on this training and technical assistance.

4. The changes do not appear to be reflective of our experiences since the MRGP permit was initially established. We recommend producing a report about how the permit process worked for the first five years, and then summarize how the proposed changes address those lessons learned.
5. How is the funding raised by permit fees (administrative processing fee, annual operating fee) being used?

Technical Recommendations:

1. ANR has not issued a synthesis of the proposed changes to the permit. This requires painstaking cross referencing between the current permit and the draft permit in order to get a sense of what changes are proposed. A synthesis of the proposed changes would be helpful for evaluating the draft permit.
2. How will the transition from the current permit to the reissued permit work? For example, proposed changes to the prioritization methodology may significantly reduce the number of very high priority (VHP) road segments in many municipalities. If the initial road erosion inventory (REI) is to serve as the basis for implementation requirements until a second REI assessment is completed, is a municipality required to implement drainage improvements in accordance with the number of VHP segments as calculated from the initial inventory? Might this trigger permit violations that may not otherwise be violations if a second REI assessment had been completed resulting in fewer overall VHP segments?
3. The new requirement about intermittent stream culverts will require training for road crews on identifying and sizing intermittent stream culverts to be compliant with the permit.
4. As it relates to annual reporting (particularly the annual report due April 1, 2023), we have concerns regarding some municipalities' ability to certify compliance for projects that may have been completed in the absence of VTrans, DEC or RPC oversight. Some municipalities may substantially overestimate the number of segments that have been upgraded to meet the permit standards. For the 2023 Annual Report, some towns may be required to estimate the number of segments that have been upgraded over as much as a 4-5 year period, during which tracking of work completed was deficient and there was little to no oversight to ensure that the work was compliant with the permit.
5. Develop accessible and suitable technology to implement the proposed MRGP permit:
 - a. The draft permit language is requiring all REIs be collected using that state's app/survey 123 forms. Since RPCs will no longer be able to collect the data using their own systems—customized for the needs of the collector and including basic layers such as streams—it is imperative that tools are as accessible and user-friendly as possible. This will require DEC to take feedback from users and be willing to direct staff time to updating the materials/tools. It is essential that DEC make this a priority to ensure this tool works and can be optimized for its intended purposes.

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- b. Another long-standing concern is using one set of credentials for the entire state (every municipality, RPCs and partners). For example, CCRPC and their consultant developed a solution for vtculverts.org (a non-regulatory data set). VAPDA encourages DEC to invest in a solution for better protecting this regulatory dataset.
 - c. The MRGP Reporter, which allows towns and RPCs to view and edit REI data, uses red for “does not meet” and green for “fully meets.” That needs to change to use a color scheme that is legible for colorblindness.
6. Gully erosion along some Class 4 town highways may be impractical to access with the heavy machinery necessary to implement the required improvements. In some instances, attempts to do so may trigger road improvements and disturbance that may exacerbate erosive conditions. We encourage ANR to consider an exemption option (like the historic stone walls, historic large trees, buried utilities or wetland) to the permit standards to account for this scenario.
7. We recognize the need for use of fractured stone to stabilize drainage ditches along steeper slopes to ensure that the stone remains in place. However, ANR should be aware that limiting the types of compliant stone protection may have a magnifying effect on supply chain issues.

Thank you for your consideration.

Sincerely,



Catherine Dimitruk, VAPDA Chair
Executive Director, Northwest Regional Planning Commission