

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER DIVISION

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SUBJECT: Guidance Memo No. 11-2010
Process for Determination of Noncompliance with the General VPDES Permit for Storm Water Discharges Associated with Industrial Activity, VAR05

TO: Regional Directors

FROM: Melanie D. Davenport, Director



DATE: December 5, 2011

COPIES: Regional Water Compliance Managers, Regional Water Permit Managers, Kathleen OConnell, Fred Cunningham, Burt Tuxford

Summary:

The purpose of this guidance is to assist the Compliance Auditors in the issuance of Warning Letters or Notices of Violation for alleged violations of the General VPDES Permit for Storm Water Discharges Associated with Industrial Activity (a/k/a Storm Water Industrial General Permit or SWI GP). This guidance will be rescinded when the relevant section of the Compliance Auditing Manual (Guidance Memo #02-2010) is updated.

Electronic Copy:

An electronic copy of this guidance in PDF format is available for staff internally on DEQNET, and for the general public on DEQ's website at: <http://www.deq.virginia.gov>.

Contact information:

Please contact Lily Choi, Office of Water Permits and Compliance Assistance, at (804) 698-4054 or Lily.Choi@deq.virginia.gov with any questions regarding the application of this guidance.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any particular method for the analysis of data, establishment of a wasteload allocation, or establishment of a permit limit. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Process for determination of noncompliance with the Storm Water Industrial General Permit

Background

The Storm Water Industrial General Permit (SWI GP) was reissued on July 1, 2009 and the first Discharge Monitoring Report (DMR) was due January 10, 2010. This was the first permit cycle that the DMRs were required to be submitted. Consequently, CEDS data entry and compliance tracking for these DMRs started in January 2010. The reporting frequencies for this general permit are either semiannual (Total Maximum Daily Load or TMDL monitoring) or annual (benchmark, effluent and impaired water monitoring). Since the current points program tracks the violation points in a rolling 6-month rather than a 6-monitoring period window, the violation points accrued from the previous monitoring period would likely have been removed from the 6-month window when the next monitoring period begins. The regional staff has identified this and other compliance issues associated with this general permit during the Compliance Auditors' (CAs') conference calls and requested that Central Office develop a stepwise process to ensure noncompliance is handled consistently statewide and appropriate actions are taken for repeat violations. This document also includes some specific permit requirements to help staff determine noncompliance.

Determination of noncompliance

1. Missing or late DMRs

Points for the missing or late DMRs will be assessed by the CEDS points program as with the VPDES Individual Permits (IPs) and other GPs. Points may also be assessed manually upon receipt of a referral form from inspection staff in cases where an effluent limitation or TMDL wasteload allocation is exceeded but the DMR was not submitted within 30 days after the results were received from the lab.

Due dates for the DMRs are specified below.

- Benchmark monitoring - due January 10th of each year.
- Effluent monitoring
 - No exceedance – due January 10th of each year.
 - With exceedance – due January 10th of each year or no later than 30 days after the results are received by the facility, whichever date is earlier. Compliance may be determined by the inspector during the inspection (by checking the lab report).
- TMDL monitoring
 - No exceedance – due January 10th and July 10th of each year.
 - With exceedance – due January 10th and July 10th of each year or no later than 30 days after the results are received by the facility, whichever date is earlier. Compliance may be determined by the inspector during the inspection (by checking the lab report).
- Impaired Water monitoring – due January 10th of each year.

Note that the latest on-time annual reporting is January 10th and the latest on-time semi-annual reporting is January 10th and July 10th. The 30 days after results received is for early DMR submission and not meant to extend the 10th of the month due dates.

Also note the permit contains the following provisions regarding the first DMR:

- Benchmark, effluent and impaired water monitoring - if a permittee's permit coverage is effective less than one month from the end of a monitoring period, the permittee's first monitoring period starts with the next respective monitoring period. For example, if permit coverage begins on 12/5/11, the permittee will not need to start the monitoring until January 2012 and the first annual DMR is due 1/10/13.
- TMDL monitoring - if a permittee's notification that it is subject to the TMDL monitoring requirements is effective less than one month from the end of a semiannual monitoring period, the permittee's first monitoring period starts with the next respective monitoring period. For example, if the TMDL notification is effective on 6/5/11, the permittee will not need to start the TMDL monitoring until July 2011 and the first semiannual DMR is due 1/10/12.

The permit staff will notify the CA of any new permit coverage.

2. Incomplete or improper DMRs

All DMRs are submitted in paper form at this time. Based on the manual review of the DMRs, the CAs should check the proper box in the DMR header table in CEDS DMR screen for deficient (missing 25 percent or more of data), incomplete (missing less than 25 percent of data), or improper (missing LOE, signature, etc.) DMRs. Points will be assessed by the points program according to the box(s) checked provided DMR data are entered in CEDS by the 25th of the month the DMR is due.

If a permittee reports that no discharge occurred, the CA should enter the DMR received date, check the No Discharge box, and note in the Comments field that no qualifying event* occurred during the monitoring period. Since no discharge is a rare situation in Virginia, the CA should refer the permittee to the inspection staff for a site inspection to verify the SWPPP and/or a review of the National Oceanic and Atmospheric Administration (NOAA) data, if requested, before sending a WL.

* The General Permit Part I A.2.b states "A minimum of one grab sample shall be taken from the discharge associated with industrial activity resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event"), providing the interval from the preceding measurable storm event is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document that less than a 72-hour interval is representative for local storm events during the sampling period. In the case of snowmelt, the monitoring must be performed at a time when a measureable discharge occurs at the site."

3. Effluent violations

The CAs should determine the effluent violations based on the manual DMR review since the CEDS points program is yet to be updated.

- The CAs should follow the Point Assessment Criteria Section (1) (a) (i) Effluent Limits and enter the effluent violations and points in CEDS manually.
- Corrective actions and follow-up monitoring are required whenever an effluent violation occurs. The follow-up monitoring data should be submitted to DEQ within 30 days of receipt of the results*. Determination of noncompliance with the corrective action requirements may rely on DEQ's inspection staff (e.g., by reviewing the SWPPP and lab sheet, etc.). If violations are confirmed via inspection, Violation Referral Forms should be completed and forwarded for the CAs to assess points according to the Point Assessment Criteria Section (1) (a) (iv) (4) Inspection Deficiencies. Note any exceedance in the follow-up monitoring data by itself is not a violation and no points should be assessed.

4. TMDL exceedance

Since the TMDL wasteload allocations are calculated on an annual basis, compliance cannot be determined based on the monitoring results from a single rainfall event.

- Points should not be assessed for any TMDL exceedance. Whenever a TMDL exceedance occurs, the CAs should provide the monitoring data to the permit writer and TMDL coordinator for further evaluation/tracking.
- Corrective actions and follow-up monitoring are required when a TMDL exceedance occurs. The follow-up monitoring data should be submitted to DEQ within 30 days of receipt of the results**. Determination of noncompliance with the corrective actions requirements may rely on DEQ's inspection staff (e.g., by reviewing the SWPPP and lab sheet, etc.). If violations are determined via inspection, Violation Referral Forms should be completed and forwarded for the CAs to assess points according to the Point Assessment Criteria Section (1) (a) (iv) (4) Inspection Deficiencies.

5. Exceedance of benchmark concentration values

Benchmark concentration values are not effluent limitations. Therefore, exceedance of the benchmark concentration values is not a violation.

- Points should not be assessed for any exceedance of benchmark concentration values.
- The permittee must review the SWPPP and modify it as necessary when a benchmark concentration value is exceeded. A determination of noncompliance may rely on DEQ's inspection staff (e.g., by reviewing the SWPPP, BMPs, etc.). If violations are determined via inspection, Violation Referral Forms should be completed and forwarded for the CAs to assess points according to the Point Assessment Criteria Section (1) (a) (iv) (4) Inspection Deficiencies.

** The CAs should enter the follow-up monitoring data by creating a separate DMR record in CEDS. Enter the DMR due date as the received date and the storm event date listed in the DMR as the monitoring start and end dates. It should be noted in the Comments field that the results came from a follow-up sample.

- Should the benchmark exceedance be attributable solely to natural background pollutant levels, corrective action is not required if the following conditions are met: 1) the concentration of the benchmark result is equal to or less than the concentration of the natural background pollutant; 2) it is properly documented in the SWPPP; and 3) the permittee has notified DEQ of the fact on the benchmark DMR.

WL/NOV Issuance

The DMR submittals and effluent violations should be closely tracked during this permit cycle.

According to the current point assessment criteria, 1 point will be assessed for any missing or incomplete DMR and a WL is warranted. The WL should include a response due date. It may also include the following statement to encourage (but not require) the permittee to collect an extra sample during the next monitoring period.

“It is recommended that you collect an extra sample during the next monitoring period and submit the sample results along with your next DMR. While this extra sample provides the missing data point, it does not eliminate the previous violation for unreported parameters.”

If a response to the WL is not received by the due date or the response is received but not satisfactory to the DEQ staff, the regions may extend compliance assistance via telephone calls, emails or meetings, or conduct a site inspection to follow up with the permittee to resolve the issue. If after exhausting these compliance tools the issue still cannot be resolved, points may be assessed and additional WLs may be sent in the following month (additional WL should cite the same alleged violation(s) stated in the initial WL rather than “no response to the WL”). And the CA should refer the permittee to the inspection staff for a site inspection. If additional violations are identified during the site inspection, an NOV may be issued to address the missing DMR and inspection deficiencies.

The CAs should share the list of non-compliant permittees with the inspection staff on a regular basis so these permittees may be prioritized under the risk-based inspection program. Noncompliance with the required corrective actions and follow-up monitoring, or other permit requirements may be determined by the inspection staff. A Violation Referral Form should be completed by the inspector and forwarded to the CA. Upon receipt of the referral form, the CA should follow the Point Assessment Criteria Section (1) (a) (iv) Inspection Deficiencies, manually enter the points and violations in CEDS, and send the WL/NOV in a timely manner.

If a WL/NOV is issued for exceedance of an effluent limitation, the letter may include a statement that reminds the permittee to take corrective actions, conduct follow-up monitoring, and submit the follow-up monitoring data according to the General Permit Part I A.5.b & c.

Monitoring waiver/monitoring discontinued

If any monitoring waivers or monitoring discontinuances are granted, the permit writer will notify the CA.

1. Benchmark monitoring

A waiver may be requested by the permittee and granted by DEQ, on an outfall-by-outfall basis, if all the parameter concentrations were below the benchmark concentration values in two consecutive monitoring periods. Other factors for consideration of granting a waiver include a favorable compliance history and no outstanding enforcement actions. A waiver may also be requested and granted if the permittee certifies that the facility remains inactive and unstaffed and there are no industrial materials or activities exposed to storm water.

2. TMDL monitoring

A waiver may be requested and granted if any pollutant (parameter) subject to the TMDL waste load allocation is not detected in any of the samples (for all outfalls) in the first four monitoring periods (i.e., the first two years of coverage under the permit). The waiver is parameter based and it applies to all applicable outfalls of this facility.

3. Impaired water monitoring

If any pollutant (parameter) for which the receiving water is impaired is not present (not detected) in the discharges from the facility, or if it is present but its presence is caused solely by natural background sources, the permittee must include a notification to this effect in the first DMR and then monitoring of this parameter may be discontinued for all applicable outfalls of the facility. The CA should forward the notification to the permit writer for review and approval. The permit writer should then notify the CA whether the monitoring can be discontinued or not.

4. Adverse climatic conditions

Monitoring may be waived for all monitoring types and all outfalls of the facility if adverse climatic conditions occur. However, a substitute sample should be taken during a qualifying storm event in the next monitoring period. Adverse weather conditions are those that are dangerous or create inaccessibility for personnel, and may include such things as local flooding, high winds, electrical storms, or situations that otherwise make sampling impracticable, such as drought or extended frozen conditions. It is expected that such a waiver may be granted if a proper explanation of not being able to sample along with supporting document are submitted to DEQ prior to the DMR due date. The CA should forward the DMR and any supporting document to the permit writer for review and approval. It will be very rare in Virginia that permittees will encounter these situations and not be able to collect samples in a 6 -12 month period.

Representative outfalls

Representative outfalls apply to benchmark monitoring only. If the facility has two or more outfalls that discharge substantially identical effluents, benchmark monitoring may be performed for only one of these outfalls and the following information must be included in the DMRs:

- a. The locations of the outfalls.
- b. Why the outfalls are expected to discharge substantially identical effluents, including evaluation of monitoring data, where available;
- c. Estimates of the size of the drainage area (in square feet) for each of the outfalls; and
- d. An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%).

It is a violation if the above information is not included on the DMR. This information may be submitted one time for the permit writer to approve representative/substantially identical outfalls. If approval is received and nothing has changed with regard to the outfalls since the last DMR submission, the permittee may indicate so in the Comments field and provide the date of approval. The permittee should still identify on the DMR which outfall was the representative outfall, and which outfalls were substantially identical to that outfall.

Adding/deleting outfalls

The SWI GP allows the permittee to add or delete the storm water outfalls as needed. The permittee has to update the SWPPP and notify DEQ of the change within 30 days of the change. The permit writer will notify the CA when such notification is received.