



Commonwealth of Virginia

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SUBJECT: Technical Advisory Committee (TAC) Meeting to Discuss the 2024 Reissuance of 9VAC25-150, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated With Industrial Activity

TO: TAC Members and DEQ Staff (listed below)

FROM: Joseph Bryan, Office of VPDES Permits

DATE: October 13, 2022

A TAC meeting was held on October 5, 2022 at the DEQ Piedmont Regional Office, 4949-A Cox Rd., Glen Allen, VA, 23060. The meeting, which was the first TAC meeting for this general permit reissuance, began at 10:00 am. Participants attending the meeting were:

<u>Name</u>	<u>Organization</u>
Tom Dunlap	Citizen
Jason Franti	TRC/ DAA
Clay Kulesza	Aqualaw
Liz McKercher	Dominion Energy
Lisa Ochenshirt	Aqualaw
Andrew Parker	VMA
Erin Reilly	JRA
Jim Taylor	Westrock
Jessica Wenger	UVA
John Westerfield	Labella Assoc.
Joseph Bryan	DEQ - CO
Allan Brockenbrough	DEQ - CO
Kevin Crider	DEQ - BRRO
Joseph Crook	DEQ - CO
Elleanore Daub	DEQ - CO
Amy Dooley	DEQ - NRO
Susan Mackert	DEQ - NRO
Troy Nipper	DEQ - CO
Kelli Park	DEQ - VRO

Peter Sherman	DEQ - CO
Noel Thomas	DEQ - VRO
Somsiri Youngpatanna	DEQ - PRO

Information provided before the meeting included:

- Regulation with draft amendments, VPDES General Permit Regulation for Discharges of Stormwater Associated With Industrial Stormwater, 9VAC25-150
- Role of TAC overview
- Agenda

Discussion

Joseph Bryan, Department of Environmental Quality (DEQ) Office of VPDES Permits, provided a brief introduction and background regarding the general permit promulgation process, reviewed the role of the TAC, and reviewed the agenda (three slides). He then reviewed comments from four groups submitted in response to the NOIRA (summarized in handout).

Changes to the EPA 2021 Multisector General Permit

Mr. Bryan reviewed and discussed the changes to the EPA 2021 Multisector General Permit (MSGP). A handout provided summarized the changes (with some DEQ comments), which include:

- Indicator Analytical Monitoring (pH, TSS and COD)
- Indicator Analytical Monitoring (PAHs)
- Updated Benchmark Threshold Values
- Updated the Benchmark Monitoring Schedule
- Impaired Waters Monitoring
- Additional Implementation Measures (AIM)
- Public Sign of Permit Coverage
- Consideration of Stormwater Control Measure Enhancements for Major Storm Events

For the first two items, Mr. Bryan stated that these are “report only” data collection efforts. If monitoring at the federal level results in new ELGs and/or benchmarks for specific industrial sectors in the future, DEQ will consider those changes at that time.

With regard to benchmark values, Virginia’s benchmark values were originally based off of the first MSGP, and then some were revised over the years based on various reasons (changes in the MSGP, VA WQS, etc.). The handout included the relevant values from the 2015 and 2021 EPA MSGPs, and the 2019 VPDES ISWGP for the parameters being updated by EPA.

EPA modified the benchmarks, which are not effluent limits, for aluminum, copper for discharges to freshwater, selenium for discharges to freshwater, and cadmium based on revised current CWA section 304(a) national recommended aquatic life water quality criteria.

Mr. Bryan indicated that DEQ may revise its benchmarks in order to be consistent with the MSGP. Virginia, which does not have a water quality standard (WQS) for aluminum, will consider increasing its benchmark from 0.75 mg/l to 1.1 mg/l consistent with the MSGP change. A TAC participant asked about the basis for EPA increasing the benchmark. DEQ indicated that the federal water quality criteria had been revised. Mr. Bryan indicated that DEQ may revise its benchmark for copper (freshwater) from 18 ug/l to 5.19 ug/l based on the MSGP change (which also reflects revised federal water quality criteria). A TAC participant expressed concern that DEQ not set benchmarks at unachievably low levels, and asked about background levels. DEQ said they could check to see if there are available statewide data. Mr. Bryan discussed the selenium benchmark which is 5 µg/L in the 2019 ISWGP and which was revised in the MSGP to be 1.5 µg/l (lentic) and 3.1 µg/l (lotic), respectively. The ISWGP benchmark for cadmium is 2.1 µg/l while the 2021 MSGP revised the benchmark to be 0.49 to 4.7 µg/l based on hardness.

EPA suspended the benchmarks for magnesium and iron in the 2021 MSGP based on lack of documented acute toxicity. The 2019 ISWGP includes benchmarks for magnesium and iron, however, the state does not have toxicity-based water quality criteria for these parameters. DEQ could remove these from the ISWGP based on the same rationale as the MSGP.

Mr. Bryan noted that further research into the original sources of the benchmarks will be completed and presented at the next TAC meeting for discussion.

Mr. Bryan discussed the 2021 MSGP benchmark monitoring schedule. He indicated that EPA's approach is more complicated than our current approach and would be difficult to integrate into our data management system. The current approach is less confusing and less burdensome overall and we are inclined to keep it. He noted we receive very few waiver requests now.

Mr. Bryan noted that the ISWGP already includes impaired waters monitoring requirements and approved-TMDL monitoring conditions that allow for waiver of additional monitoring when monitoring shows a facility is not a source of the impairment. Hence we have no plan to adopt the MSGP changes, which reflect a more complicated scheme.

Mr. Bryan discussed the Additional Implementation Measures (AIM) in the MSGP, which includes three levels of implementation measures that are required due to benchmark exceedances. He indicated that the corrective actions setup for benchmark exceedances in the ISWGP will be preserved in order to maintain flexibility for facilities in addressing issues without increasing regulatory or administrative burden. Facilities with ongoing issues will be addressed through DEQ's compliance/enforcement staff.

One TAC member agreed that the EPA approach complicates the process of corrective action, and noted that there is no single solution to benchmark exceedances.

DEQ discussed the public sign requirement in the 2021 MSGP. DEQ noted that permit and monitoring data is publically accessible at present. It was acknowledged that signs are required for construction sites, but such sites are different in character than operating businesses. Also, a publically accessible location may be difficult to identify. One TAC member pointed out that

DEQ does receive some inquiries asking if distinct sites are permitted. On balance, it was determined that signage does not appear to be necessary

Finally, Mr. Bryan discussed consideration of control measure enhancements to address major storms. TAC members observed that this only requires “consideration,” and that both control measures and major storms are not specifically defined and could be subject to different interpretations. One TAC member stated that industrial facilities are typically built to manage a 100-year storm event. Mr. Bryan stated that SWPPP preparation requirements in the ISWGP appear sufficient.

Chesapeake Bay TMDL Language

Mr. Bryan then reviewed the draft proposed Chesapeake Bay TMDL language. This included the current TMDL language in the general permit, action plan status, load data, the status of certain high-load facilities, and proposed language to address the Chesapeake Bay TMDL from July 1, 2024 onwards. The existing requirements address newly constructed facilities (9VAC25-151-60 C.14), expanding facilities (9VAC25-151-70 B.10), and existing or newly permitted facilities (9VAC25-151-70 B.9). He noted that under the 2019 general permit, reductions are due by June 30, 2024.

Mr. Bryan observed that across all industrial sectors covered by the ISWGP, the actual loads for TSS, TN and TP are below the expected loads (i.e., loading rates specified in the general permit times the reported industrial acreage for each facility).

Mr. Bryan noted that the 24 “high-load” facilities reviewed appear to be headed in the right direction. For example:

- 14 have TMDL Action Plans
 - 7 have shown significant reductions
 - 1 has met all of their reductions
- 4 did not require an Action Plan after additional sampling
 - One facility had a TN sample of 1,818 mg/L – which was attributed to a lab error. Additional sampling (submitted with calculations) showed: 0.84 mg/L; 0.60 mg/L; 1.6 mg/L; 1.4 mg/L
- 4 need additional samples (1 of which is moving into an IP)
- 1 was moved to a VPDES IP
- 1 was terminated (the facility shut down).

A TAC member asked whether after eight years we are seeing many newly permitted facilities. Another TAC member indicated that NRO has seen perhaps four newly permitted facilities. PRO also has seen a handful. One question is how to structure the Bay TMDL compliance requirements for new permittees. TAC participants mentioned appending the Action Plan or including it in the SWPPP, so it is continued to be implemented.

One TAC member suggested that for existing facilities that require an action plan, having a requirement to include the means and methods of achieving reductions in the SWPPP. Include

calculations that demonstrate the facility is meeting the TMDL loads. One TAC member asked if this should be in the Chesapeake Bay section or the SWPPP section. The response was the Bay section.

One TAC member stated that we need to determine compliance requirements for various scenarios, including: have Action Plan but have not met reduction; new outfall; rarely discharge; failed to get four samples.

One participant said we could request a demonstration, a facility must provide calculations to show it complies with the TMDL. Another asked if we could address these specifics in guidance. One response was that guidance is not mandatory. One TAC participant asked if we could ask for information in the registration statement that indicates that the facility is meeting its Action Plan.

A participant asked if new facilities are expected to meet the Chesapeake Bay TMDL on day one. The response was yes, for new construction, as per the current registration statement requirements. Existing permittees under the 2019 ISWGP are to comply with the TMDL by the expiration date of the permit. Compliance options for existing facilities include reducing loads or buying credits (i.e., NPS perpetual credits).

One participant asked if we can reissue permit coverage if a facility is not meeting the TMDL. Another participant asked about the actual TMDL compliance date. The target is the end of 2025 when all reductions should be in place. One person asked why we have the June, 30, 2024 date in the ISWGP. This is simply the end of the 2019 permit term. A ten-year implementation plan was set a long time ago and has been integrated in other related program plans. Mr. Bryan noted that the term of the upcoming ISWGP is 2024 – 2029.

One participant asked if the handful of facilities that have not yet complied with the TMDL requirements actually affect the overall compliance of the industrial sector.

A participant suggested treating everyone as new permittees who must include in their SWPPP the steps required to control the Bay pollutants (N, P and TSS). They also suggested that we move away from the Action Plans given that the sector as a whole is already under the TMDL target load. Participants asked about those facilities who completed monitoring and their calculations showed no need for a plan, and whether they would have to do anything further. They also noted that all permittees typically have some level of BMPs in place.

A participant stated that permittees are not done with compliance until they have made some form of demonstration. This will constitute compliance as of a specified date. Another asked what if they do not have the data.

One participant said the concept is to address facilities in different stages of compliance, for example:

- If the facility completed an Action Plan, then incorporate the requirements into the SWPPP;

- If the facility has not completed an Action Plan or demonstrated compliance, must provide calculations demonstrating compliance.

One participant observed that compliance could be meeting reductions or buying credits. Another pointed out that some facilities may not have time to complete the existing Chesapeake Bay TMDL compliance process.

Mr. Bryan indicated that discussions on the revised Chesapeake Bay TMDL language would resume at the next TAC meeting.

Review of Marked-up Version of ISW General Permit

Joseph Bryan reviewed the marked-up 2019 general permit. He discussed the change in the Board's authority, and the corresponding edits to the permit. He reviewed in section 40 the revised dates for the permit term (July 1, 2024 – June 30, 2029). A participant noted that section 50 C needed a title. Based on discussion, revisions were made to one authorized non-stormwater discharge, and firefighting training activities were added (specific language to be determined – checking the MS4 general permit) (50 C 4).

A TAC participant observed that small airports remain subject to this general permit (see definition of industrial activity) and making this clear would be useful, since the sector was removed in 2019. We may want to consider identifying BMPs to put in place.

Mr. Bryan reviewed revisions to the registration statement requirements. One TAC participant asked if the permit could be revised so permittees who have notified an MS4 of a discharge do not have to notify the same MS4 at each reissuance. The permit language was adjusted to require that the registration statement include an indication that a facility has notified the MS4 of the existence of the discharge. A TAC participant stated that this notification requirement is in all of the VPDES general permits.

Mr. Bryan stated he removed duplicative registration statement language regarding runoff from coal storage piles, and added a requirement to identify outfalls from mulch dyeing.

In section 70, DEQ added qualifying language for monitoring regarding impairments due to PCBs, since PCB sampling is quite expensive.

One TAC participant suggested requiring monitoring for PFAS compounds where present (no permit limit). It was noted that the language being discussed addresses impaired waters, and there is no current state water quality standard for PFAS. It was also noted that DEQ is collecting data regarding PFAS. DEQ can check with management on the status of that effort.

There was a discussion of the term “measurable storm event,” which is defined in the regulation and also explained in the stormwater sampling language. There was discussion that compliance sampling is not restricted to normal operating hours. One participant stated that, in some circumstances, it is not reasonable or sometimes even safe to require sampling in isolated areas in the middle of the night. One participant asked what is the difference between the inability to

take a sample and the climatic waiver. The first is due to no sufficient discharge, the second focuses on dangerous weather conditions.

There was discussion of the requirement for storm event data. It was noted that the duration information was deemed burdensome by the Concrete General Permit TAC. Storm event duration data was struck in the working draft. One participant noted that storm event data is included on the eDMR template for this and other general permits.

Corrective action was discussed. There was discussion of a new corrective action requirement (would be sub-item 4) based on quarterly visual observations of stormwater pollution (a similar provision is in EPA's MSGP). Some felt that this was too general. Perhaps the focus should be on in-stream impact.

For sub-item 3, added "or any approved TMDL WLA." There was a question regarding aggregate versus individual TMDL allocations. A participant pointed out that TMDLs are addressed in sub-item 2. The requirement that corrective action reports be signed by an authorized representative was removed. It was observed that submitted reports and those associated with 24-hour notification typically must be signed, but this corrective action report must be retained with the SWPPP. A requirement for signature was added to the follow-up reporting provision. Mr. Bryan stated that the requirement for quarterly visual documentation to be signed has been removed. This documentation is maintained with the SWPPP, and the SWPPP is signed.

Mr. Bryan explained that authorized non-stormwater discharges are addressed in two sections and, pending applicable revisions, they would be consolidated.

Mr. Bryan noted that there is new language regarding PCB minimization plans that may be added. This could help address PCB TMDLs under development and implementation activities.

Meeting adjourned at 2:30 pm.

A TAC meeting is scheduled for October 26, 2022. DEQ will keep TAC members informed of the schedule going forward. Please call or email Joseph Bryan (joseph.bryan@deq.virginia.gov) with questions. Thank you for your time and participation.