

Pocahontas Building Information

Please be advised that all House and Senate building rules and regulations apply to the conference room. Rules will be enforced fairly and impartially not only to ensure the participation and enjoyment of citizens and visitors to the General Assembly Building but also guarantee that the legislative branch officials working in the building for the public and the entire Commonwealth are able to perform their duties and responsibilities.

The rules include but are not limited to:

- Individuals and groups visiting the Pocahontas Building may enter the building through the doors marked public entrance on the south side of the building. Visitors with special needs may use the wheelchair accessible entrance.
- To ensure the safety of employees and visitors, all non-credentialed visitors are required to pass through a security screening and have their personal items screened by an x-ray machine prior to entry to the building. Please note that all packages and bags are subject to physical search.
- Campaign signs, banners, posters and other materials advocating the election or defeat of any candidate for public office may NOT be displayed at any time in any public space in the Capitol or Pocahontas Building.
- Possession or use of any device that may disrupt the conduct of business is prohibited, including but not limited to: voice-amplification equipment; bullhorns; blow horns; sirens, or other noise-producing devices; as well as signs on sticks, poles or stakes; or helium-filled balloons.

All violators are subject to removal.

**TENTATIVE AGENDA
STATE WATER CONTROL BOARD MEETING
TUESDAY, AUGUST 21, 2018**

**HOUSE COMMITTEE ROOM, FIRST FLOOR
POCAHONTAS BUILDING
900 EAST MAIN STREET
RICHMOND, VIRGINIA**

CONVENE – 9:30 A.M.

- I. Minutes (April 12, 2018)**
- II. Regulation - Exempt Final (Page 4)**
General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (9VAC25-890)
- III. Regulation - Final (Page 78)**
Water Quality Standards (9VAC25-260) (Remaining Triennial Review issues except Ammonia)
- IV. Regulations - Exempt Proposed (Page 83)**
VPDES General Permit Regulation for Discharges Resulting from The Application of Pesticides to Surface Waters (9VAC25-800)
- V. Consent Special Orders (Page 83)**
Tyson Farms, Inc. (Accomack Co.) (VPDES)
- VI. Eastern Shore Groundwater Withdrawal Permitting - Status Report**

REMAINING ITEMS NOT BEFORE 12:30 P.M.

- VII. Mountain Valley Pipeline/Atlantic Coast Pipeline Reports**
Nationwide Permit 12 Comment Period
Update in Response to April 12 Requests from Board
- VIII. Other Business**
Future Meetings (September 20 and December 13)
- IX. Public Forum**

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to the staff contact listed below.

PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory actions and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For Regulatory Actions (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is

accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For Case Decisions (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is an additional comment period, usually 45 days, during which the public hearing is held.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

Regulatory Actions: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

Case Decisions: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented during the public comment period (i.e., those who commented at the public hearing or during the public comment period) up to 3 minutes to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

Pooling Minutes: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

New information will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances, new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

STAFF CONTACT: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378; e-mail: cindy.berndt@deq.virginia.gov.

General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (9VAC25-890):

This is a final regulation. The staff will ask the board to approve the regulation reissuing the General VPDES Permit Regulation for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s). The Small MS4 General Permit will expire on June 30, 2018, and will be administratively continued until the new effective date. Every authorization to discharge under the current term of the general permit will expire upon the new effective date. The regulation establishing this general permit is being amended to reissue another five-year permit. Final amendments showing the final changes to the current regulation and the Agency Town Hall background document are included as part of this Board Memo package.

On December 7, 2017, The State Water Control Board authorized DEQ to move forward with the public comment period and hearing on the amendments to the small MS4 General Permit regulation. The public comment period was held from January 8, 2018 to March 9, 2018. Public notices for this regulation were published in The Washington Times, the Richmond Times Dispatch, and The Roanoke Times. The public hearings were held at the Department of Environmental Quality's (DEQ) Northern Regional Office in Woodbridge on February 9, 2018; DEQ's Central Office in Richmond on February 12, 2018; and DEQ's Blue Ridge Regional Office in Roanoke on February 14, 2018. There were three comments provided by attendees. Twelve comment letters were received from registered organizations including: the Hampton Roads Regional Planning District Commission (HRPDC); the Virginia Association of Municipal Stormwater Authorities (VAMSA), various environmental organizations and permittees under the general permit. Comments were also received from EPA Region 3 and US EPA Washington, DC office. A summary of all comments and responses is included below.

DEQ used a participatory approach to develop this regulation. A Technical Advisory Committee (TAC) was formed to assist the department in the reissuance of the Small MS4 General Permit. The final regulation takes into consideration the recommendations of a technical advisory committee formed for this regulatory action. The technical advisory committee consisted of representatives of state and federal agencies, local governments, consultants, planning district commissions, non-profit environmental groups, and DEQ staff.

Significant changes to the proposed regulation include:

- Clarification of the definition of maximum extent practicable (MEP). Comments were received to address the definition of MEP within the context of the small MS4 General Permit. To provide permittees with clarification according to the laws and regulations of the Commonwealth of Virginia, 9VAC25-890-40.I.B was revised as follows:

“The permittee shall develop, implement, and enforce a MS4 program designed to reduce the discharge of pollutants from the small MS4 to the maximum extent practicable (MEP) in accordance with this permit, to protect water quality, and to satisfy the appropriate water quality requirements of the State Water Control Law and its attendant regulations. The permittee shall utilize the legal authority provided by the laws and regulations of the Commonwealth of Virginia to control discharges to and from the MS4. This legal authority may be a combination of statute, ordinance, permit, policy, specific contract language, order or interjurisdictional agreements. The MS4 program shall include the minimum control measures

(MCM) described in Part I.E. For the purposes of this permit term, implementation of MCMs in Part I.E and the Chesapeake Bay and Local TMDL requirements in Part II (as applicable) consistent with the provisions of an iterative MS4 program required pursuant to this general permit constitutes compliance with the standard of reducing pollutants to the “maximum extent practicable,” provides adequate progress in meeting water quality standards and satisfies the water quality requirements of the State Water Control Law and its attendant regulations.”

- Changed the effective and expiration dates to reflect the reissuance date of the permit.

Approximately 100 permittees are currently registered under this small MS4 General Permit. This number may be adjusted according to any changes in the 2020 decennial census.

Changes since publication of the proposal:

Current Section number	Requirement at proposed stage	What has changed	Rationale for change
Contact Information	This section provides agency contact information.	Agency contact person has been changed with revised phone and e-mail contact information.	Update contact information.
MS4 General Permit Summary	This section provides a summary of proposed regulatory action.	The word implanted was corrected to <u>implemented</u> .	This revision was to correct a word to <u>implemented</u> .
1	This section provides the definitions for terms used throughout the permit.	The word on line has been corrected to <u>online</u> .	This was changed to provide consistency on use of the term throughout the document.
1	Provided the definition for the term “High-priority facilities”.	The word engaged was changed and the sentence to read as follows: “... <u>engage in one or more of</u> in the following activities...”. A revision was also made to remove the words “facilities” and “yards” after each listed item and add <u>storage for</u> before “public works” for the sentence to read as follows: “(i) <u>composting facilities</u> , (ii) <u>equipment storage and maintenance facilities</u> , (iii) <u>materials storage yards</u> , (iv) <u>pesticide storage facilities</u> , (v) <u>storage for public works yards</u> , (vi) <u>recycling facilities</u> , (vii) <u>salt storage facilities</u> , (viii) <u>solid waste handling and transfer facilities</u> , and (ix) <u>vehicle storage and maintenance yards</u> .”	The intent of this change is to clarify that the listed items for “High-priority facilities” should be activities conducted and not locations and specify “storage for” public works. A grammatical error was also corrected.
10.A	Provided purpose, delegation of authority information and effective date of the state permit.	Changed a permit reference from 9VAC25-890-20.C to 9VAC25-890-20.D to clarify nonmunicipal stormwater or wastewater discharges are not	Correction for a permit reference.

		authorized by the permit except in accordance to 9VAC25-890-20.D.	
10.B	Provided effective date of the permit.	Changed the effective date of the state permit to November 1, 2018 and expiration to October 31, 2023.	Correction to update the permit effective and expiration dates.
15	Provided the reference and incorporation of U.S. Environmental Protection Agency Title 40 CFR regulation and published date.	Added the following sentence as follows: “The final rule published in the Federal Register on August 28, 2017 (82 FR 40836) which amends 40 CFR Part 136 is also incorporated by reference in this chapter.”	To update the correct federal regulation and date information.
20.A.4	Authorization to discharge information.	Changed the term owner to <u>operator</u> .	Changed the term to provide consistency throughout the document.
20.C.3		Defined what the term “MEP” is, added that implementing BMPs was to <u>reduce pollutants</u> and added regulatory reference to <u>9VAC25-31-220.K.2.</u>	Further clarification based on comments received and regulatory reference.
20. D.3		Changed “Dechlorinated water line flushing” to “ <u>Water line flushing, managed in a manner to avoid an instream impact.</u> ”	Revised term to allow water line flushing which must be managed in a manner to avoid instream impact as authorized in non-stormwater discharges listed in 9VAC25-890-20.D.3. The following item was also added to the list, “discharges from noncommercial fundraising car washes if the washing uses only biodegradable, phosphate-free, water-based cleaners” as required by the amendment to the Code of Virginia, Section 15.2-2114.1.
30.B.3 and 4	Registration Statement	Revised to make a grammatical correction and clarify the “...type of the small MS4...” for the information that must be submitted on the Registration Statement.	Further clarification based upon comments received.
30.B.6		Revised information requirements for the Registration Statement. Changed the submittal requirement in the Registration Statement to “The names of receiving surface waters to which the outfall <u>MS4 system</u> discharges;” and the reference for the Virginia 305(b)/303(d) Water Quality Assessment Integrated Report	Revised the required information for the Registration Statement application and updated report reference dates.

		was updated to reflect the most recent 2016 date.	
30.B.6 30.B.7 30.B.8		<p>Removed the Registration Statement submittal requirement for the following information:</p> <ul style="list-style-type: none"> • the unique outfall identifier; • the estimated MS4 acreage served for the outfall; • the name of any applicable TMDL for the segment of the receiving water; • the 6th Order Hydrologic Unit Codes currently receiving discharges from the small MS4; • the estimated drainage area served by the MS4 directly discharging to an impaired receiving surface water; and description of the land use for each such drainage area; <p>These requirements have been revised and are now included as part of MCM 3.a.</p>	<p>This information was removed from the Registration Statement to simplify the permit application process. The necessary information is still required and will be submitted following the reporting requirements as listed in MCM 3.</p> <p>The numbering for 30.B.6-12 was adjusted after the referenced sections were removed.</p>
40	General Permit introduction and regulatory reference	The opening paragraph was changed as follows: “Any MS4 operator whose registration statement is accepted by the board will receive <u>coverage under</u> the following general permit and shall comply with the requirements in this general permit <u>and be subject to all applicable requirements of the Virginia Stormwater Management Program (VSMP) Regulations (9VAC25-870)9VAC25-870 and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulations. (9VAC25-31).9VAC25-31”.</u>	Further clarification based on comments received from both public comments and EPA comments to reference the appropriate regulations and that the permittee is provided “coverage under” and “...subject to all applicable” requirements of the referenced regulations.
40	General Permit effective and expiration dates	Effective date of permit November 1, 2018 to October 31, 2023.	Updated effective dates of the permit November 1, 2018 to October 31, 2023.
40	General Permit	Revised terms within the permit.	Changed the term “operator” to permittee to provide consistency throughout the permit. The term “DEQ” was revised to “the department” based on comment received.
40 Part I.A	General Permit - Discharge	Provides reference for authorized nonstormwater	Revised the reference for authorized nonstormwater

	Authorization and Special Conditions	discharges.	discharges from 9VAC25-890-20 C to 9VAC25-890-20 D.
40 Part I.B	General Permit - Discharge Authorization and Special Conditions	Provides requirements for compliance with the small MS4 permit including definition of “maximum extent practicable”.	Clarified the definition of “maximum extent practicable” and MS4 permittee requirements to include as follows: “The permittee shall develop, implement, and enforce a MS4 program designed to reduce the discharge of pollutants from the small MS4 to the maximum extent practicable (MEP) in accordance with this permit, to protect water quality, and to satisfy the appropriate water quality requirements of the State Water Control Law and its attendant regulations. The permittee shall utilize the legal authority provided by the laws and regulations of the Commonwealth of Virginia to control discharges to and from the MS4. This legal authority may be a combination of statute, ordinance, permit, policy, specific contract language, order or interjurisdictional agreements. The MS4 program shall include the minimum control measures (MCM) described in Part I.E. For the purposes of this permit term, implementation of MCMs in Part I.E and the Chesapeake Bay and Local TMDL requirements in Part II (as applicable) consistent with the provisions of an iterative MS4 program required pursuant to this general permit constitutes compliance with the standard of reducing pollutants to the “maximum extent practicable,” provides adequate progress in meeting water quality standards and satisfies the water quality requirements of the State Water Control Law and its attendant regulations.” This revision included additional language to clarify the definition of MEP based on public and EPA comments received.
40 Part I.C	This section includes	Revised a sentence in Part I.C.1	Part I.C.1.was revised according

	MS4 program plan requirements.	to read as follows: “The MS4 program plan shall include, at a minimum, the following <u>written items</u> ”. Part I.C.1.c.(2) was revised as follows: “A description of the BMPs or <u>strategies</u> that the permittee anticipates will be implemented...”	to EPA comment received and Part I.C.1.c.(2) was revised in response to a public comment received.
40 Part I.C.3	MS4 Program Plan requirements	Revised to include a provision to update the MS4 program plan to meet the requirements of the permit no later than six months after permit effective date unless otherwise specified in another permit condition. This section also was revised to include posting of the most up-to-date version of the MS4 program plan on the permittee’s website or location it can be obtained within 30 days of updating the MS4 program plan.	Changes made to indicate the date by which the MS4 program plan must be updated and that the permittee make updates available on the permittee’s website within 30 days of a revision. This permit change was made based on a comments received.
40 Part I.E.1	Public education and outreach requirements as part of MCM 1.	Revised Table 1 heading from Public Outreach and Education to <u>Public Education and Outreach</u> . Revised contact information in Part I.E.1.c.(4) to include addition of website information. Added an annual requirement that the permittee use the 2 or more strategies listed in Table 1.	The use of two or more strategies from Table 1 was clarified to be a yearly requirement. Changes were made to the heading of Table 1 and the term “operator” was changed to “ <u>permittee</u> ” to provide consistency within the section. The term “website” was added to provide additional information location. Revisions were based on comments received.
40 Part I.E.2.	Public involvement and participation requirements as part of MCM 2.	Additions were made as part of MCM 2 to clearly reference that term “MS4 program plan” in the list for procedures to be developed and implemented as part of the plan.	Revisions were made to provide consistency in the section and clearly delineate the actions necessary for the MS4 program plan. The revisions were based on comments received.
40 Part I.E.2.	Public involvement and participation requirements as part of MCM 2.	For the annual reporting requirements, Part I.E.2.f, the term “address” was added after “webpage” and Part I.E.2.f.(5) the sentence was revised as follows: “The name of the MS4 permittees <u>with whom the permittee collaborated in the public involvement opportunities.</u> ” Also, the <u>requirement in Part I.E.2.f.(1) specifies as part of the summary</u>	Revisions were made based on comments received to clarify the information required as part of the annual report. The revision for “stormwater complaints” is from an EPA comment in Part I.E.4.c.

		<u>of public input on the MS4 program that stormwater complaints be included.</u>	
40 Part I.E.3.	Illicit discharge detection and elimination as part of MCM 3.	MCM 3 a was revised to include additional outfall information that was originally provided as part of the Registration Statement. This includes the MS4 regulated service area; conveyances; and stormwater management facilities owned or operated by the permittee; and the predominant land use for each outfall discharge to an impaired water. Additionally, as part of Part I.E.3.a.(3), the due date for the permittee to submit to DEQ a GIS-compatible shapefile of the permittee’s MS4 map or map in a PDF format was extended to July 1, 2019. Language was also added to Part I.E.3.a.(1).(a).(ii) to clarify mapping requirements for MS4 outfall discharges to receiving water channelized underground.	Revisions were made based on a comment received from the EPA and public comments. The map requirements were moved to MCM 3 to provide consistency and clear submittal requirements. The land use requirement was changed to specify land use for each outfall discharging to an <i>impaired water</i> . Language was also added for mapping outfall discharges to receiving water channelized underground to provide an additional mapping option the permittee may use.
40 Part I.E.3.b and c	Illicit discharge detection and elimination as part of MCM 3.	A reference to nonstormwater discharges was corrected to 9VAC25-890-20 D. In Part I.E.3.c the section was revised to read as follows: “The permittee shall maintain, and implement, <u>and enforce illicit discharge detection and elimination (IDDE) written procedures designed to detect, identify, and address unauthorized nonstormwater discharges, including illegal dumping, to the small MS4 with the goal of eliminating to effectively eliminate the unauthorized discharge.”</u>	Revisions were made based on comments received to correct a reference and to clarify MS4 permittee responsibilities for illicit discharge and detection.
40 Part I.E.3.c	Illicit discharge detection and elimination as part of MCM 3.	The screening criteria for outfalls was revised to include as follows: “If the total number of MS4 outfalls is greater than 50, a schedule to screen a minimum of 50 outfalls annually such that no more that 50% are screened in the previous 12-month period. <u>The 50% criteria is not applicable if all outfalls have been screened in the previous</u>	The revision was made to clarify the requirement for screening outfalls under the dry weather field screening protocol section based on EPA comment received. Grammatical changes were made to clarify the section and provide better understanding including word order changes according to comments received.

		<u>three years;</u> ” Several grammatical changes were made in this section to clarify the requirement.	
40 Part I.E.3.c.(5) and (6)	Illicit discharge detection and elimination as part of MCM 3.	A revision added as follows: “... Methodologies for conducting a follow-up investigation as necessary for illicit discharges that are continuous or permittees expect to occur more frequently than a one-time discharge to verify that the discharge has been eliminated <u>except as provided for in Part I.E.3.c.(4).</u> A revision was also made to add terminology to Part I.E.3.c.(6) for a mechanism to track all illicit discharges investigations as follows: “The date <u>or dates</u> that the illicit discharge was initially observed, reported <u>or both.</u> ”	The revision was made to clarify that follow up investigations are necessary except as provided for in situations that the source remains identified after attempts to observe the discharge flowing were unsuccessful as detailed in Part I.E..3.c.(4). These revisions were made based on comments.
40 Part I.E.3.e	Illicit discharge and detection and elimination	The language for annual reporting requirements was changed in Part I.E.3.e and revised to add as follows: “A confirmation statement that the MS4 map and information table have been updated <u>to reflect any changes to the MS4 occurring on or before</u> June 30 of the reporting year;” Part I.E.3.e.(3).(b) was revised to add <u>or dates</u> to clarify the requirements within the permit.	The revision was made to clarify the requirements for updating MS4 map and information table. All revisions were made in response to a comments received.
40 Part I.E.4	Construction site stormwater runoff control	In Part I.E.4.a. was revised to add “ <u>from regulated construction site stormwater runoff</u> ” to clarify the source of discharges entering the MS4 in this section. Revisions were made to clarify town requirements when a town is not a VESCP in Part I.E.4.a.(2).	The language was changed to allow towns to utilize the surrounding county VESCP consistent with the Virginia Erosion and Sediment Control law and regulations and this would constitute compliance with the requirement and details that the town shall notify the surrounding county of ESC or other construction stormwater runoff problems. This revision was made based on comment made.
40 Part I.E.4.b	Construction site stormwater runoff control	The following has been added: “The permittee shall require implementation of appropriate controls to prevent nonstormwater discharges to the	The revision was made based upon EPA comment received to provide appropriate controls to prevent nonstormwater discharges to the MS4.

		MS4, such as wastewater, concrete washout, fuels and oils, and other illicit discharges identified during land disturbing activity inspections of the MS4. The discharge of nonstormwater discharges other than those identified in 9VAC25-890-20 D through the MS4 is not authorized by this state permit.” Numbering within this section was also revised with the additional paragraph and a grammatical revision.	
40 Part I.E.5.a	Post-construction stormwater management for new development and development of prior developed lands.	Revisions were made to Part I.E.5.a.(2) similar to Part I.E.4.a above to provide a town that has not adopted a VSMP to utilize the surrounding county program and requires the town to notify the surrounding county of erosion, sedimentation or other post construction stormwater runoff problems. The term “program” was also added within two sections to clarify that “...the permittee shall implement a post-construction stormwater runoff control <u>program...</u> ”	This revision was to clarify requirements for towns that do not have their own VSMP programs and utilize the surrounding county VSMP program. The revision was made based on a comment made.
40 Part I.E.5.b.(2)	Post-construction stormwater management for new development and development of prior developed lands.	Terminology has been added to the stormwater management facilities inspection requirement as follows: “ <u>The alternative inspection frequency shall be no less than once per five years...</u> ”	The revision was to specify an alternative inspection frequency requirement for permittee owned BMPs and was made based on a comment received.
40 Part I.E.c.(1).(b)	Post-construction stormwater management for new development and development of prior developed lands.	A revision for long-term operation and maintenance by the owner of a stormwater management facility requires the owner “...to develop <u>and record a maintenance agreement, including an inspection schedule</u> to the extent allowable under state or local law or other legal mechanism...: ”	This revision was to clarify adequate long-term O&M of privately owned BMP requirements by developing and recording a maintenance agreement and was made based on comments received.
40 Part I.E.5.d and h	Post-construction stormwater management for new development and development of prior developed lands.	Language was added in this section to clarify stormwater management facility “ <u>or BMP</u> ” reference. Clarification was also added to specify a “webpage address” in Part I.E.5.h.(6) for the location	The revisions were based on comments received.

		<p>of the stormwater management facility spreadsheet or database.</p> <p>One revision for ordinances as part of Part I.E.5.h.(3) was added to include as follows: “A description of the legal authorities utilized to ensure compliance with Part I.E.5.a for post-construction stormwater runoff control such as ordinances <u>(provide citation as appropriate)...</u>”.</p>	
40 Part I.E.5.i	Post-construction stormwater management for new development and development of prior developed lands, Annual Reporting	<p>Changes were made to Part I.E.5.i for annual reporting to clarify maintenance of stormwater management facilities owned or operated by the permittee as follows: “A description of the significant <u>maintenance, repair, or retrofit</u> activities performed on the stormwater management facilities owned or operated by the permittee...This does not include <u>routine</u> activities ...”.</p>	Changes were made to clarify the maintenance requirements for permittee owned stormwater management facilities to include maintenance, repair and retrofit, but routine activities. This change was based upon a comment received.
40 Part I.E.6	Pollution prevention and good housekeeping for facilities owned or operated by the permittee within the MS4 service area MCM 6	<p>Revisions include a reference to employee training program requirements within the permit in Part I.E.6.m.</p> <p>Other revisions include term changes, typo corrections, and a revision in the clarification of high priority facilities that have a high potential for discharging pollutants. The revision in Part I.E.6.c includes that the permittee shall maintain and implement a site <u>specific stormwater pollution prevention plan for each facility identified</u>. This MCM 6 also included a clarification to the inspection and maintenance of site specific source controls as follows: An inspection <u>frequency of no less than once per year</u> and maintenance scheduler <u>requirements for site specific controls</u>. <u>Part I.E.6.d.(8) was deleted</u>. <u>MCM 6 changes also include clarification in Part I.E.6.l of the use of contract language</u>.</p>	<p>These changes were made based on comments received. The clarification for high-priority facilities that have a high potential of discharging pollutants provides additional definition for those facilities to be considered.</p> <p>The requirements for maintenance and inspection were defined to include a specific frequency of no less than once per year.</p> <p>Part I.E.6.d.(8) was deleted from the permit since the requirements listed duplicated the requirements found in Part I.E.6.d.(7).</p> <p>Certification requirements by VDACS was added to the Part I.6.l.(4) to clarify certification standards for contactors and employees who apply the pesticides and herbicides.</p> <p>A clarification statement was added to Part I.6.n to state that the permittee shall maintain documentation of each training</p>

		<p><u>training, standard operating procedures “...or other measures within the permittee’s legal authority...”</u></p> <p>A reference was added to Part I.6.1.(4) to include as follows: <u>“Certification by the Virginia Department of Agriculture and Consumer Services (VDACS) Pesticide and Herbicide Applicator program shall constitute compliance with this requirement.”</u></p> <p>Finally, one item was amended to delete a repetitious statement regarding the MS4 program already referenced. The word daily was also removed to maintain consistency from the annual reporting requirement for summary of any operational procedures developed or modified in accordance with Part I.E.6.a.</p> <p>The annual reporting requirement added as follows: A summary of any SWPPPs modified in accordance with Part I.E.6.f <u>or the rationale of any high priority facilities delisted in accordance with Part I.E.6.h</u> during the reporting period.”</p>	<p>event conducted <u>by the permittee....</u></p>
40 Part II.A	Chesapeake Bay TMDL Special Condition	<p>Revisions in this Part II.A include revision of Tables 3a – 3d to change the terms in columns C and D to better define the necessary calculations. The calculation for Column F in the notes was also revised.</p> <p>Additional terminology was added to clearly state the required total reduction at the end of the permit term for the reduction of at least 40% of the L2 scoping run in separate sections to clarify the needed requirements.</p> <p>Basic terminology was revised within Part II.A to clearly reference the tables, correct grammatical errors,, and change</p>	<p>Changes to the tables were proposed by DEQ to accurately reflect the resulting calculations and as a result of comments received.</p> <p>Other changes were based upon comments received.</p>

		<p>the tense of a word.</p> <p>Part II.A.13 was deleted since that was a section that referenced requirements from the previous permit. Subsequent numbering was also changed to make this revision.</p>	
40 Part II.B	Local TMDL special condition	<p>Part II.B.2 was changed to include: <u>“The permittee shall complete implementation of the TMDL Action Plans as soon as possible.”</u></p> <p><u>Two references were corrected in Part II.B.4 for Bacterial TMDLs to Part II.B.3.d.</u></p> <p>The term “Marinas” was removed from Table 5.</p>	<p>These revisions were made based upon comments received.</p> <p>The TAC had discussed adding a strategy to Table 5, however, upon further review by DEQ staff, this type of strategy would not result in a reduction in load from the MS4.</p>
40 Part III	Conditions Applicable to All State and VPDES Permits	<p>The note at the beginning of Part III was revised to read as follows: “Discharge monitoring is not required for <u>compliance purposes by</u> this general permit. If the operator chooses to monitor stormwater discharge for control measures, the operator must comply with the requirements of Part III A, B, and C as appropriate <u>informational or screening purposes, the operator does not need to comply with the requirements of Part III A, B, or C.</u> Revisions were made to the certification statement in Part III.K.4 to change the terminology to maintain consistency throughout all documents.</p>	<p>The change to the “Note” was made in response to comments received and distinguishes that testing conducted for informational or screening purposes does not need to comply with the requirements Part III, A,B,C.</p> <p>Revision was made based on comments received.</p>

Public comment summary and response

Commenter	Comment Received	DEQ Response
City of Alexandria	Line 52 - reductions to ‘implemented’ not ‘implanted’	The noted correction has been made.
City of Alexandria	Line 70 - The listed items should be activities not locations. Consider deleting “facilities” and “yards.”	The noted correction has been made.
VAMSA	“High-priority facilities” means facilities	Revisions to that section have been made as

Commenter	Comment Received	DEQ Response
	owned or operated by the permittee that are actively engaged in the following activities: (i) composting facilities, (ii) equipment storage and maintenance facilities, (iii) materials storage yards; (iv) pesticide storage facilities; (v) storage for public works yards, (vi) recycling facilities, (vii) salt storage facilities, (viii) solid waste handling and transfer facilities, and (ix) vehicle storage and maintenance yards. (<i>VA Register</i> , p. 991)	noted in the City of Alexandria’s response to remove “facilities” and “yards” to clearly state that definition of “High-priority facilities” are actively engaged in the activities as listed and does not reference locations.
City of Charlottesville	Line 71 – please consider replacing “engaged” with “engage”.	The noted correction has been made.
City of Charlottesville	Line 74 – please consider replacing “and” with “or” since a high priority facility by definition only has to be engaged in one of the listed activities, not all of them.	DEQ agrees that it is appropriate to clarify this definition and proposes to add the following language to the definition: “...engage in <u>one or more of</u> the following activities...”
Navy	As written, the MS4 service area definition appears to make non-traditional MS4s responsible for drainage received from outside its property boundary. This could also be interpreted to require traditional MS4s to be responsible for drainage received outside its jurisdictional boundary. Recommendation: Given that non-traditional MS4s have no legal mechanisms to require load reductions from land outside their property boundary, this section should be modified to clearly demonstrate that non-traditional MS4s are not responsible for drainage received from outside their property boundary and traditional MS4s are not responsible for drainage received outside their jurisdictional boundary. Suggested language is "MS4 regulated service area" or "service area" means for Phase II permittees, the drainage area served by the permittee's MS4 that is located within an urbanized area as determined by the 2010 decennial census, performed by the Bureau of the Census, and drainage originating within the property boundary of a non-traditional MS4 or within the jurisdictional boundary of a traditional MS4.	DEQ discussed the proposed definition of <i>regulated service area</i> with the technical advisory committee for the MS4 General Permit, and the definition proposed is consistent with DEQ’s expectations. Also the definition of <i>regulated land</i> in DEQ’s guidance document GM15-2005 for the Chesapeake Bay TMDL Special Condition requirements in the 2013-2018 MS4 General Permit. Land within the Census Urbanized Area that drains to a regulated MS4 is part of the service area of that regulated MS4 regardless of the land’s ownership or control. No change proposed.
Department of Defense	As written, this definition appears to make non-traditional MS4s (such as federal installations) responsible for	Please see proposed comment to 9VAC25-890-1 above.

Commenter	Comment Received	DEQ Response
VAMSA	<p>drainage received from outside the permittee's property boundary. This could also be interpreted to require traditional MS4s to be responsible for drainage received outside its jurisdictional boundary.</p> <p>Recommendation: Given that non-traditional MS4s have no legal mechanisms to require load reductions from land outside their property boundary, this section should be modified to clearly demonstrate that non-traditional MS4s are not responsible for drainage received from outside their property boundary and traditional MS4s are not responsible for drainage received outside their jurisdictional boundary. Suggested language is "MS4 regulated service area" or "service area" means for Phase II permittees, <i>"the drainage area served by the permittee's MS4 that is located within an urbanized area as determined by the 2010 decennial census, performed by the Bureau of the Census, and drainage originating within the property boundary of a non-traditional MS4 or within the jurisdictional boundary of a traditional MS4."</i></p>	<p>The references in 9VAC25-890-40 Part I A and Part I B for non-stormwater discharges have been changed from 9VAC25-890-20 C to 9VAC25-890-20 D. The noted correction has been made.</p>
Chesapeake Bay Foundation	<p>There are similar references at Part I(A) and I(B) of the Proposed GP (<i>VA Register</i>, p. 997, p.1004).</p> <p>The Draft Permit proposes to allow the DEQ Director or his designee to perform any act of the State Water Control Board (Board) specified within the permit, except as limited by a specific Virginia Code prohibition. While we recognize the goal of efficiency associated with this provision, we believe that it would further the continuing erosion of the meaningful citizen review for which the</p>	<p>Under the State Water Control Law, the Director of DEQ is delegated authority to make case decisions on behalf of the State Water Control Board except under certain situations provided for in law or regulation. The language that is referenced in this comment is language that appears in all of DEQ's VPDES and VSMP general permits. Additionally, this language was part of the 2013 MS4 General Permit regulation as</p>

Commenter	Comment Received	DEQ Response
EPA	<p>Board was created. We urge the deletion of this provision—or at least a limitation on its use to specific, identified tasks for which DEQ’s administration is essential.</p> <p>Why do 1-3 refer to the operator, but 4 uses the term owner?</p>	<p>9VAC 25-890-50. No change necessary</p> <p>DEQ will ensure consistent use of terms.</p>
City of Alexandria	<p>Line 101 - ‘Operator’ stricken from the definitions and appears the term should be ‘permittee’ here instead of ‘operator’. Permittee is used elsewhere in place of operator when the discussion is regarding items after the permit is issued.</p>	<p>Changes were made throughout the permit (9 VAC 25-890-40) to update “operator” to “permittee.” The point at which the general permit 9VAC 25-890-40 becomes applicable, DEQ has granted coverage under the general permit. The base regulation of 9VAC 25-890 provides regulatory requirements and additional regulatory information to “operators” for which coverage under the general permit has not yet been extended. As written in this section, use of the word “operator” is correct. No change necessary.</p>
EPA	<p>Flagging the language “to the MEP standard” as a potential issue. This may be addressed later in the permit, where the MEP standard may be defined by the permit requirements. As it stands though, it could be deferring discretion to the permittees to determine this.</p>	<p>DEQ is not deferring MEP decision to permittee. DEQ has determined that the requirements of the permit meet MEP and therefore by complying with the permit, the permittee demonstrates compliance with the MEP standard. This is addressed in the accompanying fact sheet.</p>
EPA	<p>When/how is this evaluated/determined?</p>	<p>MEP was determined by DEQ and results in the items that are included in the MS4 GP. This is addressed in the accompanying fact sheet.</p>
City of Charlottesville	<p>Line 119: The term “MEP” has not yet been defined for use as an abbreviation.</p>	<p>The noted correction has been made.</p>
VAMSA	<p>9VAC25-890-20(C)(3) states that the SWCB will notify an MS4 operator that it is not eligible for GP coverage if the operator “fails to implement BMPs to the MEP standard in order to demonstrate progress toward meeting the water quality requirements as listed in 9VAC25-31-220 D 1 a.” (<i>VA Register</i>, p. 992).</p> <p>9VAC25-31-220(D)(1)(a) is part of the VPDES regulations (9VAC25-31-10, et seq.), and mandates that VPDES permits include limitations that “control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the board determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any Virginia water quality</p>	<p>MS4s are regulated under both the VSMP (9VAC25-870) and the VPDES permit (9VAC25-31) regulations. As such, DEQ believe it is appropriate to maintain a reference to the provisions of the VPDES regulations. However, DEQ agrees that as part of this section of the regulation further clarification is appropriate. DEQ has revised the proposed permit language to incorporate VAMSA’s 2nd suggestion:</p> <p>3. The operator fails to implement BMPs <u>to reduce pollutants</u> to the maximum extent practicable (MEP) standard in order to demonstrate progress toward meeting the water quality requirements as listed in 9VAC25-31-220 D 1 a <u>in accordance with 9VAC25-31-220 K 2.</u></p> <p>Please note that revisions to include “to reduce pollutants” are not proposed by</p>

Commenter**Comment Received**

standard, including Virginia narrative criteria for water quality.” VAMSA submits that the Virginia Stormwater Management Programs (VSMP) regulations, not the VPDES regulations, are the appropriate cross-reference for the Proposed GP. The VSMP regulations directly address stormwater, and explicitly provide a Small MS4 compliance standard:

“Your MS4 state permit will require at a minimum that you develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, the Virginia Stormwater Management Act, and the State Water Control Law.” 9VAC25-870-400(D)(1).

If DEQ will not substitute the 9VAC25-870-400(D)(1) reference, VAMSA suggests the following alternatives to the current text:

3. The operator fails to implement BMPs to the MEP standard in order to demonstrate progress toward meeting the applicable water quality requirements as listed in 9VAC25-31-220 D 1 a.

3. The operator fails to implement BMPs to the MEP standard in order to demonstrate progress toward meeting the water quality requirements as listed in 9VAC25-31-220 D 1 a in accordance with 9VAC25-31-220 K 2.

3. The operator fails to implement BMPs to the MEP standard in order to demonstrate progress toward meeting the applicable water quality requirements as listed in 9VAC25-31-220 D 1 a in accordance with 9VAC25-31-220 K 2.

Similar edits should be made to the Draft Fact Sheet, specifically under the discussion of “Activities covered by this general permit” (p. 2). DEQ has also

DEQ Response

VAMSA but are initiated by DEQ as a result of further review of the permit.

Commenter	Comment Received	DEQ Response
City of Charlottesville	<p>stated in the Draft Fact Sheet that the pollution prevention and good housekeeping programs (MCM-6) are “key elements for minimizing the impact from any activity exposed to stormwater that has the potential to discharge to surface waters.” (p. 11). The compliance standard for an MS4 is reducing pollutants</p>	<p>Please see response to similar VAMSA comment above.</p>
City of Suffolk	<p>Line 120 – the City feels that the cross-reference to 9VAC 25-31-220.D.1.a is not the most appropriate reference to make. In our opinion, the more appropriate cross-reference is to 9VAC25-870-400.D.1, which specifically addresses the VSMP regulations and requires permittees to develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, the Virginia Stormwater Management Act, and the State Water Control Law.</p>	<p>Please see response to similar VAMSA comment above.</p>
City of Suffolk	<p>9VAC25-890-20(C)(3) cross references the Virginia Pollutant Discharge Elimination System (VPDES) regulations for water quality requirements. Suffolk believes that the Virginia Stormwater Management Programs (VSMP) regulations are the appropriate cross reference for the MS4 GP.</p> <p>The City supports including a list of authorized non-stormwater discharges in 9VAC25-890-20(D)(3). However, we believe the list should be consistent with existing federal and state law. The list currently provided in the proposed MS4 GP adds "dechlorinated" to water line flushing making this GP inconsistent with federal and state law as well as the individual permit issued to Virginia Department of Transportation on June 29, 2017. Suffolk requests that DEQ delete the word -dechlorinated- from the proposed MS4 GP.</p>	<p>Please see response to similar VAMSA comment above.</p> <p>We have revised 9VAC25-890-20 D 3 a to include “Water line flushing, managed in a manner to avoid an instream impact” with the intent that this has not been identified by the operator or board as a significant contributor of pollutants as long as it is managed to avoid instream impact. This reflects the requirement of 9VAC25-870-400 D 2 c (3) which states: “<i>You need to address the following categories of nonstormwater discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)),</i></p>

Commenter	Comment Received	DEQ Response
HRPDC	<p>The HRPDC supports including a list of authorized non-stormwater discharges in 9VAC25-890-20 (D)(3). However, the list provided in the draft MS4 GP includes dechlorinated water line flushing. The addition of "dechlorinated" makes the water line flushing condition more restrictive than existing federal (40 C.F.R. §122.26(d)(2)(iv)(13)(1), 40 C.F.R. §122.34(b)(3)(ii)) and state law (9VAC25-870-380(C)(2)(d)(2)(a), 9VAC25-870-400 (D)(2)(c)(3)). It is also inconsistent with the individual MS4 permit issued to the Virginia Department of Transportation on June 29, 2017. Recommendation: delete "dechlorinated" from the water line flushing condition in 9VAC25-890-20(D)(3).</p>	<p>Please see revision of the regulatory language in 9VAC25-890-20 D.3 described in the response to the comment above.</p>
JMU	<p>Line 133: The word “dechlorinated” has been added to the allowable discharge for water line flushing. Implications if the wording is changed:</p> <ul style="list-style-type: none"> i. State fire code (NFPA 25) requires that all fire sprinkler lines are flushed on a quarterly basis. The building discharge points for sprinkler lines are an open outlet (end pipe) without a way to attach a dechlorination device. So while it would be possible to dechlorinate discharge from regularly scheduled draining of building sprinkler systems, our current system would need to be re-worked on 68 buildings to attach an apparatus on the main drain. Also the inspector test valves would require considerably more effort to capture/dechlorinate if they even make an apparatus that size. 	<p>Please see revision of the regulatory language in 9VAC25-890-20 D.3 described in the response to the comment above.</p>

DEQ Response
uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water. (Discharges or flows from fire-fighting activities are excluded from the effective prohibition against nonstormwater and need only be addressed where they are identified as significant sources of pollutants to surface waters.)”
”

Commenter	Comment Received	DEQ Response
VAMSA	<p>ii. Fire pump discharge filtration is out of the question on annual inspections. Anything that will alter the flow characteristics coming out of the 2.5” hose valves will alter pressure readings and we will not be able to accurately chart how our pump is performing compared to past years. Several fire pump manifolds have up to (8) 2.5” hose valves, so a dechlorinating unit would need to be provided for each discharge point. This would be a significant cost to implement across the campus. Several fire pumps discharge at rates higher than ‘commercially available’ dechlorinating units support with regards to flow rates. Recommendation: remove “dechlorinated”</p> <p>VAMSA objects to limiting acceptable nonstormwater discharges to “dechlorinated water line flushing.” VAMSA was surprised that DEQ included “dechlorinated” in the proposed regulations. We understood from TAC discussions that DEQ would not be doing so; in fact, DEQ did not include the “dechlorinated” limitation in the final permit it issued the Virginia Department of Transportation (VDOT) on June 29, 2017. VAMSA acknowledges DEQ’s concerns; small MS4 operators across the State work diligently to reduce the flow of nonstormwater into their MS4s in order to positively impact local waterways. However, there are numerous reasons why adding “dechlorinated” to “water line flushing” is problematic and should be stricken.</p> <p>From a legal perspective, adding “dechlorinated” to the Proposed GP conflicts with other sections of state and federal law.⁴This will cause confusion among permittees. Many localities will also have to revise current ordinances to incorporate the new word “dechlorinated.” This is a time-consuming process that can take many months to complete.</p> <p>For all of these reasons, VAMSA requests that DEQ delete the word “dechlorinated” from the Proposed GP.</p>	<p>Please see revision of the regulatory language in 9VAC25-890-20 D.3 described in the response to the comment above.</p>

Commenter	Comment Received	DEQ Response
City of Richmond	<p>VAMSA respectfully requests clarification on this point. Although there appears to be no consensus across the U.S., VAMSA has found some instances where fire hydrant flushing is an authorized nonstormwater discharge, presumably because fire departments flush the hydrants, at least in part, as “firefighting activities” (i.e., they are flushing lines to ensure there is enough available flow should a fire occur on the system). Fire hydrant flushing also occurs as a part of general maintenance of the water distribution system</p> <p>"Dechlorinated water line flushing" is not discussed in the Fact Sheet and is not clearly defined in the permit or the Fact Sheet. This provision needs to be changed to be consistent with EPA issued permits</p>	<p>Please see revision of the regulatory language in 9VAC25-890-20 D.3 described in the response to the comment above.</p>
City of Charlottesville	<p>Line 133 – please consider deleting “Dechlorinated”. The TAC discussed this issue at length and DEQ had agreed to not include this term in the final permit language, as it is more restrictive than the federal statute and presents serious logistical challenges to permittees.</p>	<p>Please see revision of the regulatory language in 9VAC25-890-20 D.3 described in the response to the comment above.</p>
City of Alexandria	<p>Line 133 - The addition of “Dechlorinated” water line flushing;” is inconsistent with 9VAC25-870-400 D.2.c.(3). We recommend keeping the list of authorized nonstormwater discharges as outlined in the above-referenced VSMP section.</p>	<p>Please see revision of the regulatory language in 9VAC25-890-20 D.3 described in the response to the comment above.</p>
DoD	<p>Landscape irrigation and irrigation water seem to be redundant. Add language to clarify the difference between these two types of discharges.</p>	<p>Irrigation water refers to a spray irrigation systems associated with large parcels such as agriculture fields whereas landscape irrigation is the runoff typically associated with lawn watering such as from sprinkler systems typically associated with residential or commercial sites. No change required.</p>
EPA	<p>Where is the term immediate defined?</p>	<p>As was discussed with EPA, the first responding emergency personnel determine the need of a discharge in order to protect public safety. DEQ understands the concerns of EPA but believes defining “immediate” beyond the context of protecting public safety is not practical or appropriate. No change proposed.</p>
EPA	<p>Coverage under the July 1, 2013 permit commences upon its expiration, unless it</p>	<p>9VAC 25-890-20 K gives DEQ the authority to administratively continue coverage under</p>

Commenter	Comment Received	DEQ Response
	is administratively extended by DEQ. Once a new permit is issued and effective, coverages must comply with the new permit.	the MS4 GP if certain conditions are met. No change proposed.
DoD	The permit states, "If coverage is denied, permittee would be required to cease the activities authorized by the continued general permit." If the activity covered under this general permit involves point source stormwater discharges from regulated small municipal separate storm sewer systems to surface waters of the Commonwealth of Virginia, it is unclear how the permittee would be expected to cease stormwater from flowing to surface waters of the Commonwealth of Virginia. Would there be expectation that the permittee must block the outfalls that are discharging and allow flooding? Recommendation: Add language to clarify how the permittee would be expected to cease the activities authorized by the general permit .	This language is boilerplate language found in all VPDES general permit regulations. In the case of an MS4 operator who may not be eligible for coverage under the general permit, DEQ would work with the operator to obtain a complete permit application for an individual MS4 permit and discuss terms coverage in the interim. No change necessary.
EPA	Was the notification sent by DEQ? If so, did all required entities respond properly by submitting a registration statement?	This notification applies for newly designated MS4s. There are no newly designated MS4s associated with the 2018 MS4 GP reissuance. Note that those permittees identified during the 2010 Census were previously notified and have been issued coverage under the 2013 MS4 GP. Additionally, this condition will apply if any existing MS4s are identified during the term of the permit that DEQ determines should be regulated. No change proposed.
City of Charlottesville	Line 226: please consider replacing "of" with "or".	The noted correction has been made.
City of Charlottesville	Line 229: please consider retaining "of small MS4".	The noted correction has been made.
City of Charlottesville	Line 236: please consider rephrasing as follows, "The following information for each regulated MS4 outfall". This language would clarify the information DEQ is seeking.	Please see revision to registration requirements in 9 VAC 25-890-30 B and comment below.
City of Suffolk	Acknowledging the fact that we will be submitting a GIS compatible shapefile of the MS4 map that includes information on outfalls, impaired waters, and HUC codes on December 31, 2018, 6 months after permit coverage, it is unclear why DEQ wants this information with the Registration Statement. The requested revision is to remove section 9VAC25-890-30(B)(6) from the proposed MS4 GP	DEQ has reviewed several comments pertaining to the requirement to provide outfall information, receiving waters, and other associated information as part of the registration (9VAC 25-890-30 B 6, 7, and 8.) Upon further review, DEQ agrees that since Minimum Control Measure 3 (Part I.E.3) requires permittees to submit a GIS file of the MS4 service area and associated informational table, that requiring this

Commenter	Comment Received	DEQ Response
	and the resulting table in Section II A. of the draft Registration Statement	information with the registration statement results in a duplicative effort. As such, DEQ is proposing to remove following items: 6.a; 6.b; 6.e; 7; and 8 from the proposed Registration Statement and revise any requirements in MCM 3 to ensure all required information previously requested as part of the registration statement will be submitted with the GIS information. Additionally, for any permittee that does not have their system mapped in a GIS format, the allowed PDF map must be accompanied by a table with this same information included.
EPA	The state should consider providing this information in the permit to ensure accuracy, especially since it is in the best position to access the TMDL documents and interpret which are applicable to the regulated MS4s.	Approved TMDL reports are available on DEQ's website. Permittees and stakeholders are aware that they can access this information online or by contacting DEQ staff. No change proposed.
EPA	Has the 2016 list been approved yet?	DEQ has received EPA approval of the 2016 Water Quality Assessment Integrated Report (WQIR) and has updated all references to the 2016 WQIR date.
James River Association	The current draft of the permit does not require the submittal of an MS4 Program Plan with the Registration Statement. While we acknowledge the Department's position that the MS4 Program Plan is no longer considered an enforceable part of the permit, the MS4 Program Plan must still meet the requirements of the permit. Accordingly, the submittal of a consistent MS4 Program Plan should be required with the Registration Statement.	MCM 2 (Part I E.2) of the MS4 General Permit requires permittees to develop a webpage dedicated to the MS4 Program and must also post the MS4 Program Plan on that webpage or provide information on how a copy can be reviewed or obtained. Based on this requirement, DEQ and the public will have access to the most current version of the MS4 Program Plan for review to ensure that the plan meets the minimum requirements of the permit. Additionally, having the permittee submit a MS4 Program Plan that was developed under the 2013 MS4 General Permit would not be of value since there are many aspects of the plan that will need to be updated in accordance with the requirements of the new permit. No change necessary.
EPA	The action plan is submitted as part of the registration statement. Is the plan reviewed and approved in a second permitting step? If not, will need to evaluate whether the specifics of the plan are still consistent with the requirements for Comprehensive Gen. Permits in 40 CFR 122.28(d)(1). Otherwise, the plans will need to be reviewed and approved consistent with the Two-Step Gen. Permit requirements.	The requirement is the reduction. The action plan is the tool used to demonstrate compliance with the reduction requirement. This is explained in the fact sheet for this MS4 GP. DEQ will be reviewing the plans to ensure that they are consistent with the requirements of the permit. If the plan does not contain certain requirements of the permit, then the agency may determine that the permittee is in violation of the permit. No change is proposed.

Commenter	Comment Received	DEQ Response
City of Alexandria	Lines 281- 283 - Given that many changes to the Chesapeake Bay Action Plan Guidance for the first AP, and given that DEQ has not provided the Guidance for the draft second Bay TMDL Action Plan to date, localities should not be required to provide many changes to the Second AP draft due June 2018 in the absence of clear guidance	The draft Chesapeake Bay TMDL action plans due with the 2018 MS4 General Permit registration statements should be developed using the most current agency approved action plan guidance (GM15-2005). In the near future DEQ will be updating the action plan guidance document, however, it will not occur in time for permittees to use in developing the draft action plans. At this time DEQ does not anticipate substantial changes to the guidance document in terms of BMPs or reduction efficiencies previously established. No change necessary.
VAMSA	Section B(12) and Proposed GP 9VAC25-890-40 Part III(K)(4) have different verb tenses in the certification language. B(12) references a system “designed to assure that qualified personnel properly gather and evaluate...” (<i>VA Register</i> , p. 995). Part III(K)(4) references a system “designed to assure that qualified personnel properly gathered and evaluated.” (<i>VA Register</i> , p. 1034).	Revisions have been made to Part III K 4 of this permit according to 9VAC25-870-370 D to read as follows: “to assure that qualified personnel properly gather and evaluate the information submitted.” and to provide consistency with both certification statements in the permit. The same statement is in the Registration Statement.
City of Alexandria	Under Section II, populating the data required under Tables A and B is very time consuming for the applicant and of limited benefit. The City has hundreds of outfalls that would need to be listed. The purpose of providing this information is unclear, especially since an MS4 map will be submitted in accordance with the permit. In addition, Line 247 of the permit asked from the drainage area served by the small MS4 discharging to impaired waters. It does not indicate that this needs to be broken out by specific outfall.	Please see revision to registration requirements in 9 VAC 25-890-30 B and response to comment above.
City of Alexandria	Item F is to list the names of all regulated MS4s to which the MS4 is interconnected while Line 253 of the permit states “to which the small MS4 discharges.” Therefore, there is a discrepancy in whether applicants should list any interconnection(s) or just a downstream interconnection(s).	Item F of the Registration Statement has been changed to reflect what is required in 9VAC25-890-30 B 6 for “ The names of any physically interconnected MS4s to which the small MS4 discharges;” to provide clarification of registration requirements.
VAMSA	The draft Registration Statement circulated to TAC members in January 2018 requires that an applicant seeking GP coverage provide “the estimated MS4 acreage served” for each outfall listed on Section II, Table A. Applicants must also provide “a description of the land use for	The 2013 MS4 General Permit required most all of the requirement information that was required in 9VAC25-890-30 B 6, 7, and 8 and which in turn were included on the registration statement form. Assuming permittees were in compliance with the requirements of the 2013 MS4 General

Commenter**Comment Received**

each drainage area” for each outfall to impaired waters on Section II, Table B, and the HUC information for waters receiving or with the potential to receive MS4 discharges on Section II, Table C. With regard to Tables A and B, VAMSA submits that this will be a very labor-intensive process for Small MS4s. It is unclear why DEQ wants this information, and whether it feels it is necessary in light of the work involved to provide the information at this scale. GP permittees will be submitting an MS4 map that includes detailed information on outfalls, impaired waters, and HUC codes by December 31, 2018. VAMSA requests that DEQ consider streamlining the Registration Statement to only request a list of receiving waters and impaired waters receiving MS4 discharges (not broken out by outfall) based on this later submittal.

VAMSA

VAMSA requests that DEQ clarify that the HUC information requested on Table C is intended to be broader than HUC codes for each outfall. This appears to be DEQ’s intent, but given the placement of the Table, clarification would be helpful.

City of Suffolk

The requirement to provide estimated drainage areas and land use descriptions for each outfall in Section II.B. of the draft Registration Statement is inconsistent with section 9VAC25-890-30(B)(8) of the proposed MS4 GP. The suggested revision is to replace "unique outfall identifier" with "impaired receiving surface water" for consistency with the proposed MS4 GP language.

HRPDC

It is unclear why land use information is requested for each outfall when permit language does not require it. 9VAC25-890-30 (B) (8) requires permittees to provide "the estimated drainage area, in acres, served by the small MS4 directly discharging to any impaired receiving surface waters listed in the 2014 Virginia 305(b)/303(d) Water Quality Assessment Integrated Report, and a description of the land use for each such drainage area." Recommendation: delete the phrase "for each outfall" from the instructions and revise the column header from "Unique Outfall Identifier" to "Impaired

DEQ Response

Permit, this should be information existing permittees already have tracked. Regarding land use information, this information is necessary for review by agency staff in the development of local TMDLs as well as by staff for reviewing TMDL action plans.

Please note, however, DEQ is proposing some changes to the registration statement as a result of comments received during the comment period. Please see revision to registration requirements in 9 VAC 25-890-30 B and response to comment above.

Please see revision to registration requirements in 9 VAC 25-890-30 B and response to comment above.

Please see revision to registration requirements in 9 VAC 25-890-30 B and response to comment above.

Please see revision to registration requirements in 9 VAC 25-890-30 B and response to comment above.

Commenter	Comment Received	DEQ Response
City of Charlottesville	Receiving Surface Water" in the table in Section II.B. of the Registration Statement form so that it will be consistent with the permit language.	DEQ has carried this requirement forward in Part I E 3 MCM 3 mapping, and requires the submittal of the predominant land use for each outfall discharging to an impaired water. We have always included this requirement. No change required.
EPA	This term should remain. The state grants coverage under a GP.	The language has been revised to reinstate "...coverage under..." in the second line of 9VAC25-890-40.
City of Richmond	<p data-bbox="375 1104 846 1367">"Any MS4 operator whose registration statement is accepted by the department board will receive coverage under the following state general permit and shall comply with the requirements therein in this general permit and be subject to the requirements of 9VAC25-870 and 9VAC25-31."</p> <p data-bbox="375 1402 862 1902">9VAC25-870 is the Virginia Stormwater Management Program (VSMP) Regulation and 9VAC25-31 is the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. The above statement "be subject to the requirements of 9VAC25-870 and 9VAC25-31" for all practical purposes negates the need for the rest of the permit. The statement means the regulations are incorporated by reference. This reference to the regulations needs to be removed otherwise any permit shield normally provided would become questionable at best. How would the</p>	<p data-bbox="891 1104 1414 1398">DEQ disagrees that this statement incorporates the VSMP and VPDES regulations by reference. This statement provides the regulatory programs to which a permittee is subject if coverage is issued under the general permit. This is language that is provided in all of the VPDES general permits which have been reviewed and approved by the Attorney General's office.</p> <p data-bbox="891 1402 1146 1440">No change necessary.</p>

Commenter	Comment Received	DEQ Response
VAMSA	<p>following section of the regulation be interpreted where there is potential disagreement between the regulation (which requires interpretation by the permit writer) and what is written in the permit?</p> <p>VAMSA requests that DEQ revise the first sentence of the Proposed GP to make clear that a permittee who complies with this GP will have fully complied with all applicable state laws (“Any MS4 operator whose registration statement is accepted by the department board will receive coverage under the following state general permit and shall comply with the requirements therein in this general permit which implements all applicable and be subject to all applicable requirements of the Virginia Stormwater Management Act (Article 2.3 (§62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia) and the Virginia Stormwater Management Program (VSMP) Regulations (9VAC25-870) the requirements of 9VAC25-870 and 9VAC25-31.) (VA Register, p. 995).</p>	<p>Changes were made to the opening paragraph of 9VAC25-890-40 to include as follows: “Any MS4 operator whose registration statement is accepted by the department board will receive coverage under <u>[coverage under]</u> the following state general permit and shall comply with the requirements therein in this general permit <u>[and be subject to all applicable]</u> all applicable requirements of the Virginia Stormwater Management Act (Article 2.3.(§ 62.1 44.15:24 et seq.) of chapter 3.1 of Title 62.1 of the Code of Virginia) and the Virginia Stormwater Management Program (VSMP Regulations (9VAC25-870) requirements of [the Virginia Stormwater Management Program (VSMP) Regulations (VAC25-870)9VAC25-870] and <u>[the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulations, (9VAC25-31)9VAC25-31]</u>. This revision was made to clarify the coverage is “subject to all applicable requirements” and regulatory references. The changes were made based on comments received.</p>
City of Charlottesville	<p>Lines 304-309: please consider adding “applicable” to Line 309 directly before “requirements of 9VAC25-870 and 9VAC25-31”. As there are significant sections of the referenced regulations that are not directly applicable to the MS4 program, this qualifier is necessary.</p>	<p>Please see revision to the opening paragraph of 9VAC25-890-40 in the response immediately above.</p>
City of Suffolk	<p>Suffolk requests that DEQ restore the word "applicable" in the first sentence of the General Permit. The requested revision is "Any MS4 operator whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements in this general permit and be subject to the applicable requirements of 9VAC25-870 and 9VAC25-31".</p>	<p>Please see revision to the opening paragraph of 9VAC25-890-40 in the response immediately above.</p>
City of Alexandria	<p>Line 326 - The use of “DEQ” or “department” should be used consistently in the permit.</p>	<p>The noted correction has been made.</p>

City of Alexandria	Line 341 - We believe Part I should be entitled “Discharge Authorization and Municipal Separate Storm Sewer System Management Program” since the Special Conditions were moved to Part II.	Please note that any permit requirement that is not part of the “Conditions Applicable to All” listed in the VPDES or VSMP regulations, is considered a “special condition; therefore, the title as proposed is appropriate. No change necessary.
City of Charlottesville	Line 345: please confirm the proper reference is cited; the City believes the correct reference is 9VAC25-890-20.D.	The noted correction has been made.
EPA	I’m confused by the interchanging use of the terms MS4 program and MS4 program plan. Are these meant to mean the same thing? If they are different, then the permit should clarify. If they are the same, then consistent use of one term is necessary.	MS4 program is the municipal stormwater program that the permittee must implement in accordance with federal and state requirements. The MS4 program plan is the written documentation on how the MS4 program will be implemented. An MS4 program plan is the equivalent of what EPA calls a SWMP. No change proposed.
EPA	Flagging this language. The permit must establish what is considered necessary to meet the MS4 standard, and not leave it up to the permittee to determine. It could be that this language is made unnecessary by the sentence further down in the paragraph – “Implementation of best management practices (BMP) consistent with the provisions ...”. In which case, maybe this highlighted sentence could be removed.	DEQ, as the permitting authority, has determined that the requirements of the MS4 GP constitutes MEP; therefore, by complying with the requirements of the permit, the permittee is meeting the MEP standard. To clarify, the phrase “in accordance with this permit” has been added after “(MEP)”.

VAMSA

DEQ references the need for a permittee to design a program “to reduce the discharge of pollutants from the small MS4 to the maximum extent practicable (MEP), to protect water quality, to ensure compliance by the operator permittee with water quality standards, and to satisfy the appropriate water quality requirements of the Clean Water Act, State Water Control Law and its attendant regulations.” (*VA Register*, p. 1004). Although there is reference further down in the same paragraph that clarifies that implementation of a BMP based program “ensures compliance by the operator permittee with water quality standards,” referencing compliance with WQS must be associated with and subject to the MEP compliance standard. To avoid confusion, VAMSA requests that DEQ delete the phrase “to ensure compliance by the permittee with water quality standards” in both instances. Alternatively, after “WQS” insert “to the MEP.”

Part I.B. has been revised to more accurately reflect the requirements of Section 402(p)(3)(B)(iii) of the Clean Water Act. The reference to the permittee ensuring compliance with water quality standards has been removed and the condition has been modified to clearly define “maximum extent practicable” for this permit term. The revised Part I.B. permit condition reads as follows: “The permittee shall develop, implement, and enforce a MS4 program designed to reduce the discharge of pollutants from the small MS4 to the maximum extent practicable (MEP) in accordance with this permit, to protect water quality, and to satisfy the appropriate water quality requirements of the State Water Control Law and its attendant regulations. The permittee shall utilize the legal authority provided by the laws and regulations of the Commonwealth of Virginia to control discharges to and from the MS4. This legal authority may be a combination of statute, ordinance, permit, policy, specific contract language, order, or inter-jurisdictional agreements. The MS4 program shall include the minimum control measures (MCMs) described in Part I E. For the purposes of this permit term, implementation of MCMs in Part I E and the Chesapeake Bay and Local TMDL requirements in Part II (as applicable) consistent with the provisions of an iterative MS4 program required pursuant to this general permit constitutes compliance with the standard of reducing pollutants to the MEP, provides adequate progress in meeting water quality standards, and satisfies the appropriate water quality requirements of the State Water Control Law and its attendant regulations.”

City of Richmond	The Clean Water Act requires permits for municipal stormwater discharges to include requirements to reduce the discharge of pollutants to the maximum extent practicable. If the Commonwealth of Virginia has decided to require more stringent limitations such as compliance with water quality standards and total maximum daily loads (TMDLs), the permit fact sheet must clearly explain its statutory authority for this given it is different than what is required under the Clean Water Act. What is the statutory authority DEQ is using to require more than the MEP standard set out in Clean Water Act sec 402(p)?	Please see response to similar VAMSA comment above in Part I B.
City of Charlottesville	Lines 584-600: as the legal compliance standard for MS4s is MEP, all references to compliance with water quality standards should be deleted. This language appears on Lines 586-587 and 597. If reference to compliance with water quality standards remains, it must be accompanied by reference to MEP. For example, the reference would read "...to ensure compliance by the permittee with water quality standards to the maximum extent practicable (MEP)".	Please see response to similar VAMSA comment above in Part I B.
City of Charlottesville	Lines 584-600: reference to the Clean Water Act is struck and replaced with reference to the State Water Control Law in the first part of this provision (Line 588) but left intact in the second part of the provision (Line 598). Please ensure this is appropriate for the final version of the permit, or consider whether striking "Clean Water Act" and replacing it with "State Water Control Law" at Line 598 is more appropriate.	The proposed revised language will strike "Clean Water Act" and replace it with "State Water Control Law and its attendant regulations" to maintain consistency throughout the section where compliance with the State Water Control Law constitutes compliance with the Clean Water Act.
VAMSA	VAMSA supports having a statement in the later part of the paragraph supporting a BMP-based approach, there should be a reference to the State Water Control Law in addition to the Clean Water Act so it is clear the BMP program will satisfy appropriate parts of the state law as well as the federal law.	Please see response to similar City of Charlottesville comment above.
EPA	The Remand Rule requires each permit to require a written SWMP. The state could add something like that here: "The permittee is required to develop a written MS4 program plan that describes how the permittee intends to comply with the permit's requirements."	Use of the phrase "MS4 program plan" is meant to indicate the written documentation of how the permittee will implement an MS4 program. To clarify intentions, DEQ proposes to revise item Part I C 1 to read "The MS4 program plan shall include, at a minimum, the following <u>written items</u> :"

Commenter	Comment Received	DEQ Response
City of Alexandria	Line 612 - “A description of the BMPs <u>or strategies</u> that the permittee anticipates...”	The noted correction has been made.
EPA	Potentially problematic since “measurable goals” are required to be established in the permit for “Comprehensive General Permits”, not left up to the permittee to establish for itself. Recommend deleting this.	Per standards of the MS4 Remand Rule, the permit contains conditions that are measureable in the context that the permitting authority and EPA, as well as the permittee, can decidedly determine whether or not the permittee is in or out of compliance with the permit condition. This requirement for a “measurable goal” for the permittee to assess whether or not the strategies they are employing are effective as part of the adoptive, iterative process. If the strategies are not effective then the permittee has the ability to choose other strategies as authorized by the permit. No change is proposed.
EPA	It may be helpful to add here that permit modification is not required because the underlying permit requirements are not changed, just the way in which the permittee is meeting the requirement.	This type of explanatory information is more appropriate in the fact sheet. DEQ will ensure that this is addressed in that documentation.

NRDC

The permit should not direct MS4s to develop their own measurable goals in their MS4 program plans (as proposed in Part I.C.1 on page 19-20 of the draft permit document). EPA’s regulations clearly state that the permit itself must contain the measurable standards by which a permittee’s compliance will be judged. (By contrast, the alternative permitting approach—the “procedural approach”—allows the permittee to propose its own measurable goals that will be reviewed by the permitting authority and the public.⁶) As a result, DEQ must ensure that all requirements in the draft permit contain a measurable component.

DEQ contends that as drafted the 2018 MS4 General Permit meets the clear, specific, and measurable requirements of EPA’s remand rule. The items in the permit establish means by which the permitting authority, EPA, or the public can determine if the permittee is demonstrating compliance with the terms of the permit. However, the permit does allow some flexibility for permittee’s by providing a variety of strategies for some MCMs by which the MS4 permittee can demonstrate compliance. As such, and as part of the adaptive, iterative process, it is incumbent for permittees to review the MS4 program implementation to determine “what is working, and what is not” and also to determine the most effective and efficient means of program implementation. Permittees need measures to determine the effectiveness of their program implementation that go beyond the requirements of the permit. Therefore, permittees are required to include the measurable goals of their MS4 program. Since the permit includes measurable requirements to demonstrate compliance with the permit, DEQ believes it is appropriate to require permittees to include additional goals as part of their program plan that is ultimately a planning tool. No change necessary.

City of Alexandria

Lines 632 – 634 - What is the schedule for updating the program plan to meet new permit requirements? Need to know how long a locality will ‘continue to implement’ the previous program plan, versus when the program plan needs to be changed per Part I.E., and are required to be placed into practice. Should the program plan be revised by July 1, 2018?

DEQ agrees that a statement is necessary in the permit to indicate the date by which the MS4 program plan must be updated and proposes to revise language in Part I.C.3 as follows:

If the permittee was previously covered under the General VPDES Permit for the Discharge of Stormwater from the MS4 effective July 1, 2013, the permittee shall update the MS4 program plan to meet the requirements of this permit no later than than six months after the effective date of this state permit unless otherwise specified in another permit condition and shall post the most up-to-date version of the MS4 program plan on the permittee’s website or location where the ~~small~~ MS4 program plan can be obtained as required by Part I E 2 within 30 days of updating the MS4 program plan.

City of Alexandria

Lines 638 -639 - There are some changes needed to the program plan as part of an

Please see proposed revisions to MS4 program plan requirements in response to

Commenter	Comment Received	DEQ Response
EPA	<p>iterative process, while there are also updates needed to the program plan due to meeting new permit requirements. Electronic reporting requirements will eventually be required as part of the permitting process and this should be addressed.</p>	<p>similar comments above.</p> <p>DEQ proposes to revise this section to include as follows: “The permittee shall submit an annual report to the department no later than October 1 of each year <u>in a format as specified by the department</u>. The report shall cover the previous year from July 1 to June 30.”</p>
City of Richmond	<p>It is not clear what is meant by "effectiveness" or how this is to be measured. This provision should be dropped or more clarity provided. This also needs to be fully explained in the Fact Sheet.</p>	<p>DEQ believes that the proposed use of the word “effectiveness” is necessary to convey the intent of the requirement. No change required.</p>
City of Alexandria	<p>Line 678 - ‘Effectiveness’ is hard to determine without more objective criteria and doesn’t fit the measure of MEP, whereas ‘appropriateness’ was included in the previous permit and is more applicable to MEP.</p>	<p>Please see the response to the similar comment above.</p>
City of Charlottesville	<p>Line 678: please consider replacing “effectiveness” with “appropriateness”; the current requirement is to evaluate the appropriateness of the identified BMPs. The City feels the current requirement is more appropriate.</p>	<p>Please see the response to the similar comment above.</p>
VAMSA	<p>The Proposed GP requires that an MS4 file an annual report that evaluates each MCM “to determine the MS4 program’s effectiveness and whether or not changes to the MS4 program plan are necessary.” 9VAC25-890-40 Part I(D)(1)(e). (<i>VA Register</i>, p. 1006). VAMSA requests that DEQ edit this requirement to have an MS4 permittee evaluate the “appropriateness,” not the “effectiveness,” of its MS4 program. Perhaps because it is a word that is often used in the context of specific BMPs and removal rates for particular pollutants, “effectiveness” suggests an MS4 should be reviewing its program against some objective (even numeric) criteria. There is no objective criteria, leaving an MS4 open to criticism that it has not complied with this requirement. The current GP uses the term “appropriateness;” VAMSA requests that DEQ retain the current terminology.</p>	<p>Please see the response to the similar comment above.</p>
NRDC	<p>The permit requires the permittee to use two or more public education and</p>	<p>DEQ is proposing to revise the MCM 1 public education and outreach MCM, Part I E</p>

Commenter**Comment Received**

outreach strategies, but no frequency is established for how often the permittee must implement these strategies. In the preamble to the recent EPA rulemaking, the agency explained that a permit term that “includes no minimum frequency that can be used to measure adequacy . . . would not constitute a measurable requirement for the purposes of the rule.” DEQ should require these strategies to be implemented once per year, similar to what is required of permittees under the Public Participation and Involvement MCM.

NRDC

The strategies offered as options under this section vary widely in terms of both the permittee’s level of effort and the actual impact in terms of public education. For example, a presentation to a church group would have a smaller impact than inserting information into the utility bills for an entire community, which in turn would have a smaller impact than disseminating information through a radio or TV advertisement that runs statewide. As a result, allowing the permittee to select any two strategies from this list does not ensure that the permittee will meet the Clean Water Act’s “maximum extent practicable” standard. As an alternative, we suggest a “points system” such as the one contained in New Jersey’s small MS4 permit, under which permittees must achieve a certain number of points and the strategies offered as options are “weighted” so that the most effective strategies are worth more points.

James River Association

Additional specificity is needed within the permit with regard to the individuals or groups that will be reached as a part of each public education and outreach program. As a part of the MS4 Program Plan for each high priority stormwater issue, the permittee should submit the strategies (e.g., printed brochures, newspapers, media, workshops, etc.) they will use to reach the target individuals or groups, how many people the permittee expects to reach, and what degree of behavioral change the permittee expects the outreach strategy to achieve over the permit term. This is necessary in order

DEQ Response

I d to add language requiring the permittee to conduct 2 activities per year at a minimum. This was the intent of the originally drafted permit language but unfortunately, the annual measure was left out. The requirement for public education and outreach strategies in the MS4 permit has been changed to “*The permittee shall use two or more strategies listed in Table 1 below “per year” to communicate to the public the high-priority stormwater issues identified in accordance with Part I E 1 b including how to reduce stormwater pollution.*” to provide an established frequency.

The strategies offered in this section provide the needed action items to comply with permit requirements and can be improved as part of iterative process and evaluation after a strategy has been completed. The implementation of a point system to weigh the effectiveness of different options may be considered as part of the next permit cycle. No change required.

As drafted, DEQ has determined the language in the permit to be clear, specific and measurable in accordance with the MS4 Remand Rule. No change required.

Commenter	Comment Received	DEQ Response
City of Alexandria	<p>ensure that the permit is “clear, specific, and measurable” as required.</p> <p>Line 756 - Leaving the requirement to be a “contact” instead of a “contact name” would allow permittees to use their division/department name in case of employees changing positions. Also, can “website” be added as another option to “telephone number or location”?</p>	<p>DEQ is proposing to revise the permit language in this condition as follows:</p> <p>“Provide a contact name and telephone number, <u>website</u> or location where the public...”</p>
City of Alexandria	<p>Line 760 - Recommend changing table name to “Strategies for Public Education and Outreach” to be consistent with name of the MCM.</p>	<p>The noted correction has been made.</p>
City of Alexandria	<p>Lines 774 – 784 - When should the program plan be revised with this information and implementation begin?</p>	<p>Please see revisions to Part I C 3 to the MS4 program plan.</p>
EPA	<p>Recommendation to include some type of specific milestones here, such as deadline to develop the materials, and deadline to disseminate. Otherwise, the permittee can wait until the end of the permit term and still be considered in compliance.</p>	<p>The intention is that the permittee will implement two or more strategies PER YEAR to communicate their stormwater message. To clarify, it is proposed that Part I E 1 d be revised to include the phrase “ per year” as follows:</p>
City of Richmond	<p>This section goes well beyond what is listed in the federal regulations at 122.34(b)(2). The Fact Sheet must provide the basis for why the requirements exceed those established in the federal regulations. Further, the language is not clear with regard to what is to be implemented, for instance paragraphs 2.a(1) and 2.b(4) are similar yet different and it is not clear why both sections are in the permit.</p>	<p>“The permittee shall use two or more of the strategies listed in Table 1 below <u>per year</u> to communicate...”</p> <p>In accordance with the MS4 Remand Rule, requirements are to be clear, specific and measurable. As part of the public involvement and participation MCM, Part I.E.2.a.(1), includes a listing of specific activities to record for public reporting. Part I.E.2.b.(4) requires the development and maintenance of a webpage which must include the actual method or mechanism the public will use to report the information. No change required.</p>
EPA	<p>Add plan as suggested by EPA edit.</p>	<p>DEQ has revised the sentence to read, “The public to provide input on the permittee’s MS4 program plan.”</p>
City of Alexandria	<p>Lines 821 and 865 - Including a summary of any public input received on the MS4 program seems excessive and too broad. Suggest rewording to summary of public input received on the MS4 program plan and annual report.</p>	<p>DEQ staff agrees further clarification is necessary for this condition. As such the following revision is being proposed:</p> <p>(2) The public to provide input on the permittee’s MS4 program <u>plan</u>;</p> <p>(4) Responding to public input <u>received on the MS4 program plan</u> or complaints;</p>
EPA	<p>Input received for what?</p>	<p>This is meant to be public input received on the MS4 program and associated plan. To clarify, it is proposed that language is added</p>

Commenter	Comment Received	DEQ Response
EPA	This is a good requirement. Recommend that the launch or continued availability of the website be announced through newsletters, emails, and/or other communications to boost the public’s awareness of it.	to Part I E 2 a 5 as follows: “Maintain documentation of public input received on the <u>MS4 program and associated MS4 program plan...</u> ” Thank you. At this time, we believe the requirement to set up and manage an MS4 website is appropriate and will consider the suggestion for announcements of continued availability in future permit iteration. No change proposed.
EPA	How is this different from (4) just above it?	Item (4) is specific to illicit discharge reporting, etc. Item (5) is specific to receiving public input on the MS4 program plan. These may be the same or the permittee may choose to separate the reporting/complaint/comment procedures. No change is proposed.
DoD	Though the table is noted as not being comprehensive, public/private partnership opportunities are a valuable public engagement tool. Recommendation: Provide clarification indicating that public/private partnerships, such as the DoD Readiness and Environmental Protection Integration (REPI) Program, are creditable activities under public involvement opportunities for this minimum control measure.	DEQ does not believe it is appropriate to include a reference to a specific permittee’s program such as REPI in a general permit. No change necessary.
City of Charlottesville	Line 858: please consider inserting “types of” before “public involvement activities”. In the vein of the MS4 Action Plan being an implementation planning tool, this would allow the City the needed flexibility in planning for the expected public involvement activities without committing to specific activities that may or may not end up coming to fruition. The Annual Report is the appropriate place to report on the specific activities that the City participates in during the permit year.	While DEQ agrees that the MS4 program plan is an implementation tool, we believe that it does need to include specificity as to what the permittee is planning to meet the permit requirements. As such, no change is being proposed in response to this comment. It should be noted that permittees are able to revise MS4 program plans as needed to incorporate changes in program implementation.
City of Alexandria	Lines 851 – 862 - When does the program plan need to be updated for all this information? Lines 825-836 gives three months for the locality to have a webpage (much like the last permit), should we assume that is also the timeframe for the program plan update items?	Please see revisions to Part I C 3 regarding revisions to the MS4 program plan.
City of Alexandria	Lines 853 -867 - Be consistent with the use of “webpage address” or “webpage	The proposed language has been revised for consistency.

Commenter	Comment Received	DEQ Response
EPA	link” Same comment here as in the previous MCM (public education and outreach). The permit should specify deadlines here so that permittees aren’t able to wait until the final year to carry this out. Maybe the 4 activities can be spaced out so that at least one is carried out per year.	Part I E 2 C includes language that the permittee is required to implement 4 activities per year from 2 or more categories that addresses this comment. No change is proposed.
City of Alexandria	Line 859 - Is the term “metric” being used in place of “measurable goal”? “Measurable goal is still used in line 615.	DEQ has reviewed the permit language and found use of the term metric to be appropriate. No change required.
City of Alexandria	Line 871 - Listing all MS4 permittees who participated in a public involvement opportunity may be difficult and overly time consuming. If multiple MS4 permittees participate in a regional event each permittee may not be aware of all the other permittees also participating in that event. If this applies only to joint efforts, please clarify.	The intent of this provision is for permittees to report the listing of permittees who participated in joint efforts and is not meant to apply to regional events that may have been organized by a 3 rd party. Revisions to the permit language is proposed as follows: (5) The name of other MS4 permittees who participated <u>with whom the permittee collaborated</u> in the public involvement opportunities.
EPA	What does DEQ consider as “the system”? There are many more components to a system other than outfalls.	See proposed revisions identified in the comment below. The following will be added: d. MS4 regulated service area; e. conveyances; and f. stormwater management facilities owned or operated by the permittee.
City of Richmond	This section needs to be re-drafted and many of the terms utilized need clearer definition. For instance, in many places the provisions of this section pertain to "point of discharge" and/or "outfalls." In the VSMP regulations it states, "Point of discharge" means a location at which concentrated stormwater runoff is released, "Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or	To address additional items in MS4 map, DEQ proposes to revise due date of map to July 1, 2019. DEQ has clarified the noted section of the permit to read as follows: ii) In cases where the MS4 outfall discharges to receiving water channelized underground, the permittee may elect to map the point downstream at which the receiving water emerges above ground as an outfall discharge location. If there are multiple outfalls discharging to an underground channelized receiving water, the map shall identify that the outfall discharge location represents more than one outfall. This is an option a permittee may choose to use and recognizes the difficulties in accessing outfalls to underground channelized stream conveyances for purposes of mapping,

Commenter	Comment Received	DEQ Response
	<p>pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.</p> <p>The permit states,</p> <p>(ii) In cases where the MS4 outfall discharges to receiving water channelized underground, the permittee may elect to map the point downstream at which the receiving water emerges above ground as a point of discharge. If there are multiple outfalls discharging to an underground channelized receiving water, the map shall identify that the point of discharge represents more than one outfall.</p> <p>How can a "receiving water" be a point of discharge? And how can a "point of discharge" represent more than one outfall?</p> <p>Also, the map of the system is referenced a number of times in the permit with varying dates related to completion and updating of the map. The dates need to be reconciled and one clear date needs to be referenced.</p>	<p>screening or monitoring.</p> <p>The mapping information requirement is now listed in Part I.3.a as part of the illicit discharge and detection MCM with the submittal deadlines for mapping information clearly detailed for submittal of the GIS-compatible shapefile and the date of submittal of annual report mapping information.</p>
City of Alexandria	Line 917 - Line 917 seems to indicate that the shapefile is the MS4 map. Is the only shapefile required the one that includes the outfalls and, if needed, points of discharge?	DEQ has revised the requirement regarding the MS4 map and associated information table to include outfall information, conveyances, and other necessary information as listed in Part I.E.3.a. Please see City of Richmond comment above.
City of Alexandria	Line 924 and 1029 - Line 924 states that "No later than October 1 of each year, ...the permittee shall update the storm sewer system map and outfall information table" while line 1029 requires a confirmation statement that it is up-to-date as of June 30 of the reporting year. Please make consistent.	<p>The intent of the permit language is to require permittees to confirm with submittal of the annual report due October 1st that the map reflects the assets of the MS4 regulated service area as of June 30th. DEQ agrees that this may be confusing and is proposing to clarify the requirements. It should be noted that the 3 month discrepancy is to allow permittees time to incorporate any BMPs, pipes, outfalls, etc that were placed in service on or before June 30th by the time that the annual report (with the certification statement) is due.</p> <p>The revised proposed language for annual reporting requirements in Part I.E.3.e.(1):</p> <p>"A confirmation statement that MS4 map and information table are up-to-date as of <u>have</u></p>

Commenter	Comment Received	DEQ Response
EPA	Suggest including a definition here as to what an “unauthorized non-stormwater discharge” is. It could be as simple as saying that this includes all non-stormwater that is not identified in 9VAC25-890-20 C 3. I haven’t looked at this section but it looks like this is the section where the list of authorized non-stormwater discharges is specified.	<u>been updated to reflect any changes to the MS4 occurring on or before June 30 of the reporting year;</u> DEQ believes that a definition of “unauthorized stormwater discharge” is unnecessary. Authorized stormwater discharges are listed in 9 VAC 25-880-20 D.3; therefore, anything not listed in that regulation would not be authorized. Additionally, the list of unauthorized discharges is too extensive to be all encompassing. No change is proposed.
City of Charlottesville	Lines 934-935: please confirm the proper reference is cited; the City believes the correct reference is 9VAC25-890-20.D.3.	The noted correction has been made.
EPA	Added “and enforce”and “to effectively eliminate”	Condition has been revised as suggested.
City of Alexandria	Line 944 - If IDDE written procedures, which were previously required to be incorporated into the program plan, need to be revised per the new permit, what is the timeframe for revision?	Please see Part I C 3 regarding revisions to the MS4 program plan.
EPA	Suggest reframing this as a requirement, not just as examples. Consider something like this: “A prioritized schedule of field screening activities and rationale for prioritization determined by the permittee, with the highest priority given at a minimum to older areas of the system, areas with a history of illegal discharges, dumping, or cross connections, and areas with higher concentrations of land uses, such as commercial and industrial, that are more likely to contribute pollutants of concern.”	DEQ staff believes that various permittees may identify other criteria that would be appropriate for consideration in prioritizing outfall screening, and therefore, do not think it is appropriate to limit the criteria available to permittees. No change proposed.
EPA	Discussed revising 50% screening requirement.	DEQ has added the following sentence at the end of Part I.E.3.c.(1).(c): “The 50% criteria is not applicable if all outfalls have been screened in the previous three years.”
City of Charlottesville	Line 965: the identifier being described has previously been phrased the “unique outfall identifier”. It appears that the words may have been inadvertently transposed in this section. For consistency, please consider replacing “outfall unique identifier” with “unique outfall identifier”.	The noted correction has been made.
City of Charlottesville	Line 967: please consider whether it would be more beneficial to specify that the reported quantity of the last precipitation event should be described in	DEQ reviewed the language as written and found it appropriate. Each permittee may track the information appropriate to their dry weather screening program.

Commenter	Comment Received	DEQ Response
City of Charlottesville	<p>a point precipitation frequency estimate. Understanding whether a precipitation event was 1” in 15-minutes or 1” in two days may prove useful.</p> <p>Line 973: please consider whether “order” is the appropriate characteristic or whether it should be “odor”.</p>	The noted correction has been made.
City of Alexandria	<p>Line 973 - (vii) should be moved up to (vi) since the permittee can only document the visual characteristics of the discharge if one was observed.</p>	<p>DEQ agrees that a revision is needed to clarify this requirement and proposes to combine (v) and (vi) as suggested.</p> <p>(v)..; <u>and</u> (vi)...; <u>and visual characteristic of the discharge (e.g.....)</u> (vii)Visual characteristics of the discharge...</p>
EPA	<p>Change to “unauthorized non-stormwater discharge”</p>	<p>Agree suggested change is appropriate and the revision has been made to Part I E 3 c (3). DEQ proposes to change the order of the wording from “nonstormwater unauthorized” to “unauthorized nonstormwater”. Only those unauthorized discharges need to be investigated. There may be times in which discharge is observed and the permittee is aware that it is an authorized non-stormwater discharge or seasonal groundwater flow etc.</p>
EPA	<p>Are those discharges even regulated by this permit? This seems like it could be confusing language.</p>	<p>Discharges covered under a separate VPDES permit are not covered under this permit; however, DEQ believes this language is appropriate to advise permittees how to proceed if a discharge from a separate VPDES permitted entity is discharged during an illicit discharge investigation. Additionally, MS4 permittees like the explicit clarity of DEQ’s expectations regarding this situation. No change is proposed.</p>
City of Alexandria	<p>Line 977 - Consider removing “unauthorized” since the authorization will depend on the investigation into the source (landscape irrigation, dechlorinated swimming pool water, etc.)</p>	<p>DEQ proposes to change the order of the wording from “nonstormwater unauthorized” to “unauthorized nonstormwater”. Only those unauthorized discharges need to be investigated. There may be times in which discharge is observed and the permittee is aware that it is an authorized non-stormwater discharge or seasonal groundwater flow etc.</p>
EPA	<p>The use of “as necessary” here makes this requirement potentially ambiguous, and doesn’t seem to be necessary. Suggest deleting it.</p>	<p>DEQ concurs that a revision is needed to remove “as necessary.” This phrase was meant to refer to item (4) above for when a permittee is able to identify the source of an illicit discharge. DEQ proposes to revise this language as follows:</p> <p>(5) Methodologies for conducting a follow-up investigation as necessary for illicit discharges that are continuous or that</p>

Commenter	Comment Received	DEQ Response
EPA	Noting that there is no general timeframe for eliminating the illicit discharge. Suggest that some type of timeframe be used here.	<p>permittees expect to occur more frequently than a one time discharge to verify that the discharge has been eliminated <u>except as provided for in Part I E 3 c (4).</u></p> <p>DEQ staff believes that setting a drop dead time frame for eliminating the illicit discharge could be problematic. DEQ reviews the IDDE program and illicit discharge investigation information during program audits and annual report reviews. No change is proposed.</p>
City of Charlottesville	Line 1004: please consider making the requirement here consistent with the reporting requirement found in line 1040.	Part I.E.3.c.(6).a has been revised to be consistent with Part I.E.3.e.(3).(b) to include the requirement for the date that an illicit discharge was observed, reported, or both..
EPA	If this is a requirement of the contents of the plan, how can they be incorporated by reference? Those seem like contradictory statements.	The map and information table are to be kept as GIS/PDF and database style files in order for permittees to maintain up to date info and query it when necessary. Therefore it is not appropriate as part of the “written” program plan documentation, but it is appropriate to incorporate by reference. No change is proposed.
VAMSA	MCM-3 requires that permittees include in the annual report a “statement that the MS4 map and information table are up-to-date as of June 30 of the reporting year;” (<i>VA Register</i> , p. 1012). Earlier in the Proposed GP, a permittee is instructed to update the map each year by October 1. (<i>VA Register</i> , p. 1010). VAMSA requests that DEQ clarify that October 1 is the date that applies to both sections of MCM-3.	Please see the response to related comments above and the proposed revisions to address this concern.
City of Charlottesville	Line 1029: on lines 922-924 it is stated that the updates to the MS4 map and information table are to be made by October 1; this requirement should be consistent and also be October 1.	Please see the response to related comments above and the proposed revisions to address this concern.
City of Richmond	<p>Fact Sheet - Construction stormwater runoff control</p> <p>The Fact Sheet states “Also as part of the proposed 2018 general permit, programmatic requirements have been incorporated by reference where appropriate due to the potential changes in the near future of the VESCP underlying law and regulations. In 2016, the Virginia General Assembly passed legislation that consolidated the VESCP law and the Virginia Stormwater Management Act (2016 Va. Acts Ch.</p>	The fact sheet justification provided in this comment referencing up coming regulatory initiatives is meant to explain why DEQ believes it is appropriate to streamline the requirements of MCM 5 to reference the VESCP and VSMP regulations. Otherwise, permittees may find that there are contradictions between the MS4 permit requirements and other future program requirements. DEQ is not proposing to reference regulations that have not been promulgated. No change needed.

Commenter**Comment Received****DEQ Response**

758.). Under this law, the Department is required to promulgate regulations that combine the VESCP regulations and the VSMP regulations to make the requirements consistent, among other things. While it is unclear at this time what regulatory changes may occur, it is likely that local government ordinances and programs will require revisions. Additionally, Virginia has seen multiple legislative initiatives related to stormwater-over the past several years. To minimize contradictory requirements that could potentially occur as a result of including the specific VESCP regulatory language in the MS4 permit, the Department has opted to require the control of stormwater associated with construction activity through a regulatory requirement by reference.”

It is not clear where the permit references possible future regulation. Regardless it is important to note that permits cannot incorporate by reference requirements that do not currently exist. Permits must provide adequate notice and opportunity for comment. Because these requirements do not exist there is no opportunity to assess the requirement and provide comment. Similar language is also included in the Fact Sheet for Post-construction stormwater management for new development and development on prior developed lands and therefore the same comment applies.

Chesapeake Bay Foundation

Amend the Draft Permit to require permittees that are towns that have not adopted a Virginia erosion and sediment control program (VESCP) or a Virginia stormwater management program (VSMP) to “comply with” the VESCP and VSMP of the surrounding city or county. The current formulation—using the phrase “rely on” — carries little meaning

If the ESC program of a town is administered by the surrounding county, the agency considers the ESC section of the town’s MS4 permit to be satisfied by the surrounding county’s program. Additionally , a permit condition has been added requiring the town to notify the surrounding county of E&S or stormwater runoff issues related to construction activities.

Chesapeake Bay Foundation

Amend the Draft Permit to require permittees that are towns that have not adopted a VESCP or a VSMP to notify the VESCP or VSMP of the surrounding city or county of any issues of concern regarding erosion, sedimentation, and/or stormwater runoff that may come to the

Commenter	Comment Received	DEQ Response
Chesapeake Bay Foundation	<p>permittee’s attention.</p> <p>Amend the Draft Permit to require permittees that are cities, counties, or towns to develop, submit to DEQ, and implement a progressive compliance and enforcement strategy for privately-owned stormwater management facilities. Under the current formulation, such a strategy—a critical element for an effective stormwater control program—is discretionary and would not be subject to DEQ scrutiny or guidance.</p>	<p>VSMP requires permittees to adopt an enforcement strategy under ordinances. VSMPs are approved by DEQ, and DEQ will perform compliance reviews to ensure the program is implemented in accordance with Virginia’s laws and regulations, local stormwater ordinance, and the program approved by DEQ. Therefore, it is not necessary for the MS4 permit to require a progressive compliance schedule to ensure that permittees are enforcing provisions of the Stormwater Management Act and VSMP regulations that are incorporated by reference to the MS4 permit. No revision proposed. Proposed language will be added to read as follows: “. . .to address discharges entering the MS4 from regulated construction site stormwater runoff.”</p>
EPA	<p>Consider adding “from regulated construction site stormwater runoff.”</p>	<p>Proposed language will be added to read as follows: “. . .to address discharges entering the MS4 from regulated construction site stormwater runoff.”</p>
EPA	<p>Are the VA Erosion and Sediment Control Regulations consistent with the minimum requirements of the C&D rule?</p>	<p>40 CFR 450.21 (C&D Rule) is implemented through Virginia’s Construction General Permit (CGP) program because it only applies to permitted discharges from construction sites. Virginia’s ESC program applies at 10,000 sq ft or 2500 sq ft for those construction development projects located in the Chesapeake Bay Preservation Act areas or at more stringent thresholds if adopted by the local government. There is no federal requirement to apply C&D to projects at thresholds lower than those qualifying for CGP coverage. However, Virginia’s ESC regulations contains most of the components of the C&D Rule. No change is proposed.</p>
EPA	<p>The req’ts in these laws must be consistent with the MS4 req’ts in order to be relied upon to fulfill this MCM. See 40 CFR 122.34(b)(4)(ii)</p>	<p>40 CFR 122.34(b)(4)(ii) is guidance; however, if comment is meant to reference (b)(4)(i), the Virginia ESC Law and Regulation which must be implemented by all localities in Virginia include adoption of an ESC ordinance (A); requirement for ESC implementation (B); site plan review for greater than 10,000, 2500 for CBPA areas, or more stringent thresholds if adopted by the locality (D); and inspections and enforcement (F). Item (E) requirement for opportunity for public to submit information is addressed in Part I E 2 a(1) of this permit (MCM 2 - Public involvement). DEQ will reinstate previous item c.(7)- proposed for deletion. This will now be included in Part I.E.4.b as follows: “The permittee shall require implementation of appropriate controls to prevent</p>

Commenter	Comment Received	DEQ Response
EPA	Question for clarification: Do the inspection requirements in (4) and (5) cover all the possible types of MS4 permittees? Or, are (4) and (5) different types of MS4s than what is included in (1), (2), and (3).	nonstormwater discharges to the MS4, such as wastewater, concrete washout, fuels and oils, and other illicit discharges identified during land disturbing activity inspections of the MS4. The discharge of nonstormwater discharges other than those identified in 9VAC25-890-20 D through the MS4 is not authorized by this state permit.”, to prevent discharge of nonstormwater to the MS4. Inspection requirements for the categories of permittees described in (4) and (5) are specified in this MS4 GP, because in these cases, the permittee is not an approved ESC authority or approved Annual Standard and Spec hold with an approved inspection program. No change is proposed.
DoD	The permit calls for certain permittees to inspect all land disturbing activities within 48 Hrs. following any runoff producing storm event: Federal civilian employees who administer requirements of the stormwater MS4 permits at military facilities typically have regularly scheduled business days. If a runoff producing storm event occurs just prior to consecutive non-business days, it would be challenging to meet compliance. The Construction General Permit (CGP) states, "In the event that a runoff producing storm event occurs when there are more than 48 hours between business days; the inspection shall be conducted on the next business day." This language should be consistent with the CGP language. Recommendation: Add language that states, <i>"In the event that a runoff producing storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted on the next business day."</i>	MCM 4 – Construction Stormwater Runoff Control of the MS4 permit requires permittees to develop a program to oversee land disturbing projects within the permittee’s jurisdiction. For local governments that means continued implementation of the Virginia Erosion and Sediment Control Program (VESCP) in accordance with the VESCP laws and regulations. For non-traditional permittees, the condition requires permittees to establish an ESC program equivalent to that required of VESCP authorities. The inspection requirements in Part I.E.4.a(4)(c) are consistent with the periodic inspection requirements in 9 VAC 25-840-60 in the ESC regulation. The inspection frequency in the Construction General Permit is the inspection frequency expected by CGP permittees. No change proposed.
DoD	Runoff producing storm event is not defined. Though the intent of the language is understandable, the interpretation may be unclear allowing for inconsistent interpretation about the amount of rainfall that will trigger an inspection. This language is different from the CGP language i.e "runoff producing storm event" vs. "measurable storm event" defined as 0.25 inches of rain or greater over 24 hours.	

Commenter	Comment Received	DEQ Response
City of Alexandria EPA	<p>Recommendation: : Define "measurable storm event" in this section using the VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880-1) definition as "a rainfall event producing 0.25 inches of rain or greater over 24 hours." This ensures greater consistency across permitted programs.</p> <p>Line 1161 - 1193 - If applicable, when is the program plan to be updated? This section does not appear to include requirements that address the requirements in 122.34(b)(4)(D) and (E) for site plan review and procedures for receipt and consideration of information submitted by the public. Also, this section doesn't appear to address 122.34(b)(4)(C), requirements to "control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality."</p>	<p>Please see revisions to Part I C 3 regarding revisions to the MS4 program plan. See response to comment above in Part I.E.4.a.(1) above. As described, the Virginia ESC program requires plan approval. Additionally, (E) is addressed in MCM 2 requirements (Part I.E.2.a.(1). No further change is proposed than those described in the response to the comment referenced above.</p>
EPA	Should include a req't to report public information received and the permittee's response to any public inquiries.	Part I.E.2.a.(1) and a.(4) address complaints regarding stormwater associated with land disturbance. DEQ has revised I.E.2.f.(1) in the annual reporting requirement to ensure permittee reports summary of stormwater complaints and responses.
EPA	Shouldn't the permittee be req'd to report how many project plans were reviewed in accordance with the VESCP	<p>9 VAC 25-840-65 of the ESC regulations require reporting. Specific requirement:</p> <p><u>Each VESCP authority shall report to the department, at least monthly, in a method such as an online reporting system and on a time schedule established by the department, a listing of each land-disturbing activity for which a plan has been approved by the VESCP authority under the Act and this chapter.</u></p>
City of Alexandria EPA	<p>Line 1204 - "erosion" not "erosions"</p> <p>This provision seems to lack specificity in terms of what the inspections must check for at a minimum.</p>	<p>No change is proposed. The noted correction has been made.</p> <p>The localities implement their own ESC programs and have done so for 30 years. These are mature programs that have been developed following the regulations requirements, but are individual locality programs.</p>
EPA	Do these regulations include the req't to use an ordinance (or other reg	Yes. In accordance with the Virginia Stormwater Management Act, all MS4s are

Commenter	Comment Received	DEQ Response
EPA	<p>mechanism) to address PCSM?</p> <p>For the requirements in both (b) and (c), is there a maintenance standard by which the facilities will be assessed, or can there be a minimum set of maintenance issues to look for during the inspections?</p>	<p>required to implement the Virginia Stormwater Management Program and must have an ordinance in order to implement the program. No changes proposed.</p> <p>Post construction stormwater management facilities must conform to Virginia’s BMP Clearinghouse specifications (9VAC 25-870-65). These specifications describe the design, operation, and maintenance requirements associated with each type of BMP. No change is proposed. Additionally, in accordance with the VSMP regulations, each VSMP authority (which includes MS4 permittees) must provide for long term maintenance for BMPs that control quality and quantity. No change proposed.</p>
EPA	<p>The permit should list the minimum req’ts for inspection and maintenance procedures.</p>	<p>The specifications for post construction BMPs are provided in the Virginia Stormwater BMP Clearinghouse which lists maintenance and inspection requirements for individual BMPs and is referenced as the source for information as part of the CGP and VSMP regulatory programs. No change is proposed.</p>
EPA	<p>Shouldn’t this be approved by DEQ?</p>	<p>This language is a carry over from the previous 2013 MS4 GP. Since the VSMP regulations only require BMPs to be inspected once per 5 years, DEQ is proposing to add language that states that alternative inspection frequency for permittee owned BMPs be no less than once per 5 years as long as the rationale is included in the MS4 program plan. DEQ staff believes that adding this provision would address EPA’s comment and not require a separate approval by DEQ. DEQ is proposing to allow an alternative inspection frequency for permittee owned BMPs with rationale to support less frequent inspections; however, but the alternative frequency cannot be less than once per five years.</p>
NRDC	<p>While the requirement to inspect permittee-owned BMPs at least once per year is appropriate, the permit should not allow permittees to develop their own “alternative” inspection schedules without subjecting those schedules to DEQ review, as proposed in Part I.E.5.b.2 on page 36 of the draft permit document.</p>	<p>The VSMP regulations require that a VSMP authority inspect all BMPs once per five years. The requirement for MS4 permittees to inspect publicly owned BMPs once per year was established in the 2013 MS4 general permit with an unclear basis. Additionally, the 2013 MS4 general permit also allowed permittees to adopt an alternative inspection schedule for publicly owned BMPs. DEQ believes that the alternative frequency was originally included to allow permittees flexibility such that recently installed BMPs</p>

Commenter	Comment Received	DEQ Response
City of Charlottesville	Lines 1250 and 1255: please consider inserting the word “program” after “stormwater runoff control”.	may not need inspections as frequently as once per year. As such, DEQ is proposing to revise this permit condition to require permittees to include publically owned BMPs once per year or at a reduced frequency of no less than once per five years in accordance with the requirements of the VSMP regulations as long as they provide the rationale in their MS4 program plans. DEQ believes that by setting the minimum inspection frequency of one per five years this requirement provides a clear specific and measurable requirement and a separate review and approval by DEQ is not necessary. The noted correction has been made.
City of Charlottesville	Line 1364: please consider inserting the words “or BMP” after “stormwater management facility”.	The noted correction has been made.
EPA	What is the reasoning for different inspection time frames for public vs privately owned BMPs? Is this schedule consistent with CB BMP verification protocols?	This language as explained above is a carry over from previous 2013 MS4 GP. Rationale for different inspection frequency is unknown; however, VSMP regulations specify an inspection frequency of 1 per 5 years and does not include a different frequency for MS4 permittee owned BMPs. Evaluation/comparison of each BMP verification protocol has not been performed as part of the MS4 GP reissuance. No change is proposed.
VAMSA	MCM-5 requires that certain permittees address adequate long-term O&M of privately owned BMPs by requiring a facility owner “develop a recorded inspection schedule and maintenance agreement to the extent allowable under state or local law or other legal mechanism;” (<i>VA Register</i> , p. 1016). VAMSA suggests that an MS4 can require that an owner develop a “recordable” agreement—the act of recording the document in the land records results in a “recorded” schedule, not the drafting itself.	DEQ agrees and proposes to revise the language as follows “(b) Adequate long-term operation and maintenance by the owner of the stormwater management facility by requiring the owner to develop a recorded inspection schedule and maintenance agreement “and record a maintenance agreement, including an inspection schedule” to the extent allowable under state or local law or other legal mechanism.”
EPA	Is this different from what is req’d in (1) above?	(1)Above requires that the MS4 permittee adopt and implement an enforcement program. The language in item (3) allows the use of a progressive compliance and enforcement strategy that could include a

Commenter	Comment Received	DEQ Response
EPA	It's sometimes helpful to have a photo of the BMP. Can we include that as something optional to have in the record for the BMP as well?	compliance assistance component, and progressive implementation of various enforcement mechanisms, (Letter of Agreement, NOV, Warning Letter, Order) and/or a points accumulation program similar to Virginia's VPDES compliance program. No change is proposed.
City of Alexandria	Line 1371 and Line 61 - In line 1371, "online" is one word while in the line 61 "on line" is two words.	While DEQ believes that documentation such as a photo could be useful in an inspection program and understands many MS4 permittees already do this, requiring a photo as part of an inspection is too prescriptive. No change proposed. The noted correction has been made.
City of Alexandria EPA	Lines 1381 and 1385 - Add "or BMP" consistently. Need a copy of the ordinance or other mechanism that the permittee has in place to address PCSM in accordance with 40 CFR 122.35(b)(5)(ii)(B).	The noted correction has been made. Item h.(3) requires permittees to provide a description of their legal authorities to implement a post construction stormwater program. However, to address EPA's comment, DEQ proposed to include in h.(3) a requirement to provide the citation for an ordinance as appropriate (to recognize that non-traditional MS4 permittees cannot adopt ordinances. Using the citations, most current and related ordinances can be reviewed online.
City of Alexandria	Line 1427 - The permit requires documenting the location or link where the stormwater facility spreadsheet or database can be reviewed in the MS4 program plan. Is this requirement asking the permittee to post their database for external download? Why is this needed if the permittee is already submitting their BMPs to DEQ through the DEQ Construction Stormwater Database or the BMP Warehouse?	The spreadsheet is considered part of the MS4 program plan and it is expected that permittees will maintain it as a separate document from the MS4 program plan because of the format. Therefore, the MS4 program plan needs to include a link to where the spreadsheet can be viewed. This is a separate requirement from the annual reporting requirement to upload the spreadsheet to the BMP warehouse. No change needed.
City of Alexandria	Line 1448 - The permit requires a description of significant activities performed on the stormwater management facilities owned or operated by the permittee to ensure it continues to perform as designed. There is no definition of "significant activity" rendering this item subjective and unclear.	DEQ agrees and proposes the following: " A description of the significant "maintenance, repair or retrofit" activities performed on the stormwater management facilities owned or operated by the permittee to ensure it continues to perform as designed. This does not include routine activities such as grass mowing or trash collection.
EPA	Why is this requirement here versus in	These are permanent post construction BMPs.

Commenter	Comment Received	DEQ Response
HRPDC	<p>the construction section?</p> <p>This section is titled "pollution prevention and good housekeeping for facilities owned or operated by the permittee." The HRPDC would like to add clarification that this section is intended to apply only to those facilities owned or operated by the permittee that are within the MS4 service area.</p> <p>Recommendation: change the section title to "pollution prevention and good housekeeping for facilities owned or operated by the permittee within the MS4".</p>	<p>MCM 4 address ESC. No change is proposed.</p> <p>DEQ agrees that clarification to the section title is appropriate and proposes to revise the title as suggested.</p> <p>Pollution prevention and good housekeeping for facilities owned or operated by the permittee <u>within the MS4 service area</u>.</p>
City of Suffolk	<p>Suffolk requests the addition of "within the MS4" to the title of 9VAC25-890-40 Part I (E) (6). The requested revision is "pollution prevention and good housekeeping for facilities owned or operated by the permittee within the MS4".</p>	<p>Please see response to similar comment above.</p>
EPA	<p>Since these are identified in (c) below as "Municipal high-priority facilities that have a high potential for discharging pollutants", suggest referring to them as such here for clarity. Also, suggest modifying this to identify these examples areas as the minimum types of activities/facilities that must be identified as "high priority facilities", though the MS4 can add others.</p>	<p>The requirements in item a. for written pollution prevention procedures applies more broadly than to just high priority facilities. No changed proposed.</p>
City of Alexandria	<p>Line 1463-1472 - Consider rewording this sentence.</p>	<p>It is unclear what the commenter's concern is in regard to this sentence; therefore, no revision is proposed.</p>
EPA	<p>Recommend adding citation to the training program requirement.</p>	<p>The noted correction has been made.</p>
EPA	<p>Should this be "SWPPP"?</p>	<p>The noted correction has been made.</p>
City of Alexandria	<p>Line 1496 - The high-priority facilities that have a high potential for discharging pollutants have already been identified so a time limit is not needed for permittees continuing coverage. Consider combining this item with item e. (annual review of high-priority facilities).</p>	<p>As stated, existing permittees were required to identify high priority facilities under the 2013 MS4 general permit. However, for implementation of the new permit, permittees should review all high priority facilities whether previously identified or not to determine if the requirements of this section apply to any facilities not previously identified or to determine if any facilities need to be removed from the category of high priority facilities in accordance with Part I E.6.h. No proposed revision.</p>

Commenter	Comment Received	DEQ Response
City of Alexandria City of Charlottesville	Line 1500 - SWPPP not SWMPP Line 1500: please verify use of the abbreviation “SWMPP” vs. “SWPPP” found in the next reference of the document at line 1529. The City believes “SWPPP” is the appropriate abbreviation	The noted correction has been made. The noted correction has been made.
City of Charlottesville	Lines 1498-1499: these lines reference municipal high priority facilities that have a high potential to discharge pollutants identified in Part I E 6 a, however there is no text in the referenced section about these facilities. Municipal high priority facilities are defined in the Definitions section. Municipal high priority facilities with a high potential to discharge pollutants are further defined in Part I E 6 c 1-9. Please ensure that the proper reference is included.	Upon review, DEQ agrees that revisions are necessary to the language on these lines to clarify that the requirements of the section go beyond the traditional definition of “municipal” as it applies to local governments; it also applies to federal and state MS4 permittees. During review of the language in this section, DEQ also identified additional revisions needed to clarify the requirements as noted below. The sentence with that reference was unnecessary and has been removed.
		<p>Part I E 6 c</p> <p>“Within 12 months of the state permit coverage, the operator permittee shall identify which of the municipal high-priority facilities have a high potential of discharging pollutants. Municipal high priority facilities that have a potential for discharging pollutants are those facilities identified in subsection (1) above Part I E 6 a. <u>The permittee shall maintain and implement a site specific stormwater pollution prevention (SWMPP) (SWPPP) for each facility identified. high priority facility owned or operated by the permittee with a high potential to discharge pollutants High priority facilities that have a high potential for discharging pollutants are those facilities that are not covered under a separate VPDES permit and which any of the following materials or activities occur and are expected to have exposure to stormwater resulting from rain, snow, snowmelt or runoff”</u></p>
EPA	These requirements leave much of the “clear, specific, and measurable” details up to the MS4, which is not consistent with the Comprehensive GP requirements in the Remand Rule.	DEQ believes that the list of SWPPP requirements meets the clear, specific, and measurable standard. Each site is different and therefore the SWPPPs will be site specific. The clear, specific, and measureable standards are achieved by the permit because the permit specifies what has to be included in the site specific SWPPP. It would be nearly impossible to specify the appropriate

Commenter	Comment Received	DEQ Response
NRDC	The permit may not allow permittees to develop their own inspection and maintenance schedules for permittee-owned facilities in their stormwater pollution prevention plans (SWPPPs) without DEQ approval, as proposed in Part I.E.6.d.7 on page 41 of the draft permit document. These provisions allow permittee self-regulation and clearly fall short of the criteria established by EPA. “[I]t is the permitting authority [that has] the ultimate authority to determine what small MS4s must do to meet the MS4 permit standard.”	site specific SWPPP requirements for all types of high priority facilities. DEQ added a SWPPP frequency of once per year. Inspection and maintenance requirements are site specific; however the condition was revised to require SWPPP inspection to occur at a minimum of once per year.
EPA	If this happens, recommend that the rationale be explained in the subsequent annual report.	DEQ will add a requirement to the MCM 6, Part I.E.6.q.(3) annual reporting requirement to incorporate EPA’s suggestion that rationale for delisting a facility as a high priority facility be explained in the annual report.
EPA	This language does not qualify as clear, specific, and measurable.	This condition was added to ensure that contractors hired by a permittee that perform work that have the potential to discharge pollutants to stormwater follow appropriate good housekeeping and pollutant prevention measures. It is nearly impossible to specify all situations involving a contractor.
VAMSA	MCM-6 states that the permittee must require that any contractors it hires that may discharge pollutants agree to appropriate control measures “through the use of contract language, training, standard operating procedures, etc.” (<i>VA Register</i> , p. 1020). VAMSA requests that DEQ add the text it included in the Draft Fact Sheet on this point, so that the phrase reads: “through the use of contract language, training, standard operating procedures, or other measures as appropriate.” Draft Fact Sheet, p. 11.	DEQ agrees that “etc.” is not appropriate for a clear permit requirement. To correct this, DEQ is proposing to revise the permit language as follows:
City of Charlottesville	Line 1613: please consider deleting “etc.” and inserting “or” between “training” and “standard operating procedures”	“1. The permittee shall require through the use of contract language, training, standard operating procedures, or other measures within the permittee’s legal authority that contractors employed by...”
HRPDC	Revise the permit language in 9VAC25-890-40 Part I (E) (6) (1) as follows "...require through the use of contract language, training, standard operating procedures, or other measures as appropriate, that contractors employed by the permittee and engaging in	Please see response to Part I E 6 l comment above.

Commenter	Comment Received	DEQ Response
HRPDC	<p>activities with the potential to discharge pollutants use appropriate control measures to minimize the discharge of pollutants to the MS4." This addition allows the permittee the flexibility to determine how best to meet the requirement.</p> <p>Permittee Flexibility to Ensure Contractor Training: 9VAC25-890-40 Part I (E) (6) (I) states permittees shall "...require through the use of contract language, training, standard operating procedures, etc., that contractors employed by the permittee and engaging in activities with the potential to discharge pollutants use appropriate control measures to minimize the discharge of pollutants to the MS4." This requirement is explained differently on page 11 of the Fact Sheet, which indicates that the permit provision "...is to be implemented through the use of such measures as contract language, training, and standard operating procedures, or other measures as appropriate."</p>	Please see response to Part I E 6 l comment above.
HRPDC	<p>The requirements for contractor training have been revised and are unnecessarily onerous and limiting to MS4 permittees. Two examples have been provided A. Certifications: 9VAC25-890-40 Part I (E) (6) (m) (4-6) states that the training plan for applicable staff will ensure that both employees and contractors hired by the permittee obtain the appropriate state certifications. This requirement should be limited to permittee employees. Requiring contractors to minimize the discharge of pollutants to the MS4 is typically included in legally binding contract language, which is addressed in 9VAC25-890-40 Part I (E) (6) (l).</p> <p>Recommendations: Restore the 2013 MS4 GP language that requires permittees "to ensure that applicable employees obtain the appropriate certifications, as required under the Virginia Erosion and Sediment Control Law (or the Virginia Stormwater Management Act) and its attendant regulations" and to delete the reference to</p>	<p>Language in Part I E.6.m (4) is consistent with the requirements of the 2013 MS4 general permit even though the language has been revised for clarity. A sentence has been added as follows: "Certification by the Virginia Department of Agriculture and Consumer Services (VDACS) Pesticide and Herbicide Applicator program shall constitute compliance with this requirement."</p> <p>Language in Part I E.6.m (5) is consistent with Section II B 6.e (5) of the 2013 MS4 general permit. The 2013 permit requirement stated that "the operator "ensure that employees and contractors serving as plan reviewers..." are appropriately certified. No proposed revision to this permit condition.</p> <p>Additionally, Part I E.6.m(6) corrects an error in the Section II B 6.e(6) of 2013 MS4 general permit that referenced the VESCP law and regulations instead of the stormwater management program law and regulation. As part of the proposed permit DEQ corrected this error and also made the permit language consistent with item m (5) since similar</p>

Commenter	Comment Received	DEQ Response
	contractors in 9VAC25-890-40 Part I (E) (6) (m) (4-6).	certifications are required. DEQ believes the language as proposed is appropriate and proposes no revision to the draft permit condition.
City of Alexandria	Line 1628 - 1629 - The word “applicable” should be added before “field personnel” so that the requirement doesn’t include field personnel that would never encounter illicit discharges. Also, the should be “receive” instead of “received.”	This is an issue considered applicable to all field personnel, that they recognize and notice irregular discharges occurring from stormwater conveyances. No change proposed. DEQ has made the change for the wording from “ received ” to “ <u>receive</u> ”.
City of Charlottesville	Line 1629: please consider replacing “received” with “receive”.	The noted correction has been made.
City of Alexandria	Line 1646-1649 - The permit requires a training plan for employees and contractors to obtain appropriate certifications under VESCL and VSMP regulations and administrators, plan reviewers, and inspectors. After initial certification is obtained, formal training programs are not necessary or even required in some instances such as PEs acting as VESCL plan reviewers. Further these typically are included in job descriptions not as a training plan. It would also be excessive to require the City to include a training program for outside contractors.	As long as the appropriate City employees and contractors meet the VESCP and VSMP certification requirements, MS4 permittees do not need to establish training for these individuals. No change proposed.
City of Suffolk	9VAC25-890-40 Part I (E)(6)(n) requires permittees to maintain documentation for permittee training events, including the date the event was held, the number of employees in attendance, and the objective for training required in 9VAC25-890-40 Part I (E)(6)(m). This requirement is well-suited to the types of training listed in 9VAC25-890-40 Part I (E)(6)(m)(1-3), which covers topics such as illicit discharges and good housekeeping. The permittee usually provides this training internally for their staff. However, it is not appropriate for the types of training listed in 9VAC25-890-40 Part I (E)(6)(m)(4-6), which includes state certifications for pesticide and herbicide applicators, erosion and sediment control professionals, and stormwater management professionals. DEQ and Virginia Department of Agriculture and Consumer Services	The permittee is only responsible for the training that they conduct. The language was revised as follows: “The permittee shall maintain documentation of each training event conducted by the permittee to fulfill the requirements of Part I E 6 m for a minimum of three years after the training event.””

Commenter	Comment Received	DEQ Response
City of Alexandria	<p>(VDACS) administer these certification programs. It is unnecessary for MS4 permittees to maintain documentation of the objectives, persons in attendance, and the dates of the state-administered certification training events. Instead, permittees should maintain employee certification records. The suggested revision is to limit the documentation provision to those training events described in 9VAC25-890-40 Part I (E)(6)(m)(1-3).</p> <p>Line 1668 - The permit requires documentation of training events conducted to fulfill the requirements under Part I E 6 m. This indicates that the permittee needs to conduct trainings for items (5) and (6) which involve employees and contractors certified under VESCL or VSMP regulations. The permittee does not conduct these types of training events and training events may not be required for certain certifications such as PEs acting as ESC plan reviewers. Language should be uses the requires the permittee to obtain appropriate certification.</p>	Please see the response to Part I.E.6.n above.
City of Alexandria	<p>Line 1703 - Delete “The MS4 program plan shall include” since it is already stated above.</p>	The noted correction has been made.
City of Charlottesville NRDC	<p>Line 1712: please consider deleting “daily” for consistency with Part I E 6 a</p> <p>When the Bay TMDL strategy was initially developed in 2010, fifteen years remained to achieve the full reductions. However, because of a lengthy delay in issuing the first post-TMDL round of MS4 permits, the “first” permit cycle lasted from 2013 to 2018, and the “second” permit cycle (the term of the draft permit at issue here) will last from 2018 to 2023. This means that it is impossible for the pollution reductions required during the “third” permit cycle— comprising 60% of permittees’ total TMDL obligations—to be achieved by the Bay TMDL deadline of 2025. As a result, greater pollution reductions beyond 40% must be required in this permit cycle. This is necessary if Virginia is to have any chance of satisfying its</p>	<p>The permit condition has been revised as suggested.</p> <p>In the Phase I and II Watershed Implementation Plans (WIPs) and the Chesapeake Bay TMDL, the Commonwealth and EPA committed to using a phased approach for the MS4 sector affording MS4 permittees three full five year permit cycles to implement necessary reductions. Virginia will adjust its commitments, if necessary, as part of its Phase III WIP to ensure that practices are in place by 2025 that are necessary to meet water quality standards in the Chesapeake Bay and its tidal tributaries. Virginia is currently reviewing the results of the Phase 6 Chesapeake Bay TMDL Watershed model and developing strategies for the Phase III to ensure compliance with the Chesapeake Bay TMDL. As such, Virginia will adjust its commitments, if necessary, as part of its Phase III WIP to</p>

Commenter	Comment Received	DEQ Response
	<p>legal obligations under the Bay TMDL within the 2025 timeframe. One approach could be to require the permittees to achieve an additional 36% of their reductions, for a total of 76% of their reductions, during this term.¹² The only other alternative is to require permittees to achieve their entire reductions for the “third” permit cycle—60% of their L2 reductions—during the first two years of that permit term.</p> <p>The fact sheet for the draft permit states, “Virginia will adjust its commitments, if necessary, as part of its Phase III WIP to ensure that practices are in place by 2025 that are necessary to meet water quality standards in the Chesapeake Bay and its tidal tributaries.” It is unclear what DEQ means by this statement, but the draft permit’s terms must be consistent with the assumptions and requirements of wasteload allocations as they currently stand—not how they may be modified in the future.</p>	<p>ensure that practices are in place by 2025 that are necessary to meet water quality standards in the Chesapeake Bay and its tidal tributaries. No change proposed.</p>
Chesapeake Bay Foundation	<p>Add a requirement that Bay watershed permittees develop and submit to DEQ within 36 months of the permit’s effective date a detailed report demonstrating that the permittee will have in place by 2025 all steps, including trading and any other necessary options, needed to meet the WIP</p>	<p>Please see response to similar NRDC comment above.</p>
Chesapeake Bay Foundation	<p>Add a requirement that Bay watershed permittees develop and submit to DEQ within 36 months of the permit’s effective date a detailed report that (a) outlines the financial requirements for achieving WIP goals by 2025; and (b) identifies any reasonably foreseeable funding shortfalls for this work.</p>	<p>The information requested is outside the scope of the VPDES permit. No revision is proposed.</p>
EPA	<p>Is it realistic to think that MS4s will be able to attain the remaining 60% in the two years from 2023 to 2025? Should the proposed 35% be revisited?</p>	<p>This is an on-going discussion as Virginia develops Phase III CB WIP. However, the Commonwealth and EPA agreed to three full 5 year permit terms to achieve the required reductions from MS4 permittees. No change is proposed.</p>

City of
Charlottesville

The City implores DEQ and the SWCB to continue to stand by the commitment the State made in the Chesapeake Bay TMDL Phase I and II Watershed Implementation Plans (WIPs) that gives MS4s three full permit cycles (15 years) to make the reductions needed to meet the requirements in the Chesapeake Bay TMDL Special Condition, specifically the pollutants of concern reductions in the L2 scoping run. (Phase I WIP, p. 93; Phase II WIP, p. 25)

Thank you for your comment.

VAMSA

Part II(A) of the Proposed GP requires that a permittee reduce nutrients and sediment by 40% of the L2 scoping run by the end of this five-year term. As noted above and in Appendix A, the MEP compliance standard governs MS4 compliance with an NPDES permit. A permittee should not be required to comply with TMDL reductions above and beyond its MEP, after also considering all of the other permit obligations. For this reason, VAMSA requests the following textual changes:

Part II(A)(1) (*VA Register*, p. 1024)
The Commonwealth in its Phase I and Phase II Chesapeake Bay TMDL Watershed Implementation Plans (WIPs) committed to a phased approach for MS4s, affording MS4 permittees up to three full five-year permit cycles to implement necessary reductions. This permit is consistent with the Chesapeake Bay TMDL and the Virginia Phase I and II WIPs to meet the Level 2 (L2) scoping run for existing developed lands as it represents an implementation of an additional 35% of L2 as specified in the 2010 Phase I Phase I and II WIPs, so long as the level of effort for a permittee is consistent with, and does not exceed, the maximum extent practicable (MEP), when considered cumulatively with other obligations in this permit. Unless MEP limitations apply, a permittee shall, in combination with the 5.0% reduction of L2 that has already been achieved, implement reductions required by Part II(A)(3), (4), and (5) below for a total reduction at the end of this permit term of 40% of L2. The updated Chesapeake Bay TMDL Action Plan in Part II(A)(11) and any required reporting on the Plan shall reflect these reductions. Conditions of future permits will be consistent with the TMDL or WIP conditions in place at the time of permit issuance.

DEQ does not believe that the suggested language is appropriate. In accordance with federal and state regulations, MEP applies to the reduction of pollutants from MS4 permittees and does not apply to the “level of effort.” Additionally, MEP must be determined by the permitting authority at the time of permit issuance, and DEQ has determined that for MS4 permittees, MEP equates to the compliance with the minimum control measures, Chesapeake Bay TMDL and local TMDL requirements as prescribed in the proposed 2018 MS4 general permit. In order to address implementation issues associated with meeting the Chesapeake Bay TMDL reduction requirements, the Commonwealth committed to MS4 reductions that could be achieved over three full permit terms. DEQ contends that the permit language as drafted by DEQ is appropriate and no revision is necessary.

City of
Charlottesville

Lines 1860-1861: please consider deleting “for” on line 1860 and adding “will be achieved” at the end of the sentence on line 1861 such that the sentence reads, “In combination with the 5% reduction of L2 that has already been achieved, a total reduction at the end of this permit term of 40% of L2 will be achieved”. The City believes this will provide more clarity as to the intended requirement.

DEQ agrees that the suggested language clarifies the intent of the permit language and proposes to revise the language as suggested.

In combination with the 5% reduction of L2 that has already been achieved, ~~for~~ a total reduction at the end of this permit term of 40% of L2 will be achieved.

EPA

Is this allowing the permittee additional time to achieve the 5% required by the current permit?

No. This is recognizing that by the end of the 2nd permit term, 40% must be achieved. Given the requirements over multiple permit terms, and the fact that “new” permittees (2010 CUA) were not required to meet the 5% during the first permit term but is required to meet the 40% by the end of the 2nd permit term, this language simplifies the accounting for DEQ and the MS4 permittees. No change is proposed.

VAMSA

In addition to VAMSA's concerns regarding practicability, VAMSA is also concerned that the 40% reference Part II(A)(3) (*VA Register*, p. 1024) could be misread. VAMSA believes DEQ's intent is that the 40% requirement only applies to those additional acres that were added to an individual MS4's service area as a result of the 2010 Census, and not to the full footprint of the service area based on the 2010 Census. However, out of an abundance of caution, VAMSA recommends textual edits to this section to make this point clear.

No later than the expiration date of this permit, the permittee shall reduce the load of total nitrogen, total phosphorus, and total suspended solids from existing developed lands served by the MS4 as of June 30, 2009, within the 2010 Census Urbanized Area by at least 40% of the Level 2 (L2) Scoping Run Reductions. The 40% reduction is the sum of (i) the first phase reduction of 5.0% of the L2 Scoping Run Reductions based on the lands located within the 2000 Census Urbanized Areas required by June 30, 2018; (ii) the second phase reduction of at least 35% of the L2 Scoping Run based on lands within the 2000 Census Urbanized Areas required by June 30, 2023; and (iii) the reduction of at least 40% of the L2 Scoping Run ~~based on~~, which shall only apply to the additional lands that were added by within the 2010 expanded Census Urbanized Areas required by June 30, 2023. The required reduction shall be calculated using Tables 3a, 3b, 3c, and 3d below as applicable:

Navy

Permit language in lines 1876 through 1881 works for situations where urbanized area increased from 2000 to 2010. It is not appropriate to require load reductions from lands that were urbanized in 2000 but no longer urbanized in 2010. It is not appropriate to require reductions under an MS4 permit from areas which are no longer urbanized and therefore not a part of the MS4 regulated service area. These non-urbanized areas should be addressed in the Load Allocation of the TMDL rather than the WLA of the MS4 permit.

DEQ agrees that the suggested language clarifies the intent of the permit language and proposes to revise the language as suggested.

“...and (iii) the reduction of at least 40% of the L2 Scoping Run ~~based on~~, which shall only apply to the additional lands that were added by within the 2010 expanded Census Urbanized Areas required ...”

When a small MS4 is automatically designated as regulated based on the definition of urbanized area for any given census year, that small MS4 remains regulated regardless of the results of subsequent urbanized area determinations. (Page 68751 of the December 8, 1999 Federal Register/Vol. 64, No 235). Therefore, even though lands may be identified in the 2010 Census as being outside the urbanized area, if they were part of the designated urbanized area in accordance with the 2000 Census, they remain regulated under the MS4. No proposed change.

Commenter	Comment Received	DEQ Response
DoD	<p>Recommendation: This section should be modified to account for situations where an MS4 lost urbanized area from 2000 to 2010. We believe that this can be accomplished by keeping the first sentence (lines 1874 to 1877) and deleting the second sentence (lines 1878-1883). If VADEQ believes it is best to retain the existing language, it should be modified to indicate that it only applies to MS4s that had urbanized areas expanded in 2010 compared to 2000.</p> <p>This language works for situations where an MS4 service area expanded in 2010 as compared to 2000. However, provisions (i) and (ii) would require load reductions from lands that were urbanized in 2000, but are no longer urbanized in 2010. It is not appropriate to require load reductions under an MS4 permit from areas which are no longer urbanized and therefore not part of the MS4 regulated service area. These non-urbanized areas should be addressed in the Load Allocation of the TMDL rather than in the Waste Load Allocation of the MS4 permit.</p> <p>Recommendation: This section should be modified to account for situations where an MS4 has reduced urbanized area from 2000 to 2010. This can be accomplished by keeping the first sentence (lines 1874 to 1877) and deleting the second sentence (lines 1877-1883). If VDEQ believes it is best to retain the existing language, it should be modified to indicate that it only applies to MS4s that had urbanized areas expanded in 2010 compared to 2000.</p>	See response above to similar Navy comment above for Part II.A.3.
City of Charlottesville	Lines 1882-1883: the City feels that these lines need to more clearly express that only new acres added in the 2010 Census (above and beyond those already identified using the 2000 Census) and that are served by the MS4 are subject to the 40% reduction requirement.	Please see the response and proposed revision to the similar comment above.
City of Charlottesville	Lines 1885-1888, Tables 3a-3d: please consider reformatting these tables to landscape orientation for ease of viewing	Virginia’s Regulation Information System (RIS) requires the department to format tables in a portrait format for purposes of the official publication. DEQ will be reformatting the tables into a more “easy to read” and user-friendly format as part of the MS4 general permit that is distributed to permittees upon issuance of coverage under the 2018 permit. No change proposed in the regulation.

City of Charlottesville	Lines 1885-1888, Tables 3a-3d: please consider deleting “rate” from the header of Column D. The L2 requirement is a reduction of the total loading, not a reduction of the loading rate.	DEQ proposes to revise Table 3a through 3d as suggested as well as revise Column C from “Loading” to “Load” to accurately reflect the resulting calculation. Column C: Revise heading to: Loading (lbs/yr) Column D: Revise heading to: <u>Percentage of MS4 required Chesapeake Bay total L2 loading rate</u> reduction
City of Charlottesville	Lines 1885-1888, Tables 3a-3d: for clarity, please consider removing the “%” after each number in Columns D and E and inserting a “(%)” at the end of the column headers. As such the Column D header would read “MS4 required Chesapeake Bay total L2 loading reduction (%)”, and Column E would read “L2 required reduction by 6/30/2023 (%)”. This will make the calculation described in Subscript 4 after each Table correct – currently it is unnecessary to divide by 100 since the numbers are already expressed as percentages.	DEQ agrees that a correction is needed in order to accurately represent the calculation intended for Column F and proposes to revise footnote 4 in order to correct the calculation. Footnote 4: Column F = Column C x (Column D divided by 100) x (Column E divided by 100)
VAMSA	Subscript 4 to each Table states that Column F = Column C X (Column D ÷ 100) X (Column E ÷ 100). (<i>VA Register</i> , p. 1025-1027). Columns D and E are already provided as percentages, making it unnecessary to divide by 100. VAMSA suggests either removing the % in the columns or the divide by 100 reference in the subscript.	Please see response to similar comment above.
City of Charlottesville	Line 1910: please consider replacing the first “to” with “towards” to make it clear that reductions achieved under the current MS4 General Permit count towards the overall 40% of L2 reductions required by the end of this draft permit.	DEQ agrees the suggested language revision is consistent with the intent of the permit condition and proposes to revise the language as indicated below: “...shall be applied to <u>toward</u> the total reduction...”
EPA	Is there a methodology for assigning values to reduction efforts and specific BMPs for tracking compliance with these requirements?	DEQ staff understands this comment to be referring to reduction efficiencies assigned to BMPs. The acceptable reduction efficiencies are addressed for specific BMPs through the BMP Clearinghouse or Chesapeake Bay Program. Reduction efficiencies may sometimes be refined when new information is discovered; therefore, DEQ does not believe it to be appropriate to include any reduction efficiencies in the permit. No changes proposed.

EPA	Are these BMPs listed in a Manual or some other central location? If so, recommend stating so here in the permit.	BMPs eligible for use to retrofit existing developed lands to meet the CB TMDL reduction requirements include BMPs on DEQ’s BMP Clearinghouse or the CBP approved expert panel report. DEQ has a 70 page guidance document developed with a variety of stakeholders to document acceptable practices and calculation methodologies to meet the reduction requirements. Because the guidance document periodically needs to be updated to include new approved BMPs, it is not appropriate for reference in a permit regulation. No change is proposed.
City of Charlottesville	Line 1927: please consider replacing “suspend” with “suspended” and adding “credits” after “total suspended solids”.	DEQ proposes to revise the language as suggested below: “...Virginia and total suspended solids..”
City of Charlottesville	Line 1928: there is technically not a Part II A 3 a through d, but rather Tables 3a through 3d, which all come under section Part II A 3. Please ensure that the proper reference is included.	DEQ proposes to revise the language as suggested below: ...the required reductions in Part II A Part II A <u>Tables 3</u> a through A 3d. . .
VAMSA	VAMSA supports the clear language in the Proposed GP authorizing trading for Bay compliance. (<i>VA Register</i> , p. 1028). That said, VAMSA believes the Proposed GP would be even more effective if DEQ took the existing term at 9VAC25-890-40 Part II(A)(10) and created separate terms for nutrients and sediment. The Virginia Code sections authorizing nutrient and sediment trading are different, and blending them into one paragraph means losing some of the individual features of each section.6As a concrete example, the Virginia Code limits the use of sediment credits to Bay compliance; there is no similar limitation on nutrient credits. If DEQ decouples the current text, VAMSA also requests that DEQ add specific authorization in the Local TMDL section of the GP that allows trading for local nutrient TMDLs. (<i>VA Register</i> , p. 1031).	DEQ agrees that there are differences in the VA Code sections authorizing nutrient and sediment trading and plans to further address these issues in the TMDL Action Plan Guidance. No changes necessary.
EPA	Is this a part of the trading program? I’m wondering how credit generators would know the baseline reduction necessary?	Baseline reduction requirements are a component of Virginia’s trading program. DEQ staff have established requirements for what equates to “baseline” and works closely with nutrient bankers to ensure that baseline is met prior to certifying available credits for sell or trade. No change proposed.

EPA	What is the rationale for how the updated plan avoids state review and approval?	The enforceable requirement is the reduction which is included in the permit. The action plan is the tool used to demonstrate compliance with the reduction requirement. This is explained in the fact sheet for this MS4 GP. Please note that DEQ will be receiving and reviewing action plans to ensure that the plans contain the components as required by the permit. Lack of components in the plan may constitute a permit violation and will be addressed through the compliance and/or enforcement program. No change proposed.
Chesapeake Bay Foundation	Reduce to six months the Draft Permit's allowance of 12 months from its effective date for submission to DEQ of its TMDL Action Plan. In view of the current permit's requirement for submission of an updated Action Plan with the permittee's reapplication for coverage, six months should be adequate to address any changes required by the new permit	In accordance with discussions of the Technical Advisory Committee and in consideration of other regulatory requirements associated with this permit, DEQ believes that submittal of the action plans 12 months after the permit effective date is an acceptable time frame for finalization. Note that regardless of the action plan due date, MS4 permittees are still require to ensure that plans are implemented and the necessary BMPs and strategies are in place to demonstrate compliance with the requirement to achieve 35% reduction of L2 no later than the expiration date of the permit. No change proposed.
James River Association	In order to ensure continued progress and compliance with the Chesapeake Bay TMDL, this permit must include provisions that acknowledge and provide for modification when new Waste Load Allocations (WLAs) are approved as a part of the Phase III Watershed Implementation Plan process. Consistency with WLAs is an integral element of these permits and must be maintained throughout the permit cycle. Once new WLAs are approved, they must be incorporated into the permit. Continued progress towards Chesapeake Bay restoration is imperative and the permit should require action plans to be updated to incorporate compliance schedules for newly approved WLAs.	DEQ does not have the authority to modify general permit conditions without initiating a regulatory action, and does not anticipate reopening the general permit in response to the Phase III WIP. Virginia will adjust its commitments, if necessary, as part of its Phase III WIP to ensure that practices are in place by 2025 that are necessary to meet water quality standards in the Chesapeake Bay and its tidal tributaries. No change proposed.

EPA	To be able to point to milestones in the plan, there should also be some dates attached to the proposed BMPs/projects.	The permit only requires that the strategies to meet reductions be in place by the end of the permit. Annual reports include a status update of action plan/reductions. It would be impossible to require clear specific and measurable milestones for each permittee since each plan to comply with reduction requirements is different. Additionally, the action plan is not enforceable outside of the permit. No change proposed.
City of Alexandria	Line 1992 - Should this item include the BMPs not submitted to the DEQ BMP Warehouse or the "DEQ Construction Stormwater Database"? Also, how should retrofits be reported?	The intent of this reporting requirement is to prevent duplicative reporting by the permittee. As such, DEQ believes that the language in the permit condition should be revised to indicate that BMPs reported as part of the Construction Stormwater Database do not need to be reported under Part II A.14.a. BMPs retrofitted to meet Chesapeake Bay TMDL reductions should be reported through the BMP Warehouse.
City of Alexandria	Fact Sheet: 1. The City finds it is imperative that DEQ and the Board continue to stand by the commitment the State made in the Chesapeake Bay TMDL Phase I and II Watershed Implementation Plans (WIPs) that gives MS4s three full permit cycles (or 15 years) to make the reductions needed to meet the L2 scoping run. The Draft Fact sheet states that "Virginia will adjust its commitments, if necessary, as part of its Phase III WIP to ensure that practices are in place by 2025" and the City is concerned that this language signals a change to the three full permit cycles commitment. The City recommends striking this language from the Fact Sheet.	Language as written in the fact sheet that states "ensure practices are in place" applies as a broad statement to indicate that overall reduction requirements will be met and encompasses all sectors in aggregate. The Commonwealth has committed to three full permit terms for MS4 permittees to meet the required Chesapeake Bay TMDL reductions and intends to honor that commitment. No proposed revision necessary.
James River Association	Similarly, local TMDL action plans should be required to be developed for new TMDLs approved after the start date of the permit.	Implementation of future TMDL requirements in the MS4 general permit requires that the permit be modified by a regulatory action following TMDL approval. Imposing future requirements in a permit condition yet to be determined is considered to be a self-modifying permit and is not allowed under state or federal law. Because of the ongoing approval of new TMDLs, this would require a nearly continuous series of regulatory actions. For this reason requirements for implementation of new TMDLs are implemented with each permit term. No change proposed.
NRDC	The draft permit requires permittees to develop TMDL action plans for TMDLs	Please see response provided in Part II B immediately above.

Commenter	Comment Received	DEQ Response
	<p>approved prior to June 30, 2018 (the anticipated start of the permit term), but not to develop or update plans for TMDLs approved during the term of the permit. Consistency with wasteload allocations is a core Clean Water Act requirement and an integral component of this permit, and it must be maintained throughout the permit cycle.¹⁶ Permittees should not be allowed to ignore applicable wasteload allocations for five (or perhaps more) years until they are issued a new MS4 permit. EPA Region III guidance confirms, “Permits should include provisions that allow reopening and modification of permits if new WLAs are adopted during the permit term.” The permit should require action plans to be updated on an annual basis as needed to incorporate compliance schedules for newly approved TMDL wasteload allocations.</p>	
Chesapeake Bay Foundation	<p>Amend to six months the proposed 18-month timeframe after the permit’s effective date within which the permittee must update previously developed local TMDL action plans; the shortened period is appropriate for updates, as distinct from new action plan development.</p>	<p>DEQ does not think 6 months provides sufficient time for local TMDL Action Plans to be updated due to the complex nature of TMDL development and evaluation. Some MS4 permittees are responsible for management of a significant number of local TMDL Action Plans and DEQ believes this would not provide sufficient time for re-evaluation. No change proposed.</p>
EPA	<p>Overall question here is whether the state will review and approve the plan. As it is described, a number of details are left up to the permittee, and should be subject to a second step process consistent with the Remand Rule to ensure adequate state oversight and opportunity for public comment, as well as to make these implementation details enforceable under the permit.</p>	<p>DEQ believes that this condition meets the clear, specific and measurable standard. The plan components are clear, specific, and measureable. The action plan acts as the tool for the permittee to demonstrate compliance with the reduction requirements. Therefore, as long as the action plan includes all of the items listed in the permit and the plan demonstrates compliance with the reduction requirements, then the plan does not need a separate review, public notice, or approval process. No change proposed.</p>
EPA	<p>Compliance with this provision would be improved if the list of TMDLs, WLAs, and associated pollutants of concern were specified in the permit, or in an appendix, along with the MS4s that are affected.</p>	<p>TMDL information is available on DEQ’s website. Additionally, DEQ staff are available to offer assistance to permittees and other stakeholders. No change proposed.</p>
EPA	<p>What if a new permittee has a TMDL approved prior to July 2013? They would be developing a plan, not updating.</p>	<p>Part I C 2 addresses the requirements for permittees receiving initial permit coverage to establish a schedule and submit it to DEQ on implementation of an MS4 program and associated plan. A schedule to develop Local</p>

Commenter	Comment Received	DEQ Response
NRDC	<p>Aside from the insufficient length of the public comment period, the substantive requirements for permittees' local TMDL action plans also fall short of minimum standards. The permit terms governing these plans are extremely vague, requiring permittees to "reduce loadings for pollutants of concern" without specifying how much reduction must be achieved or, for many pollutants, any end date by which wasteload allocations must be met.</p> <p>The draft permit states: "TMDL action plans may be implemented in multiple phases over more than one permit cycle using the adaptive iterative approach provided adequate progress is achieved in the implementation of BMPs designed to reduce pollutant discharges in a manner that is consistent with the assumptions and requirements of the applicable TMDL." (Part II.B.2, on page 57 of the draft permit document.) While it is true that TMDLs may be implemented over timeframes spanning more than one permit cycle, the statement in Part II.B.2 fails to acknowledge that compliance with wasteload allocations must be achieved "as soon as possible" in accordance with the Clean Water Act. It is this standard that defines whether a permittee is making "adequate progress" toward implementation.</p> <p>Yet the draft permit does not impose any conditions that ensure a permittee will achieve wasteload allocations as soon as possible. It requires them to choose certain actions to implement, but does not require those actions to result in any particular amount of pollution reduction, meaning that a permittee plan that results in a pollution reduction of 0.1% will comply with the permit just as much as a plan that results in a reduction of 90%. For PCB TMDLs, the permit does not even require that the permittee perform any pollution reduction activities at all. These arbitrary permit terms represent an abdication of DEQ's regulatory</p>	<p>TMDL action plans would be considered part of this schedule. No change proposed.</p> <p>Part II B 2 has been modified to require completion of TMDL Action Plans as soon as possible. The following sentence has been added to the condition: "The permittees shall complete implementation of the TMDL Action Plans as soon as possible.</p>

Commenter	Comment Received	DEQ Response
	<p>responsibility and bear no logical connection to the assumptions and requirements of applicable wasteload allocations, in contravention of the Clean Water Act.</p> <p>To resolve this legal defect, the draft permit must be revised to require permittees to develop and implement action plans that will achieve a certain minimum percentage of necessary WLA pollution reductions within the permit term.</p>	
EPA	<p>Why would the plan not identify a source even if it has its own permit? The permittee may not have to implement BMPs there, but it should still be identified and explained in the TMDL plan.</p>	<p>The MS4 permittee would not be responsible for reductions from the source if it is covered by a separate VPDES permit. That separate VPDES permittee would be responsible for complying with the TMDL, and DEQ would already be aware of it. Asking them to track sources that are already permitted is redundant and provides no value. No change proposed.</p>
City of Charlottesville	<p>Line 2028: please consider inserting “that” after “and”.</p>	<p>The noted correction has been made.</p>
Chesapeake Bay Foundation	<p>Require permittees to set estimated TMDL achievement dates for local bacteria and polychlorinated biphenyl TMDLs. This is a Clean Water Act requirement in cases where permittees rely on a staged implementation plan that spans more than one permit period</p>	<p>DEQ has included the submittal of anticipated end dates for nutrients and sediment which have agency prescribed reductions efficiencies for associated BMPs. For parameters without identified BMP reduction efficiencies, DEQ has relied on the implementation of control strategies associated with those parameters. However, without established BMP reduction efficiencies for bacteria and PCBs, DEQ determined that the calculation of an anticipated end was infeasible. No changes proposed.</p>
EPA	<p>Recommend adding deadlines for the three required strategies that aren’t all stacked up by the end of the permit term. Could they be required to be completed in Years 3, 4, and 5 so that they’re spaced out a bit?</p>	<p>This approach has been implemented in the past (all action plans due at the same time) and has worked well. By doing so, it ensures implementation doesn’t get delayed, allows permittee and DEQ to have clear expectation of when all action plans are due, and allows permittees to combine action plans if chosen strategies achieve reductions of multiple pollutants of concern. No change proposed.</p>
City of Charlottesville	<p>Lines 2044 and 2048: please confirm the proper reference is cited; the City believes the correct reference is Part II B 3 d</p>	<p>Thank you for the comment, the reference has been corrected to Part II B 3 d.</p>
VAMSA	<p>The Proposed GP allows a permittee to</p>	<p>The TMDL action plan conditions in the</p>

Commenter	Comment Received	DEQ Response
Chesapeake Bay Foundation	<p>enhance its dry weather screening and IDDE program and “identify and remove illicit connections and identify leaking sanitary sewer lines infiltrating to the MS4 and implement repairs” in order to satisfy the requirement to implement at least three strategies to address bacteria local TMDLs. 9VAC25-890-40 Part II(B)(4), Table 5 (<i>VA Register</i>, p. 1030).</p> <p>VAMSA requests that DEQ revise the Proposed GP to include language from the VDOT permit that allows for MCM enhancements to address other pollutants. For example, for sediment TMDLs, the permittee could identify enhancements to MCM 1 through 6 that would also reduce loadings of sediment into the MS4.</p> <p>To address local bacteria TMDLs, increase to five the number of bacteria-reducing strategies that must be adopted by permittees that serve as “VSMP authorities” under the Virginia stormwater management program. As VSMP authorities, these permittees will have the ability to manage more aggressive programs where warranted, such as in cases where there may be a public health concern.</p>	<p>VDOT individual permit do not list MCM enhancements as an option to meet TMDL conditions. Instead, the permit requires that VDOT list in the action plans each MCM implemented that achieves reductions for the TMDL’s pollutant of concern. This is in addition to other reduction strategies to specifically address the TMDL wasteload allocations. No change is proposed.</p> <p>The minimum number of bacteria reducing strategies was discussed by the TAC and DEQ selected three based upon that input. No change proposed.</p>
City of Charlottesville	<p>Line 2049, Table 5, Illicit connections or illicit discharges to the MS4: the last strategy is merely "Marinas"; please ensure a complete strategy is provided here</p>	<p>The TAC discussed adding a strategy associated with marinas to the list; however, upon further review by DEQ staff, this type of strategy would not result in a reduction in load from the MS4. Therefore, “marinas” has been removed from the list of strategies to address bacteria TMDL wasteload allocations.</p>
City of Alexandria	<p>Line 2049 - In Table 5 under Illicit connection or illicit discharges to the MS4, the last item only says “Marinas”</p>	<p>See response to similar comment above.</p>
DoD	<p>Under the "Illicit connections or illicit discharges to the MS4", last line in the strategies section, the word "Marinas" is written with no explanation.</p> <p>Recommendation: Provide clarification in the form of a strategy example for Marinas indicating how they apply for the source noted or delete it if mention was not intended.</p>	<p>See response to similar comment above.</p>
City of Alexandria	<p>Line 2066 - The permit requires submitting anticipated end dates by which the permittee will meet each WLA</p>	<p>DEQ believes it is appropriate for permittees to evaluate the timeline necessary to meet the wasteload allocation for sediment and</p>

Commenter	Comment Received	DEQ Response
	<p>for sediment, phosphorus or nitrogen. This requirement is unreasonable and flawed since there are many unpredictable, contributing factors involved in developing an anticipated end date. The submitted anticipated end date will require valuable staff time and not provide much, if any, benefit to DEQ</p>	<p>nutrients. DEQ published guidance in 2015 developed with input from stakeholder describing how to calculate reductions to meet the nutrient and sediment reductions for the Chesapeake Bay TMDL special condition. DEQ anticipates that permittees will use most of the same methodologies to achieve reductions for purposes of local TMDLs. Additionally, DEQ is only asking that permittees provide an <i>estimate</i> of when they will achieve reductions and is not prescribing the date by which permittees need to have achieved reductions. No proposed change.</p>
EPA	<p>This requirement lacks specificity in terms of the implementation schedule, where the BMPs must be implemented and to what extent.</p> <p>Also, which aspects of these implementation details will be enforceable?</p>	<p>BMPs for local TMDLs must be implemented in the watershed of the impaired waters in order to implement strategies through the adaptive iterative process to address TMDLs, some flexibility of permittees are needed. The components of the plan required by the permit are enforceable. No change is proposed.</p>
HRPDC	<p>The draft MS4 GP requires all permittees to submit action plans for applicable local TMDLs. 9VAC25-890-40 Part II (B)(5)(d) requires submittal of the "anticipated end dates by which the permittee will meet each WLA for sediment, phosphorus, or nitrogen" no later than 36 months after the permit effective date. The concept of requiring an MS4 permittee to make an educated guess on an anticipated end date is flawed. Several factors would influence such a date, such as population and development trends and new stormwater treatment technologies. Small MS4 permittees should instead focus on near-term implementation to reduce the discharge of these pollutants to the maximum extent practicable in accordance with the permit.</p> <p>Recommendation: delete this requirement from the draft MS4 GP.</p>	<p>See response to similar City of Alexandria comment above.</p>
EPA	<p>Why is this schedule longer than the due date of the plan, which is 30 months from effective date?</p>	<p>While DEQ recognizes that this is not consistent with the due date of the action plans, this date was agreed upon with the technical advisory committee during the drafting of the permit. No change is proposed.</p>
EPA	<p>Noting that a compliance schedule like this may need to be approved.</p>	<p>These are estimates of achieving reduction requirements. DEQ will evaluate the information provided to determine if specific dates are need in future permit terms. No</p>

Commenter	Comment Received	DEQ Response
City of Charlottesville	Lines 2065-2068: the City prefers that the general permit does not include a requirement to submit anticipated end dates for meeting WLAs.	change is proposed for this proposed permit. See response to similar City of Alexandria comment above.
VAMSA	With regard to sediment, phosphorus, and nitrogen TMDLs, the Proposed GP also requires that the permittee submit no later than 36 months after the permit effective date the “anticipated end dates by which the permittee will meet each WLA for sediment, phosphorus, or nitrogen.” 9VAC25-890-40 Part II(B)(5)(d). (<i>VA Register</i> , p. 1031). VAMSA objects to this requirement. Not only is this inconsistent with the recently-issued VDOT permit (no requirement for an estimated end date for local TMDLs), but the concept of requiring an MS4 permittee to make an educated guess on an anticipated end date is flawed. Small MS4 permittees would make better use of their limited resources by focusing on near-term implementation, and not on out-year planning efforts. The mandate to estimate an end-date will not yield enough useful information to warrant the staffing time needed to prepare the submittal. VAMSA requests that DEQ delete this requirement from the Proposed GP.	See response to similar City of Alexandria comment above.
James River Association	The draft permit does not require reductions as a part of a PCB TMDL action plan, which directly contradicts the federal requirement to comply with WLAs as soon as possible. It is suggested that the Department consider an approach similar to Maryland’s Department of the Environment, which recommends source targeting, monitoring, accounting for PCB load reduction through stormwater practices, as well as alternative approaches.	The proposed general permit includes PCB TMDL requirements which are consistent with the most recent Virginia DEQ Individual permits. These permits require evaluation of permittee owned facilities and reporting of any previously identified significant sources of PCBs in the MS4 service area to DEQ within 30 days. DEQ has determined that identification of PCB sources is an appropriate initial measure to an overall PCB reduction plan and is consistent with the adaptive iterative approach allowed by state and federal law for the reduction of pollutants from MS4s. Many industrial sites discharging to MS4s are also subject to DEQs General Permit for Industrial Stormwater Discharges which includes PCB screening requirements. No change proposed. The enforceable requirements are the list of plan components included in the permit. The action plan is the tool used to demonstrate compliance with the TMDL
EPA	This requirement lacks specificity. Will the action plan be reviewed and incorporated as enforceable by the state.	

Commenter	Comment Received	DEQ Response
HRPDC	<p>New language was added to Part III of the draft MS4 GP which states "discharge monitoring is not required for this general permit. If the operator chooses to monitor stormwater discharges or control measures, the operator must comply with the requirements of Part III A, B, and C as appropriate." Without a specific definition of discharge monitoring, it is not clear that field screening (such as illicit discharge source investigations) and their associated results would be excluded from the requirements listed in Part III A, B, and C. Recommendation: clarify the permit language at the beginning of Part III as follows: "discharge monitoring is not required for this general permit. If the operator chooses to monitor stormwater discharges or control measures, the operator must comply with the requirements of Part III A, B, and C as appropriate. <i>These requirements do not apply to field screening or other monitoring that is analyzed using a method outside of those approved by the EPA.</i>"</p>	<p>requirements. This is explained in the fact sheet for this MS4 GP. Please note that DEQ will be receiving and reviewing action plans to ensure that the plans contain the components as required by the permit. Lack of components in the plan may constitute a permit violation and will be addressed through the compliance and/or enforcement program. No change proposed.</p> <p>To clarify this section, the language has been revised to as follows: "Note. Discharge monitoring is not required for control measures, the operator must comply with the requirements of Part III A, B, and C as appropriate compliance purposes by this general permit. If the operator chooses to monitor stormwater discharges for informational or screening purposes, the operator does not need to comply with the requirements of Parts III A, B or C.</p>
Chesapeake Bay Foundation	<p>Amend the Draft Permit to require periodic in-stream monitoring for critical parameters. For permittees within the Bay watershed (and those with local nitrogen, phosphorus, and/or sediment local TMDLs), the parameters should include at a minimum total phosphorus, total nitrogen, total suspended sediment; dissolved oxygen; and bacteria. The monitoring should be conducted once every two months at each of five stream locations, with samples and measurements that are representative of the monitored activity and that follow prescribed monitoring, reporting, and recordkeeping protocols.</p>	<p>DEQ believes that required instream monitoring is not appropriate for a small MS4 due to the complexities associated with monitoring wet weather impacts (e.g. staffing, expense, data variability, safety, wet vs. dry weather characterization). Additionally, instream monitoring is not necessary to demonstrate compliance with any components of this permit. No change proposed.</p>
VAMSA	<p>The Proposed GP amends the existing</p>	<p>Please see response to the comment</p>

Commenter	Comment Received	DEQ Response
EPA	<p>Conditions Applicable to All State Permits to add text regarding monitoring. 9VAC25-890-40 Part III. (<i>VA Register</i>, p. 1032). The new text states that if an MS4 operator “chooses to monitor stormwater discharges or control measures” it must comply with Part II A, B, and C “as appropriate.” Part A requires that monitoring be done pursuant to EPA approved methods. VAMSA requests that DEQ clarify that informational or control type testing need not be conducted pursuant to approved methodologies.</p> <p>The permit should include language that discusses the impact of the NPDES e-Reporting rule which is scheduled to come online during the middle of this permit term in 2020 for MS4s.</p>	<p>immediately above in Part III.</p> <p>DEQ is still fleshing out how the MS4 e-reporting requirements for implementation in 2020 will impact the Virginia MS4 program and closely monitoring the federal MS4 e-reporting workgroup. DEQ believes that at this point it is pre-mature to incorporate or reference any e-reporting for MS4s. No change proposed.</p>
DoD	<p>Requirements expected to be included in the MS4 Program Plan and MS4 Annual Report (e.g. what information to include, frequency, etc.) are scattered throughout the document. It's confusing and requires the permittee to look in multiple locations to ensure all necessary information is included in MS4 program plan or annual report. Recommendation: Identify requirements for these documents in one section or central location within the permit.</p>	<p>DEQ discussed the organization of the general permit including the placement of the annual reporting requirements with the TAC. Based on input from the TAC DEQ believes it is appropriate that the specific annual report requirements be included with the matching permit condition rather than as a separate section. No change proposed.</p>
NRDC	<p>Although the updated EPA regulations do not strictly require an opportunity for public comment on permittees’ MS4 program plans under the “comprehensive general permit” approach, we nonetheless urge DEQ to require permittees to formally solicit public input on their plans. Allowing the public to provide comment can improve community engagement and support for municipal stormwater programs. Moreover, it can yield substantive improvements to the permittee’s plan.</p> <p>The draft permit already requires the permittee to develop “procedures” for the public to “provide input on the permittee’s MS4 program,” in Part I.E.2.a on page 24 of the draft permit</p>	<p>EPA’s MS4 Remand Rule does not require a public comment period for MS4 Program Plans when a permitting authority implements the Remand Rule’s comprehensive permitting approach. Under this approach, the MS4 Program Plan is meant to serve as a compliance plan describing how the MS4 permittee will demonstrate compliance with the terms of the permit. Through Virginia’s Administrative Process Act as it pertains to regulations such as this Small MS4 general permit regulation, the public notice requirements of the comprehensive approach are satisfied.</p> <p>However, DEQ does see value in affording the public an opportunity to review and comment on each permittee’s program plan. As such the permit already contains</p>

Commenter**Comment Received**

document. This provision on its own is too vague to meet the EPA's "clear, specific, and measurable" standard, but if DEQ were to require permittees to solicit public comment on the MS4 program plan, that revision would resolve the legal deficiency and boost public engagement at the same time.

NRDC

The draft permit requires permittees to develop "action plans" detailing how they will achieve the permit's TMDL-related requirements. The permit further provides that the permittee must provide a 15-day public comment period on these plans (in Part II.A.12 and Part II.B.7). This timeframe is absurdly short and cannot possibly provide the public adequate time to review and comment on the highly technical information that the plans will likely contain.

Moreover, at least with regard to the Chesapeake Bay TMDL Action Plan, this 15-day comment period violates federal regulations. The draft permit provides that this plan will be incorporated by reference into the permit. As a result, its contents will become enforceable permit conditions. As EPA specifies in the preamble to the recent MS4 rulemaking, any requirements established based on information submitted by the permittee and "incorporat[ed] . . . into the permit as enforceable requirements" must follow the procedural requirements established in 40 C.F.R. 122.28(d)(2). That regulation requires the public notice-and-comment process for permittee-developed plans to be the same as the public process for the draft permit itself; in other words, the comment period must be at least 30 days long.

DEQ Response

requirements in Part I.E.2. (MCM 2- Public Involvement) for the permittee to develop and implement procedures to receive input from the public on the MS4 Program Plan and responding to such input (Part I.E.2.a). No change is proposed.

Upon further review of the Chesapeake Bay TMDL action plan section (Part II.A), DEQ staff identified that language from the 2013 MS4 general permit stating that the action plan is "incorporated by reference into the permit" was left in the draft permit in error. Incorporating by reference documents to be developed in the future does not conform to the EPA Remand Rule comprehensive permitting approach that requires all conditions of the permit to actually be included within the permit at the time that coverage is issued. DEQ's intentions of implementing Remand Rule's comprehensive permitting approach is well documented throughout the fact sheet.

Additionally, the actions plans are implementation plans that allow permittees to demonstrate how they will meet the requirements of the permit. The proposed permit regulation includes specific and clear measures that permittees must achieve in regards to local TMDLS for which they have been allocated a WLA. As such, there is no federal or state requirement that the Chesapeake Bay or Local TMDL action plans be provided to the public for the purposes of review and comment. However, DEQ believes that providing the public an opportunity to review these plans is important. In determining the "15 day" public comment period, DEQ considered the results from the action plan public comment period that occurred under the 2013 MS4 general permit Chesapeake Bay TMDL special condition requirements. In very few instances were public comments submitted to permittees. Therefore, the resulting public comment period requirement is meant to allow the public to review and comment on action plans, however, it also allows that permittees can proceed with implementation of the action plans. No change proposed.

Commenter	Comment Received	DEQ Response
City of Charlottesville	The development of a new MS4 permit is of great significance to the City of Charlottesville. The City would like to acknowledge the hard work of the Virginia Department of Environmental Quality (DEQ) staff in engaging permit holders throughout the development of the proposed permit, and thank DEQ for the opportunity to serve on the Technical Advisory Committee (TAC)	Thank you for your comment.
City of Charlottesville	The City conveys our general support for the comments submitted by the Virginia Municipal Stormwater Association (VAMSA)	Your comment has been noted, Thank you.
City of Charlottesville	Throughout the permit, there is inconsistent use of the terms “operator” and “permittee”. Please ensure that these terms are used consistently throughout the permit.	Corrections have been made to address the use of “operator” and “permittee”. The term “operator” has been used to address the applicant prior to submittal of the registration statement and the term “permittee” as it applies to any operator that receives coverage under the permit and is used within the permit.
City of Charlottesville	Due dates of permit requirements and reporting requirements could be better harmonized to aid in permittee compliance. There are currently discrepancies between reporting periods and when certain requirements must be met. For example, see comment 26 below regarding line 1029 of the permit. These discrepancies may lead to unintended incidents of noncompliance.	We have created a table that includes due dates and important permit action items and are providing that to all permittees when e-mailed the final copy of the MS4 Draft Permit, fact sheet and transmittal letter. This can be used as a reference for important due dates for permittees. No change to the permit regulation is proposed.
City of Charlottesville	There is inconsistent use of capitalization and abbreviation throughout the document; examples include “board” vs. “Board” in reference to the SWCB, municipal separate storm sewer system vs. MS4, and specification of small MS4 vs. MS4 generally. Please ensure consistency to aid permittees’ proper interpretation of the permit.	The document has been reviewed and any inconsistent terms have been addressed.
VAMSA	At the most fundamental level, the GP should never impose requirements that exceed the Clean Water Act’s “maximum extent practicable” (MEP) compliance standard and level of effort, whether due to water quality standards (WQS), total maximum daily loads (TMDLs), or otherwise. VAMSA includes as Appendix A, a discussion of the MEP compliance standard as it applies to	Please response to similar VAMSA comment in Part I B above.

Commenter	Comment Received	DEQ Response
	<p>MS4s. VAMSA requests that DEQ include a rationale to support the MEP standard in the Fact Sheet; the language in Appendix A could be used as a basis for that rationale.</p> <p>Although we suspect for the vast majority of VAMSA Members complying with the 40% aggregate Bay related reduction is unlikely to be a concern using that MEP level of effort, given the large number of MS4s there is no way to know for certain that compliance will be achievable. For that reason, it would be appropriate for DEQ to capture the overarching concept of MEP even though it was not highlighted in the prior permit. Looking even further ahead to the third permit cycle that will begin in six years and end in eleven years, which contains an even larger requirement for 100% progress to the L2 level, it becomes even more likely that practicability will become a real constraint. VAMSA recommends that DEQ address this issue now, and recommends text below in the Specific Comments that would make the appropriate link between the required 40% reductions and the MEP compliance standard.</p>	
VAMSA	<p>VAMSA requests that DEQ revise Part II(B) of the Proposed GP to include specific references to MEP. This is an appropriate reflection of the legal standard and acknowledges the role practicability and achievability plays for permittees who are developing local TMDL action plans. (<i>VA Register</i>, p. 1029):</p> <ol style="list-style-type: none"> 1. The permittee shall develop a local TMDL action plan designed to reduce loadings for pollutants of concern to the maximum extent practicable (MEP) if the permittee discharges the pollutants of concern to an impaired water for which a TMDL has been approved by the U.S. Environmental Protection Agency (EPA) as described in Part II B 1 a and 1 b: 2. TMDL action plans may be 	Please response to similar VAMSA comment in Part I B above.,

Commenter	Comment Received	DEQ Response
VAMSA	<p>implemented in multiple phases over more than one permit cycle using the adaptive approved provided adequate progress is achieved using an MEP level of effort in the implementation of BMPs designed to reduce pollutant discharges in a manner that is consistent with the assumptions and requirements of the applicable TMDL.</p> <p>In addition to TMDL work, all Small MS4s will also have to revise their programs to incorporate proposed changes and enhancements in the minimum control measures (MCMs) in the GP.</p> <p>VAMSA urges DEQ and the SWCB to consider the level-of-effort involved in implementing the Proposed GP for many of Virginia's communities and universities. VAMSA is somewhat concerned about the practicability of the permit ramp up in the second permit cycle as a Bay Watershed-wide general requirement, and even more concerned about the even more challenging third permit cycle yet to come.</p>	<p>DEQ recognizes the significant increase in level of effort necessary to achieve the 2nd phase of reductions necessary under the Chesapeake Bay TMDL. The three phases of reductions (5%, 35% and 60% of L2) over 3 permit cycles was established prior to issuance of the 2013 permit and MS4s should have been planning for the reductions since that time. We anticipate that MS4 permittees unable to complete the 2nd phase of reductions prior to the end of the permit term will make use of relatively inexpensive nutrient and sediment credits provided for under §62.1-44.19:21 and §62.1-44.19:21.1 of the Code of Virginia.</p>
City of Richmond	<p>Many of the regulatory citations in the permit are not appropriate owing to the fact the citations are for regulations that are meant to provide direction to the permit writer and not the permittee</p>	<p>DEQ has reviewed the regulatory citations through the permit and believe the citations are appropriate. No change proposed.</p>
City of Richmond	<p>In some places the Fact Sheet refers to future regulation and legislation and indicates the intent to include those future requirements in the permit. This is not allowed because it would violate requirements for adequate opportunity for notice and comment. It is not possible to provide adequate comment on a provision that does not actually exist and may not exist in the future.</p>	<p>Discussion in the fact sheet of future regulatory initiatives as a result of the stormwater and ESC consolidation legislation was included by DEQ to further explain why streamlining of MCM 4 (construction site runoff control) and MCM 5 (post construction stormwater runoff control) is necessary. DEQ has not drafted the permit to include any requirements other than those that are currently in effect. No proposed change.</p>

Water Quality Standards (9VAC25-260) (Remaining Triennial Review issues except Ammonia):

Staff will ask the Board to adopt proposed amendments to the Virginia Water Quality Standards Regulation (9 VAC 25-260). Based upon review of public comment and final EPA recommendations and technical support information, staff has concluded the following actions are appropriate:

- Adopt proposed amendments to the bacteria criteria, which keep the Geometric Mean (GM) values for both freshwater and marine water unchanged; slightly increase the Statistical Threshold Value (STV) for both freshwater and marine water; revise the assessment period for both the GM and STV to consider all data collected in up to a 90 day period; and, include provisions covering bacterial limits and monitoring periods in

VPDES permits.

- Adopt proposed amendments to the cadmium criteria, which are slightly more stringent than the current acute and chronic values for both freshwater and marine water.
- Adopt proposed amendments to 94 human health parameters, which reflect the latest scientific information and EPA policies, including updated factors for exposure, bioaccumulation, and toxicity.
- Further defer action on amendments to the ammonia criteria, in consideration of recent changes made to Virginia State Code.

BACKGROUND

The water quality standards are the cornerstone for water quality protection and restoration programs at the Department of Environmental Quality. For example, these standards are used to set pollution limits in discharge permits and evaluate the quality of surface waters statewide. Water quality standards define the goals for healthy waters by designating their uses, setting water quality conditions that will protect those uses and establishing anti-degradation provisions to safeguard high quality waters. They protect water quality so rivers, lakes and other waterbodies can be sources of water supplies; support recreational, agricultural, and industrial activities, among others; promote the growth of fish and shellfish that are suitable for human consumption; and protect aquatic life and water-dependent wildlife.

Both the Clean Water Act and State Water Control Law require that the Board review Virginia's water quality standards every three years for the purposes of revising and updating to reflect changes in law, technology and scientific information. The goal is to provide the citizens of the Commonwealth with a technical regulation that is protective of water quality in surface waters, incorporates recent scientific information, reflects agency procedures and is reasonable and practical. The Board concluded a portion of the most recent Triennial Review (TR) at its meeting on January 14, 2016, adopting several noncontroversial amendments to the Water Quality Standards Regulation. Those amendments were approved by EPA in letters dated June 5, 2017, and December 22, 2017, and are now in effect.

PURPOSE

At their January 2016 meeting the Board approved recommendations to separate four elements of the TR and address these in a "follow-up" continuation of the rulemaking, to allow more public review and input on the proposals and consideration of additional information and technical guidance from EPA. The Board also directed the staff to continue use of the participatory approach for the "follow-on" rulemaking and reconvene the Regulatory Advisory Panel (RAP) formed for Triennial Review. The RAP met five times from March 2016 to February 2018. Three of the separated elements were amendments to the bacteria criteria, the cadmium criteria, and 94 human health parameters. For each element, staff will provide background on the proposed amendments, review the results of two public hearings (Oct. 24, 2017 in Richmond and Nov. 28, 2018 in Roanoke) and a 60-day public comment period, the staff response to comments, along with consideration of final EPA recommendations for criteria revisions and technical support information.

The fourth element separated from TR, amendments to the ammonia criteria, is being recommended for further deferral due to recent legislation adopted by the 2018 General Assembly. Virginia Code now requires that ammonia criteria amendments cannot be adopted unless the Board includes in such adoption a phased implementation program that addresses the potential adverse impact on permitted dischargers across the State. DEQ staff intends to develop this phased implementation program and return to the Board with recommendations for approval before the end of this year.

A. BACTERIA CRITERIA

1. Background and Proposed Amendments

In 2012, the Environmental Protection Agency (EPA) published nationally recommended Recreational Water Quality Criteria (RWQC) for assessing potential risks to humans posed by

bacteria in surface waters. The RWQC reflected the latest scientific knowledge, public comments, and external peer review and are designed to protect the public from exposure to harmful levels of pathogens while participating in water-contact activities such as swimming, wading, and surfing in waters designated for such recreational uses. It is important to note that all of Virginia's surface waters are currently designated for primary contact recreation. The RWQC are similar to Virginia's current bacteria criteria, but provide additional refinements and options to the states. In 2017, EPA conducted a mandatory 5-year review of the RWQC and decided to keep the 2012 criteria unchanged during this review cycle.

EPA's recommended RWQC offers two sets of numeric concentration thresholds, both of which are protective of the primary contact recreation use, but use different estimated illness rates based on the National Epidemiological and Environmental Assessment of Recreational Water (NEEAR) definition of gastrointestinal illness. States can choose to use either an estimated illness rate of 36 or 32 per 1,000 population. Since Virginia's existing bacteria criteria are based on the 36/1,000 rate, and subsequently all existing impaired waters designations, TMDLs and restoration implementation plans are based on this rate, for consistency the recommended criteria continue the use of this factor.

The RWQC consist of three components: magnitude, frequency and duration. The magnitude of the bacterial indicators are now expressed as both a geometric mean (GM) and a statistical threshold value (STV) for the bacteria samples. The GM is a type of average value (mathematically defined as the n th root of the product of n numbers), and approximates the 50th percentile of the water quality data distribution used by EPA in forming the recommended RWQC. The STV approximates the 90th percentile of the water quality distribution. In terms of frequency, the GM is a "not-to-be-exceeded" value and the STV is intended to be a value that should not be exceeded in more than 10% of the samples taken.

EPA originally recommended that the duration applicable to the RWQC was a 30-day interval for both the GM and STV. This was problematic to DEQ and the Regulatory Advisory Panel formed to assist with the rulemaking, because the majority of Virginia's waters are only monitored once per month, and this single sample would have to be used as both the GM and the STV, potentially leading to an increase in "false" impairment designations without any real improvements in human health protection. However, in October 2015 a narrative justification for a longer duration for the RWQC was issued, clarifying that EPA considers a period of up to 90 days to represent an acceptable critical exposure period to protect recreational uses. This duration is part of the proposal being presented for the Board's consideration.

The following tables compare the current bacteria criteria and the proposed revisions:

Table 1. CURRENT WQ CRITERIA FOR BACTERIA

Criteria Element	E. Coli (counts/100ml) Freshwater	Enterococci (counts/100 ml) Saltwater and Transition Zones
Geometric Mean	126	35
Single Sample Maximum	235	104

GM criterion can be waived when there are not enough samples to calculate (minimum 4 samples in a calendar month). Allowable exceedence rate (not greater than 10%) of SSM calculated over a six-year period using all observations.

Table 2. PROPOSED WQ CRITERIA FOR BACTERIA

Criteria Element	E. Coli (counts/100ml) Freshwater	Enterococci (counts/100 ml) Saltwater and Transition Zones
Geometric Mean	126	35
Statistical Threshold Value	410	130

GM and SN must both be assessed, using all observations over a period up to 90 days.

2. Public Comment and DEQ Response

During the 60-day public comment period, which closed December 18, 2017, the following comments were received on the proposed Bacteria criteria amendments:

- The Chesapeake Bay Foundation expressed support for the proposed revisions.
- EPA commented that DEQ should ensure the proposal is consistent with recommendations regarding duration and frequency of exceedance.

DEQ's Response:

- *Acknowledge CBF's support for the proposed revisions.*
- *To be consistent with EPA's RWQC recommendations, the updated bacteria standard has been revised to specify a 90-day duration for assessment of both the geometric mean and the statistical threshold value (SW), with the STV not having a greater than 10% excursion frequency.*

DEQ reconvened the Regulatory Advisory Panel for the rulemaking on February 21, 2018, to discuss further revisions to the bacteria criteria proposal which were not considered significant, but the agency sought concurrence before proceeding with final recommendations.

- First, it was originally proposed to strike the section covering secondary contact recreation criteria since EPA's RWQC recommendations did not provide any criteria for this classification. Upon further consideration, DEQ decided to retain this section in the event that EPA does provide recommendations in the future.
- Second, language had been added to cover the type and frequency of bacterial effluent monitoring at permitted discharges requiring disinfection. Both the GM and STV were to be measured, retaining the existing 30-day assessment period, with specified minimums for the number of samples to be taken.

The first item was agreed to by the RAP; however, additional comments were received on the second item from the Virginia Association of Municipal Wastewater Agencies:

- Permitting procedures should not be addressed in the Water Quality Standards Regulation; the better approach is to use the Permit Manual or Guidance.
- It is unnecessary to include a specific SW-based limit in VPDES permits.
- *DEQ's Response:*
 - *It is not unusual for the Water Quality Standards Regulation to include policy elements related to permitting. For example, 9 VAC 25-260-20 (General Criteria) deals with the use of mixing zone concepts in evaluating VPDES permit limits. DEQ's Water Permit staff has advised that we should establish in the regulation that VPDES compliance with the geometric means of 126 counts/100ml for E.coli or 35 counts/100ml for enterococci will be determined with monthly geometric means. This has been our historical approach and it is appropriate to specify this in regulation now that instream assessment periods up to 90 days may be used. Regarding use of the SW, staff agrees that implementation can be addressed in permit guidance rather than in the Regulation and this provision has been removed from the proposal.*

B. CADMIUM CRITERIA

1. Background and Proposed Amendments

Virginia's current freshwater cadmium criteria are based on EPA guidance issued in 1984. EPA updated their nationally recommended cadmium criteria in 2001, using "dissolved" instead of "total recoverable" cadmium to more accurately account for bioavailability and reflect the latest EPA policy for metals risk assessment to aquatic life. Virginia did not immediately act to adopt the revised criteria for freshwater at that time because it was known that EPA was conducting further study and supplemental revisions to the criteria were expected. Additional changes were proposed, in part based on a report published by the U.S Geological Survey in 2010, and DEQ staff was preparing to present these recommended changes to the Board for approval as part of the Triennial Review rulemaking at their January 2016 meeting. However, in November 2015, EPA gave notification of a pending update to their nationally recommended freshwater cadmium criteria, reflecting the latest scientific information. To avoid confusion and potential for adoption of freshwater aquatic life criteria more restrictive than the pending federal recommendations without justification, staff recommended that the Board withdraw the proposed amendments and address cadmium as part of the "follow-on" rulemaking.

EPA's nationally recommended 2016 criteria reflect toxicity data for 75 new species and 49 new genera. As in the 2001 criteria, the 2016 freshwater acute criterion was derived to be protective of aquatic species and was lowered

further to protect the commercially and recreationally important rainbow trout. In addition, the duration of the 2016 acute criterion was changed to one-hour. Both changes are consistent with EPA's current aquatic life criteria guidelines. Modest changes to the saltwater acute and chronic criteria are due to inclusion of additional sensitive genera in the toxicity database used to derive the values.

The following tables compare the current Cadmium criteria and the proposed revisions:

Table 3. WQ CRITERIA FOR CADMIUM IN FRESHWATER — Current & Proposed

Criterion	Acute (ug/L; hardness = 100)	Chronic (ug/L; hardness = 100)
Virginia (1984)	3.9	1.1
EPA (2001)	2.0	0.25
<i>EPA (2016)</i>	<i>1.8</i>	<i>0.72</i>

Table 4. WQ CRITERIA FOR CADMIUM IN SALTWATER — Current & Proposed

Criterion	Acute	Chronic
Virginia (2001)	40	8.8
<i>EPA (2016)</i>	<i>33</i>	<i>7.9</i>

Note that while three of the four criteria are slightly more stringent than EPA's 2001 recommendations, the freshwater chronic value is less stringent— however, all the recommended revisions are more stringent than Virginia's current cadmium criteria.

2. Public Comment and DEQ Response

No comments were received regarding amendments to the cadmium criteria during the 60-day public comment period, which closed December 18, 2017.

C. HUMAN HEALTH CRITERIA (94)

1. Background and Proposed Amendments

Under the original Triennial Review rulemaking, DEQ staff was working on amendments to eight human health parameters in the Water Quality Standards Regulation that are potentially toxic or carcinogenic. However, in June 2015 EPA issued recommended updates for 94 human health parameters (including the eight already under consideration) on the same day that the Virginia Register published public notice for the Triennial Review's proposed amendments. Due to the lack of opportunity for sufficient public comment on potential changes to the original eight parameters, DEQ recommended that the Board withdraw the proposed amendments and address all 94 updated human health parameters as part of the "follow-on" rulemaking. EPA's recommended criteria updates included recent research into exposure factors (body weight, drinking water consumption rates, fish consumption rate, and relative source contribution), bioaccumulation factors, and toxicity factors (reference dose, cancer slope factor). Each human health parameter has two criteria (one for Public Water Supply and one for all other waters) for a total of 188 individual criteria concentrations:

- 127 of these would become more stringent
- 57 would become less stringent
- 2 remain unchanged
- 2 are new additions; did not have criteria in the current Regulation

2. Public Comment and DEQ Response

- EPA requested that DEQ consider adopting EPA's 2015 updated criteria for 2,4,5-Trichlorophenoxy propionic acid (Silvex).

DEQ's Response:

- *The omission of the updated criteria for Silvex from the regulatory proposal was an oversight that will be corrected prior to final adoption by the Board. This parameter is accounted for in the total count (94) of pollutant criteria being amended.*
- Several commenters (American Forest & Paper Association, Hampton Roads Sanitation District, National Council for Air and Stream Improvement, Inc., Virginia Manufacturers Association/Troutman Sanders LLP, West Rock, Virginia Coal and Energy Alliance, Inc.) expressed

the opinion that there are substantial weaknesses with the assumptions (e.g., fish consumption rate, drinking water consumption rate, and relative source contribution factors) EPA used to derive the nationally recommended criteria. These commenters recommend that DEQ use alternative assumptions that are less conservative. Additionally, commenters recommended DEQ produce an estimate of potential costs.

DEQ's Response:

- *EPA's updated criteria recommendations are based on science and policy that were vetted through a very extensive public process, including both external expert peer and stakeholder review. Because EPA proposed these updated criteria to the public and requested comments, it is EPA's view that these criteria have undergone review on a national level and no additional facts were presented during the review and comment periods that indicated to EPA any other alternate estimates for different exposure assumptions would be appropriate for these chemicals. DEQ lacks the staff and resources to mobilize a multi-year process, similar to that employed by EPA, to develop scientifically defensible alternative assumptions — which could result in being more or less conservative. The agency generally assumes that nationally recommended section 304(a) criteria are reasonably sound and scientifically defensible. Although DEQ has not estimated the potential costs to dischargers that would be caused by the updated criteria, DEQ does not believe that costs will be substantial statewide since the majority of the affected pollutants are uncommon and discharger-specific. EPA's Water Quality Standards Regulation (40 C.F.R. §131) provides States with multiple relief options when the costs of complying with water quality standards are proven to be too burdensome. These options can be considered once the criteria are adopted and discharger/waterbody-specific costs are better understood. It is notable that 57 of the criteria would become **less stringent** which may result in cost savings for some facilities, if any of these parameters are regulated in their discharge.*

VPDES General Permit Regulation for Discharges Resulting from The Application of Pesticides to Surface Waters

(9VAC25-800): The current VPDES General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters will expire on December 31, 2018, and the regulation establishing this general permit is being amended to reissue this general permit for another five-year term. The staff is bringing this proposed regulation amendment before the Board to request authorization to hold a public comment period and a public hearing. No substantive changes are proposed to the existing regulation. The proposed changes affect effective dates, two definitions, two points of clarification and minor changes to certain standard conditions. The proposed regulation takes into consideration the recommendations of a technical advisory committee formed for this regulatory action. The technical advisory committee consisted of representatives of industry, local governments, state agencies, consultants and DEQ staff.

A Notice of Intended Regulatory Action (NOIRA) for the amendment was issued on June 12, 2017. No public comments were received in response to the NOIRA.

Tyson Farms, Inc. (Accomack Co.) (VPDES) - Consent Special Order w/Civil Charge and Corrective Action Plan:

Tyson Farms, Inc. (“Tyson”) is a manufacturing operation located in Temperanceville, Virginia. The manufacturing operation consists of a poultry hatchery, which supplies chicks to contract growers, and poultry processing (“Facility”). Poultry processing including the slaughtering, defeathering, eviscerating, chilling, packaging, and shipping of poultry products for human consumption to an offsite destination.

DEQ issued VPDES Permit No. VA0004049 (“Permit”) to Tyson on January 1, 2016 (expires on December 31, 2020). The Permit authorizes Tyson to discharge stormwater and wastewater resulting from poultry processing and rendering operations. The Permit requires Tyson to monitor and report compliance with effluent limits for biological oxygen demand (BOD₅), ammonia, fecal coliform, *E.coli*, and total suspended solids (TSS).

In submitting Discharge Monitoring Reports (“DMRs”), as required by the Permit, Tyson indicated that discharge limits were exceeded for ammonia, TSS, *E. coli*, fecal coliform and BOD₅. Tyson also failed to provide a letter of explanation for non-compliance with its Permit limits.

DEQ issued to Tyson a Notice of Violation (“NOV”) No. W2015-09-T-0003 on October 27, 2015 for the aforementioned violations. Tyson signed a proposed consent order to resolve the NOV on December 16, 2016 (“proposed December 2016

Order”), and then again on June 20, 2017 (“proposed June 2017 Order”) following changes made to the proposed December 2016 Order in response to public comments. Tyson signed a revised Order (“July 2018 Order”) on July 25, 2018 that contained an increased civil charge.

The proposed December 2016 Order required Tyson to pay a \$16,150.00 civil charge and submit to DEQ for review and approval a Corrective Action Plan (“CAP”). The CAP and schedule required that Tyson fully examine the cause(s) of ammonia, TSS, E. coli, fecal coliform, and BOD5 exceedances at the Facility and describe actions that Tyson had taken or planned to take to comply consistently with the discharge limits established in the Permit. Tyson signed the order on December 16, 2016 and paid the \$16,150.00 civil charge.

Tyson submitted the CAP originally on December 16, 2016 in compliance with the proposed December 2016 Order. Tyson submitted a revised CAP on March 8, 2017 (“March 2017 CAP”) to address the concerns received during the public comment period, which DEQ approved on March 15, 2017.

The revised CAP included the following:

- A plan and process to address excess solids in the anaerobic lagoon on a continuous basis;
- A schedule to provide documentation of an Audit and Assessment process that Tyson will use to make further operations and maintenance decisions regarding removal of solids;
- Additional information regarding Tyson's ongoing water conservation goals, schedule, and implementation plan; and
- The feasibility, schedule, and implementation of a third-party full engineering process review with recommendations to be implemented for improving solids handling capability for current and future.

The proposed December 2016 Order was public noticed from January 23, 2017 to February 22, 2017 and from March 20, 2017 to April 19, 2017. DEQ received eight public comments.

Based on public comments and the revised CAP, the proposed December 2016 order was revised to require that Tyson pay an increased civil charge and comply with the CAP no later than December 31, 2017. Tyson signed the revised order on June 20, 2017 and paid an additional \$10,010 civil charge.

On July 19, 2017, the proposed June 2017 Order was presented to the State Water Control Board (“SWCB”) for approval. SWCB did not approve the Order, but advised DEQ to seek a higher civil penalty and more defined goals and dates for each corrective action.

On October 12, 2017, Tyson submitted an additional revised CAP (included elements from the March 2017 CAP), under which it is currently in compliance. The October 2017 CAP included that Tyson:

- Dewater and land apply solids from the anaerobic and waste activated sludge holding lagoons in the Spring of 2018;
- Refurbish the Facility dormant solids lagoons (including removal of vegetation and biosolids, rebuilding embankments, and install+ liner and associated piping), the design of which to begin in August 2017;
- Reduce Facility water consumption by 12% by 2020 (compared to the 2015 baseline);
- Conduct a third-party evaluation of Facility wastewater treatment operations.

Tyson is meeting the schedule of compliance set forth in the October 2017 CAP. The land application of solids from Facility lagoons is a reoccurring operation and began in early spring 2018.

During the month of April 2018, Tyson conducted the following solids removal activities:

- Removed 3,000,000 gallons of liquid sludge from the WAS lagoon, which was land-applied under its VPA permit;
- In addition, 2,250,000 gallons of sludge from the anaerobic lagoon was removed and land-applied under the VPA permit;
- Tyson removed and land-applied 423.43 dry tons of solids from the anaerobic lagoon in 2016 and 529.87 dry tons of solids in 2017;

- Tyson removed 3,129,000 gallons of solids from the WAS lagoon in 2016 and 4,551,500 gallons of solids from the WAS lagoon in 2017;
- The O&M Manual has been updated to require Tyson to manage solids and land-apply, as needed, annually to prevent future noncompliance from occurring as a result of improper solids handling.

The lagoon refurbishment is scheduled to begin in the fall of 2018 with completion in the fall of 2019. DEQ is currently carefully reviewing permits required to begin construction.

Tyson has continued to evaluate its water consumption and in the first five months of 2018, Tyson recognized a 15.29% reduction in groundwater use and 18.03% reduction in wastewater discharge compared to the first five months of 2017.

Tyson submitted a third-party evaluation of its wastewater treatment operations on December 18, 2017. In addition to the audit of its wastewater treatment operations, Tyson also conducted a multi-media audit which was completed the week of July 16, 2018.

In addition to the CAP requirements set forth in the October 2017 CAP, Tyson has also submitted a revised solids disposal plan, O&M Manual, wastewater process control document, and updated wastewater flow diagram.

To date, Tyson has not had additional violations of the VPDES permit.

The proposed December 2016 Order imposed a civil charge based on exceedances of E. coli, a pollutant of concern, BOD, TSS, ammonia, and fecal coliform. Based on public comment and SWCB request, the Department conducted further negotiations with Tyson concerning the civil charge and recommends the amount of \$30,160.00. Tyson signed the proposed consent order on July 25, 2018 with the additional CAP requirements and paid an additional \$4,000.00 civil charge.

A public notice for the proposed December 2016 Order was published on January 23, 2017 in Eastern Shore News and on the Department's website and ended on February 22, 2017. A public notice for the proposed consent order was published on March 20, 2017 in the *Virginia Register* and ended on April 19, 2017.

During the public notice period, DEQ received eight comments. The public comments requested that the civil charge be adjusted higher. Comments also indicated that the CAP did not sufficiently prevent future violations. In particular, requirements for facility upgrades, frequency of monitoring, and mitigation and remediation for natural resource damage are not adequately addressed.