

Technical Advisory Committee for Amendment to 9VAC25-890 (MS4 Phase II General Permit)
Meeting #8
04/26/17
DEQ Piedmont Regional Office

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9VAC25-890-1 Definitions

Definition of MS4 Service Area

- Norm (NVRC) stated that most of his group had no comment.
- Lisa (Aqualaw for VAMSA) stated VAMSA's position is still that this definition is not necessary. If it remains, suggested that the scope of the definition be narrowed so that it is clear this applies to the Phase II's only. Also area served by the MS4 is not the correct term – use term in the table.
- Erin (Lynchburg) suggested referencing column B from the tables.
- John (Christiansburg) suggested using the Local TMDL Guidance definition.

- Peggy (CBF) asked if there is a plan to update the local TMDL action plan guidance or is the plan to just recognize it needs to be updated.
- Jaime (DEQ) responded that DEQ recognizes that it needs to be updated.
- Jaime asked for preferences, TAC agreed to move forward with the definition.

High Priority Facility Change

- Jaime (DEQ) proposed rephrasing high priority municipal facility to high priority facility in the definitions and MCM 6 to accurately reflect that it applies to non-municipal permittees.
- Erin (Suffolk) suggested to include “owned or operated by the permittee” in the definition.
- Jaime (DEQ) made change to text.
- TAC agreed to the change.

Strike Non-Traditional Definition

- TAC consensus that this definition is not necessary.

Strike Point of Discharge definition

- TAC consensus to strike this definition since it is defined in 9 VAC 25-870-10.

9VAC25-890-15 Authorization to Discharge

- Erin (Lynchburg) asked how process of converting from a General Permit to an Individual Permit works.
- Jaime (DEQ) stated this comes into play if there is an issue when a permittee cannot comply with the terms of the general permit or DEQ believes that an individual permit is more appropriate than a General Permit (e.g. VDOT). This decision is not made arbitrarily.
- Peggy (CBF) asked what is MEP in this scenario, how can anyone know what DEQ will consider MEP going forward. How will DEQ make this determination?
- Jaime (DEQ) responded DEQ has set operational standards and MCM requirements in the permit. This sets the expectations of MEP. If the permittee fails to meet the standards and requirements, then they are not meeting MEP.
- Peggy (CBF) asked if EPA was comfortable with this interpretation.
- Jaime (DEQ) responded based on DEQ’s read of the remand rule, this approach is acceptable.
- Fred (DEQ) stated DEQ did something similar with the draft VDOT permit. Initial read from EPA is it is ok.
- Peggy (CBF) stated in her view this approach won’t work for the Phase I permit and suggested clarifying that this only applies to Phase IIs and not to Phase I’s.
- Jaime (DEQ) stated that individual permits receive more extensive review and are not governed by the Small MS4 general permit regulation.
- Peggy (CBF) asked how this relates to buying credits, will that undercut BMP requirements.
- Jaime (DEQ) stated permittees are required to comply with the MCM permit requirements and trading is in option to meet the Bay reduction requirements outside of the MCMs. The Chesapeake Bay regulations include trading and the MS4 permit can’t limit trading. It is possible that trading will become more prevalent in future permit cycles to meet reduction requirements.
- Peggy (CBF) expressed concern that trading will become the preferred method instead of looking at other BMPs or practices.
- Jaime (DEQ) responded that the concern about using trading instead of BMPs is noted.
- Fred (DEQ) stated BMPs are still included in MCMs 1-6 and on top of that there are TMDL requirements for the Chesapeake Bay that allows the use of credits.
- Peggy (CBF) asked so for DEQ MEP applies to MCMs and not to the Bay TMDL
- Fred (DEQ) stated evaluation for each permit section, MCMs, local and Chesapeake Bay TMDLs in context of MEP. This is how DEQ has drafted the permit.

D.3.a. List of authorized non-stormwater discharges – “Dechlorinated water line flushing”

- Lisa (Aqualaw for VAMSA) stated “the federal and state regulations authorize “waterline flushing” and do not limit it to “dechlorinated waterline flushing” as proposed in the list of authorized non-stormwater discharges. She expressed concern for the inconsistency.
- Jaime (DEQ) responded DEQ has concerns with waterline flushing, because DEQ has seen fish kill incidents when dechlor is not implemented.
- (TAC) some localities use portable dechlorination.
- Norm (NVRC) stated most localities don’t dechlorinate.
- Erin (Lynchburg) stated fire flow testing will be impacted because dechlorination will affect the test.
- Dan (Charlottesville) stated we have an exemption for potable water as well and asked if we should define waterline flushing
- Melanie (DEQ) stated when there is a break in water a line significant flushing is needed during the repair.
- Fred (DEQ) asked what about item q in the list - dechlorinated swimming pool discharges.
- Erin (Lynchburg) stated you can let pools sit and dechlor prior to release and you can’t do that with waterlines being flushed. Adding dechlorination is inconsistent with every other regulatory program.
- Ed (DEQ) stated that NRO considers hydrant flushing a controlled managed activity.
- Fred (DEQ) asked if we should tie the activity to operational controls instead of dechlorination and state there is a responsibility to limit impacts of controllable processes
- Lisa (Aqualaw for VAMSA) stated the concern is confusing the issue with different standards.
- Doug (GKY) stated the activity is a concern whether it involves an MS4 or not.
- Jaime (DEQ) stated flushing is a risk based activity and the VPDES program recommends dechlorination. If the flushing causes a problem DEQ can take actions.
- Joe (Hopewell) stated the permittee may not operate the water supply.
- Erin (Lynchburg) asked how will the MS4 will control activities when they are not performing that activity (water works not operated by permittee)
- TAC suggested changing the language to managed water line flushing not limiting it to dechlorinated waterline flushing.
- Lisa (Aqualaw for VAMSA) reiterated the concern that regulations will still be different and potentially cause confusion.
- John (Christiansburg) asked do we want to define what dechlorination means.
- Melanie (DEQ) stated that DEQ needs to consider this topic in more detail.
- Jaime (DEQ) stated we will take the TAC comments and concerns into consideration and re-evaluate.

Page 4 9VAC 25-890-20 D - Proposal to strike language and instead have permittees report non-compliance beyond their control with the annual report

- TAC agreed to strike this language

G. Termination of separate VPDES permit coverage

- TAC agreed to keep as is

9VAC25-890-30 (Registration Statement)

B.8

- Dan (Charlottesville) asked what does “directly” discharging mean. Does it mean if the outfall discharges to a tributary that is not impaired it does not have to be listed?
- Jaime (DEQ) responded drainage area is only those outfalls that discharge directly to the impaired stream.

B.12

- Norm (NVRC) asked if the service area should be based on the 2010 Census urbanized area maps.
- Jaime (DEQ) responded yes.
- Erin (Suffolk) asked if the section numbers should be changed.
- Jaime (DEQ) responded we will check all section and reference numbers before publishing a draft.

Part I. Discharge Authorization and Special Conditions

B.

- Erin (Lynchburg) stated that the period after practicable and before protects indicates an incomplete sentence.
- Jaime (DEQ) made corrections.

9VAC25-890-40. General Permit opening

- Dan (Charlottesville) asked if the intent of “be subject to all requirements of 9VAC 25-870 and 9 VAC 25-31” is inconsistent with requirements to comply with the permit since these regulations cover more than just MS4 permitting requirements.
- Jaime (DEQ) responded that these are the controlling regulations that authorize DEQ to issue MS4 permits so they are relevant.
- Erin (Lynchburg) suggested adding “subject to all applicable requirements”
- Peggy (CBF) stated that MS4s need to comply with all of those regulations and if a change is made make it clear which provisions do not apply.
- Jaime (DEQ) responded that there are numerous sections of these regulations that would not apply to MS4s.
- Fred (DEQ) proposed using “subject to the applicable requirements.”
- TAC agreed to this proposal

Part I. Discharge Authorization and Special Conditions

- Dan (Charlottesville) commented that Part I. A - the reference should be to 9VAC25-890-20 D not C.
- Jaime (DEQ) responded we will review and make the necessary corrections

Part I.C.1.e

- Erin (Lynchburg) asked if this was really a new requirement since permittees have been required to report Program Plan changes with the annual report.
- Jaime (DEQ) responded the difference is maintaining a list in the program plan instead of reporting changes with the annual report.
- Erin (Suffolk) stated that permittees can change certain things as long as they are compliant with the terms of the permit.
- Jaime (DEQ) responded that we will strike the requirement based on TAC discussion.

Part I.C.4

- TAC agreed language was okay.

Part I.C.5.

- TAC agreed language was okay.

Part I.D.3.b

- Erin (Suffolk) asked about the intent of 3b.
- Jaime (DEQ) responded it is part of the adaptive, iterative approach and provides some assurance that progress will be measured somehow

Part I.D.3.c-h

- Dan (Charlottesville) suggested that there may be occasions where no changes to the program plan is necessary and suggested adding “as necessary” for these situations.
- Jaime (DEQ) responded agree and will add language

Part I.E.1.c

- Erin (Lynchburg) asked if under speaking engagements can “and” be changed to “or”.
- Jaime (DEQ) made the language change.
- Jaime (DEQ) asked if the list is comprehensive enough or should additional items be added
- John (Christiansburg) asked if under speaking engagements community groups could also include industrial groups.
- Jaime (DEQ) responded yes and made language change.
- Peggy (CBF) stated a concern about the effectiveness of giveaway item such as refrigerator magnets, t-shirts, etc.
- Jessica (UVA), Erin (Lynchburg), Norm (NVRC), Dan (Charlottesville) expressed disagreement and believe that these items are valuable in getting messages out to the public.
- John (Christiansburg) asked if training materials can be sent to non-local industry people.
- Jaime (DEQ) responded yes and made language change.

Part I.E.1.d

- Jessica (UVA) asked if DEQ expects to see all listed information on every item. Expressed concern that some items will not have room on them to fit everything listed in the permit condition.
- Jaime (DEQ) responded that everything doesn’t have to be on the item, but everything listed should be part of the overall educational event or exercise.
- Erin (Lynchburg) asked if putting these on a webpage would be adequate.
- Dan (Charlottesville) stated that typically give away items are part of a broader campaign and messages don’t appear on every item but they do get conveyed as part of the overall campaign.
- Jessica (UVA) suggested rewording “d.”
- Erin (Lynchburg) suggested moving d to above c.
- Jaime (DEQ) made the change.
- Mason (DEQ) stated permittees could say outreach strategies used to convey message.
- Norm (NVRC) stated the message is part of the strategy.
- Jill (HRPDC) stated the problem is with the word “items” and suggested that word be removed.
- Jaime (DEQ) made the change.
- Peggy (CBF) suggested using shall.
- Erin (Lynchburg) suggested the language “can do one or all of the above.”
- Jaime (DEQ) made language change.
- Ginny (ASCE) suggested changing “strategy” to “program.”
- Jaime (DEQ) made the change.

Part I.E.1.g.2

- Jaime (DEQ) changed message to strategy.

Part I.E.1.h Strike language

- TAC okay with striking language.

Part I.E.2 Public Involvement/Participation

Part I.E.2.b.1

- Dan (Charlottesville) asked if this means the general permit should be posted on the website.
- Jaime (DEQ) responded yes.
- Pam (Army) asked if this should include the coverage letter.
- Jaime (DEQ) responded yes.
- Jaime (DEQ) changed language to reflect permit and coverage letter.

Part I.E.2.c

- Dan (Charlottesville) asked if this means annual activities or 4 activities during the course of the permit.
- Erin (Lynchburg) asked if the same 4 events could be used year after year.
- Jaime (DEQ) responded yes and added clarifying language.

Part I.E.2.c.Table 2

- Erin (Suffolk) asked if adopt a street programs could be added.
- Jaime (DEQ) added them.
- Pam (Army) asked how these categories were different from MCM1.
- Jaime (DEQ) responded that MCM1 and MCM 2 can overlap and DEQ has allowed this in the past.
- Erin (Lynchburg) asked about adding pet waste station maintenance as an activity under establish pet waste stations.
- Jessica (UVA) asked if the same could be done with storm drain marking.
- Jaime (DEQ) responded that DEQ will consider changes to the language.
- Pam (Army) asked if adding drug take back program would be appropriate for the disposal/collection category
- Jaime (DEQ) responded probably not unless it can be linked back to protecting stormwater.

Part I.E.2.e.1

- Jaime (DEQ) changed “procedures” to “mechanism.”

Part I.E.3.a.ii.7

- Jessica (UVA) asked why the July 31st date was picked as the date to have storm sewer maps updated each year. .
- Jaime (DEQ) responded to give review time.
- Jill (HRPDC) stated there is some confusion with the date. Why not keep it in line with the annual report due date October 1st each year.
- Jaime (DEQ) made the changes to the language.
- Erin (Lynchburg) asked if this could just be a certification.
- Peggy (CBF) asked if the intent was to get a confirmation statement as a simple declarative statement or a statement like “as of this date the map is complete except for...” and provide a list of new portions of the MS4 not updated because staff haven’t gotten final plans.

Part I.E.3.b.3

- Erin (Lynchburg) asked if “may” could be used instead of “shall”.

- Jaime (DEQ) made the change.

Part I.E.3.e ii and iii

- Erin (Lynchburg) stated “points of discharge” are struck through.
- Lisa (Aqualaw for VAMSA) stated that “points of discharge” are not required to be screened in previous permit requirement. Permittees are only required to screen outfalls.
- Jaime (DEQ) stated dry weather screening includes outfalls
- Jaime (DEQ) responded that DEQ will review the language to ensure permit requirements and reporting requirements are consistent.

Discussion Skipped MCMs 4 and 5 at request of Jaime since language has not been updated yet. .

Part I.E.6.e

- Lisa (Aqualaw for VAMSA) asked if identifying those facilities needing a SWPPP in the annual report and have SWPPP updated and implemented by next annual report could be considered.
- Jaime (DEQ) responded that the concern is allowing 12 months to develop and implement a SWPPP is a much longer timeframe than any other program where SWPPP development is required. Additionally, if there is a need for a SWPPP it should be prioritized.
- Lisa (Aqualaw for VAMSA) stated the concern is that some permittees are doing SWPPPs in house and some are using contractors, and that 90 days may not be enough time to get through the development process in either case.
- John (Christiansburg) asked if permittees could propose a schedule in the annual report for development of the SWPPPs when the need is identified.
- Jaime (DEQ) responded that removes a level of enforceability with specifying the requirement in the permit.
- Erin (Lynchburg) stated that with one SWPPP time frame isn't too bad but for more than one SWPPP, timing could be a problem.
- John (Christiansburg) stated that permittees don't have to wait till June to review the list of high priority facility and develop the SWPPP.
- Jaime (DEQ) responded that the concerns were duly noted.

Part I.E.6.g

- Dan (Charlottesville) asked would it follow that you would no longer be implementing the SWPPP and should the language mention this.
- Jaime (DEQ) responded the language implies that if it is no longer a high priority facility with a high potential to discharge that you would no longer be implementing a SWPPP.

Part I.E.6.k

- Lisa (Aqualaw for VAMSA) stated a concern with having to conduct oversight for all contractors employed by the permittee and asked if requirement could focus on contractors that have a higher risk to impact stormwater.
- Jaime (DEQ) responded the intent of the language is to provide oversight to those positions that have a potential to impact stormwater discharges.
- Lisa (Aqualaw for VAMSA) asked how do you have oversight on overnight janitorial staff
- Peggy (CBF) stated that it is the job of the MS4 to have that oversight and suggested maintaining the language that it is the MS4's responsibility.
- Peggy (CBF) added that any business has to figure out how to have oversight as a matter of course. They could have procedures that stipulate consequences if certain actions are or are not done.
- John (Christiansburg) asked could a certification program for contractor satisfy the requirement.
- Jaime (DEQ) responded DEQ was thinking in terms of strategy. Wording may be confusing things.

- Dan (Charlottesville) suggested using contract language and say what strategies are to be used.
- Jaime (DEQ) changed the language.
- Lisa (Aqualaw for VAMSA) asked if a permittee hires call center staff via a contractor why they have to worry about them impacting stormwater discharges. Suggested narrowing the scope of contractors this applies to.
- Jaime (DEQ) changed language to better target types of contractors at which the condition is aimed.
- Erin (Lynchburg) asked the clarifying question if a permittee hires a vehicle maintenance contractor and they take municipal vehicles to the contractor's site would the MS4 SOPs apply.
- Jaime (DEQ) responded no, that the requirements of the permit apply at the facilities owned or operated by the permittee.
- Pam (Army) stated that all maintenance done on site is via contractors and this language gives the Army the ability to hold contractors responsible
- Jaime (DEQ) responded that DEQ will revisit the language

Part I.6.I.i

- Jaime (DEQ) asked if field staff is appropriate language to use.
- Joe (Hopewell) asked why applicable personnel got changed to field staff.
- Norm (NVRC) stated a secretary doesn't need to be trained.
- Joe (Hopewell) asked how a secretary is applicable and suggested that using professional judgement was appropriate here.
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- Melanie (DEQ) asked if applicable was too vague or is it okay.
- Jaime (DEQ) proposed using applicable staff.
- TAC agreed changing to "applicable" was appropriate.

Part I.6.I.vii

- Jaime (DEQ) asked if the proposed language satisfies the TAC's concerns expressed in previous meetings.
- Dan (Charlottesville) asked if firefighter responder training satisfies this training requirement.
- Jaime (DEQ) responded "yes" and that MS4 staff do not need to go out and train firefighters.
- Erin (Lynchburg) proposed a language change from first responders to emergency responders.
- Jaime (DEQ) made changes to language.
- Pam (Army) asked why not say spill response.
- Jessica (UVA) responded because some permittees have spill response and don't want to train firefighters and police officers.

Part I.6.n

- Erin (Lynchburg) suggested changing localities to permittees.
- Jaime (DEQ) changed the language.

Part I.6.n.iv

- TAC suggested changing phrase "oversight procedures" for consistency with item above.

Meeting adjourned at approximately 2:50 pm.