



Commonwealth of Virginia

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

TO: TAC Members and DEQ Staff (listed below)

FROM: Joseph Bryan, Office of VPDES Permits

DATE: November 09, 2022

A TAC meeting was held on October 26, 2022 at the DEQ Piedmont Regional Office, 4949-A Cox Rd., Glen Allen, VA, 23060. The meeting, which was the second TAC meeting for this general permit reissuance, began at 10:00 am. Participants attending the meeting were:

<u>Name</u>	<u>Organization</u>
Patrick Fanning	Chesapeake Bay Foundation
Jason Franti	TRC/ DAA
Anna Killius	JRA
Clay Kulesza	VAMWA
Lisa Ochenshirt	Aqualaw
Andrew Parker	VMA
Jim Taylor	Westrock
Jessica Wenger	UVA
John Westerfield	Labella Assoc.
Joseph Bryan	DEQ - CO
Allan Brockenbrough	DEQ - CO
Kevin Crider	DEQ - BRRO
Joseph Crook	DEQ - CO
Amy Dooley	DEQ - NRO
Susan Mackert	DEQ - NRO
Kelli Park	DEQ - VRO
Peter Sherman	DEQ - CO
Noel Thomas	DEQ - VRO
Somsiri Youngpatanna	DEQ - PRO

Information provided before the meeting included:

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

Discussion

Joseph Bryan, Department of Environmental Quality (DEQ) Office of VPDES Permits, provided a brief introduction and asked attendees to sign in. He then reviewed the agenda, which included

- Updates:
 - Edits based on “words to avoid” in regulations (based on style manual)
 - Board/Department edits completed
 - Corrective Actions section consolidated
 - Addition of Part V (Chesapeake Bay TMDL Compliance)
- Continue Discussion on Proposed Changes
- Benchmark Updates

Mr. Bryan explained that some wording had been edited based on the Registrar Style Guide requirements, and that some edits reflect the changes to the SWCB’s authority under Senate Bill 657 (2022).

Chesapeake Bay TMDL Provisions

Mr. Bryan presented revised slides regarding the Chesapeake Bay TMDL language in the general permit. He noted that reductions are due by June 30, 2024 under the 2019 ISWGP (EPA’s TMDL states “2025”). He also presented updated data regarding the status of Chesapeake Bay action plans (785 facilities subject to the Bay TMDL; 243 have approved plans; 162 still require submittal of calculations; 380 did not require an action plan).

The slides for Chesapeake Bay TMDL loading and high load facilities have not changed since the first TAC meeting.

Mr. Bryan explained that the proposed Chesapeake Bay TMDL language has been moved to a new Part V in the permit in order to consolidate the requirements for permittees subject to the Bay TMDL. This also simplifies Part I B of the permit for permittees not subject to the Bay TMDL.

A TAC participant asked why facilities that obtain initial coverage under the 2024 industrial stormwater general permit, but are not newly constructed facilities, would be required to conduct quarterly sampling for TSS, TN and TP. This sampling frequency could constitute a hardship for new facilities. DEQ responded that the sampling frequencies should remain consistent across the board to avoid confusion. For existing facilities previously registered under the 2019 permit, quarterly sampling is proposed in order to meet the TMDL reductions deadline of December 31,

2025. If the current semi-annual monitoring was carried forward, there may not be enough time for facilities to sample, submit calculations, and implement and necessary reductions before the TMDL deadline. However, while quarterly monitoring is proposed for facilities obtaining initial coverage under the 2024 permit (but not newly constructed), they do have additional time (up to 2 years) to implement any necessary reductions. Other DEQ participants indicated that they have issued only a handful of new permits (not newly constructed) in the past year.

A participant asked about submitting whatever a facility has, in terms of sampling and calculations. DEQ responded that alternative calculations may be accepted on a case-by-case basis and that there is proposed language to that end in Part V D (Calculation of facility loads).

A TAC participant said that for facilities that obtained coverage under the 2019 permit, that did not demonstrate compliance with the Chesapeake Bay TMDL loading rates by the end of the 2019 permit term, the submittal date for the demonstration (January 10, 2026) may be challenging to meet. It was agreed to revise this to February 1, 2026.

One participant asked how many of the 162 facilities in this subcategory are affected by this date. DEQ responded that there were 162 facilities as of October 2022 that still need to submit calculations and that there is still a little over a year and a half of the 2019 permit term remaining. Some of these facilities may require reductions and an action plan, some of them may not, so it's impossible to know how many may be affected by the submittal date under the 2024 permit.

Mr. Bryan reviewed the approach for existing facilities, including those that have demonstrated compliance with the Chesapeake Bay TMDL loading rates, those that have not yet made this demonstration (sampling not completed, calculations not yet submitted, or reductions not finished), and existing facilities that are newly permitted under the 2024 general permit.

There was discussion of new registrants, and of new constructions (the latter would submit information with its registration statement and must be nutrient neutral – and also could be subject to the Construction General Permit). A participant pointed out that some industries move to pre-developed properties. Mr. Bryan noted that language has been added for alternative calculations on a case-by-case basis to address outfalls that rarely discharge. A participant pointed out that there are a number of site-specific scenarios that can occur.

A suggestion was made to consider facilities registered late in the 2019 permit term that do not have enough time to complete sampling and submit calculations as “newly permitted” facilities under the 2024 permit. This would still require quarterly sampling under the 2024 permit, but would give these facilities up to two years to complete any necessary reductions rather than make them subject to the December 31, 2025 TMDL date. DEQ suggested that, if implemented, a cutoff date of July 1, 2022, be applied. Facilities registered after July 1, 2022, would not have had four full semi-annual monitoring periods prior to the expiration of the permit. Such facilities would be subject to the provisions of Part V A 3.

A participant pointed out an instance where “average” should be “acreage” and it was corrected.

A participant asked if fleets are switching from gas to electrical, will their permit change. The response was that if a change at the facility results in it being subject to a new SIC code, then the permit would reflect the requirements for that new sector.

Mr. Bryan indicated that the monitoring provisions in Part V have been copied from Section I. It was agreed that items 7 (representative outfalls) and 8 (including specified monitoring information in the SWPPP) should reference back to Part I, and the additional (i.e., duplicative) language should be removed from Part V. A TAC participant stated that the two sections should cross-reference each other. Mr. Bryan noted that the only difference between the two is monitoring period.

A participant asked whether a facility that has submitted a demonstration of compliance with the Chesapeake Bay TMDL loading rates would ever require future nutrient monitoring, and noted that they would like to see additional monitoring going forward to ensure continued compliance with the TMDL. DEQ noted that no further monitoring is needed for facilities that have demonstrated compliance with the Bay TMDL; however, documentation of the demonstration must be maintained with the SWPPP and, if compliance was demonstrated through the implementation of BMPs (structural or otherwise) per an action plan, continued implementation of those BMPs is required. DEQ also stated that under the current and proposed language, such facilities would be required to submit additional data/calculations in cases where there is an expansion of the industrial acreage (i.e. no-net increase calculations). There are also a number of Sectors under the permit that have benchmarks for total nitrogen and total phosphorus, and if a facility added/changed its industrial activities such that it falls under those Sectors, it would be required to do ongoing benchmark monitoring for nutrients. Further, there is always the possibility of future requirements (e.g. changes to ELG requirements, benchmarks, or TMDLs), but the proposed permit language will be based on federal and state requirements in place at the time that the regulation is issued.

Mr. Bryan indicated the definition for “measurable storm event” has been removed since the term is no longer used in the draft permit. The DMR requirement regarding storm duration has also been deleted, but the interval between the sampled event and the previous storm event discharge is still required.

A TAC participant asked about sampling at night. DEQ responded that the agency does not want to create a loophole but supports reasonable flexibility as to when it is safe to sample. It was noted that the VSMP or small MS4 program may have some language that is useful.

Mr. Bryan pointed out that there were some minor wording revisions to the authorized non-stormwater discharges. He then reviewed Table 50-1 (Stormwater Specific Effluent Limitation Guidelines).

A participant asked about including No Exposure in the body of the general permit. Mr. Bryan clarified that when the No Exposure exclusion is granted (per 9VAC25-31-120 E), the requirements of the general permit no longer apply, so moving or adding this to the permit would not make sense.

A participant asked if DEQ would consider designating no exposure by outfall. DEQ responded not at this time. The exclusion at 9VAC25-31-120 E refers to all industrial materials and activities being protected from exposure to rain, etc. EPA regulations (40 CFR 122.26(g)(3)(ii)) and guidance (Guidance Manual for Conditional Exclusion from Storm Water Permitting Based On “No Exposure” of Industrial Activities to Storm Water, 833-B-00-001, June 2000, Sec. 2.1, pg. 3) also support this approach.

A participant asked about the primary industrial activity SIC code. Mr. Bryan indicated that this determines the main sector requirements that are applicable to the facility.

Mr. Bryan indicated that the introductory language to the permit (section 70) now references Part V (Chesapeake Bay TMDL Compliance) as conditions applicable to a discharge of industrial stormwater.

PFAS

With regard to PFAS monitoring, Mr. Bryan explained that the DEQ survey is ongoing, there is currently no accepted analytical method for these compounds, and that the MSGP does not require such monitoring. It was noted that the response rate to the PFAS survey, which was focused by SIC codes, has been low, but that there is a follow-up effort. He noted that EPA’s PFAS strategy in stormwater focuses on firefighting activities. One suggestion was to have facilities indicate on their registration statement whether they use PFAS onsite. Some participants asked what does it mean to have PFAS onsite. Asking for this on the registration statement complicates N-form and could result in permit applications being deemed incomplete. Mr. Bryan indicated that DEQ can address this outside of the general permit process. DEQ can ask for information, including sampling, at any time.

Mr. Bryan discussed a comment on the adverse climatic conditions (monitoring) waiver. The comment promoted getting samples as early as possible and limited the ability to use the waiver for bad weather. It was noted that this waiver is only used occasionally. More typically, compliance staff see DMRs marked as no discharge.

Corrective Action

Mr. Bryan indicated that the corrective action provisions had been consolidated to remove repetition. A participant observed that natural background pollutants do not include run-on from neighboring sources and asked if a facility is responsible for such pollutants. The response was yes. Natural background pollutants are substances that are naturally occurring in soils or groundwater on a site.

Special Conditions, Part I B

The Chesapeake Bay TMDL provisions have been moved from this section to Part V. One comment asked if they should remain here. Another participant asked how aggregate wasteloads are implemented since one facility cannot be responsible (under the 2019 permit the Bay TMDL

was used to determine acceptable loading rates). A participant asked if the Bay TMDL should be in this section.

A participant asked about removing “in other than trace amounts” from prohibition on discharges of waste, garbage or floating debris. Compliance noted that enforcement of this would be problematic, so it was left as is.

Mr. Bryan explained that a PCB pollutant minimization plan (PMP) is required when DEQ notifies a facility. The draft PMP language that was added for the first meeting is being moved under Part I A 1 c (3) – “Facilities discharging to an impaired water with an approved TMDL wasteload allocation.” The PMP due date is now 180 days following notice. DEQ also noted that a PMP guidance document is under development.

Mr. Bryan indicated that facilities discharging to impaired waters without a TMDL will, upon notification (which identifies parameter), need to monitor every six months, with possible case-by-case exception for PCBs (due to high cost). The default is to monitor. He noted that the reference to an impaired water is a water listed as impaired prior to permit reissuance (in this case, the 2022 Final 305(b)/303(d) Water Quality Assessment Integrated Report).

In Part II (Standard Conditions) edits have been made to Board/ Department, and minor wording changes reflect style guidance.

Mr. Bryan pointed out that under Part II H, 24-hour reports can be submitted via the PReP online portal (reports outside normal business hours are required via this portal). There was discussion of whether the five day written report requirement is for all days or business days (as written it is not qualified). Some participants suggested that if the discharge is not harmful it should be business days, and if harmful, it should be reported immediately. It was noted that the permit, under Part II I, includes a 24-hour reporting requirement where there is noncompliance that may adversely affect state waters or may endanger public health. A participant pointed out that these conditions effectively mirror federal standard permit conditions and should remain as-is.

A participant asked if entry under Part II W (Inspection and entry) is restricted to reasonable times. DEQ noted not expressly, although the last paragraph indicates “the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. ...”

SWPPP

Mr. Bryan noted that a non-numeric technology based effluent limitation for airport deicing was added under Part III B 4 b. This addresses small airports that are not subject to the Airport Deicing ELG (40 CFR 449). The provision mostly provides suggested BMPs based on language in prior permits and the MSGP, but also notes that procedures and selected control measures should at all times be consistent with considerations of flight safety.

There was some discussion of landfills, and whether there are landfills that receive only municipal waste (current wording in Sector L). DEQ will check on this.

Benchmark Values

Mr. Bryan stated that he had researched the derivation of the benchmarks in the general permit, and presented a table showing the benchmark history and sources for the 2004, 2009, 2014, and 2019 permits as compared to the MSGP over time. He discussed this information with a focus on suggested changes. A participant asked about the basis for the 2019 arsenic level, which does not match the state WQS criteria. A participant noted that this was a drinking water standard in 2001. Mr. Bryan suggested using the state chronic criteria, which matches the same benchmark used in the 2021 MSGP.

Meeting adjourned at 2:30 pm.

A TAC meeting is scheduled for December 1, 2022. DEQ will keep TAC members informed of the schedule going forward. Please call or email Joseph Bryan (joseph.bryan@deq.virginia.gov) with questions. Thank you for your time and participation.