

**COMMONWEALTH OF VIRGINIA**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**WATER DIVISION**

**P.O.BOX 1105**

**Richmond, VA 23218**

**SUBJECT: Guidance Memo No. 15-2001**

Process for Determination of Noncompliance with the General VPDES Permit for Stormwater Discharges Associated with Industrial Activity, VAR05

**TO:** Regional Directors

**FROM:** Melanie D. Davenport, Director



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**COPIES:** Regional Water Compliance Managers, Regional Water Permit Managers, Jerome Brooks, Fred Cunningham, Allan Brockenbrough, Kathleen OConnell

**Summary:**

The purpose of this guidance is to assist the Compliance Auditors in determination of noncompliance with the 2014 reissued General VPDES Permit for Stormwater Discharges Associated with Industrial Activity. This guidance replaces GM#11-2010 and it will be rescinded when the relevant section of the Compliance Auditing Manual (Guidance Memo #02-2010) is updated.

**Electronic Copy:**

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

**Contact information:**

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

**Disclaimer:**

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

## Process for determination of noncompliance with the Stormwater Industrial General Permit

### Background

On December 17, 2013, the State Water Control Board adopted amendments to [9 VAC25-151](#) that allowed the reissuance of the VPDES Industrial Stormwater General Permit, VAR05. The new general permit became effective on July 1, 2014 and will expire on June 30, 2019. The purpose of this guidance is to assist Compliance Auditors (CAs) in determination of noncompliance with the reissued general permit. Please refer to [GM#14-2013](#) for specific permit changes and general implementation guidance for the reissued general permit.

### Determination of noncompliance

#### 1. Missing or late DMRs

Reporting frequency is now **semi-annual** for all monitoring types (Benchmark, Effluent, Impaired Water, and Total Maximum Daily Load or TMDL), and the DMRs are due January 10<sup>th</sup> and July 10<sup>th</sup> of each year. Points for the missing or late DMRs will be assessed by the CEDS points program as with the VPDES Individual Permits (IPs) and other general permits (if the skeleton records are created in CEDS prior to the points run).

The reissued general permit specifies that monitoring commences with the **first full monitoring period** after the owner is granted coverage under the general permit (e.g., if permit coverage is granted on 8/15/14, the monitoring start date will be 1/1/15 and the first semi-annual DMR due 7/10/15). The permit staff will notify the CAs of any new permit coverage.

#### 2. Incomplete or improper DMRs

For paper DMR submissions, based on the manual review, the CAs should check the applicable box(es) in the CEDS DMR header table for deficient (missing 25 percent or more of data), incomplete (missing less than 25 percent of data), and/or improper (e.g., Monitoring period not entered, no signature, etc.) DMRs. Since Letter of Explanation is not required with the DMR for this general permit, the checkboxes for Letter of Explanation not received or not adequate should not be checked. Note: failure to report the storm event information on a paper DMR should be considered as an incomplete DMR. For e-DMR submissions, any deficient/incomplete DMR issues and most of the improper DMR issues will be corrected prior to submissions. Points will be assessed by the points program according to the box(es) checked on the DMR header table.

If a permittee reports in paper DMRs that no discharge occurred, the CA should enter the DMR received date and check the No Discharge box. If a permittee reports no discharge via e-DMR, the No Discharge box will be checked automatically after submission data transfer. The CAs should run a Discoverer query report to identify the permittees with DMRs reporting no discharge in early August each year and submit the report to the Regional Water

Compliance Managers prior to development of the risk-based inspection strategy. Permittees with a history of reporting no discharge should be evaluated for inclusion in the annual inspection schedule. If extra DMRs are received after the two-year monitoring period, the CAs should enter the data in the manually created records in CEDS.

### 3. Exceedance of benchmark concentration values

Exceedance of a benchmark concentration does not constitute a violation of the permit and, therefore, points should not be assessed for any exceedance of benchmark concentration values.

Whenever there is an exceedance of a benchmark concentration value, the permittee has to review the Stormwater Pollution Prevention Plan (SWPPP) and modify it as needed to address any deficiencies. Revisions to the SWPPP have to be completed within 30 days after an exceedance of a benchmark concentration value is discovered. When control measures need to be modified or added, implementation has to be completed before the next anticipated storm event if possible, but no later than 60 days after the deficiency is discovered. Noncompliance with the SWPPP revision or implementation due date is determined by inspection. The CAs should assess the points manually based on the receipt of Referral of Potential Violations from inspectors.

Should the benchmark exceedance be attributable solely to natural background pollutant levels, corrective action is not required if the following conditions are met: 1) the concentration of the benchmark result is equal to or less than the concentration of the natural background pollutant; 2) it is properly documented in the SWPPP; and 3) the permittee has notified DEQ of the fact on the benchmark DMR. The permittee's determination does not require formal approval from DEQ. However, if there is disagreement between DEQ and the permittee, and/or if subsequent information would support rescinding the determination, the determination is subject to DEQ approval and/or question, and DEQ has the final say. Note: such determination, if not disputed by DEQ, allows the permittee not to pursue corrective action but the permittee must continue benchmark monitoring and DMR submissions throughout the permit term.

### 4. Effluent violations

The CAs should manually assess points for effluent violations based on the manual review of paper DMRs and, for e-DMR submissions, by using a Discoverer query of the DMR data for e-DMR participants. The CAs should follow the Point Assessment Criteria Section (1) (a) (i) items (1) – (4) Effluent Limits (general permits are considered as minors) and enter the effluent violations and points in CEDS manually.

Corrective actions requirements for any exceedance of an effluent limitation remain in the reissued permit but **follow-up monitoring is no longer required**. The permittee has to take corrective actions whenever there is an exceedance of any effluent limitation (including effluent limits for coal pile runoff). The permittee has to review the SWPPP and modify it as needed to address any deficiencies. Revisions to the SWPPP have to be completed within 30

days after the deficiency is discovered. When control measures need to be modified or added, implementation has to be completed before the next anticipated storm event if possible, but no later than 60 days after the deficiency is discovered. The permittee has to submit a Corrective Action Report within 30 days of implementing the relevant corrective actions. Noncompliance with the requirement to revise the SWPPP and implement relevant corrective actions may be determined by inspection. The CAs or other appropriate staff should expect a Corrective Action Report submitted by the permittee no later than 90 days after the DMR due date (i.e., April 10<sup>th</sup> or October 10<sup>th</sup>). An earlier due date may be determined by the inspector.

For the purposes of tracking, the CAs may add two new columns in a spreadsheet downloaded from a shared Discoverer query “SWI GP Exceedance Report” to enter the expected due date and received date of the Corrective Action Report for all effluent violation items. Alternatively, a separate tracking sheet may be developed and maintained by the CAs or other appropriate staff. The CAs should manually assess points for failure to submit the Corrective Action Report by the expected due date (i.e., 1, 1, 2 pts for compliance schedule item past due).

## 5. TMDL exceedance

Depending on the location of the discharge, two types of TMDL monitoring are included in the general permit:

### a. Impaired water with an approved TMDL Wasteload Allocation

Upon written notification from DEQ, facilities subject to TMDL wasteload allocations (WLAs) will be required to monitor such discharges for the pollutant(s) of concern. Because the TMDL WLAs are calculated on an annual basis, compliance cannot be determined based on the monitoring results from only two rainfall events. Points should not be assessed if the TMDL concentration data reported exceeds the concentration value used in developing the TMDL (referred to as “TMDL exceedance” in the text following). Whenever a TMDL exceedance occurs, the CAs should provide the monitoring data to the permit writer and regional TMDL coordinator for further evaluation/tracking.

The permittee has to take corrective actions whenever there is any TMDL exceedance (other than polychlorinated biphenyls or PCBs which are addressed through a Pollutant Minimization Plan, as discussed below). The permittee has to review the SWPPP and modify it as needed to address any deficiencies. Revisions to the SWPPP have to be completed within 30 days after the deficiency is discovered. When control measures need to be modified or added, implementation has to be completed before the next anticipated storm event if possible, but no later than 60 days after the deficiency is discovered. The permittee has to submit a Corrective Action Report within 30 days of implementing the relevant corrective actions. Noncompliance with the due date for implementing relevant corrective actions may be determined by inspection. The CAs or other appropriate staff should expect a Corrective Action Report submitted by the permittee no later than 90 days after the DMR due date (i.e., expected due date of April 10<sup>th</sup> or October 10<sup>th</sup>). An earlier due date may be determined by the inspector.

For the purposes of tracking, the CAs may enter the TMDL exceedance in the Violation screen but not assign points. The CAs can then add two new columns in a spreadsheet downloaded from a shared Discoverer query “ SWI GP Exceedance Report” to enter the expected due date and received date of the Corrective Action Report for all TMDL exceedance items. Alternatively, a separate tracking sheet may be developed and maintained by the CAs or other appropriate staff. The CAs should manually assess points for failure to submit the Corrective Action Report by the expected due date (i.e., 1, 1, 2 pts for compliance schedule item past due).

For facilities discharging to an impaired waterbody with an approved PCB TMDL: If the permittee monitored for PCBs for the 2009 general permit and the monitoring data are sufficient to indicate a “reasonable potential” to exceed the water quality criterion, or actually exceed the WLA specified in the PCB TMDL, the permittee will be notified via the permit transmittal letter to develop and implement a Pollutant Minimization Plan (PMP). Based on the referrals from the permit writers or other appropriate staff, the CAs should assess points for failure to submit the PMP or implement the approved PMP according to the set schedules (i.e., 1, 1, 2 pts for compliance schedule item past due).

#### b. Chesapeake Bay Watershed

The general permit includes special Chesapeake Bay TMDL monitoring requirements for all facilities discharging to the Chesapeake Bay Watershed. All the owners of these facilities have to monitor for total suspended solids (TSS), total nitrogen (TN) and total phosphorus (TP) semi-annually for the first two years of the permit coverage. These Chesapeake Bay TMDL parameters (TSS, TN and TP with designated parameter codes 929, 930 and 931, respectively) will be included in a TMDL DMR. The DMR records in CEDS and e-DMR, if applicable, should reflect the four monitoring periods.

Note that the permit allows facilities that were covered under the 2009 industrial stormwater general permit that sampled for TSS, TN or TP to use applicable sampling data from the last two monitoring periods of that permit and the first two monitoring periods of this permit to satisfy the four consecutive monitoring periods requirement for calculating facility loading value.

The permittee has to calculate the facility loading based on the actual facility area information and the monitoring data collected to determine if additional action is needed during this permit term. If the facility loading value for TP, TN or TSS exceeds the corresponding loading value presented in permit Part I.B.7.b (3) (a), the permittee is required to submit a Chesapeake Bay TMDL Action Plan (Action Plan) for DEQ’s approval within 90 days from the end of the fourth monitoring period. Once approved, the permittee is required to implement the Action Plan and to submit an annual report by June 30<sup>th</sup> of each year. Noncompliance with the Action Plan submittal will be verified by inspections. Submissions of Action Plan and annual reports will be tracked in the CEDS Permit Event table by the permit writers or other appropriate staff. The CAs will assess points for failure to submit the Action Plan or annual reports based on the referrals from the inspectors, permit writers, or other appropriate staff (i.e., 1, 1, 2 pts for compliance schedule item past due).

## WL/NOV Issuance

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

According to the current point assessment criteria, 1 point will be assessed for any missing or incomplete DMR and a WL is warranted. The WL should include a response due date.

If a response to the WL is not received by the due date or the response is received but not satisfactory to the DEQ staff, the regions may extend compliance assistance via telephone calls, emails or meetings, or conduct a site inspection to follow up with the permittee to resolve the issue. If after exhausting these compliance tools the issue still cannot be resolved, points may be assessed and additional WLs may be sent in the following month (additional WLs should cite the same alleged violation(s) stated in the initial WL rather than “no response to the WL”). And the CA should refer the permittee to the inspection staff for a site inspection. If additional violations are identified during the site inspection, upon receipt of a referral from the inspector, the CA should follow the Point Assessment Criteria Section (1) (a) (iv) Inspection Deficiencies and manually enter the violations and points in CEDS. An NOV may be issued to address the missing DMR and inspection deficiencies.

If a WL/NOV is issued for exceedance of an effluent limitation, the letter may include a statement that reminds the permittee to take corrective actions and to submit a Corrective Action Report according to Part I A.6. b & c of the general permit.

Other violations such as failure to submit the Corrective Action Report, PMP, Chesapeake Bay TMDL Action Plan or annual reports, or failure to notify the municipal separate storm sewer system (MS4) may be referred to the CAs by the inspectors, permit writers or other appropriate staff. The CAs should assess points according to the Point Assessment Criteria Section (1) (b) (i) Compliance schedules/due dates and send the WL/NOV in a timely manner.

## Monitoring waiver/monitoring discontinued

If any monitoring waivers or monitoring discontinuances are approved, the permit writer will notify the CA. Note: monitoring waivers are not applicable to effluent monitoring or Chesapeake Bay TMDL monitoring (except in the case of Inactive or Unstaffed sites).

### 1. Benchmark monitoring

A waiver may be requested by the permittee and approved by DEQ, on an outfall-by-outfall basis, if: 1) samples were collected in four consecutive monitoring periods, and the average of the four samples for all parameters at the outfall is below the benchmark concentration value; and 2) the facility is not subject to a numeric effluent limitation for any of the parameters at that outfall. Other factors for consideration of granting a waiver include a favorable compliance history and no outstanding enforcement actions. Note: permittees that were covered under the 2009 general permit may use sampling data from the last two monitoring periods of that permit (i.e., the last two they were required to sample – if they

received a waiver under the 2009 general permit, they can use the data from those two monitoring periods as part of the calculation) and the first two monitoring periods of this permit to satisfy the four consecutive monitoring periods requirement.

The monitoring waiver may be revoked for just cause. By selecting the proper waiver status (monitoring waived or waiver revoked) on the Processing Information screen under Outfall Information/Limits tab in the CEDS Permit Module, the skeleton records will be updated in CEDS and e-DMR, if applicable, accordingly.

2. TMDL (Impaired water with an approved TMDL WLA) monitoring

A waiver for TMDL monitoring may be requested by the permittee and approved by DEQ if any pollutant subject to the TMDL WLA is below the quantitation level in all of the samples from the first four monitoring periods. The laboratory certificate of analysis has to be submitted with the request. This waiver is parameter based and it applies to all applicable outfalls of the facility. Once approved by DEQ, a new limit end date for the parameter(s) should be inserted in the CEDS Permit Limits screen and the skeleton records in CEDS and e-DMR, if applicable, will be updated accordingly.

3. Impaired water (without an approved TMDL WLA) monitoring

If any pollutant for which the receiving water is impaired is below the quantitation level in all the discharges from the facility, or if it is above the quantitation level but its presence is caused solely by natural background sources, the permittee may request approval of monitoring discontinuance. The laboratory certificate of analysis has to be submitted with the request. Once approved by DEQ, a new limit end date for the parameter(s) should be inserted in the CEDS Permit Limits screen and the skeleton records in CEDS and e-DMR, if applicable, will be updated accordingly.

4. Adverse climatic conditions

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

If the claim of adverse weather conditions is approved, for paper DMRs, the CAs should check the Adverse Weather Condition box and enter "NR" in the appropriate data fields in CEDS. If not approved, the CA should check the Deficient DMR box and enter "X" in the appropriate data fields. For e-DMR submissions, the CAs should run a Discoverer query

report prior to the points run to identify permittees reporting adverse weather conditions and forward the report and supporting documents to the permit writers for approval. If not approved, the CAs may request a DMR revision from the permittee.

If the permittee submitted the DMR for a substitute sample taken in the next monitoring period, the CAs should enter the data by creating a separate DMR record in CEDS. Enter the DMR due date as the received date and the storm event date listed in the DMR as the monitoring start and end dates. It should be noted in the Comments field that the results came from a substitute sample.

#### 5. Inactive and unstaffed sites (including temporarily inactive sites)

The permittee may request a waiver of all monitoring types (benchmark, effluent, TMDL and impaired water) at an inactive and unstaffed site. If circumstances change and industrial materials or activities become exposed to stormwater, or the facility becomes either active or staffed, the permittee has to notify DEQ within 30 days and resume the monitoring requirements immediately.

#### Representative outfalls

Representative outfalls apply to benchmark, TMDL and impaired water monitoring. If the facility has two or more outfalls that discharge substantially identical effluents, monitoring may be performed for only one of these outfalls. Note: the representative outfalls monitoring provision does not apply to effluent limitation monitoring.

On the paper DMR submitted for the sampled outfall, the permittee has to list the outfalls that are represented by the sampled outfall in the Comments section. The CAs should check the “Rep” box on the CEDS DMR screen for the sampled outfall. Signed DMRs are not required for the outfalls that are represented by the sampled outfall. However, since all records have been created in CEDS, the CAs may enter the same received date as the sampled outfall DMR and check the “SI” on the DMR screen for outfalls that are represented by the sampled outfall. For e-DMR participants, DMRs are required to be submitted for all outfalls that discharge substantially identical effluents. The sampled outfall is identified as “Representative” outfall and the outfalls that are represented by the sampled outfall are identified as “Substantially Identical” outfall in e-DMR, and “Rep” and “SI”, respectively, on the CEDS DMR screen.

#### Adding/deleting outfalls

The general permit allows the permittee to add new or delete existing stormwater outfalls as appropriate. The permittee has to update the SWPPP and notify DEQ within 30 days of the change. An updated SWPPP map must be submitted with the notification. The permit writer will notify the CA once the changes (i.e., outfall(s) added or deleted) are effected in CEDS.