



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

www.deq.virginia.gov

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

SUBJECT: Technical Advisory Committee (TAC) Meeting to Discuss the 2024 Reissuance of 9VAC25-190, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mines
TO: TAC Members and DEQ Staff (listed below)
FROM: Peter Sherman, Office of VPDES Permits
DATE: September 13, 2022 (**DRAFT**)

A TAC meeting was held on August 4, 2022 at the DEQ Piedmont Regional Office, 4949-A Cox Rd., Glen Allen, VA 23060. The meeting, which was the first TAC meeting for this general permit reissuance, began at 10:00 am. Participants attending the meeting were:

<u>Name</u>	<u>Organization</u>
Michael Smith	VA Dept. of Energy, Division of Mineral Mining
Gus Buttar	Martin Marietta Corp.
Rob Lanham	VA Transportation Construction Alliance (VTCA)
Walter Beck	Vulcan Construction Materials
Mac Nzombola	Vulcan Construction Materials
Mark Williams	Luck Stone
Troy Nipper	DEQ - CO
Peter Sherman	DEQ - CO
Elleanore Daub	DEQ - CO
Robert Hill	DEQ - PRO
Amy Dooley	DEQ - NRO

Information provided before the meeting included:

- Regulation with draft amendments, VPDES General Permit Regulation for Nonmetallic Mineral Mining, 9VAC25-190
- Role of TAC overview
- Agenda.

Discussion

Department of Environmental Quality (DEQ) staff reviewed the agenda and presented information (11 slides) regarding the TAC and the exempt general permit/ regulation process, an overview of the Nonmetallic Mineral Mining General Permit (VAG84), and initial changes.

DEQ indicated that VPDES general permits are published as regulations and noted that the Notice of Intended Regulatory Action (NOIRA) was published 1/31/2022 (there were no substantive comments in response to the NOIRA, however, there was one comment in response to the Periodic Review). At present, DEQ is hoping to present the proposed regulation by the June 2023 State Water Control Board (SWCB) meeting, and the final regulation at the end of 2023 or early in 2024. The public comment period and public hearing for the proposed regulation is expected be during second half of 2023. The current general permit expires June 30, 2024.

DEQ briefly reviewed the *Role of the TAC* handout and reiterated that the role of the TAC is advisory, to assist DEQ in developing a draft regulation/ general permit, based on a range of perspectives, that is in the best interest of the Commonwealth as a whole.

DEQ provided an overview of the Nonmetallic Mineral Mining General Permit. Key points included:

- Current general permit expires June 30, 2024.
- The general permit is applicable to process wastewater (including commingled) as well as stormwater associated with industrial activity from active and inactive mineral mines classified under SIC codes:
 - 1411, 1422, 1423, 1429, 1442, 1455, 1459, 1475, 1499.
- Facilities require a mining permit to obtain VPDES coverage.
- Facilities seeking coverage must submit a completed registration statement, included information specified in the regulation.
- Effluent limits include:
 - Process wastewater and commingled stormwater: TSS 30/ 60 mg/l (monthly average/ daily maximum); pH 6.0-9.0.
 - Stormwater: TSS 100 mg/l (evaluation value).
- Monitoring requirements:
 - Wastewater – Quarterly
 - Stormwater – Annual (evaluation value); Quarterly visual monitoring.
- Special Conditions:
 - Discharges must meet water quality standards.
 - Includes conditions addressing treatment chemicals, discharge of solids, TMDLs, inactive and unstaffed facilities, no discharge design, BMPs for blasting, etc.
- Stormwater Conditions:
 - Allows representative outfall sampling.
 - Requirement to develop, update and implement a SWPPP.
- Standard Conditions.
- Review of Initial Draft Changes:
 - SB 657 – Adding a definition of “Board” and adjusting regulatory language to reflect the change in Board authority.
 - New Term: July 1, 2024 – June 30, 2029.
 - Add conditional e-reporting language.

- Required by federal regulations.
 - Once in effect, following notice and 3-month grace period, requires that registration statements and DMRs be submitted electronically.
 - August 1 DEQ’s e-DMR system is moving to the myDEQ portal.
 - EPA provided a comment on permit transfer (Petroleum GP).
 - Updated noncompliance reporting link.
- Additional Items
 - EPA 2021 MSGP - 8 new or revised requirements.
 - Industry issues.

DEQ reviewed the initial changes in the draft general permit.

Senate Bill 657

DEQ is adding a new definition of State Water Control Board (“Board”) based on Senate Bill 657, which moved authority for issuing VPDES permits from the Board to DEQ. DEQ is also changing the term “Board” to “Department” in the permit wherever the reference is to a permitting action.

Revised Permit Term

DEQ noted that the term for the reissued general permit will be July 1, 2024 – June 30, 2029.

Electronic Reporting

DEQ explained that conditional electronic reporting (e-reporting) language for registration statements and discharge monitoring reports (DMRs) is being added to the permit. The language specifies that DEQ will notify permittees as to when these requirements become effective, and provides that permittees will have three months from such notice before e-reporting is required. DEQ explained that e-reporting is required by federal and state regulations, and that it has been in the process of being phased-in for a while. DEQ stated that a new e-DMR system went into operation August 1, 2022. One function of this system is that, now, all data is batch uploaded to EPA’s Permit Compliance System/ Integrated Compliance Information System (PCS/ICIS) system, which links to EPA’s Enforcement and Compliance History Online (ECHO) system. DEQ pointed out that since the state and EPA have separate data systems, if permittees see any data in ECHO that is not accurate, they should notify their regional DEQ office (permit writer, inspector, or compliance staff). Virginia is a delegated VPDES state and has primary control over permitting and data management. We also can correct any issues that we are made aware of.

A TAC member pointed out that some VTCA members do not have not email access, and have to use a library to electronically send data. DEQ pointed out that the e-reporting regulations do include a waiver provision (see, 9VAC25-31-1010). DEQ also pointed out that electronic submittal does not have to be immediate (there will be a specified due date). Another TAC member observed that his organization has helped some non-connected facilities submit data

online. It was also noted that some small operators are not members of VTCA, and thus may lack general support. DEQ stated that some temporary waivers have been granted.

DMR Reporting Schedule (TAC-initiated topic)

A TAC member commented that having to submit monitoring data for numerous facilities within 10 days following the end of a monitoring period is very challenging because getting all of the necessary data from the different facilities takes time and at various delays can occur (e.g., holidays, staff vacations). He stated that North Carolina specifies that monitoring data must be submitted within 28 days of the end of the monitoring period, and South Carolina uses a period of 20 days. Supporting data such as flow meter data may need to be recorded to the end of the quarter, and obtaining necessary signatures can take time. DEQ pointed out that facilities can start the process early, and submit a DMR with available data and resubmit that DMR once it is completed. A TAC member suggested that submitting a DMR twice is more work and thus not the answer. A TAC member asked if Virginia could use a 20-day schedule. One TAC member stated that they receive warning letters often with no notice. DEQ pointed out that if a facility calls the department, such a warning letter is corrected. DEQ stated that e-DMR will help facilities avoid a missed DMR, which do occur now. DEQ also pointed out that North Carolina may be exporting DMR data directly to EPA, which is different than Virginia. A TAC member noted that with a large number of facilities, there is not time to submit two DMRs for each facility. DEQ stated that DEQ staff need time to review and process DMR data once it is submitted.

One TAC member asked if facilities could submit DMR data within seven days if there is an exceedance, and could have more time if there is no exceedance. Another asked if DEQ could change the submission date.

DEQ explained that the 10-day requirement is in our VPDES permit regulations and applies to all VPDES general and individual permits. DEQ said it would check aspects of the 10-day requirement (e.g., the rationale for 10 days; how DEQ systems incorporate it; whether a change, if possible, would require a regulatory and legislative change). DEQ pointed out that the 10-day requirement is integrated into DEQ's data management and compliance system (including automated non-compliance points assessment) so a lot of reprogramming would be required if any change was made. [Post-meeting note: DEQ's 2014 Permitting Manual (Section III, pg. 23) provides: CED Procedures. "Rule 3: The 1ST DMR DUE DATE must be separated from the MONITORING START DATE by a monitoring period plus 10 days"]. One TAC member stated that facilities want to be in compliance, but that in certain situations the 10 days can be a hardship. DEQ reiterated that a facility can submit an amended DMR, and that the e-DMR system should make it easier to amend a DMR.

DEQ pointed out that of 181 permitted facilities, 14 facilities have had late DMRs during the current permit term (4 are chronic offenders).

A TAC member asked if, with e-DMR, could we move the submittal date to the 15th (since we will not be waiting on paper mail). DEQ clarified that the current requirement is for the DMR to be postmarked by the 10th. DEQ pointed out that numerous internal processes are now premised

on submittal by the 10th. Auditors have to manually enter the data into CEDS by the 25th, since the points system program runs on the 25th. DEQ observed that some elements of the administrative process may change when e-DMR is fully implemented. The e-DMR is designed to exchange data with CEDS. One TAC member asked if EPA has a due date. Another TAC member favored considering this issue while the e-DMR system is worked out. He asked if any possible change would have to wait for permit renewal.

DEQ pointed out that on August 1, 2022 the e-DMR system is moving to the myDEQ portal.

Permit Transfer

DEQ stated that EPA had commented on the permit ownership transfer language in another VPDES general permit, and that this language is similar across all of the VPDES general permits. At this point, DEQ does not anticipate changing the language in the Nonmetallic Mineral Mining general permit.

Additional Items

DEQ pointed out that the 2021 EPA Multi-sector General Permit (MSGP) includes eight new or changed requirements, and that DEQ will review these items as part of reissuance since the MSGP is part of the basis for the stormwater requirements in this general permit. The current draft does not include any of these new requirements. In some cases, they do not appear to be needed, and in others they could be unworkably complex given existing permit implementation systems.

A TAC member asked if any of the MSGP changes are being considered by DEQ. He noted that he had participated in the MSGP committee and had worked with that group so that most of the new requirements were not applicable to nonmetallic mineral mining (e.g., COD monitoring). DEQ responded that, based on an initial review, it is not clear that there is a compelling need to adopt these items. However, DEQ does need to consider the changes and have some internal discussions. In addition, DEQ will normally seek to ensure reasonable consistency among this permit, our industrial stormwater general permit, and our concrete general permit.

DEQ noted that it is aware of two industry concerns, extreme storms (raised in 2019 and again in a periodic review comment), and the Sand Branch TMDL. DEQ pointed out that the Sand Branch TMDL is a separate action from this permit, but the general permit does include standard TMDL compliance language (as do all VPDES general permits).

General Discussion e-DMR

A TAC member asked if permittees will have a chance to review the e-DMR system (during the three-month grace period). Is there any transition period, where issues (e.g., incorrect limits) can be identified and fixed? DEQ responded that the system is ready and tested (9300 users already). Users can access the system once they sign up for e-DMR. The system pulls limits from CEDS, so incorrect limits should not be an issue.

A TAC member asked if the e-reporting system work under a heavy load, such as when all DMRs are due. DEQ responded that there have been a few issues with the old system, but in general it has worked well, and we hope the new system will reflect continuing improvements.

A TAC member asked if there will be three months notice if the e-reporting requirements take effect and the new general permit has not yet been adopted. DEQ stated that the existing e-reporting regulations (9VAC25-31-1020; authorized under VA Code 62.1-44.15) specify that start dates for electronic submissions will be provided in a schedule approved by the department. Once effective, permittees will be notified. The standard language being added to this general permit for the 2024 reissuance includes three months notice before the e-reporting requirements take effect. Given DEQ's concern regarding consistency and fair notice, it is reasonable to expect that this notice period would be extended under the current period.

DEQ Review of Draft General Permit

DEQ reviewed the new definition of "board", removal of the delegation provision in section 20 B, and some of the adjustments to the language referencing the board or the department. DEQ also asked if the Division of Mineral Mining is the correct name for Virginia Energy's mineral mining department. The response was that it is acceptable.

DEQ indicated that revisions to section 60 (Registration statement) are preliminary. Some of these edits affect the representative and substantially identical outfall provision.

A TAC member asked if the e-DMR system will know or remember which outfall is representative and which are substantially identical. This would save time and could avoid errors checking an outfall not identified in the registration statement. DEQ explained that you can check the representative outfall and the substantially identical outfalls as you enter the DMR data and can change them for different submittals.

There was some discussion of ensuring consistency of stormwater requirements across related general permits. One TAC member mentioned that nonmetallic mining is little different, and encouraged DEQ to take that into account in comparing permit language.

DEQ pointed out that the language for representative outfalls and substantially identical outfalls is preliminary, as we need to confirm how the e-DMR system will handle this. DEQ noted that all outfalls will need to be accounted for through DMR reporting (i.e., either as a representative outfall, a substantially identical outfall, or a stand-alone outfall). As mentioned previously, the e-reporting language being added to the general permit is standard language.

DEQ stated that we have updated the link in the permit for non-compliance reporting. DEQ also reiterated that the EPA commented on the permit transfer language in another general permit, but at this point we do not expect to change the language in this permit.

DEQ indicated that we expect to hold at least couple of more meetings.

Open Discussion

One TAC member suggested that one TAC meeting be dedicated to the flooded pits issue. DEQ and industry representatives have met previously to discuss this issue, and the industry representatives have drafted some potential BMPs but have not shared them with DEQ. A TAC member noted that DEQ's position was that EPA did not permit dewatering after large storms. [Post-meeting note: In 2019, DEQ maintained that the effluent limits for process wastewater in this general permit are based on federal effluent limitations guidelines (ELGs) and Virginia DEQ's best professional judgement (BPJ) of controls necessary to protect state waters.]

One TAC member stated that there is a difference between process water and stormwater or groundwater coming out of the pit. He said that North Carolina looks at process water and pit dewatering as separate. He suggested that the definition of process wastewater under this general permit is problematic.

Another TAC member observed that coal mining discharges are precipitation driven, and alternative limits are available for exceptional events.

A TAC member observed that North Carolina looks at upstream and downstream water quality to assess any impact. The State also looks at turbidity and settleable solids. They have no TSS limit unless mining clay.

One TAC member stated that large rain events mean that process water goes to the stormwater basin, which results in the stormwater becoming process water.

DEQ noted that the Chesapeake Bay TMDL is one reason that Virginia focuses on TSS.

A TAC member pointed out that in some cases overland flooding, not originating from the mine site, fills a pit. Another suggested that if a quarry is built to contain a ten-year storm event, then anything beyond that could reasonably be considered an extraordinary discharge. A TAC member pointed out that such events do not happen often – the last one was in 2018 (eastern NC). When an extreme storm event stops operation, then a discharge should be allowed. If the Richmond quarry has a storm dike of 25 feet, and a 100-year storm tops 32 feet, the entire site would be under water and the quarry would be responsible for meeting discharge limits when discharging from the pit. During a 1000-year flood at Graves Mill, VDOT excused all requirements to drain the valley. Design to a 10-year storm, anything exceeding that, or that forces an operation out of service, and DEQ should make allowances. There might be some precedents that exist. Generally, 25-year storm BMPs do not work. A big rain event will result in overflow. The immediate discharge is more sediment laden than effluent/ runoff that has been allowed to settle. A TAC member requested that an action be for the TAC/ DEQ consider a list of ideas, such as BMPs, pit containment when overtopped, or changing the definition of process wastewater, that could offer some flexibility.

A TAC member suggested that DEQ look at the definition of process wastewater, which currently includes dewatering discharges. Dewatering discharges should not be process wastewater just because the water comes from the pit. Another TAC member asked if DEQ can

limit the definition to certain storm events, since stormwater that flows to the pits is filtered to some extent. Another asked if an exemption could be based on the size of the rain event. The trigger could be a large storm event, or when the mine is rendered inoperable. He asked what DEQ needs to provide some flexibility.

DEQ pointed out that process wastewater includes dewatering because stormwater that combines with process wastewater becomes contaminated. If dewatering discharges contain pollutants, those pollutants need to be reduced to levels that are protective of water quality. One question is what is the nature of dewatering discharges. Other questions are how much variation is there among different types of mines and different practices and settings.

A TAC member suggested that stormwater that is in the pit may be relatively clean stormwater since it is able to settle. At the same time, other stormwater runoff (i.e., sheetflow) just goes to the stream, and does not have to meet limits. Is there a way for a facility to contact the state to obtain approval to discharge stormwater on a case-by-case basis.

DEQ asked if the dewatering discharges exceed a limit or benchmark.

A TAC member observed that the rate of discharge is relevant. During storms, TSS levels are higher in the streams naturally. North Carolina does look at streams themselves to determine background.

Another member said that the issue of extreme storms does not occur frequently, it only arises when facilities cannot operate. Industry is not asking for a change during normal business. Only in extraordinary circumstances. EPA regulations specify a 10-year, 24-hour storm event. Our pits can handle this. Pumping water is different than overflow. So it's the pumping that subjects the discharge to regulatory limits. One TAC member mentioned designing the sump for a 10-year storm and when storm runoff exceeds that level, relief would be available (i.e., above a certain level in the pit).

DEQ stated that the VTCA should share the BMPs that have been developed with the agency. One TAC member said they may categorize their ideas and thoughts in a presentation.

One TAC member suggested categorizing pit dewatering in a similar manner to special condition 15 (i.e., "no discharge" process wastewater systems must be designed to contain the 25-year, 24-hour storm; discharges that result due to events greater than that are reported as extraordinary discharges, with no sampling or DMR required, but must meet water quality standards). Categorize pit dewatering as meeting the special condition 15.

DEQ will summarize the meeting, and check into some of the issue brought up. We will plan the next meeting. At one of the future meetings we will focus a portion of the meeting on issues associated with extreme storms. One TAC member suggested that it may be beneficial if Melanie Davenport (Director, DEQ Water Permitting Division) participates in that discussion. DEQ said we will discuss the matter with management.

A TAC member referred to special condition 15 and stated that we can't get rid of wastewater if it fills the pit. For example, if a big storm fills the pit, and another storm is coming. The facility has to empty the pit for the next storm. This is should be an extraordinary discharge. A TAC member said they do not want to waste time coming up with ideas that have no chance of being adopted. DEQ should talk to management first.

A TAC member diagramed a scenario. DEQ noted that in special condition 15 water quality standards still apply to any discharge. This condition describes a wastewater management design feature that can contain the 24-hour storm event.

A TAC member indicated that we can calculate where this level is in the pit (i.e., the 24-hour storm). Perhaps design the sump as 25-year, 24-hour storm, anything above that can be discharged.

DEQ will keep TAC members informed of the schedule going forward. Please call or email Peter Sherman (peter.sherman@deq.virginia.gov) with questions. Thank you for your time and participation today