

9VAC25-890 MS4 TAC Meeting Minutes - September 26, 2022

Meeting Location

DEQ Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060

Attendees

Lisa Ochsenhirt, VAMSA

Norm Goulet, NVRC

Ashley Hall, Stantec

Jess Wagner, UVA

Patrick Fanning, CBF

Erin Hawkins, City of Lynchburg

Doug Fritz, GKY

Tracy Harmon, VDOT

Jacob Bauchman, VDOT

Jill Sunderland, HRPDC

John Burke, Montgomery County

Erin Rountree, City of Suffolk

Ginny Snead, AMT

Mark Sauer, Navy

Melanie Davenport, DEQ

Allan Brockenbrough, DEQ

Derick Winn, DEQ

Jeff Selengut, DEQ

Mason Harper, DEQ

Nelson Daniel, DEQ

David Taylor, DEQ

Megan O’Gorek, DEQ

Anna Tuthill, DEQ

Ruth Minich-Hobson, DEQ

Robert Hill, DEQ

Meeting commenced at 9:40

Announcements

Derick opened the meeting with announcements, discussed meeting location change and thanked everyone for providing comments ahead of today's TAC meeting. Changes have been made with the comments received. Draft version shown on the screen today is from September 22, 2022 draft. Melanie announced that comments received today aren't reflected as comments on the regulation which would be available in the public comment period. Plan to take the draft regulation to the SWCB on November 29th. Melanie thanked everyone who has participated in this process, and thanked everyone for their patience as we go through the multiple stormwater related TACs and RAPs as of late.

Definitions

Not many changes to this section and not many comments received. Norm pointed out that "annual practices" carries a different definition with respect to the agricultural sector; Derick cited that the header in this section helps to clarify the context of these definitions. **Check code for any other meanings for this term.** Derick highlighted the changes to the "Board" definition in light of the Board Bill changes. Derick noted that the "Board" references throughout the regulation will likely be changed to state "Department" instead for the sake of clarity. Derick noted that all of the Board Bill changes/items are highlighted in green.

Ecosystem restoration asset definition was discussed next, Derick described examples of these projects (stream restoration, etc.) that would not be included in the stormwater management facility definition. Derick noted that while these projects likely had been previously captured under stormwater management facility inspections and maintenance, there was no explicit definition, so this was added to clarify. No comments from the TAC.

High priority facilities definition was discussed next based on feedback from the TAC members previously. Highlighted the additions in this definition, such as "long-term bulk" addition to materials storage. "Storage for public works" was removed since it seemed duplicative to other items in this definition list. "Storage" was removed based on feedback from previous TAC meetings to avoid over-interpretation of vehicle parking. No comments from the TAC.

Next Derick focused on "nontraditional MS4 permittee" definition, noting that this definition highlights what is not a nontraditional MS4 permittee. "Traditional MS4 permittee" was also added as a flipside to the nontraditional MS4 permittee definition. This was done to help clarify expectations from DEQ between nontraditional and traditional MS4s versus having to issue separate GPs for both. No comments from TAC.

Noted change with Board Bill to the "effective date of the permit" section.

No other comments from the TAC.

Registration Statement

Derick highlighted addition of line 192 for clarifying whether permittee is also capturing the school system; cited example with EPA inspection resulting in differences between municipality and their school system in terms of compliance issues and litigating the issues on the back end.

No comments from the TAC on this item.

MCM2

Derick moved to line 446 to highlight addition of “structural” to “BMP maintenance”. Erin Hawkins noted that in previous drafts, this section was very vague, and that this originally may have been tied to land disturbing complaints, but now the definition is being broadened to increase the types of complaints that would be captured under this requirement. Norm noted that prior to the revision, this would not have precluded the public from reporting these other concerns (land disturbing activities, structural BMP maintenance, etc.). Lisa noted that there is a concern with the term “other potential stormwater pollution concerns” as being too broad. Lisa asked what needs to be tracked with this requirement. Lisa noted that there are concerns with the addition of the “structural BMP maintenance” language. Having this requirement also housed under the annual reporting requirement complicates what needs to be tracked. Erin pointed out that because of this annual reporting requirement, there is a need to track the individual types of complaints and how to respond to them. Erin asked what was wrong with the previous language that warranted the change; Derick answered this was added to try to add examples of what would be provided through this mechanism. Erin asked if there would be additional examples that would need to be included in this section. John provided an example of illicit discharges from BMPs that could include differences between actual illicit discharges from BMPs versus just reporting an eyesore in a BMP. Mark noted that this mechanism/requirement would be through a hotline/website and would not necessitate a permittee having to dig through several departmental records to try and track down if there were any other stormwater complaints that were submitted. Lisa asked if we could explicitly exclude flooding, but John countered with a BMP flooding that could be causing erosion. Erin asked a follow-up regarding the annual reporting requirement – what is the expectation of DEQ regarding this requirement; she continued the example by asking how far or how detailed the information. David provided an example of what he would expect in the summary of the annual reporting requirement; Derick noted that it would be a case-by-case basis, that there might be a complaint that doesn’t quite fit within another MCM. Mark suggested it could be captured under fact sheet or implementation guidance material, David suggested maybe adding an example (e.g. “reporting to the appropriate department). Melanie noted that there just needs to be a consistent compliance approach with these types of questions. **Add information to the fact sheet or the implementation guidance regarding how this requirement should be handled and what DEQ’s expectation would be regarding the annual reporting requirement.** Erin noted that there isn’t an issue with requirement to have the mechanism, she asked what the value of tracking all of those metrics would be. Jeff noted that this requirement originated with the push from EPA to have this item included in the permits to make sure the permittee is responding to such complaints. **Derick stated that language could be amended to say “public to report stormwater complaints such as....”**

Derick moved to the nontraditional permittees not being able to post a public stormwater webpage (line 479), solicited comments on whether this would be an issue. Anna noted there were only 2 permittees in NRO that would meet this definition. Examples were discussed but no objections or comments brought forward.

Derick moved on to the annual reporting requirements starting at line 514. John went back to the annual reporting requirement for public comments (line 515) and asked what needs to be reported for this. Jeff elaborated that EPA would possibly use this requirement to evaluate the process a permittee

went through to handle such complaints. Megan suggested arranging line 517 to include the citation applicable to the MCM that a complaint would need to be tracked under. **Revise this annual reporting requirement to include citations about where such complaints are routed.** John brought up the concern that if only one complaint comes in through a hotline, is that the only one that would need to be tracked in the program, but David noted that the “mechanism” should encompass methods beyond just a hotline or an online form (such as phone calls, emails, etc.).

MCM3

Derick started with line 571, GIS data formatting requirements. Mark noted that there may be an issue with the term “collected” in line 584 to noted that the data should be submitted in the format needed, not necessarily how the data should be collected. **Change this item to reflect that the data just needs to be submitted in the format shown, not collected in the format shown.**

Derick asked if there was any other items of concern, particularly with metadata. Derick noted that the metadata we would be looking for may be limited to the data that is automatically generated with the creation of the shapefile. No other comments from the TAC on this item.

Derick noted based on previous comments, data accuracy information was adjusted in line 587 to be more realistic.

Derick moved to the structural condition provision in MCM3 (line 643). Derick noted this had previously been captured partially through line 651 (strikethrough). This information is frequently captured on dry weather screening forms by some permittees, Derick noted one other state requires this information to be captured as a part of their dry weather screening programs. Lisa stated that this is an expansion beyond the federal requirement, Lisa stated she sent some narrowed language to limit it to IDDE. Lisa objected to this language on the grounds that it may tether a locality to having to stay on a maintenance schedule for outfalls identified for maintenance concerns. Derick noted that the language was reviewed but found it to be going back to the original language. Lisa and Erin noted that the structural condition is not something that is required to be tracked in the federal regulations, Erin noted that structural condition should be tied to the context of illicit discharges. Norm suggested changing the language to read, “general structural observations of the outfall”, Lisa noted that she could live with whether an outfall is functional. Erin noted that clogging, damaged, submerged or inaccessible or gully erosion has nothing to do with illicit discharge, but strictly is an infrastructure element. Melanie asked how this is tied to the illicit discharge element, Derick pointed out the appropriate line that ties this to illicit discharge detection. Erin repeated this is a infrastructure maintenance element. Lisa noted that the scope of IDDE should be limited to IDDE. John provided an example of stormwater management facilities being examined for maintenance concerns and the upstream contributing area, so it would be applicable to outfalls being reviewed for similar maintenance concerns to prevent it from becoming an illicit discharge. Mark noted that there isn’t a requirement to maintain underground piping, so why is there an expectation that the outfall carries special attention? Jeff responded that as an example, a collapsed pipe upstream could generate sediment that would be observed during the dry weather screening (which is why the upstream inspection is not required). John suggested that physical descriptions go back to line 651 and add language to say “evaluate the physical condition of the outfall for IDDE concerns”. Norm stated the permit establishes the minimum requirement and that if some localities choose to go above and beyond, the standard shouldn’t apply to all other permittees. Derick noted that this has already been captured in other states. Erin noted that line 651 previously captured

structural condition and to put that line back. Mark suggested this could be tied back to functionality – could we have language that looks at whether the outfall is functioning as designed. Lisa stated this could be looked as “permit creep”. Jeff asked about restoring line 651, but adding language to the TMDL section pertaining to physical condition of the outfalls for receiving waterways in a TMDL; Jeff noted that while the MS4 may not be contributing to a sediment TMDL issue, the system’s maintenance itself could result in impacts to the TMDL. Allan asked if language was added to tie this condition back to the outfall (not the downstream condition) would this make it more palatable. Erin asked about possibly changing the existing language in 649 to state that if a discharge is observed, look for the specific items that were previously struck out in 651. TAC members had some consensus on focusing on the outfall physical condition element to a TMDL as Jeff had previously suggested. **Review this for possibility of leaving the language as it was in this section and look into moving the tracking of outfall condition to TMDL section.**

MCM4

Derick started with change at line 733 of striking “local government” to be clearer. No comments or feedback from TAC on this item.

Derick moved to line 749 about moving this item up from MCM6 to this section. No feedback or comments from TAC on this item.

MCM5

Derick moved to line 823 and provided the example of a town within a locality that rely on the surrounding county to be the VSMP authority and that the previous language may have eluded to the town having to be a VSMP authority even though they would be relying on the county as the VSMP authority. No comments or feedback from TAC.

At line 864, Derick noted that this section was modified to help smaller MS4s relying on BMP Clearinghouse specifications as a means to satisfy this requirement. Derick noted that the SLAF element may not apply here. Lisa noted that this adds flexibility and is helpful. No other comments or feedback on this item.

On line 868, this item was moved up from MCM6. No comments or feedback on this item.

Derick noted that especially with private BMPs, inspections could be performed consistent with the VSMP language and so those items were left unchanged. No feedback from the TAC on this item.

At line 880, Derick noted that some flexibility was added into this language considering there are a lot of factors that would influence reprioritization. Jill asked what the purpose of this requirement is, considering that if permittees are reprioritizing their inspections throughout the year, why would we need to know this information. Jeff responded that some permittees have sat on maintenance requirements without taking any action, and so this provides a mechanism for showing DEQ that there is a problem that has a plan of action. Jill asked if this was an enforcement issue, Jeff responded that the previous language was too soft and did not provide leverage to understand why a BMP was reprioritized based on funding or other issues that have come up. Norm and Lisa both objected to this language on the grounds that this is an enforcement issue. Lisa suggested that this should be in a fact sheet/implementation guidance. Melanie noted that guidance may be difficult to produce under the

processes today. Ginny asked if this language was requested by EPA or if this was a DEQ-sponsored decision, Derick noted that this item was added by DEQ. Jill noted that not all maintenance issues affect the water quality functionality of the practice, and that this gets into too much detail about how the permittee should manage their time and resources. **Review this language to determine if this can be captured in permit implementation guidance.** Erin brought up the point that this is “repair” and not necessarily “maintenance” that should be captured here. **Review this to determine if we should be using “repair” language instead of maintenance.** Mark and Megan mentioned that the language from the annual reporting requirement in 985/986 could be better suited for this requirement.

Derick revisited line 901 and explained that this provision is targeted at traditional MS4s and is mostly consistent with 9VAC25-870-114, but the difference lies between BMPs on residential lots and commercial properties. Norm noted this requirement goes well beyond federal requirements. Derick stated this requirement is in the VSMP regulation. Norm expressed concerns about the future of this requirement to include the MS4 having to address maintenance of such facilities. Derick stated that the language presented allows the flexibility of which BMPs to target. Erin noted that outreach may not ever result in any viable results. Erin also noted that legally, that right of entry is an issue that would prevent an MS4 from complying with this requirement. Derick noted again this is an existing requirement under the VSMP, and Erin noted that that would only apply to facilities subject to the VSMP. John noted that even some of the facilities subject to this requirement may not be up to the standards required under the current BMP standards. Lisa clarified the differences between historical BMPs and BMPs that are on residential property that don't have to have a maintenance agreement and asked would both of these scenarios apply for this requirement. Derick indicated this would be up to the permittee based on the flexibility of this requirement. Erin provided examples that because of the age of some of the facilities we may not be able to inspect to determine what standard the facility should be maintained to, how to inspect it, etc. Erin walked through the requirement by first starting at “shall identify any stormwater management facilities not required to have a maintenance agreement”, then, “developing a strategy...” would be difficult on the ground of legal limitations. Allan noted that the requirement in the VSMP regulation speaks to having to have a strategy that is open ended. Derick noted that this requirement helps to bridge the gap for historic BMPs, but that would ultimately be the discretion of the permittee. Jill noted “identify *any* stormwater management facility” would be too broad (line 902). Ginny noted that there are legacy issues that we can't necessarily address even through the language in the VSMP regulation. David provided the § 62.1-44.15:39 citation for right of entry and that it narrows the scope to facilities that drain to the MS4. Derick suggested adding back the residential property qualifier to limit the scope. Allan noted that the VSMP regulation isn't retroactive which would require the permittee to address legacy facilities. Melanie noted that there are a lot of such issues in the VSMP regulation and agreed with Allan that post 2014 they would only need to regulate facilities moving forward and not retroactively. Melanie also questioned the value of trying to address single family home stormwater management facilities, Norm indicated that this is why they had put together guidance documents for homeowners to try and address this type of situation. Allan suggested revising language to say that “if a locality has waived the requirement under 112 for stormwater management facilities, they shall develop a strategy...” Derick concurred that this requirement sounded reasonable for meeting the requirement. **Revise this language to align with Allan's suggested language.**

Lisa brought up lines 965 and 988/989 – that these should be reviewed for terminology updates (maintenance versus repair).

Derick brought up the requirement added in 1001 for ensuring that BMPs remain active in the warehouse as they continue to be inspected. No comments or feedback from TAC on this item.

MCM6

Starting at line 1020 – no comments or feedback from TAC.

Line 1027 – Derick indicated he narrowed the scope of this language to prevent over-interpretation of this activity. Lisa noted that its better than the previous requirement, and that it isn't in the Phase I permittees yet, but Derick indicated that we are just trying to work with the schedule we have at this point. **Lisa requested a change to include “significant renovation” instead of just “renovation” to further narrow down what activities should be addressed.** Jill asked for an example standard operating procedure on what is expected. Jess and Mark mentioned that they have example SOPs that could be useful; Lisa indicated that VAMSA may also try to adopt some example SOPs.

Line 1034 – Derick indicated that this language was made more vague to satisfy previous comments. Derick mentioned that high priority facilities would address the long term storage issues, whereas this is a good housekeeping element addressing the objectives in 6.a (line 1005). No comments or feedback from TAC.

Megan brought up that the language doesn't mesh well with the parent paragraph b in line 1024, item (2) on line 1027 should be revised or moved to ensure that the other items flow consistently. **Add the 36 month provision to the end of the requirement in line 1027.**

Jill asked a question regarding 1034 and whether this requirement applies more to the staging areas; Derick clarified that the long term storage facilities would be high priority facilities, this is addressing the short term staging areas. Erin stated she was under the impression we had moved away from this requirement based on previous discussions in previous TAC meetings. Derick again clarified that the long-term storage was captured under the high priority SWPPP, this is more geared at general practices for landscaping.

Line 1043 – Derick explained the change here focused on the “maximum applicable rates” element that permittees are not bound to apply the amount prescribed, and may do far less. No other comments and feedback on this item.

Line 1072 – Derick explained this language is not new but rather was moved to be closer with the requirements applicable to the section. Derick noted there was a comment about difficult ensuring certification, but did not have any proposed fix for this item. Jill asked if there could be a reference to the contract language qualifier in 1047. **Revise to add contract language element to this provision.** No other comments from TAC.

Line 1091 – Lisa mentioned that are some items stored at a facility that wouldn't impact stormwater. For example, plastic tubs stored in large quantities at a public works facility would not necessarily cause an impact to stormwater. Allan and Derick noted that the conditions in 1106 would protect a permittee from having to have a SWPPP for such facilities. Derick noted adding language back in for potential to discharge would add too much subjectivity. Lisa expressed appreciation for going back to more of the original language. Patrick asked about line 1092 and why we don't reference the permit definition, but Derick clarified that the definitions for the permit are housed under a different section of the regulation.

Chesapeake Bay TMDL Special Condition

Line 1323 – Derick noted the changes in columns E and F and the reason behind this language. No comments or feedback from TAC.

Line 1463 – **Megan requested “year two” to replace “second” to clarify we were talking about the second permit year.** Derick noted it wouldn’t be needed to include the comments every year, which is why this was added.

Line 1468 – Derick noted that annual practices was called out in this requirement to ensure clarity. Allan suggested making this change parenthetical to make it read easier.

Jill asked about quantifying the types of BMPs, Derick noted this item was satisfied under line 1471. **Jill stated that line 1468 states “all...BMPs” and line 1469 states “each reported BMP” and that these need to be changed to accommodate the change in 1471.** Jill requested further clarification in the fact sheet or implementation guidance for this item.

Line 1474 – Derick noted this requirement was added to be consistent with MCM5. No comments or input from TAC. Derick noted he would likely **revise this section to clarify that this requirement is only applicable to Bay-TMDL BMPs.** Derick further clarified the differences between lines 1474 and 1483.

Local TMDL Special Condition

Line 1496 – Lisa brought up that this section is not consistent with the requirements under 1502. **Revise this section to align with requirements of 1502-1522.**

Line 1520 – Derick noted this has been removed as this is duplicitous to requirements above. No comments from TAC.

Lines 1547 and 1551 – Derick noted that these requirements have changed but acknowledged that there will be some towns that rely on neighboring counties as VSMP authority that this would benefit. No comments from TAC.

Line 1562 - Derick noted that a TAC member had commented on BMPs outside of the Bay Program and whether any would be available, but Derick noted that the BMPs in the Bay Program should suffice. Allan suggested a revision to **revise this section to put a period after “Program” and just start a new sentence at “Pollutant load reductions...”**.

Line 1609-1612 – Derick noted there had been a comment about what these strategies could include, Derick indicated this could include SAMS guidance, but this would be referenced in the fact sheet instead of the permit to prevent referencing guidance in permit language. No comments from the TAC on this item.

Ecosystem Restoration Assets

Line 1630 – To be consistent with BMP maintenance pointing back to BMP Clearinghouse, this section was updated to have maintenance and inspection protocols in the SLAF guidelines. Norm asked about what maintenance procedures for land use conversion would include, Derick and Allan provided basic examples of what could go into such a standard operating procedure. Erin asked about for forest conversion if that would include counting trees, but Derick and Allan mentioned there is a stem

requirement per acre per existing guidance. John mentioned that “most recent guidelines” noted on line 1632 may not conform to the guidelines at the time a project completed if this applies to long-term projects. Lisa suggested deleting “most recent”. **Revise to remove the “most recent” requirement on line 1632.**

Line 1634 – Derick explained this is similar to BMPs but not as specific. Lisa brought up the earlier issues in MCM5 with respect to maintenance versus repair. **Review this section for revisions to align with MCM5.** Patrick asked if this section has a component about who should be conducting these inspections, Derick noted that because of the types of projects covered by this section, this would be a wide variety of individuals, so the language was left vague to this effect. Tracy asked if the purpose of this section is to prevent credits from being claimed, and noted that there may be situations where a permittee may abandon one of these projects. **Revise this section to account for permittees who wish to remove the ecosystem restoration project, to prevent having to maintain a project that is no longer being used for credit.** Ginny asked whether this requirement is necessary given the requirements in the Bay TMDL, and Jeff asked if that would be applicable to projects addressing local TMDLs.

Allan advised removing line 1624 for styling/regulatory purposes.

BMP Warehouse

Line 1647 – Opened for discussion, nothing really new here. No comments from TAC.

Line 1655 – Derick asked if any Bay localities present had any experience for the associated reporting template. No feedback from the TAC on this item.

Line 1650-1654 – Lisa asked if this was cumulative or rolling, Derick stated that this requirement is for the reporting year. Derick suggested moving this to B. 1) versus having it as C. **Move this requirement under B housed at line 1647.** Could also move C, D E and F under B.

Line 1666 – Derick noted nothing has really changed here other than removing pervious acreage. No comments from TAC.

Line 1681 – Derick indicated this is similar to what is in A, no comments from the TAC.

Q&A / Other Items

Derick also shared the table that he is working on for completion dates for updates, Mark suggested this could be provided on the transmittal letter to help permittees quickly update their programs.

Norm asked if a draft could be sent out to the TAC before the Board. Lisa asked if a draft could be sent out just highlighting the issues discussed during today’s TAC meeting.

Derick thanked the TAC members for all their input and assistance.

Jill asked if the TAC has a chance to review the fact sheet, and clarified that the Board does not approve the fact sheet.

Meeting adjourned at 3:30 PM