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Exempt Action
Final Regulation
Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-190
Regulation title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining
Action title	Amend and reissue the Nonmetallic Mineral Mining General Permit
Final agency action date	April 15, 2019
Date this document prepared	March 18, 2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations.*

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This rulemaking is to reissue the existing VPDES Nonmetallic Mineral Mining General Permit, which expires on June 30, 2019. This general permit contains effluent limitations, monitoring requirements and special conditions for discharges of process wastewater, which may be commingled with stormwater, as well as stormwater associated with industrial activity, to surface waters. The general permit regulation is being reissued so that it will continue to be available to those facilities eligible for coverage such that they can continue to operate and lawfully discharge.

In addition to the new permit term, substantive changes to the existing regulation include:

- Updating the effective and expiration dates;
- Removing monitoring for total petroleum hydrocarbons for outfalls that contain process wastewater from vehicle or equipment degreasing activities based on low levels in reported data;
- Adding a requirement to include with the registration statement safety data sheet information, maximum dosing rates and a demonstration of no aquatic toxicity for treatment chemicals added to wastewater or stormwater and that could be discharged;
- Adding a requirement that applicants must submit their State Corporation Commission entity identification number if the facility is required to obtain an entity identification number by law.

- Removing the special condition addressing special water quality standards in the Chickahominy watershed based on revisions to the applicability of those standards;
- Adding a BMP requirement for blasting;
- Adding a list of authorized non-stormwater discharges; consistent with DEQ's industrial stormwater general permit (ISWGP) and U.S. EPA's 2015 Multi-Sector General Permit (MSGP)
- Merging the comprehensive site compliance evaluation with the routine inspection provisions consistent with DEQ's ISWGP and U.S. EPA's 2015 MSGP; and
- Waiving routine facility inspection requirements for Virginia Environmental Excellence Program E3 and E4 facilities.

Numerous corrections and clarifications have been made throughout the regulation since publication of the proposal. Substantive changes to the proposal include requiring with the registration statement in 9VAC25-190-60 C 8 a demonstration of no aquatic toxicity for all added chemicals that could be discharged and in 9VAC25-190-70 II B H 3 e qualifying language that training is required at active mining sites and at temporarily inactive sites that are staffed.

Acronyms and definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

APA: Administrative Process Act
BMP: Best Management Practices
CFR: Code of Federal Regulations
DEQ: Department of Environmental Quality
EPA: (U.S. EPA): United States Environmental Protection Agency
NPDES: National Pollutant Discharge Elimination System
TAC: Technical Advisory Committee
USC: United States Code
VAC: Virginia Administrative Code
VPDES: Virginia Pollutant Discharge Elimination System
MSGP: Multi-Sector General Permit
ISWGP: Industrial Stormwater General Permit

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On April 15, 2019, the State Water Control Board adopted the amendments to 9VAC25-190 Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Nonmetallic Mineral Mining.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation will have no direct impact on the institution of the family or family stability.

Periodic review/ small business impact review report of findings

Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and

is clearly written and easily understandable. In addition, as required by §2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

There were no comments received following the publication of the Notice of Periodic Review in the Notice of Intent Comment Period. Protecting water quality in the Commonwealth's surface waters is necessary to protect the health, safety and welfare of citizens. The proposed regulatory action is needed in order to establish appropriate and necessary permitting requirements for discharges of wastewater and stormwater to surface waters from nonmetallic mineral mining facilities. These discharges are considered to be point sources of pollutants and, thus, are subject to regulation under the VPDES permit program. The primary issue that needs to be addressed is that the existing general permit expires on June 30, 2019 and must be reissued in order to continue making it available after that date.

The complexity of the regulation and ideas to make it clearer were discussed in the technical advisory committee and appropriate changes were made. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation as the State Water Control Board is the delegated authority to regulate point source discharges to surface water. The regulation was evaluated in 2014 when the permit was reissued last permit term.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
9VAC25-190-10. Definitions	Within the definition of "Industrial activity" there is an existing description of "inactive mining operations."	Made the description of "inactive mining operations" into stand-alone definition.	For clarity and public comment that there was not a definition of inactive mining operations in the permit.
9VAC25-190-10. Definitions		Added a definition of "temporarily inactive sites."	For clarity and to address comments. This definition is based on the 2015 MSGP (8.J.3.6, pg. 102) and is consistent with comparable language in the VPDES industrial stormwater permit.
9VAC25-190-60. C 2	Include with the registration statement the latitude and longitude of the facility.	Removed latitude and longitude (retain for outfalls).	Consistency with other general permits.
9VAC25-190-60. C 8	Include with the registration statement Safety Data Sheets and the maximum proposed dosing rates for chemicals added to wastewater or stormwater and that could be discharged.	Added requirement to also provide a demonstration that the application or use of chemicals will not result in aquatic toxicity.	This replaces the proposed language that would have explicitly made the use of cationic chemicals ineligible for coverage except pursuant to a demonstration of no aquatic toxicity. The demonstration is now required with the registration statement and applies to all added

Section number	Requirement at proposed stage	What has changed	Rationale for change
			chemicals that could be discharged. The change is to ensure that permit staff have sufficient information to approve chemical use in a manner that protects water quality, reflects 2015 MSGP restrictions on cationic chemicals, and reflects comments preferring the existing approach to chemical review/ approval.
9VAC25-190-60. C 18	Applicants other than sole proprietor must provide their State Corporation Commission entity identification number.	Applicants must provide their State Corporation Commission entity identification number if the facility is required to obtain such a number by law.	For consistency with state law and with other VPDES general permits.
9VAC25-190-70. I A 2 b	Requires certain documentation regarding the scope of visual monitoring, including consideration of the "nature of discharge."	Clarified that DEQ is interested in whether the discharge is a result of runoff or snowmelt.	Comments asked why "nature of discharge" is needed when all applicable discharges are stormwater. Runoff and snowmelt can have different characteristics (e.g., quantity, quality, timing). Both the 2015 MSGP and the VPDES ISWGP include this language.
9VAC25-190-70. I A 2 b	Requires documentation of visual monitoring to be retained with the SWPPP visual monitoring records.	Requires documentation of visual monitoring to be retained within the SWPPP.	Public comment that retention within the SWPPP is sufficient.
9VAC25-190-70. I B 3	The use of cationic flocculants is ineligible for permit coverage unless approved by the department based on a demonstration of no aquatic toxicity.	Removed. See registration statement, 60 C 8, above.	Comments expressed concern with regard to making the use of cationic chemicals presumptively ineligible for coverage. Comments supported using the existing approach (identification on registration statement) for chemical review.
9VAC25-190-70. I B 10 b	Prohibits solids deposition as a result of industrial activity.	Clarified that the prohibition on solids deposition to surface water applies to discharges associated with industrial activity.	Comments requested that DEQ clarify that prohibitions only apply downstream of outfall.
9VAC25-190-70. I B 14	The inactive and unstaffed facilities waiver for monitoring and inspections also apples to temporarily inactive sites.	Clarified that this applies to temporarily inactive and unstaffed sites.	For clarity and to address comments regarding temporarily inactive sites.

Section number	Requirement at proposed stage	What has changed	Rationale for change
9VAC25-190-70. II B	Representative outfall that discharge substantially identical effluents determined in part based on the size of the drainage areas.	Removed size of the drainage areas as an evaluation criterion.	Comments pointed out that DMME regulations require that sediment basins must be sized to provide 0.125 acre feet of storage per acre of disturbed land draining to the basin. This adequately accounts for variations in the size of the drainage area.
9VAC25-190-70. II B H 3 e	Employee training shall be conducted at least annually at active mining and at temporarily inactive sites.	Qualified language such that training is required at active mining sites and at temporarily inactive sites that are staffed.	Comments indicated that some temporarily inactive sites are not staffed and, thus, training should not be required. The 2015 MSGP requires training at active and temporarily inactive nonmetallic mineral mining sites (8.J.5.1, pg. 111).
9VAC25-190-70. II B I	Included a list of authorized non-stormwater discharges. Last sentence provides "pavement wash waters shall be managed to prevent the discharge of pollutants."	Revised the entry addressing pavement wash waters to specify that pavement wash waters shall be managed in a manner to avoid instream impacts.	Comments indicated that the expectation under the draft language was unclear since the list identifies authorized discharges. Final language is consistent with ISWGP.

Public Comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Eleven commenters submitted comments and most of these consisted of the same set of comments. The summary below combines comments that are the same and presents the Agency's response. (For those comments that are the same, VTCA's written comments are used unless noted). Comments marked with an * were also raised by VTCA at a more summary level at the public hearing held 11/27/2018.

Commenter	Affiliation	Comment – Response Identifier
Rob Lanham, Aggregates Program Manager	Virginia Transportation Construction Alliance	VTCA
Walter Beck III, Environmental Engineer	Vulcan Construction Materials	Vulcan
Thomas Harris, General Operations Manager	E. Dillion & Co.	E. Dillion
Mitch Scott, Environmental Manager, VA Dist.	Martin Marietta	Martin Marietta
Tim Mauzy, Engineer	Boxley Materials	Boxley
Ned Gumble, President	Virginia Vermiculite	Virginia Vermiculite
Mark Williams, Environmental Manager	Luck Stone Corp	Luck Stone
Tom Locher, Safety & Equipment Manager	Chemung Contracting Corp., Cedar Mountain Stone Corp.	Chemung
John Snoddy, Environmental & Safety Director	Kyanite Mining Corp.	Kyanite

Van Medlock, Director of Environmental Services	Rogers Group Inc.	Rogers
Mark Vigil	Luck Stone Corp	Luck Stone - Vigil

Commenter(s)	Comment(s)	Agency Response
(1) VTCA, Vulcan, E. Dillion, Martin Marietta, Boxley, Luck Stone, Chemung, Rogers, Luck Stone - Vigil	***VPDES GP 2018 DRAFT LINE 56 - 25-190-10 Definitions - Inactive Mining –*** There is not a definition of inactive mining in the permit. While Draft Line 471 Section I, B, 14 goes into great detail, this random sentence at the beginning of the permit is confusing and is not really a definition. In addition, Draft Line 806 notes training needs to be completed annually for "temporarily inactive sites." Some sites do not have active personnel, even at "temporarily inactive sites." We recommend altering the language. SUGGESTED ACTION: Provide the following as a definition, remove language within the parenthesis at line 56 and remove all language of "temporary inactive sites." This should include the removal of training requirements for "temporary inactive sites." *Inactive Mining – DMME permitted mining or waivered sites that are not being actively mined, but which have an identifiable owner/operator. Inactive sites do not include sites where claims are being maintained prior to disturbances associated with extraction, beneficiation, or processing of mined materials, nor sites where minimal actives are undertaken for the sole purpose of maintaining a mining claim.*	The draft general permit regulation includes at the end of the definition of "[I]ndustrial activity" a description of "[I]nactive mining operations." This description is verbatim from the definitions in 40 CFR 122.26(b)(14)(iii) (stormwater discharge associated with industrial activity, SICs 10-14). In the final general permit regulation DEQ has made the existing description of inactive mining operations into the following stand-alone definition: "Inactive mining operations" means mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim. The language defining inactive mining operations remains unchanged, and thus consistent with 40 CFR 122.26(b)(14)(iii) and the ISWGP (9VAC25-151). In addition, it is substantially the same language as is suggested in the comment. This restructuring more clearly indicates that the term "inactive mining operations" is specifically defined, which should aid stakeholders in more fully understanding the permit requirements. The final permit maintains the two uses of the phrase "temporarily inactive" but with an additional qualification. The first use at I B 14 (waiver of monitoring and inspection for inactive and unstaffed facilities) is existing permit language that has not been changed for this reissuance. For clarity, in the heading the language in parentheses has been amended to say "(including temporarily inactive and unstaffed facilities)." The second use of this phrase regarding training has been amended slightly to better address the situation raised in the comment. The first sentence in Part II H 3 e now reads "Employee training shall be conducted at least annually at active mining sites and at those temporarily inactive sites that are staffed." (Final changes are underlined). Training is an important element of stormwater management as evidenced by the fact that the 2015 MSGP requires training at active and temporarily inactive nonmetallic mineral mining sites (8.J.5.1, pg. 111). To ensure the permit is as clear as possible, DEQ has added a definition that provides that "temporarily inactive sites" means a site or portion of a site where nonmetallic mineral mining and/or milling occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit. This definition is based on the 2015 MSGP (8.J.3.6, pg. 102) and is consistent with comparable language in the VPDES industrial stormwater permit.

Commenter(s)	Comment(s)	Agency Response
(2) VTCA, Vulcan, E. Dillion, Martin Marietta, Boxley, Luck Stone, Chemung, Luck Stone - Vigil	***VPDES GP 2018 DRAFT LINE 364: Section I, A, 2a*** The language in this section is difficult to follow and should be corrected: *(3) ~~Refer to Part I B 12 should the TSS evaluation monitoring exceed 100 mg/l daily maximum.~~ Permittees shall review the results of the TSS monitoring required by Part I A 2 a to determine if changes to the storm water pollution prevention plan (SWPPP) may be necessary. If the TSS monitoring results are greater than the evaluation value of 100 mg/l, then the permittee shall perform [sic][1] a routine facility inspection within five days of becoming aware of the exceedance and maintain documentation as described in Part II H 3 d for that outfall. Any deficiencies noted during the inspection shall be corrected within 60 days of being identified.* SUGGESTED ACTION: The suggested language is below: *(3) ~~Refer to Part I B 12 should the TSS evaluation monitoring exceed 100 mg/l daily maximum.~~ Permittees shall review the results of the TSS monitoring required by Part I A 2 a to determine if changes to the storm water pollution prevention plan (SWPPP) may be necessary. If the TSS monitoring results are greater than the evaluation value of 100 mg/l, then the permittee shall perform a routine facility inspection within five days of becoming aware of the exceedance and maintain documentation as described in Part II H 3 d for that outfall. Any deficiencies noted during the inspection shall be corrected within 60 days of being identified.*	DEQ agrees that this provision of the draft general permit regulation includes an extra word (In the second sentence of Part I A 2 a, the fourth use of "the" should be removed). The extra "the" has been removed in the final general permit regulation.
(3) VTCA, Vulcan, E. Dillion, Martin Marietta, Boxley, Luck Stone, Chemung, Rogers, Luck Stone - Vigil	***VPDES GP 2018 DRAFT LINE 364: Section I, A, 2b*** Within this section, there is language asking for the "nature of the discharge." It is confusing as to why this is being requested if it can only be storm water. This seems to be unnecessary information and should be removed. As well, both the SWPPP and Registration Statement already requires that each outfall have a description of its type of discharge, so the nature of the discharge is already known and documented. Lastly, the storage of visual monitoring information should simply be within the SWPPP and not the "SWPPP Visual Monitoring Records." There is no reason to update an existing plan to move this documentation if these items already exist within the SWPPP. *The permittee shall conduct calendar quarterly visual monitoring of storm water discharges associated with industrial activity. The monitoring shall include examination of storm water samples representative of storm event discharges from the facility and observation of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. Documentation of visual monitoring of storm water shall be maintained on-site in the SWPPP and include the discharge examination date and time, examination personnel, outfall location,* ***the nature of the discharge****, quality of the storm water discharge and probable sources of any observed storm water contamination. Part II A regarding monitoring instructions, Part II B regarding representative outfalls, and Part II C regarding sampling waivers shall apply to the taking of*	In including "the nature of the discharge" as an item that must be documented for quarterly visual stormwater monitoring, DEQ is interested in whether the discharge is a result of runoff or snowmelt, which may have different characteristics (e.g., quantity, quality, timing). To clarify this, DEQ amended the relevant language to read "the nature of the discharge (i.e., runoff or snowmelt), …." Both the 2015 MSGP (3.2.2) and the ISWGP (I.A.1.a.3) require that visual assessments include documentation of the nature of the discharge (i.e., runoff or snowmelt). Neither the registration statement nor the SWPPP currently require this specific information (the current registration statement asks for the outfall type and source, while the SWPPP must include information describing the quality and quantity of stormwater discharges). With regard to the retention of visual monitoring documentation, DEQ agrees with the comment that visual monitoring can be documented in the SWPPP. The final permit has been changed to specify that such records must be retained in the SWPPP, which is consistent with the 2015 MSGP and ISWGP.

[1] The word "the" from the draft regulation is omitted in the original comment here.

Commenter(s)	Comment(s)	Agency Response
	*samples for visual monitoring except that (i) the documentation required by these sections shall be retained with **the SWPPP visual monitoring records** rather than submitted to the department. Calendar quarters equal the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December.* SUGGESTED ACTION: The suggested language is below: *The permittee shall conduct calendar quarterly visual monitoring of storm water discharges associated with industrial activity. The monitoring shall include examination of storm water samples representative of storm event discharges from the facility and observation of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. Documentation of visual monitoring of storm water shall be maintained on-site in the SWPPP and include the examination date and time, examination personnel, outfall location, visual quality of the storm water discharge and probable sources of any observed storm water contamination. Part II A regarding monitoring instructions, Part II B regarding representative outfalls, and Part II C regarding sampling waivers shall apply to the taking of samples for visual monitoring except that (i) the documentation required by these sections shall be retained with the **SWPPP** rather than submitted to the department. Calendar quarters equal the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December.*	
(4) VTCA, Vulcan, E. Dillion, Martin Marietta, Boxley, Luck Stone, Chemung, Rogers, Luck Stone – Vigil	***VPDES GP 2018 DRAFT LINE 377: Section I, B – Cationic Chemicals*** * This permit is already utilized by some operators that use Cationic chemicals, for those permittees, the new language would be a dramatic change. It is suggested that the proposed language be deleted, and cationic chemical approvals be just as all other chemicals currently are, to ensure they are used appropriately. Currently the permit requires MSDS sheets for all chemicals to be submitted with the Registration Statement for approved use. If the DEQ decides the cationic chemical being submitted is a concern, then it can be reviewed and discussed during the permit application submittal process. If the language "No chemicals shall be added to the discharge,..." only applies to directly adding chemicals to treat water prior to discharging and does not mean that the Cationic chemicals cannot be used internally in the process, then this language is less concerning. *3. There shall be no chemicals added to the discharge, other than those listed on the owner's approved registration statement, unless prior approval of the chemical is granted by the board. The use of cationic chemicals is ineligible for coverage under this permit unless such use is approved by the board based on a demonstration that the application or use will not result in aquatic toxicity.* SUGGESTED ACTION: Please see the proposed language below:	DEQ has removed the draft language in I.B.3 that states "[t]he use of cationic chemicals is ineligible for coverage under this permit unless such use is approved by the board based on a demonstration that the application or use will not result in aquatic toxicity." This language had been added to the draft permit based on language in the 2015 MSGP (8.J.4.1.8, pg. 104). That EPA language reflected EPA concerns regarding the aquatic toxicity of cationic chemicals, as discussed in the fact sheet to EPA's 2012 Construction General Permit (Page 69 of the 2015 MSGP fact sheet references the 2017 CGP fact sheet, which adopts by reference the discussion at pages 20-28 of 2012 CGP fact sheet). The MSGP provisions in 8.J.4.1.8 focus on pre-mining, earth-disturbing activities. As discussed in the fact sheet for this permit, these activities are not addressed in VAG84 based on state law (§ 62.1-44.15:34 and 44.15:55) and existing mining regulations and permit requirements. The use of chemicals, including cationic chemicals, by nonmetallic mineral mining facilities remains a potential concern due to the aquatic toxicity of these chemicals in certain settings. The draft VAG84 permit at the proposed stage required that registration statements include a list of treatment chemicals added to wastewater or stormwater that could be discharged and that Safety Data Sheets and maximum proposed dosing rates be provided. In addition, the final permit proposal requires that registration statements include a demonstration that the application or use of treatment chemicals will not result in aquatic toxicity. DEQ uses this information

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	3. There shall be no chemicals added to the discharge, other than those listed on the owner's approved registration statement.	to evaluate the potential toxicity of chemicals being used by permitted facilities and to restrict or condition such use as appropriate. The permit further provides that no chemicals other than those on the approved registration statement may be used unless prior approval is obtained. The restriction on the addition of chemicals to a discharge applies to all chemicals that are added to wastewater or stormwater at the facility and that could be discharged from the facility. DEQ's principal concern is restricting the potential discharge of such chemicals at levels that pose aquatic toxicity. The restriction on the use of chemicals is not limited to only treating water prior to discharging. Treatment earlier in the process can also potentially result in a discharge. At the same time, the use of chemicals at an earlier point in the process may better support a demonstration of no aquatic toxicity in the discharge due to factors such as attenuation (see 9VAC25-190-60 C 8).
(5) Virginia Vermiculite	Current Language of 9VAC25-190-70-B-3: *There shall be no chemicals added to the discharge, other than those listed on the owner's approved registration statement.* Proposed New Language of 9VAC25-190-70-B-3: *There shall be no chemicals added to the discharge, other than those listed on the owner's approved registration statement, unless prior approval of the chemical is granted by the board. The use of cationic chemicals is ineligible for coverage under this permit unless such use is approved by the board based on a demonstration that the application or use will not result in aquatic toxicity.* This additional language is concerning to Virginia Vermiculite because of the possible use of cationic chemicals in the mill to aid in vermiculite beneficiation. These chemicals are added to the process water in the mill. In some instances, this process water can be comingled with stormwater in the mine pits. Trace amounts of these chemicals could be present in our pond system. We assume DEQ's intent is to prohibit cationic chemicals for the use of sediment treatment prior to stormwater discharge (similar to EPA), and suggest the following language: *There shall be no chemicals added **directly** to the discharge, other than those listed on the owner's approved registration statement.*	See response to comment 4.
(6) Virginia Vermiculite	DEQ is proposing to amend another section of the VPDES GP as follows: Current Language of 9VAC25-190-60-C-8: *The required registration statement shall contain the following information: List of any chemicals added to water that could be discharged;* The proposed new language of 9VAC25-190-60-C-8 potentially narrows the scope of the required chemical list: *List of any treatment chemicals added to ~~water~~ wastewater or stormwater that could be discharged.*	EPA's 2015 MSGP uses "sediment treatment chemicals" in the context of imposing seven minimum requirements intended to reduce the risk of using such chemicals. Although sediment control is a primary concern under this general permit, it is not the only potential pollutant of concern. Other chemicals could pose water quality concerns and DEQ is responsible for addressing compliance with all water quality standards. As such, DEQ does not believe it would be prudent to limit the identification of chemicals to those only used for sediment control.

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	If DEQ's intent is to align this regulation with EPA's NPDES Multi-Sector General Permit (MSGP), Virginia Vermiculite suggests that DEQ amend the language to read: *"List of any treatment chemicals added to ~~water~~ wastewater or stormwater **for sediment control** that could be discharged."*	
(7) Kyanite	***VPDES GP 2018 DRAFT Part I.B.3 — Cationic Chemicals*** DEQ has revised Part I.B.3 of the permit to read as follows (underlined wording represents revised language): "3. There shall be no chemicals added to the discharge, other than those listed on the owner's approved registration statement, unless prior approval of the chemical is granted by the board. The use of cationic chemicals is ineligible for coverage under this permit unless such use is approved by the board based on a demonstration that the application or use will not result in aquatic toxicity." Based on our reading of the first sentence of this condition, and DEQ's use of the words, "added to the discharge," it is our interpretation that this condition is intended to apply to treatment chemicals that are added to the water discharge and does not apply to chemicals that may be used during the facility's processing operations. However, the addition of the second sentence may provide confusion to this point. In addition, since the first sentence of this condition already requires the facility to submit for approval any treatment chemicals added to the discharge, either as part of the registration statement or as part of a specific request, we believe that the second sentence is redundant and unnecessary. Therefore, we request that Part I.B.3 of the draft permit be revised to read as follows: "3. There shall be no chemicals added to the discharge, other than those listed on the owner's approved registration statement, unless prior approval of the chemical is granted by the board." Alternatively, we request that DEQ, at a minimum, add language clarifying that the prohibition of the use of cationic chemicals is specific to cationic chemicals used to treat water discharges. Example clarifying language is provided as follows (clarifying language included in bold and italicized font): 3. There shall be no chemicals added to the discharge, other than those listed on the owner's approved registration statement, unless prior approval of the chemical is granted by the board. The use of cationic chemicals ***to treat discharges*** is ineligible for coverage under this permit unless such use is approved by the board based on a demonstration that the application or use will not result in aquatic toxicity.	The language in I.B.3 has been revised consistent with the comment. As discussed above, DEQ has removed the draft language in I.B.3 that states "[t]he use of cationic chemicals is ineligible for coverage under this permit unless such use is approved by the board based on a demonstration that the application or use will not result in aquatic toxicity." The restriction on the addition of chemicals to a discharge applies to all chemicals that are added to wastewater or stormwater at the facility and that could be discharged from the facility. DEQ's principal concern is restricting the potential discharge of such chemicals at levels that pose aquatic toxicity. The restriction on the use of chemicals is not limited to only treating water prior to discharging. Treatment earlier in the process can also potentially result in a discharge. At the same time, the use of chemicals at an earlier point in the process may better support a demonstration of no aquatic toxicity in the discharge due to factors such as attenuation.
(8) VTCA, Vulcan, E. Dillion, Martin Marietta, Boxley, Luck Stone, Chemung, Rogers, Luck Stone - Vigil	***VPDES GP 2018 DRAFT LINE 572: Section II, B – Representative Outfalls*** * New language was added which requests information related to the "size of the drainage area and frequency of discharges" as methods of determining similar outfall, or representative outfall, status. As explained previously by industry in past meetings and permit reviews, all outfalls	DEQ has removed the draft language specifying that the size of the drainage area must be assessed as part of determining representative discharges. The language had been added to the draft permit to be consistent with the language in the VPDES industrial stormwater general permit, however, as the commenters point out, the size of the drainage area is a less significant factor where applicable DMME

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	are sized according to the DMM Reclamation Regulations, which requires 0.125 acre-ft/acre of storage for each acre of drainage. This requirement is over 50% greater than that required of the Virginia Erosion & Sediment Control Regulation. No matter what size the drainage area, the designed sediment structure will have the same effective sediment storage capacity of .125 acre-ft/acre. For instance, if the disturbed area is 1 acre, the sediment structure will be designed to have .125 acre-ft/acre of storage capacity. Comparably, if the disturbed area is 10 acres the sediment structure will be designed to have 1.25 acre-ft/acre of storage capacity. Each disturbed acre is afforded the same amount of sediment storage capacity making the size of the drainage area not a factor in function. As discussed in the past, the main item at mining facilities that determines if outfalls are representative are if the type of activities that report to them are similar. For instance, outfalls that are all associated with overburden removal would be considered representative. Outfalls associated with storm water runoff from a Processing Plant, a shop facility, or a rail loadout facility would not be considered substantially identical outfalls to those built to control overburden removal areas even though their control structures were afforded the same .125 acre-feet/acre of sediment storage design. Secondly in this section, the permit is now requesting "An evaluation, including available monitoring data, indicating why the outfalls are expected to discharge substantially identical effluents..." This information is unnecessary and excessive. Some outfalls that have yet to be constructed will have no available monitoring data. The majority of existing mining facilities holding general permits have many existing representative outfalls which have operated as such for 10 or more years; will these facilities now be required to provide monitoring data from other outfalls that they represent? This data likely does not exist and therefore the ability to set up representative outfalls will be initially impossible. Considering that each outfall, no matter what the drainage area, will be designed with the same amount of sediment storage control capabilities, the type of industrial activity should be the only major determining factor as to if they are substantially identical outfalls. Also, the type of discharge is already submitted during the registration statement and is included within the SWPPP. Lastly, this section continues to state that the permittee's DMR must list all locations that are represented by the discharge. The need to require this does not seem appropriate since the permittee is required to list representative outfalls on the Registration Statement and the DEQ will issue only those DMR's for those outfalls required to be sampled and submitted. DMR's are not issued for those that outfalls that are being represented. As well, currently most DEQ offices list the outfalls being represented on the DMR being issued during the permit issuance process after approving the representative outfall request. We do not see the need to provide this information on the DMR considering it is already approved. However, if the DEQ would like that information on the DMR, then it would be best for the agency to continue to provide the list of outfalls covered by the representative outfall on the DMR that they issue. Equally as important, making this a requirement of the permittee can lead to compliance issues that have nothing to do with the ultimate goal of protecting the environment. Someone innocently overlooking this permit requirement, due to it not being a clear requirement of the DMR, can lead to unwanted compliance issues. Under the circumstances of prior	regulations require that stormwater basins are sized based on the acres draining to the basin. The evaluation of available monitoring data language was added to the draft permit to be consistent with the language in the VPDES industrial stormwater general permit. The draft language requires monitoring data only if such data are available. If data are not available, for example because there are new outfalls or outfalls have been represented by other outfalls, evaluation of data is not required. The requirement that permittees list on the DMR of the outfall to be sampled those outfall locations that are represented by the sampled outfall is an existing provision in the general permit that was not altered in the draft permit. Permittees are, as observed in the comment, required to document representative outfalls on the registration statement. Including this existing information on the DMR, therefore, should not be excessively burdensome. At present, DEQ does not specify all representative outfalls in DMRs provided to permittees as a matter of standard practice. Yet, ensuring complete monitoring and reporting information is a core element of the VPDES program, so accounting for all outfalls is important. Sampling representative outfalls helps reduce the burden on the permitted facilities. As such, specifying that permittees provide this information is a reasonable approach to ensuring program compliance.

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	approval being obtained, it does not feel appropriate to subject requirements with potential compliance concerns on the permittee. *B. Representative ~~discharge~~ outfalls. ~~When a~~ If a facility has two or more exclusively storm water outfalls that ~~the permittee reasonably believes~~ discharge substantially identical effluents, based on a consideration of similarity of industrial activity, significant materials, **size of the drainage areas, frequency of discharges** and management practices and activities within the area drained by the outfalls, then the permittee may submit information with the registration statement substantiating the request for only one DMR to be issued for the outfall to be sampled that represents one or more substantially identical outfalls. ~~Also the~~ The permittee ~~must~~ shall document representative outfalls in the SWPPP and **list on the DMR of the outfall to be sampled all outfall locations that are represented by the discharge**. The representative outfall monitoring provisions apply to Part I A 2 a monitoring and quarterly visual monitoring.* *The permittee must include the following information in the SWPPP:* *1. The locations of the outfalls;* *2. **An evaluation, including available monitoring data, indicating why the outfalls are expected to discharge substantially identical effluents; and*** *3. **An estimate of the size of the drainage area (in acres).*** SUGGESTED ACTION: Please see the proposed language below: *B. Representative ~~discharge~~ outfalls. ~~When a~~ If a facility has two or more exclusively storm water outfalls that ~~the permittee reasonably believes~~ discharge substantially identical effluents, based ~~on a consideration of~~ similarity of industrial activity, significant materials and management practices and activities within the area drained by the outfalls, then the permittee may submit information with the registration statement substantiating the request for only one DMR to be issued for the outfall to be sampled that represents one or more substantially identical outfalls. ~~Also the~~ The permittee ~~must~~ shall document representative outfalls in the SWPPP. The representative outfall monitoring provisions apply to Part I A 2 a monitoring and quarterly visual monitoring.* *The permittee must include the following information in the SWPPP:* *1. The locations of the outfalls;* *2. A description of the type of discharge for each storm water outfall*	
(9) VTCA, Vulcan, E. Dillion, Martin Marietta, Boxley, Luck Stone, Chemung, Rogers, Luck Stone - Vigil	***VPDES GP 2018 DRAFT LINE 806: Section II, H, 3e – Inactive and Unstaffed Facilities*** As detailed at the beginning of the comments, new wording suggests employee training shall be conducted annually at "temporarily inactive sites." At this time, there is no definition for an inactive site, or a temporarily inactive site. Regarding the need for inactive sites to require training, current language suggests "spill response, good housekeeping and material management practices." Requiring training for areas of which are not a concern for inactive sites is unnecessary.	See response to Comment 1. The general permit does not require training at inactive sites. At active and temporarily inactive sites, training must inform persons responsible for stormwater management, including implementation of activities identified in the SWPPP, of the components and goals of the SWPPP. Some training topics are suggested because they are addressed by the SWPPP provisions in the permit. Training promotes the effective implementation of the SWPPP, which is important since the SWPPP is

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	Employee training shall be conducted at least annually at active mining and temporarily inactive sites. SUGGESTED ACTION: Please see the proposed language below: *Employee training shall be conducted at least annually at active mining sites.*	a key mechanism required under the permit to achieve effective stormwater management. Given that temporarily inactive facilities pose potential stormwater concerns due to past mining and no complete closure, relevant staff need pertinent training.
(10) VTCA, Vulcan, E. Dillion, Martin Marietta, Boxley, Luck Stone, Chemung, Rogers, Luck Stone - Vigil	***VPDES GP 2018 DRAFT LINE 847: Section II, H, 3, i, 8 – Authorized Non-Storm Water Discharges*** This addition was discussed during the TAC meeting process but does not match the exact language viewed and discussed at that meeting. In particular, the last sentence was added and states waters must be "managed" to prevent the discharge of pollutants. The big question is, "how do you manage an authorized discharge of paving wash waters that immediately exits the site?" It is understood that prior to washing that all materials capable of removal be cleaned using mechanical means prior to washing. It would be best if the agency worked with industry to agree on what is meant by "managing" an authorized non-storm water discharge and add this information in the permit or fact sheet to better clarify what type of management will be needed. SUGGESTED ACTION: Discuss with industry and provide a better explanation of what management procedures are expected within the permit or fact sheet to make it clear what is expected.	The last sentence of draft II.I.8, which provides "[p]avement wash waters shall be managed to prevent the discharge of pollutants", was added after adding a list of authorized non-stormwater discharges in response to TAC input, to ensure the protection of water quality and for consistency with other VPDES general permits. This sentence has been amended to say "[p]avement wash waters shall be managed in a manner to avoid an instream impact." This wording is the same as in the VPDES industrial stormwater general permit, which was referenced in the TAC as including such a list, and is more compatible with an authorized discharge while still addressing the goal of protecting water quality.
(11) VTCA, Vulcan, E. Dillion, Martin Marietta, Boxley, Luck Stone, Chemung, Rogers, Luck Stone - Vigil	***NEW LANGUAGE - VPDES GP 2018 DRAFT LINE 494: Section I, B, 15 – Discharge of Quarry Pit Process Water during Large Storm Events*** * As initially detailed by multiple TAC group representatives during the TAC meeting on August 2 2018, it is requested that the permit be updated to allow for pit dewatering discharges with no DEQ effluent limitations in emergency situations when storm events in excess of 10yr/24hr events have resulted in excessive pit bottom flooding of storm water. This addition and proposed language was provided after the TAC meeting, but was not included in the draft language. According to the recent National Climate Assessment (NCA4), annual precipitation since the beginning of the last century has increased across most of the northern and eastern United States. In addition, observed increases in the frequency and intensity of events with greater than 3 inches of precipitation - in most parts of the United States are projected to continue. Data show that from 1900 to 2016 the number of days with heavy precipitation are increasing. In Virginia, the number of days of heavy precipitation at individual stations has increased for almost all stations particularly since the 1980s. Knowing this and with the rainfall occurrences seen in Virginia over the last year, it has been a struggle at many facilities to operate our facilities after many of these large events. Many mine sites within the state of Virginia utilize quarry pits for storm water storage during storm events; the quarry pit itself has no other choice but to store direct rainfall. This is usually preferred and very practical during smaller events as it allows facilities to collect storm water and eliminates the need to manage multiple storm water outfalls. However, during very large storm events of around 4 inches equaling	DEQ recognizes that large storms can pose challenges to a range of permitted facilities, including nonmetallic mines. However, DEQ has not identified a basis to fully waive effluent limitations applicable to nonmetallic mineral mine dewatering for conditions created by such storms and such a waiver would be inconsistent with the long-established requirements under VAG84. The effluent limitations guidelines (ELGs) applicable to VAG84 include effluent limitations applicable to dewatering. Under 40 CFR 436 there are three federal ELG Subparts (which Virginia adopts by reference) that address nonmetallic mineral mining covered under VAG84 (Subparts B, C and R). These ELGs address process wastewater and dewatering. All three ELGs set pH limits for dewatering, and one sets TSS limits for dewatering. These Subparts also provide that these process wastewater and dewatering limits are not applicable to overflows from facilities designed, constructed and maintained to contain the volume of wastewater that would result from a 10-year, 24-hour storm. With regard to stormwater at in-scope nonmetallic mineral mines, the 2015 MSGP includes pH limits for dewatering discharges. VAG84includes effluent limits for discharges of process wastewater and comingled stormwater associated with industrial activity. The general permit also defines mine pit dewatering as process wastewater (such water may comingle with process wastewater and typically comes into contact with raw materials, intermediate byproducts, finished

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	about a 10yr/24hr storm event or larger, the quarry pit collects an exorbitant amount of water. This excess of water in the pit can delay mining for a facility by flooding active mining areas. Below is an example of a real-life type of Scenario: A facility operates a quarry pit with approximately 150 acres of drainage area reporting to the quarry pit. The storm water controls are via their quarry pit which would be the equivalent of approximately 15 additional outfalls at the facility if the storm water structures could be built to report to them. The facility tries to maintain multiple active working areas within the pit, but pit development has forced the majority of the extraction within the bottom pit level. During a busy month in August, a large storm event hits the site and dumps approximately 5.6 inches of rain overnight – the equivalent of a 10yr/24hr rain event for the region. The 0.5-acre pit sump is completely overwhelmed with over 2 million gallons of water and the pit bottom is flooded with approximately 13 million gallons of water. The active face is no longer accessible, and operations come to a halt. Upon completion of the storm event, the site decides to wait to discharge for two weeks to ensure they can meet their effluent limitations of the permit. At the end of the wait, they begin discharging the process water 24-hours a day via 1,000 GPM pump to their permitted process water outfall. It takes approximately 8 – 12 working days to drain the pit to allow access to the working face. During that time, approximately 13 million gallons of storm water were discharged, and the site has been down for an approximately a month. If allowed to report to DEQ and discharge, the pit could ideally discharge very soon after the storm event; operations could restart within 8-12 days instead of 3-4 weeks. As previously discussed, if these 10yr/24hr or larger storm event drainage waters reported directly to traditional storm water basins, then the water would be discharged immediately during the storm event in a shorter timeframe (usually a few hours) resulting in less retention time and sediment settling than when compared to being collected in the quarry pit and then being pumped over an extended period of time (usually days or weeks). Would a basin with a much shorter retention time of a few hours be favorable to collecting in a sump and pumping slowly allowing for a longer retention and settling time of multiple days or weeks and therefore affording a cleaner discharge? The current permit already allows for designed process water ponds, which are true process water systems as they are water used in the processing of mined materials, to discharge without limits in a storm larger than a 25-year 24-hour storm event. Conversely, in most cases, pit dewatering involves pumping storm water with possible minimal amounts of infiltrating groundwater from the quarry pit. The water is more similar to storm water than process water since it is typically generated from an accumulation of storm runoff into the pit and in most cases no process water systems are located in the mining pit. The state of Texas, in fact, treats mine pit dewatering more like storm water than process water. In the Texas TPDES General Permit No. TXR050000, Mine Pit Dewatering only has an effluent limit and annual sample for pH. Otherwise water can be pumped and is treated like storm water collected in	products, and/or waste products that result in potential contamination). In VAG84, the most stringent of the applicable ELGs is applied to discharges of process wastewater (including dewatering) and comingled wastewaters. Process wastewater discharges are subject to pH limits based on federal effluent limitation guidelines and Virginia's water quality standards. Process wastewater discharges are also subject to TSS limits based federal effluent guidelines for some of the industrial categories covered and levels that DEQ has determined will protect receiving waters from solids impacts based on experience with VPDES individual permits. VAG84 does not include the provision in 40 CFR 436 that provides that limits are not applicable to overflows from facilities designed, constructed and maintained to contain or treat the volume of wastewater that would result from a 10-year, 24-hour storm. VAG84 includes a "no discharge" facility provision under which no sampling or DMR is required for a discharge where a process wastewater system is designed to operate as a no discharge system except in storm events greater than the 25-year, 24-hour storm. This design threshold is based on best professional judgement and consistent with Virginia Pollution Abatement (VPA) no discharge permit requirements (9VAC25-32-30). DEQ notes that the overflow provision in Part 436 applies to treatment systems (i.e., impoundments) and by its terms is limited to overflows of properly designed and maintained ponds, it is not applicable to intentional mine pit dewatering discharges. The Texas stormwater general permit (TXR050000) mentioned in the comment does not alter the information presented above or provide a unique basis for waiving dewatering limits in Virginia. The Texas stormwater general permit, which includes limits for dewatering, largely reflects the federal MSGP. As such, the Texas stormwater general permit only covers discharges of industrial stormwater, not discharges of process wastewater, which are addressed under VAG84. In addition, under TXR050000, mine dewatering discharges consist solely of stormwater and non-contaminated groundwater. In contrast, VAG84 covers discharges of process wastewater and discharges of stormwater and, under VAG84, mine pit dewatering is defined as process wastewater. Unlike the MSGP, the Texas stormwater general permit does include a waiver that provides (similar to the ELGs) that numeric effluent limitations for mine dewatering do not apply to discharges that overflow from structural control facilities that are designed, constructed, and maintained to contain or treat the volume of mine dewatering wastewater that would result from a 10-year, 24-hour storm event. As discussed above, VAG84 includes a different design standard used as a no discharge management option based on BPJ and existing VPA regulations. Thus, the approach in the Texas stormwater general permit is not a substitute for VAG84. As part of considering this issue, DEQ inquired of several other states as to whether dewatering was

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	the bottom of the pit. In pits that are designed to hold or treat the volume of water from a 10-year 24-hour rain event, no effluent limits apply to the discharge from these systems. Please consider the below language regarding an allowance to discharge storm water collected in our pits under extremely unusual storm events. The language both assists mining facilities after these events while also keeping the DEQ informed during the discharge. SUGGESTED ACTION: Please see the proposed language below for Mine Pit Dewatering in case of flooded pit conditions *Effluent limitations shall not apply to discharges associated with mine pit dewatering consisting of storm water and infiltrating ground water resulting from a storm equal to or greater than a 10-year, 24-hour storm event that has caused emergency flood conditions within the mine. Effluent limitations shall not apply until the flooding condition can be rectified or as deemed appropriate by the DEQ regional office. The operator must notify the DEQ of such conditions as an Unusual or Extraordinary discharge as described in Part III H of the permit. This discharge event may only occur during emergency operation scenarios where pit access is obstructed due to the severity of the storm. The facility shall provide a time period of expected discharge in order to rectify flooding conditions. These discharges may not contravene Virginia water quality standards.*	given special treatment and researched existing state requirements. Information and responses from seven states (IN, MD, MN, MO, NC, OR, PA) did not identify a waiver of limits for dewatering following extreme storms. Rather, these states tend to reflect the federal ELG overflow provision. For example, North Carolina (which includes TSS, settleable solids, and flow limits applicable to dewatering for certain high quality waters, as well as turbidity and pH limits) indicated that they provide a conditional monitoring waiver for dewatering and process wastewater (i.e., "except for mine dewatering of clay pits, a grab sample is not required for these [limited] parameters from a basin/pond designed to contain or treat mine dewatering wastewater that only discharges in response to rainfall in excess of the 10-yr, 24-hr storm). (See, See Table 7, footnote 2, and Table 8, NCG020000). Communication with NC DEQ staff indicated that the statement in footnote 2 only gives relief to obtaining a grab sample of overflows from a basin/pond designed to contain the 10yr/24hr storm that only discharges due to a rainfall in excess of that event. Otherwise, the dewatering is still subject to the effluent limitations of the permit. As discussed above, Virginia does not use the 10-year, 24-hour design standard in VAG84. Similarly, Minnesota offers a waiver of sampling for dewatering (TSS and pH limits) where a basin is designed/ confirmed by PE to control the 10-year, 24-hour storm, but this waiver is limited to overflows caused solely by direct rainfall and groundwater seepage. This does not include unauthorized non-stormwater discharges to surface waters. This waiver is for monitoring only; effluent limits still apply to the discharge and permittees must maintain compliance with the limits. (See sec. 2.6.87, MNG490000). With regard to existing state requirements, DEQ notes that under the VPDES Bypass regulation the term "severe property damage", which is an exception to the prohibition of Bypass, is specifically defined such that it expressly excludes economic loss caused by delays in production. (9VAC25-31-190 M and 25-31-10). In summary, in researching permitting approaches in other states DEQ found that several states offer relief consistent with the provisions in 40 CFR 436 such that effluent limits and/or monitoring requirements do not apply to <u>overflows</u> from facilities designed to meet the 10-year, 24-hour storm event. None of these provisions appear to apply to the deliberate dewatering of a mine pit following a storm event.
(12) Kyanite	***<u>NEW LANGUAGE - VPDES GP 2018: Section I.B.15 — Discharge of Quarry Pit Process Water During Large Storm Events</u>*** Members of the Virginia Transportation Construction Alliance (VTCA) are providing detailed comments on this new condition. KMC supports the comments of the VTCA member companies and incorporates those comments as part of this submission, with one exception.	DEQ is not adopting the large storm dewatering waiver language suggested by VTCA for the reasons discussed above. See response to Comment 11.

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	Specifically, KMC requests that Part I.B.15 be revised consistent with the VTCA comments, except for clarifying language added to the last sentence. We request that this condition be revised as follows (note that we have placed in bold and underlined font, the sentence of the VTCA's proposed condition that we request be revised). *"Effluent limitations shall not apply to discharges associated with mine pit dewatering consisting of storm water and infiltrating ground water resulting from a storm equal to or greater than a 10 year, 24-hour storm event that has caused emergency flood conditions within the mine. Effluent limitations shall not apply until the flooding condition can be rectified or as deemed appropriate by the DEQ regional office. The operator must notify the DEQ of such conditions as an Unusual or Extraordinary discharge as described in Part III H of the permit. This discharge event may only occur during emergency operation scenarios where pit access is obstructed due to the severity of the storm. The facility shall provide a time period of expected discharge in order to rectify flooding conditions.* ***These discharges may not cause a contravention of Virginia water quality standards in the receiving waters.****"*	
(13) Kyanite	***VPDES GP 2018 DRAFT Part I.B.10 Discharge Prohibitions*** DEQ has revised Part I.B.10 of the permit to include separate discharge prohibitions in Conditions I.B.10.a, b, and c. For example, Condition I.B.10.b now reads, in part, as follows: "There shall be no: b. Solids deposition to surface water as a result of industrial activity...." For clarity, KMC requests that Conditions I.B.10.a, b, & c be revised to clarify that these prohibitions apply to floating solids, visible foam, solids deposition, and oil sheens downstream of the facility's outfall(s). Proposed language is provided as follows (proposed changes underlined for emphasis): "There shall be no: a. Discharge of floating solids or visible foam downstream of the outfall in other than trace amounts from process water discharges; b. Solids deposition to surface water downstream of the outfall as a result of industrial activity; or c. Oil Sheen resulting from petroleum products discharged to surface water downstream of the outfall as a result of the industrial activity,"	Under the VPDES program, discharge is normally understood to mean discharge of a pollutant from a point source, with outfalls normally constituting those point sources. (See the definition of "discharge" and "discharge of a pollutant" in 9VAC25-31-10). In Part I.B.10, subsections a and c address discharges and, thus, DEQ does not believe further clarification is necessary. For purposes of clarification consistent with the comment, DEQ has amended subsection b to read as follows: "Solids deposition to surface water as a result of a discharge associated with industrial activity;" (final change underlined).
(14) Kyanite	***VPDES GP 2018 DRAFT Part II.A.2.a – Sampling from Stormwater Management Structures*** Draft Permit Part II.A.2 provides procedures on "when and how to sample" stormwater discharges. DEQ has revised Part II.A.2.a of the permit to read as follows (underlined wording represents revised language): "a. In the case of snowmelt or a discharge from a stormwater management structure ~~(a series of settling lagoons)~~, a representative sample shall be taken at the time the discharge occurs."	Removal of the parenthetical was done to promote consistency with the ISWGP (9VAC25-151). The change is not meant to imply that a series of settling ponds are not a stormwater management structure. The draft and final permit adds a definition of "control measure" that is consistent with 9VAC25-151 and provides that "[c]ontrol measure" means any best management practice or other method (including effluent limitations) used to prevent or reduce the discharge of pollutants to surface waters. 9VAC25-190-10. This definition does not include examples but does provide criteria that owners of

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	The DEQ has removed the parenthetical that previously read "(a series of settling lagoons)." The reason for the removal of this language is unclear. However, by removing this parenthetical language, we are concerned that the DEQ may have inadvertently implied that it does not consider "a series of settling lagoons" to be a stormwater management structure. We have also noted that the term "stormwater management structure" is not defined within the regulation. Therefore, if the DEQ removes the above-referenced parenthetical in Draft Permit Part II.A.2.a, we request that the term "stormwater management structure" be defined within the rule and include examples of stormwater management structures such as lagoons, settling basins, retention ponds, etc.	regulated facilities can use to determine their status and corresponding permit requirements.
VTCA (Public Hearing comment not addressed elsewhere)	DEQ and VTCA could have addressed comments through negotiations as part of additional TAC meetings but we are confident comments can and will be addressed.	DEQ respects and values the dialogue achieved within the TAC process and acknowledges that, in this instance, the general permit development process proceeded quickly. This resulted from DEQ's need to reissue this general permit in a timely manner while satisfying all procedural requirements. DEQ did not want to have to administratively extend this general permit. If a general permit is not reissued in a timely manner and must be administratively extended, no new facilities can obtain coverage under that general permit. A TAC meeting was held on 8/2/2018. DEQ proposed the NMMM general permit regulation at the 9/20/18 Board meeting. A public hearing was held on 11/27/2018, and the public comment period extended from 10/29/2018-12/28-2018. Eleven interested parties submitted comments regarding the draft general permit. In response to industry concerns, DEQ held a call with industry representatives on 1/31/19 to discuss the remaining steps in the regulatory process. This document reflects DEQ's consideration and response to those comments. In several instances, the draft regulation has been altered in response to comments.

All changes made in this regulatory action

Please detail all changes that are being made and the consequences of the changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC25-190-10. Definitions.		The definitions of "colocated facilities" and "Industrial activity" include the applicable Standard Industrial Classification (SIC) codes.	Maintained the SIC codes, however, since SICs are no longer maintained by OMB we added the North American Industry Classification System (NAICS) codes that correspond to each SIC code to these two definitions.
9VAC25-190-10. Definitions.		NA	Added a definition of "control measure," since U.S. EPA 2015 MSGP and the VPDES ISWGP are moving from the term BMP to control measure.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC25-190-10. Definitions.		NA	Added a definition of "minimize," since the term is used in this general permit and is defined in similar VPDES general permits (e.g., industrial stormwater, concrete).
9VAC25-190-10. Definitions.		NA	Added a definition of "NAICS" (North American Industry Classification System), since SIC code is defined and NAICS codes are being added.
9VAC25-190-10. Definitions.		Definitions of "significant spills" and "twenty-five year, 24-hour storm event."	Made non-substantive editorial changes.
9VAC25-190-10. Definitions.		NA	Added a definition of "Virginia Environmental Excellence Program" (VEEP) since a conditional exception based on VEEP participation is being added to the general permit.
9VAC25-190-10. Definitions.		Definition of vehicle or equipment degreasing.	Removed this definition based on removal of TPH monitoring requirement.
9VAC25-190-10. Definitions.		NA	For clarification and in response to comment, added a definition of "temporarily inactive sites"
9VAC25-190-10. Definitions.		Description of "inactive mining operations" within the definition of "Industrial activity."	Made the existing description of "inactive mining operations" within the definition of "Industrial activity" into a stand-alone definition for clarification and in response to comment.
9VAC25-190-15. Applicability of incorporated references based on the dates that they became effective.		This section updates all Title 40 Code of Federal Regulations (CFR) within the document to be those published as of July 1, 2013. This is a recommendation from the DEQ Office of Policy so dates do not need to be added for each CFR reference.	Changed the date to July 1, 2018, which will be the latest EPA update prior to issuance of the final permit.
9VAC25-190-20. Purpose; delegation of authority; effective date of permit.		Purpose to regulate wastewater from nonmetallic mines.	Revised purpose to regulate wastewater and stormwater discharges to surface waters from nonmetallic mines.
9VAC25-190-20 and 70.		Effective date from July 1, 2014 to expiration date of June 30, 2019.	Effective date from July 1, 2019 to expiration date of June 30, 2024.
9VAC25-190-20. Purpose; delegation of authority; effective date of permit.		Describes applicability of the general permit including SIC codes.	Added NAICS codes that correspond to each SIC code.
9VAC25-190-20. Purpose; delegation of authority; effective date of permit.		Indicates the permit was last effective on July 1, 2014 and expires on June 30, 2019.	Revised the effective and expiration date of the permit to be July 1, 2019 and June 30, 2024, respectively, to reflect reissuance of the permit regulation and the five-year term specified for VPDES permits. These revised dates are also included in 9VAC25-190-20 and 70.
9VAC25-190-50. Authorization to discharge.		Owner must have a DMME permit to obtain authorization under this general permit.	Owner must have and maintain DMME permit during this permit term.
9VAC25-190-50. Authorization to discharge.		Compliance with permit constitutes compliance with the CWA and State Water Control Law.	Added specific sections of CWA, consistent with other state general permits.
9VAC25-190-50.		Continuation of permit coverage requires submittal of complete	Removed the specific date and provide that a complete registration statement must be

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Authorization to discharge.		registration statement before July 1, 2014.	submitted at least 60 days prior to permit expiration or as specified by the Board.
9VAC25-190-50. Authorization to discharge.		Alternatives for addressing owner covered under expiring or expired permit who has violated permit.	Made non-substantive edits to remove reference to specific years.
9VAC25-190-60.Registration Statement.		Requirement that new facilities submit registration statement 45 days prior to commencement of the discharge. Requirement that existing facilities covered under an individual permit and seeking general coverage submit a registration statement 210 days prior to expiration of the individual permit, and those under the general permit that became effective July 1, 2009 submit a registration before on or before April 1, 2014.	Changed 45 days to 60 days to be consistent with the industrial stormwater general permit, and allowed for a later date established by the Board. For existing facilities covered by an individual permit and seeking general permit coverage, changed registration submittal from 210 to 240 days prior to expiration of the individual permit. For existing facilities covered under the expiring general permit, removed the specific permit effective date (July 1, 2009) and provide that a complete registration statement must be submitted at least 60 days prior to permit expiration or as specified by the Board.
9VAC25-190-60. Registration Statement.		Late registration statement will be accepted after June 30, 2014, but authorization will not be retroactive. Existing covered facilities that submit a registration after April 1, 2014 but before July 1, 2014 are authorized to discharge.	Removed the June 30, 2014 date and replaced with after the expiration date of this permit. Removed the sentence pertaining to submission of registration after April 1, 2014.
9VAC25-190-60. Registration Statement.		Include with the registration statement the latitude and longitude of the facility.	Removed the facility latitude and longitude requirement (retain for outfalls). For consistency with other general permits.
9VAC25-190-60. Registration Statement.		Include on registration statement a list of chemicals added to water that could be discharged.	Include on registration statement a list of chemicals added to water that could be discharged, including Safety Data Sheets, the maximum proposed dosing rates, and a demonstration that application or use will not result in aquatic toxicity, to protect water quality.
9VAC25-190-60. Registration Statement.		If a facility will discharge to an MS4 it must notify the MS4 owner within 30 days of coverage and copy DEQ.	Require notification of the MS4 at the time of registration and include the notification with the registration statement.
9VAC25-190-60. Registration Statement.		Registration statement must include monitoring data to determine compliance with Chickahominy special water quality standards.	Removed the data requirement, since the Chickahominy special standard is being removed from the general permit since it has been revised and is only applicable to treatment of organic nutrient discharges.
9VAC25-190-60. Registration Statement.	C.18	NA	Added a requirement that applicants must submit their State Corporation Commission entity identification number if the facility is required to obtain an entity identification number by law. This ensures the correct entity is permitted and the permittee is authorized to conduct business in the state.
9VAC25-190-60. Registration Statement.		Registration statement may be delivered to the department by either postal or electronic mail.	Changed “may” to “shall” to clarify that submittal is mandatory.
9VAC25-190-70. General Permit.		Owners covered under the general permit must comply with the general permit and be subject to all the requirements of 9VAC25-31.	Changed 9VAC25-31 to 9VAC25-31-190, which is all of the general permit regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC25-190-70. General Permit.		The authorized discharge must be in accordance with the permit coverage page, Part I, Part II and Part III of the general permit.	Added that the discharge must also be in accordance with the information submitted with the registration statement. This ensures the authorization is further conditioned on such information.
9VAC25-190-70. General Permit.		Monitoring is required for TPH for process water outfalls from vehicle or equipment degreasing for diesel range organics.	Removing TPH monitoring for process water outfalls from vehicle or equipment degreasing. Data levels predominantly below detection. Removed associated footnote 3.
9VAC25-190-70. General Permit.		Part I.A.1, footnote 1 specifies quarterly DMR submittals dates.	For clarity, added language describing the quarterly periods.
9VAC25-190-70. General Permit.		I.A.2 specifies stormwater only monitoring.	Moved the TSS evaluation instructions from special conditions (IB) to footnote 3. Added I.A.2.b, which relocates visual monitoring requirement (with associated documentation) from routine inspection section, except the reference to substitute sampling was not included in I.A.2.b (permit does not provide for substitute sampling). For clarity, added language describing the quarterly periods
9VAC25-190-70. General Permit.		Requires certain documentation regarding the scope of visual monitoring, including consideration of the "nature of discharge."	Added consideration of the "nature of discharge" and clarified in response to comment that this means whether the discharge is a result of runoff or snowmelt.
9VAC25-190-70. General Permit.		I.B specifies special conditions. Condition 3 specifies that no chemicals shall be added to the discharge other than those listed on the owner's approved registration statement.	Allowed additional chemicals to be discharged if prior approval is granted by the board.
9VAC25-190-70. General Permit.		I.B specifies special conditions. Condition 5 requires notification of the department for discharges of specified toxics.	Minor non-substantive edits for readability/ clarity.
9VAC25-190-70. General Permit.		I.B materials handling storage.	Replaced existing text with language from GM14-2003 VPDES guidance document (boilerplate).
9VAC25-190-70. General Permit.		I.B.8 addresses dust suppression.	Added language clarifying that dust suppression shall not occur during a storm that results in an actual discharge.
9VAC25-190-70. General Permit.		I.B.10 addresses prohibitions.	Clarified existing prohibitions by breaking distinct restrictions out as sub-items (list). Clarified in response to comment that the prohibition on solids deposition to surface water applies to discharges associated with industrial activity.
9VAC25-190-70. General Permit.		I.B 12 addresses the evaluation value for stormwater only TSS levels.	Specified that if a facility exceeds the evaluation value the permittee must conduct an inspection within 5 days of becoming aware of the exceedance, and correct any deficiency with 60 days of identification. Moved this from special conditions (I B) to I A 2 a footnote 3.
9VAC25-190-70. General Permit.		I.B.14 requires certain discharges to meet special water quality standards in 9VAC25-260-310 m.	Deleted requirement to meet special Chickahominy water quality standard since the standard has been revised to only apply to wastewater treatment facilities treating an organic nutrient source.
9VAC25-190-70. General Permit.	I.B.16	NA	Added a new provision that requires the use of BMPs to ensure that contaminants do not enter surface waters as a result of blasting. One

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			regional office identified a concern with ammonia associated with explosives.
9VAC25-190-70. General Permit.		I.B.19 Notice of termination. In item b(4)(b) the closure information requirement refers to an O&M Manual, but this general permit does not require an O&M Manual.	Removed reference to the O&M Manual.
9VAC25-190-70. General Permit.		I.B.19.d requires submittal of termination to the department.	Revised to require submittal to the DEQ regional office serving the location of the discharge.
9VAC25-190-70. General Permit.		II. Stormwater Management, B addresses representative discharges (i.e., allows for the monitoring of one stormwater discharge that is representative of others).	Revised to address representative outfalls, consider the frequency of discharges, document representative outfalls in the SWPPP, clarify that representative outfall monitoring applies to benchmark and quarterly visual monitoring, and specify the information that must be included in the SWPPP. Reworded slightly to be similar to the VPDES Industrial Stormwater General Permit.
9VAC25-190-70. General Permit.		II.C Stormwater sampling waivers allowed when there is no measureable storm event during sampling period.	Narrowed this so it is only applicable to quarterly visual stormwater monitoring. The Department maintains that annual stormwater monitoring does not need a waiver based on the lack of a storm event over a one-year period.
9VAC25-190-70. General Permit.		II.E Existing facilities must update and implement revisions to their SWPPP within 90 days of the board granting permit coverage.	Changed 90 days to 60 days to be consistent with other SWPPP revision/ update provisions in this and other related general permits.
9VAC25-190-70. General Permit.		II.F Permittees must make SWPPP, annual site compliance inspection or other information available to the department upon request.	Changed annual site compliance inspection to routine (i.e., quarterly) inspection documentation, since annual site compliance inspection is being merged into the routine inspection consistent with U.S. EPA's MSGP.
9VAC25-190-70. General Permit.		II.G Maintaining updated SWPPP. Requires SWPPP update within 30 days of determining need to update.	Removed annual compliance evaluation as a reason to update SWPPP since annual evaluation is being merged into routine inspection. Changes 30 days to 60 days to improve consistency regarding making changes to SWPPP.
9VAC25-190-70. General Permit.		II.H Site map must identify the locations of stormwater conveyances, the direction of flow, and the types of pollutants present in stormwater discharges associated with industrial activity.	Removed the limitation to discharges associated with industrial activity "with the potential for containing significant amounts of pollutants." To improve clarity and make consistent with ISWGP.
9VAC25-190-70. General Permit.		II.H.3 BMPs must be implemented to prevent or control pollutants discharged.	Changed "BMPs" to "control measures" for consistency with ISWGP and U.S. EPA MSGP general permit.
9VAC25-190-70. General Permit.		II.H.3.a Good housekeeping requires the clean and orderly maintenance of areas that may contribute pollutants to stormwater discharges.	Added "the permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants in stormwater. The permittee shall sweep or vacuum paved surfaces of the site that are exposed to stormwater at regular intervals or use other equivalent measures, to minimize the potential discharge of these materials in stormwater. Indicate in the SWPPP the frequency of sweeping, vacuuming, or other equivalent measures." This language is for consistency with the ISWGP and U.S. EPA MSGP.

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9VAC25-190-70. General Permit.		II.H.3.d Routine facility inspections are required at least quarterly.	Added "such inspections must include all areas where industrial materials or activities are exposed to stormwater as identified in Part II H 2 b (inventory exposed materials)" as part of merging annual compliance inspection. Moved quarterly visual inspection and documentation to limits and monitoring section to group like requirements.
9VAC25-190-70. General Permit.		II.H.3.d.4 requires tracking or follow-up procedures to ensure appropriate actions taken in response to inspections.	Clarified that such actions must include updating pollution sources, updating pollution prevention measures and controls, and updating the SWPPP as appropriate based on information developed during the inspections.
9VAC25-190-70. General Permit.	II.H.3.d.(5)	NA	Added "the requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status." This is consistent with the ISWGP. The VEEP program requires a fully implemented EMS, pollution prevention program, and demonstrated environmental compliance.
9VAC25-190-70. General Permit.		II.H.3 Stormwater controls. Requires periodic dates in SWPPP for training.	Added that employee training shall be conducted at least annually at active mining and temporarily inactive sites, consistent with ISWGP and staff input. Training must be documented in SWPPP. Clarified in response to comment that training is required at temporarily inactive sites only if staffed.
9VAC25-190-70. General Permit.	II.I	NA	Added a list of authorized non-stormwater discharges consistent with the ISWGP. Revised the entry addressing pavement wash waters in response to comment to specify that pavement wash waters shall be managed in a manner to avoid instream impacts.
9VAC25-190-70. General Permit.		II.H.4 Comprehensive site compliance evaluation required requires an annual compliance evaluation.	Deleted consistent with ISWGP and U.S. EPA MSGP. Portions not already addressed under routine inspections have been added to that section.
9VAC25-190-70. General Permit.		III. Standard Conditions includes conditions applicable to all VPDES permits.	Non-substantive edits to make permit language consistent with general permit regulations and process and promote consistency across general permits.