Virginia Regulatory Town Hall

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Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-151
Regulation title	General VPDES Permit For Discharges Of Storm Water Associated With Industrial Activity
Action title	Amend Existing Regulation
Final agency action date	April 27, 2009
Document preparation date	March 23, 2009

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation will reissue the existing general permit for industrial activity storm water discharges (VAR05) that will expire on June 30, 2009. The proposed permit was based generally on EPA's draft 2006 Multi-Sector General Permit (MSGP). Changes have been made based upon EPA's final 2008 MSGP, and comments received from the general public, EPA, and Department staff. The substantive changes between the proposed and final regulation can be found in Section 10, 50, 60, 70 and are as follows:

1. 9 VAC 25-151-10 (Definitions).

Added definitions for "existing discharger", "impaired water", and "total maximum daily load", and restored the definitions for "large and medium MS4" and "small MS4".

2. 9 VAC 25-151-50 (Authorization to Discharge - Limitations on Coverage).

Restored the "water quality standards" subsection (3 b) and the TMDL subsection (3 d), in response to public comments.

Added a new subsection (e) for new dischargers (i.e., those without VPDES permit coverage for their storm water discharges) discharging to impaired waters without an established and approved TMDL, and explaining what those facilities had to do to be allowed to be covered under the general permit.

Added a sentence to subsection (f) (Antidegradation Policy - was subsection (e) in the proposed draft) clarifying how the Department will address proposed discharges to high quality waters (Tier II) and exceptional waters (Tier III).

3. 9 VAC 25-151-60 (Registration Statement and SWPPP).

Subsection A. Changed the requirement that existing permittees who intend to continue coverage under this general permit need to review and update their SWPPP to meet any new permit requirements prior to submitting their registration statement. Since the general permit reissuance process is taking longer than anticipated, existing permittees will not have time to update their SWPPP prior to the June 30th deadline to submit registration statements. Changed the requirement to allow existing permittees until October 1st to review and update their SWPPP. New facilities will still have to have their SWPPP developed and implemented prior to submitting their registration statement.

Subsection B (Deadlines for Submitting Registration Statement). Restored subsection 5 which requires additional notification by the applicant for discharges to MS4s.

Subsection C (Registration Statement Contents). Changed the requirement that existing permitted facilities submit the site map from the permit SWPPP (as revised by this issuance) with the registration statement. Since the general permit reissuance process is taking longer than anticipated, existing permittees must now submit the site map as soon as possible, but not later than October 1st, 2009.

Added a new subsection (F) stating that the Department will post all registration statements received to the agency's public web site for 30 days prior to the Department granting coverage under the general permit.

4. 9 VAC 25-151-70 (General Permit).

<u>Part I A - Effluent Limitations, Monitoring Requirements and Special Conditions.</u>

- Part I A 1 c (Compliance Monitoring For Discharges Subject To Numerical Effluent Limitations or Discharges to Impaired Waters).

  Added subsection (d) to section I A 1 c (3) (Facilities Discharging to Impaired Waters With an Established and Approved TMDL) that allows facilities to discontinue the TMDL monitoring after the first four monitoring periods (subject to Department approval) if the pollutant subject to the TMDL is not detected in any of the samples.

  Added subsection (4) (Facilities Discharging to Impaired Waters Without an Established and Approved TMDL) to section I A 1 c that outlines the monitoring requirements for facilities discharging to these waters. Facilities must monitor once during the monitoring period (essentially annually) for all the pollutants that are causing the impairment. Facilities may be waived from further monitoring if the pollutant is not present in their discharge, or the presence is due solely to natural background conditions. Monitoring must be submitted annually on a DMR to the Department.

- Part I A 4 (Reporting Monitoring Results).

  Changed the monitoring due dates from January 30th or July 30th to January 10th or July 10th to be consistent with the Agency's standard requirement.

  Restored subsection (b) related to additional reporting for facilities that discharge through an MS4.

- Part I A 5 (Corrective Actions).

  Added a sentence to Part I A 5 a (1) (Data Exceeding Benchmark Concentration Values) that allows a facility extra time if construction is necessary to implement BMPs that are added in response to the required SWPPP evaluation. Also added this provision into the Part I A 5 b (3) (Corrective Actions) subsection.

Added subsection Part I A 5 a (2) that allows a facility to forgo corrective action for benchmark exceedances where the exceedance is due to natural background conditions.

Part I B - Special Conditions

- Part I B 6 (Salt storage piles).

  Deleted the 24-hr 25-year storm event requirement for sizing the basin required to contain salt contaminated runoff, and added that the facility may also use above ground or below ground storage tanks to contain the waste, or may dispose of the runoff through a sanitary sewer.

- Part I B 8 (Water Quality Protection).

  Added several sentences from EPA's final 2008 Multi-Sector General Permit (MSGP) requiring the permittee to control discharges as necessary to meet applicable water quality standards, and indicating that it is expected that compliance with the conditions of this permit will control discharges as necessary to meet applicable water quality standards.

- Part I B 10 (Antidegradation Requirements for New or Increased Discharges to High Quality Waters).

  Added this special condition to discuss how new or expanded discharges from a facility may be subject to additional SWPPP control measures, or may require that the facility apply for an individual permit in order to meet the applicable antidegradation requirements.

Part II - Conditions Applicable to All VPDES Permits

- Part II B 2 (Retention of Records).

  Modified the records retention requirement to require that records be kept for three years following the date that coverage under this permit expires or is terminated, to be consistent with EPA's final 2008 MSGP.

Part III - Storm Water Pollution Prevention Plans (9 VAC 25-151-80)

- Part III A 1 (Deadlines for Plan Preparation and Compliance - Facilities That Were Covered Under the 2004 General Permit).

  Changed the requirement that existing permittees who are continuing coverage under this permit need to review and update their SWPPP to meet any new permit requirements prior to submitting their registration statement. Since the general permit reissuance process is taking longer than anticipated, the existing permittees will not have time to update their SWPPP prior to the June 30th deadline to submit registration statements. Changed the requirement to allow existing permittees until October 1st, 2009 to review and update their SWPPP.

- Part III B 6 (Contents of the Plan - Storm Water Controls).

  Added a title to Part III B 6 b ("Control Measures (Non-numeric Technology-based Effluent Limits)") to be consistent with EPA's final 2008 MSGP.

  Added a requirement to Part III B 6 b (5) (Routine Facility Inspections) that at least once each calendar year the routine facility inspection shall be conducted during a period when a storm discharge is occurring.

- Part III C (Maintenance).

  Changed the documentation requirements for maintenance activities to be consistent with EPA's final 2008 MSGP.

- Part III D (Nonstorm Water Discharges).

  Deleted Part III D 3 that required all non-storm water discharges to be subject to all the provisions of this permit, to be consistent with changes EPA made for their final 2008 MSGP.

- Part III E (Comprehensive Site Compliance Evaluation).

Deleted the requirement that at least one member of the Pollution Prevention Team participate in the comprehensive site compliance evaluation, and added a statement that the personnel conducting the evaluations may be either facility employees or outside constituents hired by the facility.

Changed Part III E 1 h (Certification of Outfall Evaluation for Unauthorized Discharges) from a certification to an annual evaluation. Deleted the Part III E 1 h (2) notification requirement and replaced it with an allowance for the permittee to request approval from the Department to be able to evaluate 20% of their outfalls annually on a rotating basis such that all outfalls are evaluated over the permit term.

Restored Part III E 4 that allows the facility to use the annual site compliance evaluation to serve as one of the facility's routine inspections where the two schedules overlap.

- Part III F (Signature and Plan Review).

  Modified Part III F 1 (Signature/Location) to be consistent with the changes EPA made for their final 2008 MSGP.

Part IV - Sector Specific Permit Requirements

Deleted the additional benchmark monitoring that was added based upon changes EPA was proposing in their draft 2006 MSGP. EPA dropped the additional monitoring for their final 2008 MSGP, so the Department also deleted the additional EPA-based monitoring. However, the benchmark monitoring that was added based on recommendations from the Technical Advisory Committee that assisted the Department with the drafting of this permit was retained (that monitoring is in Sectors N, P, R, S, U and AD).

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 27, 2009, the State Water Control Board adopted the amendment to the General VPDES Permit For Discharges Of Storm Water Associated With Industrial Activity. The Board also asserted that they will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of the regulation.

Family impact

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.

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability.

INDUSTRIAL STORM WATER GP (ISWGP) REGULATION 2009 COMMENTS AND RESPONSES

THE TREATED WOOD COUNCIL (TWC) [Jeffrey T. Miller, President & Executive Director]:

1. <u>Additional Sampling for Phenols and Total Suspended Solids are not required under US EPA Guidelines</u> [9VAC25-151-70.A.(6).b-Benchmark monitoring of discharges associated with specific industrial activity, Table 70-1 and 9VAC25-151-90. Sector A-Timber Products]

a. For Industry Sector A, Industry Sub Sector Wood Preserving Facilities, the proposal adds monitoring of Phenols and Total Suspended Solids to the Benchmark Monitoring Parameters. We understand that the US EPA does not recommend these additional monitoring requirements, and therefore, they should not be adopted into the Virginia regulations.

Response 1a: *EPA originally proposed these parameters as part of their draft 2006 Multi-Sector General Permit (MSGP). EPA removed their proposed additional monitoring requirements for the final 2008 MSGP and will be doing further analysis of the data to determine if the additional monitoring should go in the next reissuance of their permit. We will remove the requirement.*

b. For your information, wood preserving facilities that only use water-borne preservatives and do not use oil-based preservatives, monitoring for Phenols is unnecessary since none of the water-borne preservatives contain any phenolic compounds. At a minimum, Table 70-1 and Table 90-2 should be changed by adding a footnote that phenol monitoring is not required for facilities using only water-borne preservative formulations.

Response 1c: *We are removing the monitoring requirement, so no additional changes are necessary.*

c. Similarly, Table 70-1 and Table 90-2 should be changed by adding a footnote that metals (copper, chromium and arsenic) monitoring is not required for facilities using only oil-based preservatives.

Response 1c: *We will add the footnote.*

2. <u>Benchmark Concentration for Phenols is Extremely Low and Will Require Expensive Analytical Procedures</u> [9VAC25-151-70.A.(6).b-Benchmark monitoring of discharges associated with specific industrial activity, Table 70-1 and 9VAC25-151-90. Sector A-Timber Products]

Table 90-2 indicates that the benchmark concentration is 16 µg/L (parts per billion) for phenols. This is an exceedingly low concentration and will require expensive analytical procedures to reach a detection limit at or below this concentration. Again, TWC recommends that the benchmark monitoring for phenols be dropped (see point A above); however, if the Department of Environmental Quality (DEQ) disagrees, before Virginia should adopt this benchmark concentration, an evaluation of the impact of low concentrations of phenols on water quality should be undertaken by DEQ before requiring such a low action level.

Response 2: *The phenols monitoring was added by EPA in their draft 2006 MSGP. EPA removed the monitoring for the final 2008 MSGP, and we are also dropping that parameter (see*

Response 1a above). The benchmark concentration was based on EPA's proposed benchmark monitoring value, so it will be reevaluated as part of EPA's analysis of their additional monitoring parameters.

3. Procedures Should Be Added to Eliminate Contaminant Concentrations from Naturally-Occurring Sources [9VAC25-151-90, E. Benchmark monitoring and reporting requirements, Table 90-2.]

This table specifies "Pollutants of Concern" and "Benchmark Concentration" applicable to Wood Preserving Facilities (SIC 2411). Please note that the analysis of water samples for the metals arsenic, chromium and copper should be changed to allow for the filtering of storm water samples to remove entrained solids, leaves, sediment, etc. Since soil and other naturally occurring materials have been shown to contain some of these metals, principally arsenic and chromium, using "Total Recoverable Arsenic" or "Total Recoverable Chromium" etc. without the ability of the facility to filter the sample may result in the metals in entrained materials being dissolved into the water as the sample is prepared for analysis. This occurs since acid is used to preserve the water samples. By adding acid to the sample, the entrained solid material will be dissolved, causing the metal (chromium, arsenic, copper, etc) to be dissolved in the water. Therefore, when the sample is analyzed, the reported metal concentration will include both the metal dissolved in the water (if present) and the metal carried along with the entrained material (soil or other naturally occurring materials).

DEQ should eliminate this contribution from entrained material by allowing facilities to filter the sample prior to it being submitted for laboratory analysis. Table 90-2 should be expanded to incorporate the filtration of samples prior to metal analysis, effectively eliminating the contribution of metals contained in naturally occurring material such as soil.

Response 3: *We have no data at this time that shows that this is a problem at any of the facilities in Virginia. If funds allow, we will work with the wood products industry during the permit term through joint DEQ/industry sampling to determine if this provision needs to be included in future reissuances of this permit. For this reissuance, we are not going to add an allowance for facilities to filter samples prior to submitting them to the labs for analysis.*

DOMINION [Pamela F. Faggert, Vice President and Chief Environmental Officer]:

4. Additional TSS benchmark monitoring. Chesterfield Power Station is the only current Dominion facility in Virginia that has a General VPDES Storm Water Permit. The power station is subject to annual benchmark monitoring for iron and quarterly visual monitoring and we understand that this will continue under the new permit but with new annual Discharge Monitoring Report (DMR) requirements. Also, the proposed regulation includes the addition of benchmark monitoring for Total Suspended Solids (TSS) for those facilities that do benchmark monitoring, including Chesterfield Power Station.

As you are aware, EPA recently issued their new Storm Water Multi-Sector General Permit for industrial facilities for coverage in non-delegated states. While EPA originally proposed the addition of TSS benchmark monitoring, the final regulation dropped this requirement until results of a National Research Council (NRC) report on storm water management has been assessed. EPA chose to continue the amount of benchmark monitoring that was required in the

previous federal permit regulation. Dominion understands that the key driver for including TSS monitoring in the state general storm water regulation was the fact that EPA had included it in the federal rule. We therefore believe it is appropriate for Virginia to delete the TSS benchmark monitoring from the draft state regulation until such time as the NRC report can be properly evaluated for any changes to the storm water monitoring program.

Response 4: *EPA removed their additional monitoring requirements for the final 2008 MSGP and will be doing further analysis of the data to determine if the additional monitoring should go in the next reissuance of their permit. We will remove the monitoring we added that was based on EPA's draft 2006 MSGP additional monitoring. However, we are retaining the additional monitoring we added that was based on recommendations from our ISWGP Technical Advisory Committee (TAC).*

GENERAL SHALE BRICK, INC. [Steve Wyse, Environmental Engineer]:

5. Sampling for total recoverable aluminum in Sector E - Clay Product Manufacturers as it affects the brick manufacturing industry. We have always been concerned about the requirement for sampling for total recoverable aluminum in Sector E - Clay Product Manufacturers as it affects the brick manufacturing industry. Brick is manufactured using shale and siltstone that are not necessarily predominately clay materials (the primary source of aluminum in this sector). Analyzing stormwater from brick manufacturing sites for aluminum may not be indicative of stormwater contamination from our manufacturing activity.

Aluminum (Al) is the third most abundant crustal element. Furthermore aqueous aluminum chemistry is complex and care must be taken to avoid Al contamination when collecting stormwater. Sample procedures are certainly not normal activities for plant personnel with requirements for containers to be acid washed and rinsed with ASTM Type II deionized water and/or "pre-preserved" with acid. Since Al is so prevalent in the earth's crust, sample jars can get dusty and potentially contaminated making the sample results exceed the benchmark concentration (0.75 mg/l). This can lead to costly and unnecessary controls and retesting resulting from the new "corrective actions" section with its requirements for exceeding benchmark monitoring concentrations.

Fortunately, the addition to the permit of monitoring for Total Suspended Solids (TSS) provides a much better measure of the effectiveness of the stormwater BMPs used in the brick industry. Stormwater runoff that is contaminated due to the use of shale and siltstone is better identified using TSS since the shale and siltstone can cause suspended solids in stormwater but may not necessarily contain clay (Al) minerals. At the same time, since Al is so predominate and contamination of the samples possible, the Total Recoverable Aluminum results could be, at best, redundant or more likely not representative of the industrial activity at the plants.

Since TSS analysis is easier to sample for, a better indicator of the impact that brick industrial activity has on the stormwater, and a better indicator that our BMPs are effective, the waters of the State can be adequately protected without the analysis of Al. Therefore we recommend that Total Recoverable Aluminum be removed from the Sector E Benchmark Monitoring Requirements for the Brick and Structural Clay Tile Industry, SIC Code 3251.

Response 5: *The monitoring requirements for aluminum are based on EPA's MSGP Sector E requirements, which were developed in the early 1990's based on data collected from industries*

in the sector as part of EPA's "Group Application" process. In Virginia, we do not have any monitoring data from the brick facilities that would indicate that the aluminum monitoring is not necessary or appropriate. The benchmark monitoring that is required to be collected is primarily for the permittees to use to assess whether their BMPs are working as they were intended to reduce the impacts of their storm water runoff to the maximum extent practicable. While the new permit proposes to require the permittee to review the SWPPP and modify it as necessary to address any deficiencies that cause their benchmark monitoring data to exceed a benchmark concentration value, it does not require the permittee to retest the storm water during that monitoring period. We will look at the monitoring data that the brick facilities collect for this permit reissuance, and if the monitoring data indicates that the aluminum monitoring is not needed, we will consider removing the requirement for the next permit reissuance.

DEPARTMENT OF DEFENSE (NAVY) [Christine H. Porter, Director, Regional Environmental Coordination Department]:

6. 9VAC25-151-60.A, Deadline for SWPPP Update and Compliance, and 9VAC25-151-80, Part III.A.1, Deadline for SWPPP Update and Compliance

DEQ is proposing to require owners of facilities that were covered under the 2004 Industrial Stormwater General Permit to review and update their Stormwater Pollution Prevention Plan (SWPPP) to meet all requirements of the new general permit prior to submitting the registration statement. The previous permit allowed the owner to review and update the SWPPP within 60 days of filing the registration statement. This additional time is particularly important for DoD installations and other larger facilities with collocated industrial activities. Since there are fairly significant changes to the general permit, DoD requests that the new general permit also allow the owner 60 days to review and update the SWPPP.

Response 6: *We agree that existing facilities will not have time to update and implement the new SWPPP requirements prior to submitting the Registration Statement. For existing facilities, we are changing the requirement and giving them until October 1st, 2009 to update and implement any revisions to the SWPPP. New facilities will still need to prepare and implement the SWPPP prior to submitting a registration statement.*

7. 9VAC25-151-60.B.1.b, Deadline for Facilities covered by Individual Permit to Submit Registration Statement

DEQ is proposing to amend the regulation to allow facilities that hold individual permits to seek coverage under this general permit if they notify DEQ 180 days prior to expiration of their permit and file a registration statement 30 days prior to permit expiration. DoD is concerned that the 180 day notification requirement could potentially prevent facilities that were previously covered by an individual permit from obtaining coverage under the general permit which would save facility and DEQ resources. If a facility files a timely reapplication for individual permit coverage but later applies for general permit coverage due to changes in circumstances, we request that DEQ clarify that the 180 day notification requirement would not preclude them from being eligible for coverage. Even if the reapplication is not filed 180 days prior to permit expiration, DoD believes that although a facility should be subject to possible enforcement action for the late application, it should not be precluded from obtaining coverage under the general permit.

Response 7: *We agree that the 180 day notification to DEQ prior to the individual permit expiration may be confusing and restrictive. We are removing the "180 days" requirement, but we are keeping the requirement that they apply for the general permit at least 30 days prior to the expiration date of the individual permit.*

8. 9VAC25-151-60.C.8, Inclusion of SWPPP Site Map with Registration Statement

In this section, DEQ is proposing that the facility submit its SWPPP site map with the registration statement. As discussed in a previous comment, it is burdensome for military installations and other large facilities with several collocated industrial activities that are covered by the 2004 general permit to update their SWPPP site maps prior to filing the registration statement. DoD requests that DEQ retain the language in the existing general permit that only requires submission of a topographic map or other map that indicates the location of the facility, all stormwater discharges, and all receiving waters. Alternatively, DEQ could require the SWPPP site map be included with the registration statement for facilities requesting coverage for the first time, but allow facilities covered by the 2004 general permit to submit the SWPPP site map within 60 days.

Response 8: *Existing facilities may not have time to update their site map prior to submitting their Registration Statement to renew their permit coverage. We have changed the requirement to update the SWPPP to allow existing permitted facilities until October 1st to update their plan. We will also change the Site Map submittal requirement to require that the updated map be submitted as soon as practicable, but not later than October 1st, 2009. New facilities must still submit the site map with the registration statement.*

9. 9VAC25-151-70, Part I.A.1.a, Visual Monitoring Flexibility

DoD supports the revision to paragraph (2) that clarifies that the permittee is only responsible to perform visual monitoring of qualifying storm events during daylight hours. DoD also supports the representative outfall provision in paragraph (5) since it allows facilities to perform visual monitoring at representative outfalls and report the results for outfalls that are substantially identical to the representative outfall. DoD recommends that the second to the last sentence of this section be revised to replace "quantitative data" with "observations" since the monitoring is visual rather than analytical.

Response 9: *The change will be made.*

10. 9VAC25-151-70, Part I.A.5, Corrective Actions Deadlines for Structural BMPs when Benchmark Concentrations are Exceeded

This section requires the facility to review and revise the SWPPP 30 days after exceedance of a benchmark concentration value is discovered or 30 days following discovery of an inspection deficiency and implement BMPs before the next storm event if possible but no later than 60 days after the benchmark exceedance or inspection deficiency is discovered. The 60 day deadline is reasonable for nonstructural BMPs but structural BMPs often require a much longer period of time to implement, particularly if design and construction contracts are required. DoD requests that DEQ incorporate language from previous EPA stormwater general permits that allows facilities up to 3 years to implement structural BMPs.

Response 10: *We agree that the permittee should be allowed extra time if construction is necessary to implement additional BMPs. The "Corrective Actions" section has been changed to*

allow up to 3 years to complete the construction. Appropriate nonstructural and/or temporary controls must also be implemented in the affected portions of the facility until construction is completed.

11. 9VAC25-151-70, Part I.B.9, Submission of Updated SWPPP Map for Adding or Deleting Stormwater Outfalls

DoD supports this provision that allows addition or deletion of outfalls without having to file another registration statement.

Response 11: *No changes necessary.*

12. 9VAC25-151-80, Part III.B.2.d, Size of Wetlands Receiving Discharges

In this section, DEQ is proposing to require that the SWPPP include the size and description of wetland sites that may receive discharges from the facility. While it is important to identify stormwater discharges to wetlands since wetlands are considered waters of the state, it will be burdensome for facilities to determine the size of the wetland that receives discharges, particularly if all or part of the wetland is not located on the facility. Since the requirement is burdensome and there is no readily apparent benefit to providing this information, DoD requests that DEQ delete the requirement to provide the size of the wetland or clarify that the size may be an estimate that does not require a formal wetland delineation.

Response 12: *We agree that having the permittee provide the size of wetlands that may receive storm water discharges from the facility is burdensome and serves no useful purpose. EPA removed that requirement from their final 2008 MSGP. We will remove the requirement also.*

13. 9VAC25-151-80, Part III.E, Comprehensive Site Compliance Evaluation Staffing

The existing general permit allows the comprehensive site compliance evaluation (SCE) to be performed by personnel from the facility or outside constituents. DEQ is proposing that at least one member of the pollution prevention team participate in the site compliance evaluation. This provision would prevent facilities from using consultants to perform the SCE and resultant SWPPP update because there is no benefit to hiring a consultant if a facility representative needs to accompany them on the SCE. The ability to use consultants to perform SCEs and update SWPPPs is particularly important to military installations and other large facilities with collocated industrial activities because the SCE and SWPPP update is quite labor intensive for such facilities. Although it is beneficial and preferable for a pollution prevention team member to conduct the SCE or participate, it is not feasible for large facilities. Therefore, DoD requests that DEQ delete the requirement for a pollution prevention team member to participate in the site compliance evaluation, unless it is clarified that participation can mean oversight of a consultant that is performing the SCE.

Response 13: *This was a change EPA made for their 2008 MSGP reissuance. We agree that requiring a pollution prevention team member to participate in the comprehensive site compliance evaluation may not be feasible or reasonable for certain facilities. We will remove the requirement.*

14. 9VAC25-151-80, Part III.E.1.h.(1), Comprehensive Site Compliance Annual Certification of Outfalls for Unauthorized Discharges

The requirement to annually certify that all outfalls have been evaluated for the presence of unauthorized discharges is burdensome for facilities with many stormwater outfalls and particularly for those facilities with tidally influenced outfalls. Since there is no way to observe for dry weather flow at tidally influenced outfalls, the facility would have to examine all drainage structures leading to tidally influenced outfalls on an annual basis. Since observation of all drainage structures is very burdensome and the system generally does not change from year to year, DOD suggests that DEQ either require that the certification be performed when the facility applies for permit coverage (rather than annually), or that it be performed annually for a percentage of the total number of outfalls(e.g., 20% per year).

Response 14: *EPA modified this requirement for their final 2008 MSGP by removing the certification requirement and requiring only documentation in the SWPPP. We agree that evaluating all the outfalls every year would be burdensome for large facilities. We have modified the requirement by changing the certification to an annual outfall evaluation, and by allowing the facility to evaluate 20% of the outfalls each year on a rotating basis if they request and receive written permission from the Department.*

15. 9VAC25-151-80, Part III.E.4, Comprehensive Site Compliance Substitution for Routine Inspection

DEQ is proposing to delete this provision that allows facilities to use their annual site compliance evaluation as one of its routine inspections. Since the annual site compliance evaluation basically includes all the provisions of a routine inspection as well as some additional requirements, there does not appear to be a valid reason for requiring routine inspections during the same timeframe. Therefore, DoD requests that this section of the existing general permit be retained.

Response 15: *We agree and will restore this provision.*

16. 9VAC25-151-80, Part III.F.2, Signature Authority for SWPPP Revisions

DEQ is proposing that both the initial plan and all revisions be signed by a person of authority as defined in Part II.K. Although it is reasonable for the initial plan to be signed by a person of authority as defined in Part II.K, DoD requests that a qualified person working for the initial signatory be authorized to sign revisions to the plan.

Response 16: *The language in the proposed regulation was based on EPA's draft 2006 MSGP language. EPA changed the language for the final 2008 MSGP. We have changed the section to reflect the changes EPA made.*

17. 9VAC25-151-230.C.3.d, Sector P Vehicle and Equipment Washwater Requirements, and 9VAC25-151-260.C.2.f, Sector S Vehicle and Equipment Washwater Requirement

This section requires facilities that discharge vehicle and equipment washwaters to the sanitary sewer system to notify the operator of the sewer system and associated treatment plant and attach a copy of the notification letter in the SWPPP. If the facility has an industrial user permit under the pretreatment program, the permit shall be referenced in the plan and if washwaters are disposed of offsite, details of disposal frequency, volume, and destination shall be included in the plan. These requirements are burdensome and do not seem relevant to this permit since the purpose of the permit is to regulate discharges of stormwater to state waters. The permit language that prohibits the discharge of vehicle and equipment washwaters under this permit

should be sufficient. Requirements to notify POTWs and describe the disposition of these discharges in the SWPPP should be removed. Some military installations and large industrial facilities operate their own sanitary sewer systems and treatment plants. Therefore, if DEQ chooses to retain these washwater discharge notification provisions, DoD requests that they be modified to indicate that notification of the operator of the sanitary sewer system is required except when the sanitary sewer system and associated plant are operated by the facility covered by the stormwater general permit.

Response 17: *We agree that the requirement is burdensome and not relevant to this permit. We are removing the requirement.*

JAMES RIVER ASSOCIATION (JRA), THE SHENANDOAH RIVERKEEPER, AND THE POTOMAC RIVERKEEPER [David W. Sligh, Upper James Riverkeeper, James River Association]:

The proposed regulatory amendments and General Permit addressed in these comments include some important and valuable measures to help protect and restore Virginia streams and other water bodies. We recognize that the Department of Environmental Quality (DEQ) staff has devoted significant work to the review of this program and the effort to improve it. In the following pages we will note a number of provisions proposed by the staff which we strongly endorse.

However, we assert that there are serious deficiencies and problems in the proposed regulation and General Permit that cause these proposals to violate mandates, under both State and Federal law, which the State of Virginia is required to meet. Therefore, we request that the Virginia State Water Control Board reject these regulatory proposals and require that the General Permit program for regulating discharges of storm water associated with industrial activities be improved to better protect citizens and the environment and conform with all legal requirements.

We recognize that General discharge permits, which cover a class of facilities or activities with similar characteristics, are used by both EPA and States to more efficiently regulate the large numbers of point source pollution discharges that must be controlled. Where less individualized administrative reviews and procedures, such as those embodied by these General Permits, adequately protect citizens and the environment and meet all legal requirements, we endorse their use. However, it must be acknowledged that each water body to be affected by a discharge has unique conditions. Neither the Clean Water Act nor Virginia laws allow the State to provide less environmental protection under General Permits than is provided by individual permits, nor do these laws allow regulators to weaken the public's rights to be informed and active in the permitting and enforcement processes. We believe that, in its current form, the amended regulation would do both.

18. Limitations on Coverage

a. The amendment would remove two clauses from the current regulation, at 9VAC25-151-50.B.3.b and 9VAC25-151-50.B.3.d. These sections withhold authorization for coverage under the General Permit for, respectively, discharges the DEQ Director believes will or may cause or contribute to violation of Water Quality Standards (WQS) and discharges to waters with established TMDLs, where the Stormwater Pollution Prevention Plan (SWPPP) does not properly reflect the allocation scheme to meet the TMDL.

We assert that these two clauses should be retained in the regulation. The State is already obligated, by statute, to assure that each discharge allowed under either a general or individual permit will uphold both the Water Quality Standards and TMDL allocations. Still, we believe it is appropriate and desirable to retain these two clauses in this regulation.

The fact sheet or statement of basis that accompanies each individual permit prepared by the DEQ, includes detailed analyses to demonstrate, based upon the specific nature of the receiving stream and of the discharge (both the quality and quantity of each), that WQS and TMDL provisions will be met. Since this type of individualized analysis of stream and effluent conditions is not completed for each discharge covered under the General Permit, these broadly worded exclusions are especially important. If the agency staff, the permit applicant, or a third party possesses evidence that raises serious questions about a discharge's potential to violate WQS or TMDL provisions, then the applicant should be required to apply for an individual permit and the staff should perform the necessary detailed analyses to develop appropriately protective effluent limitations.

Response 18a: *We agree with the comment. The sections will both be restored.*

b. We also note that the DEQ staff has proposed to retain a similar provision in this section, previously listed as 9VAC25-151-50.B.3.e, to prohibit coverage under the General Permit for any discharge not meeting antidegradation requirements. The antidegradation policy is, in fact, a component that EPA requires states to include in their Water Quality Standards. We absolutely support the proposal to keep this clause in place, but we see no logical reason to treat the other two clauses differently.

Response 18b: *No changes necessary.*

c. One category of discharges that must be excluded from coverage under the General Permit, is those entering impaired waters for which TMDL allocations have not yet been developed and approved. The DEQ may not permit a discharge to any water that would cause or contribute to WQS violations. Therefore, if a receiving water body is impaired and the discharge would contribute any amount of the pollutant(s) responsible for the impairment, then no discharge may be allowed under the General permit or any other.

Response 18c: *The EPA requirements in 40 CFR 122.4(i) state that new dischargers may not be issued a permit if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. We have added a subsection to the regulation in section 9 VAC 25-151-50 B 3 (Limitations on Coverage - Storm Water Discharges Not Authorized by This Permit) similar to the language included by EPA in their final 2009 MSGP, and addressing new dischargers that discharge to impaired waters for which a TMDL has not been established and approved, and what they have to do to be allowed to get coverage under the ISWGP.*

Existing dischargers that discharge to impaired waters for which a TMDL has not been established and approved are required to meet water quality standards in accordance with the permit Special Condition #8. No additional changes are proposed for these dischargers.

19. <u>Registration Statement and Stormwater Pollution Prevention Plan (SWPPP)</u>

a. We support the provision in the regulation, at 9VAC25-151-60.A, requiring that applicants for coverage under the General Permit, "prepare and implement a written SWPPP … prior to submitting the registration statement." It is important that the SWPPP be available to the DEQ

staff and to the public at the time the registration statement is filed. In addition, the requirement in this same section requiring dischargers already covered by the current General Permit to review and revise their SWPPPs as appropriate to conform with the amended regulation is necessary and we support this language.

Response 19a: *The requirement that new applicants for coverage under the General Permit prepare and implement a SWPPP prior to submitting the registration statement is a continuation from the previous permit. Note that the SWPPP is not required to be submitted to the Department with the Registration Statement. A SWPPP is only required to be submitted if requested by the DEQ Regional Staff. Since the general permit reissuance process is running so late, existing permitted facilities will not have adequate time to update and implement the new SWPPP requirements prior to submitting the Registration Statement. Therefore, for existing permitted facilities, we are changing the requirement and giving them until October 1st, 2009 to update and implement any revisions to the SWPPP. New facilities will still need to prepare and implement the SWPPP prior to submitting a registration statement.*

b. We oppose the removal of the condition previously listed at 9VAC25-151-60.B.5, as recommended in the draft regulation. This condition requires that a discharger of industrial stormwater to municipal separate storm sewer system (MS4) submit a copy of the registration statement to the operator of that MS4. We think this notification is appropriate and that it should be retained in the regulation. MS4 operators have the, often difficult, task of tracking polluted discharges into their systems and controlling the quality of the effluent from those systems. This required notification cannot fail to make that effort more efficient and effective.

Response 19b: *We agree that the MS4 should be notified of industrial storm water discharges to its system. The requirement will be restored.*

20. <u>General Permit</u>

a. The opening portion of the draft General Permit contains the following sentence:

> "The authorized discharge shall be in accordance with this cover page, Part I-Effluent Limitations, Monitoring Requirements and Special Conditions, Part II-Conditions Applicable to All VPDES Permits, Part III-Storm Water Pollution Prevention Plan, and Part IV-Sector-Specific Permit Requirements, as set forth herein."

We propose the addition of the words:

> "This discharge shall not cause or contribute to a violation of Water Quality Standards and any such violation of Water Quality Standards will constitute a violation of this permit."

As discussed above in these comments, the DEQ staff will not prepare a detailed analysis to demonstrate how each discharge covered by the General Permit will affect the particular receiving waters. Where such analyses are completed and incorporated into approval documents for individual permits, regulators have sometimes considered it appropriate to include so-called "shield" provisions in those permits, stating that conformance with permit limits would also be deemed compliance with Water Quality Standards. We see no language in the draft regulation reviewed here that states or implies that such a "shield" provision exists under the General Permit, however we favor an affirmative statement such as that proposed above to eliminate any confusion on this issue.

Such a "shield" provision is not justified for dischargers covered by a general permit. Those seeking coverage under the General Permit enjoy reduced administrative burdens and costs and must take on more of the responsibility of ensuring that their particular discharge will meet all WQS. The flexibility given to permit applicants to develop a system of BMPs under their SWPPP also must place responsibility on the permit holder. Further, as demonstrated in Part I.A.5 of the draft General Permit, "The permittee must take corrective action whenever … [t]here is any exceedance of an effluent limitation…, TMDL wasteload allocation, or water quality standard" and follow-up monitoring must show that water quality standards are met. The response to an exceedance of a WQS is the same as those for an effluent limit or a wasteload allocation and, likewise, the exceedance of any of the three levels should be considered a permit violation.

Response 20a: *Part I B 8 of the permit (Special Conditions - Water Quality Protection) deals with compliance with Water Quality Standards. Similar to what EPA included in their final 2008 MSGP, we have added the following wording to the beginning of that subsection: "The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards." We modified the next sentence ("The permittee shall select, install..."), see Response 36b. We then added the following sentence (also similar to EPA's final 2008 MSGP): "The board expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards." We have also made some other changes at the end of that section - see Response 35.*

b. Part II.B.2 of the draft General Permit requires that a permittee retain "all monitoring information … copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage." We believe that the retention period for these documents must be extended to five years and that this change is necessary to meet minimum federal requirements. Further, there is a strong practical reason to maintain these documents throughout the permittee's entire period of coverage under the General Permit, as this information may be important in assessing compliance and pursuing enforcement actions that may be needed. Also, such data would likely be useful and appropriate information to consider upon application for coverage under the next General Permit.

Response 20b: *We agree that the Part II B 2 section needs updating. Based on EPA's final 2008 MSGP language in Section 7.5, we have modified Part II B 2 to require the documents to be kept for three years after permit coverage expires or is terminated.*

21. <u>Monitoring Requirements</u>

The General Permit's monitoring requirements (both visual inspections and stormwater sampling) are insufficient with respect to their frequency and the pollutant parameters and locations to be monitored. The scientific literature demonstrates that the quality of stormwater discharges can be significantly different from one event to the next, based upon the intensity and timing of the storm, differences in weather and site management from one time to another, and other factors. Even, when other factors are similar, there is inherent variability within a population of samples from the same discharge during the same event. Therefore, we consider the "bare minimum" monitoring regimes required in the draft permit to be inadequate to ensure protection of receiving waters.

a. The requirement at Part I.A.1.a, that visual monitoring be conducted only once per quarter is inadequate to obtain a representative sample of the discharges. Because visual sampling requires very little in the way of resources or expense, we recommend that the General Permit require that at least 10 qualifying storm events be visually monitored each year, at each outfall, with the requirement that at least one monitoring event occur in each calendar quarter (unless the permittee documents that no qualifying storm event occurred in any quarter). Of these 10 storm events to be monitored visually, we believe that both individual grab samples and series of samples should be included, with grab samples taken as specified in the draft permit but with series of samples taken during at least four of the 10 sampling events, as follows: the first sample to be taken within the first 30 minutes after the discharge starts to occur, and additional samples of the same quantity to be taken each half-hour thereafter during the first 2 hours of discharge, unless the discharge lasts for a shorter period of time, in which case samples will be taken every 30 minutes for the discharge's duration.

Response 21a: *The quarterly visual examination (QVE) requirement has been in EPA's MSGP since that permit was first developed in 1995. DEQ has mirrored this requirement in each of the industrial storm water general permits that we have issued. EPA developed this requirement as a tool for permittees to use to evaluate the effectiveness of the SWPPP. The visual examination provides a simple, low cost means of assessing the quality of storm water discharge with immediate feedback. When conducting the examination, the facility personnel can relate the results of the examination to potential sources of storm water contamination on the site. If a source can be located, then this information allows the facility operator to immediately conduct a clean-up of the pollutant source, and/or to design a change to the pollution prevention plan to eliminate or minimize the contaminant source from occurring in the future. When contamination is observed, the personnel can evaluate whether or not additional BMPs should be implemented in the SWPPP to address the observed contaminant, and if BMPs have already been implemented, evaluating whether or not these are working correctly or need maintenance. Permittees may also conduct more frequent visual examinations than the minimum quarterly requirement, if they so choose. By doing so, they may improve their ability to ascertain the effectiveness of their plan. EPA believes that permittees should be able to maximize the effectiveness of their storm water pollution prevention efforts through conducting visual examinations which give direct, frequent feedback to the permittee on the quality of the storm water discharge.*

At this time we believe the quarterly visual monitoring requirement is doing what it was designed to do, and that no changes are needed.

b. In addition to the documentation required in the draft permit, we request that photographs of the samples collected for each visual inspection be taken and included with the documentation required in the draft permit. Photographs must be taken of the samples under the same conditions as specified for the visual samples.

Response 21b: *While photographs may be a nice idea (and the permittee is always welcome to include these with the QVE documentation), we do not feel that the added expense and burden this would put on the permittee is justifiable for the end results that would be achieved. Photographs would allow the DEQ inspectors (and anyone else who looks at them) to see what the permittee was looking at when the evaluation was made, but unless the inspector is there when the sample is pulled, there is not a whole lot of utility in just having the picture (there is no*

way to QA/QC the process to ensure a clear and adequate photo, you can't detect odors, you may or may not see a sheen if present, and you can't look more closely if you see something that doesn't look right). We do not propose to make this change.

c. We believe the clause addressing "representative outfalls," at Part I.A.1.a.(5) should be changed. While some outfalls may be proven to be essentially the same in quality, we believe that such an assumption must be based upon data, rather than subjective assumptions. If after at least four sampling events at every outfall in any year the permittee can demonstrate that samples from two or more outfalls are statistically indistinguishable, based not only on the factors cited in the draft permit but also on the actual quality of the samples taken, then subsequent samples during that year may be taken only from one of the discharges of that similar group. In such a case, the permittee must testify in the documentation describing sampling results that the conditions in the areas drained by the various outfalls have not changed significantly since the previous sampling periods.

Response 21c: *In the proposed permit, the determination that a facility's outfalls have substantially identical effluents must be based on similarities of the industrial activities, significant materials, size of drainage areas, and storm water management practices occurring within the drainage areas of the outfalls. This determination must be documented in the SWPPP, and is subject to review and approval of the DEQ inspectors when the facility inspection is conducted. The suggestion outlined above would require that samples be analyzed to determine the quality of the effluent, and then be compared statistically to prove that they were statistically indistinguishable before they would be considered as substantially identical effluents. This suggestion would be costly and burdensome to the facility without adding any real benefit to the visual inspection requirement. We believe the process as currently set up works well for the determination of representative outfalls.*

d. As explained below, we believe that water quality-based effluent limitations will be required for some discharges, based on the need to ensure compliance with the anti-degradation policy, numerical water quality standards, or TMDL allocations. Therefore, our comments here apply to quantitative monitoring done to assess compliance with either technology-based or water quality-based limitations, as addressed in Part I.A.1.c of the draft permit. Of course, in addition to the parameters measured to assess compliance with technology-based limits, parameters addressed in water quality-based limits must also be added to the sampling regime. Further, we suggest that certain parameters be measured from these discharges, even though effluent limits are not set. For example, turbidity, conductivity, temperature, pH, and dissolved oxygen should be standard tests for stormwater discharges and, particularly for all water bodies within the Chesapeake Bay watershed, nitrogen and phosphorous should be measured, because these pollutants are recognized contributors to severe water quality impairments in the Bay.

Response 21d: *If numeric water quality-based effluent limits are necessary for some dischargers, based on the need to ensure compliance with the anti-degradation policy, numerical water quality standards, or TMDL wasteload allocations, then the general permit is not appropriate for those dischargers, and an individual permit will be issued. The numeric effluent limitations in the proposed permit are based solely on EPA's Effluent Limitation Guideline monitoring parameters, and are the same as required by EPA in their MSGP. As far as adding additional parameters to the sampling requirements, we have no basis to require these "standard tests". Also, while nitrogen and phosphorous are recognized contributors to severe water*

quality impairments in the bay, storm water discharges from most industrial facilities have not been identified as a source that needs reductions. Any that have been identified are already permitted under an individual permit containing limits for nitrogen and phosphorous. If any industrial storm water general permit holders are identified in the future as sources needing reductions, they will be handled on a case-by-case basis through an individual permit.

e. As discussed above, we believe the variability in discharge quality is predictably much too great to allow for once per year sampling, as is permitted for most of the period covered by the draft permit. We recommend that quantitative sampling be done at least 3 times per year at each discharge point, with a period of at least 3 months separating any two sample events. Further, we recommend that at least one of these 3 samples per year be a composite sample, while the other two events may be grab samples.

Response 21e: *For the effluent limitation (EL) monitoring, the proposed permit matches EPA's 2008 MSGP requirement of once/year. If the facility exceeds the EL, they have to take corrective action and do follow-up monitoring until they come into compliance again. We believe this is sufficient to ensure compliance with the limitation.*

Benchmark monitoring is used primarily by the permittee to assess the effectiveness of the SWPPP and the BMPs employed on site. If the benchmark monitoring result is above the benchmark monitoring concentration, the proposed permit requires the permittee to review the SWPPP and modify it as necessary to address any deficiencies that caused the exceedance. We believe the current benchmark monitoring requirements are sufficient to achieve what the benchmark monitoring is designed to do. However, since we did not receive benchmark monitoring DMRs from permittees during the previous permit term, we have no idea what the range of monitoring results look like. We will be receiving DMRs from all facilities that require benchmark monitoring for this permit cycle. We will review the submitted monitoring data over the permit term to determine if additional monitoring requirements need to be added for the next reissuance of the permit.

f. We recommend that the words "or estimates" be removed from the condition entitled "storm event data" at Part I.A.2.c. We see no reason why actual rainfall data cannot and should not be provided by the permittee in conjunction with discharge monitoring results, particularly since no guidance is given as to how a valid estimate of rainfall amounts over a storm event would be obtained.

Response 21f: *EPA removed the "estimate" language and made several other changes to the "measurable storm events" requirement for their final 2008 MSGP. We will modify our requirements to match EPA's new requirements.*

g. The requirements for reporting monitoring results, at Part I.A.4, allow too much time to pass between the collection of discharge data and its reporting to make timely enforcement and corrective actions possible, both for DEQ and citizens. In each case, we recommend that monitoring results be submitted to DEQ no later than the 30 days following the date of sampling on the Discharge Monitoring Report (DMR). Further, we believe that all sampling data should be reported to DEQ on this schedule, without the exemptions from reporting contained in the draft permit.

Response 21g: *If monitoring results are below the effluent limitation or TMDL wasteload allocation, then no problem is indicated, no corrective action is necessary, and no follow-up*

monitoring is required. To be consistent with the DEQ reporting protocol, we have changed the due date for these DMRs to January 10th for EL monitoring, and January 10th and July 10th for TMDL monitoring. We have also changed the benchmark monitoring DMR due date to January 10th.

If monitoring results exceed the effluent limitation or TMDL wasteload allocation, then a problem is indicated, corrective action is necessary, and follow-up monitoring is required. We have added a due date for these DMRs as: (1) either January 10th, or 30 days after the results are received by the facility (whichever is earlier) for EL monitoring; and (2) either January 10th or July 10th, or 30 days after the results are received by the facility (whichever is earlier) for TMDL monitoring.

We have modified the permit to require the submittal of the additional monitoring at metal mining facilities (sector G). However, consistent with EPA's final 2008 MSGP, we are not requiring the submittal of quarterly visual monitoring results.

h. We also recommend that the language in the clause formerly styled Part I.A.4.b be retained and continue to require the submittal of discharge monitoring reports to the operator of a MS4 system into which the permittee's stormwater discharges.

Response 21h: *We agree that facilities discharging to MS4s should be required to submit a copy of their DMRs to the MS4 operator. We have reinstated that subsection.*

i. Part I.B.5 of the draft permits prohibits the discharge of "floating solids or visible foam in other than trace amounts." We recognize that this clause has been a standard formulation in NPDES permits but we are also aware that the lack of definition for the term "trace amounts" prevents this condition from being easily or reliably enforced. We recommend some more definable measure of floating solids or visible foam to be prohibited, such as the following: no floating solids or visible foam in discrete groupings of a size greater than one square foot or identifiable in the receiving water body for more than ten feet from the discharge point. We also suggest that wording from Virginia's "General criteria" at 9VAC25-260-20, be incorporated into this permit provision and prohibit the discharge of any substance

> "attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life. Specific substances to be controlled include, but are not limited to: floating debris, oil, scum, and other floating materials."

Response 21i: *The "floating solids or visible foam in other that trace amounts" language is standard language that EPA has been requiring in permits since the early 1970's. EPA has never chosen to define what this means exactly, so both the DEQ and the regulated community have to guess how to interpret this. Until EPA comes up with a definition, or allows us to take the statement out, we will leave it as written.*

We have added a statement at the beginning of the permit Special Condition 8 (Water Quality Protection) that states that the discharge "shall be controlled as necessary to meet applicable Water Quality Standards". Therefore, we do not believe it is not necessary to add wording from the Standards "General Criteria" to this section.

22. <u>Water Quality-Based Effluent Limits</u>

a. The General Permit fails to include water-quality based effluent limitations to supplement the permit's technology based effluent limitations and ensure that discharges of storm water associated with industrial activity will meet all applicable water quality standards. In particular, the General Permit fails to reflect a reasonable potential analysis ("RPA") or to provide for RPAs to be conducted at the time of registration to determine whether water quality-based effluent limits are required due to a reasonable potential that discharges will cause or contribute to violations of applicable water quality standards. See generally 40 CFR 122.44(d) and MSGP §§ 1.1.4.7; 1.1.4.8; 2.2; 5.1.4 and 5.1.5.

It must particularly be noted that such RPAs must be conducted in relation to compliance with numerical water quality standards but also to compliance with the antidegradation policy. Although the draft General Permit prohibits coverage for any discharge failing to meet antidegradation requirements at 9VAC25-151.50.B.3.c, the amended regulation includes no requirement that the registration statement include any analysis by the applicant to ensure such compliance, no monitoring requirements to make such an analysis possible, and no protocol for DEQ staff to follow in completing the required RPA. In short, this permit cannot ensure that a covered discharge will meet the antidegradation policy's requirements.

Response 22a: *The Department has added a requirement into Part I B 8 (Special Conditions - Water Quality Protection) that discharges "shall be controlled as necessary to meet applicable water quality standards". The Department has used the phrase "controlled as necessary to meet applicable water quality standards," rather than the phrase "do not cause or contribute to a violation of water quality standards." This wording was used because the "cause or contribute" phrase derives from EPA's regulation specifying how the permit authority should determine whether there should be a water quality based effluent limitation, 40 CFR 122.4(d)(1)(i) and (ii) (often referred to as the "reasonable potential" determination.) Once the permit authority determines that a water quality-based effluent limitation is warranted (the discharge causes, has the "reasonable potential" to cause, or contributes to non-attainment of applicable water quality standards), then CWA section 301(b)(1)(C) and the implementing regulations at 40 CFR 122.4(d), 122.44(d)(1) and 122.44(d)(1)(vii)(A) require the effluent limitation be included in the permit as necessary to meet applicable water quality standards.*

This permit includes non-numeric water quality-based effluent limits (WQBELs) to control discharges as necessary to meet applicable water quality standards. The provisions of Part I B 8 (Special Conditions - Water Quality Protection) constitute the WQBELs of this permit, and supplement the permit's technology-based effluent limits in Part I A 1 c (1) and (2), and Part IV. The following is a list of the permit's WQBELs: (1) Control the discharge as necessary to meet applicable water quality standards in the receiving waterbody; (2) Comply with any additional, more stringent requirements that are necessary to meet an applicable TMDL wasteload allocation, or to control discharges to impaired waters that do not yet have an approved or established TMDL; and (3) Comply with any additional, more stringent requirements that the Board determines are necessary to comply with applicable antidegradation conditions for new or increased discharges to Tier 2 waters. The Board may require the permittee to implement additional WQBELs on a site-specific basis, or require the permittee to obtain coverage under an individual permit, if information indicates that the facility is causing or contributing to an exceedance of water quality standards, a TMDL wasteload allocation, or is causing downstream pollution (as defined in the Code of Virginia §62.1-44.3).

The Department will determine at the time a facility submits a Registration Statement whether a "reasonable potential" exists to require numeric water quality-based effluent limits based on the need to ensure compliance with the anti-degradation policy, numerical water quality standards, or TMDL wasteload allocations. If the Department determines that numeric water quality-based effluent limits are necessary for a discharger, then the general permit is not appropriate for that discharger, and an individual permit will be issued. We believe that the staff review of the facility's Registration Statement, and the implementation by the permittee of the general permit water quality requirements will ensure that both water quality standards and the antidegradation requirements are met.

b. Because different waterbodies will need different antidegradation requirements, based upon the existing conditions in the receiving waters, there must be provision within the General Permit for variable treatment of discharges. A prerequisite for antidegradation analysis is to determine whether Tier I, II, or III standards apply. Waterbodies designated for Tier III protection are identified at 9VAC25-260-30.c.3 and "No new, additional, or increased discharge of sewage, industrial wastes or other pollution into waters designated in subdivision 3 c … shall be allowed," according to 9VAC25-260-30.b, except where pollution sources and any resulting impairments will be temporary. We assert that no facility proposing to discharge industrial stormwater into Tier III waters should be covered by the General Permit.

Response 22b: *The ISWGP Registration Statement that the applicant submits identifies where the facility is located, their receiving stream, and what types of activities are occurring at the site. The DEQ staff use the registration to determine what antidegradation requirements apply to the waterbody receiving the storm water discharges from the facility. Facilities proposing storm water discharges to Tier III waters are not authorized under this general permit (as per the WQS Antidegradation Policy.)*

c. Tier II antidegradation requirements specify that:

> "Where the quality of the waters exceed water quality standards, that quality shall be maintained and protected unless the board finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located." 9VAC25-260-30.A.2.

According to EPA's *Water Quality Standards Handbook*, all parameters need not be of better quality than the State's ambient criteria for the water to be deemed a "high-quality water." "EPA believes that it is best to apply antidegradation on a parameter-by-parameter basis. Otherwise, there is potential for a large number of waters not to receive antidegradation protection, which is important to attaining the goals of the Clean Water Act to restore and maintain the integrity of the Nation's waters." *Water Quality Standards Handbook*, Section 4.5 Protection of Water Quality in High-Quality Waters - 40 CFR 131.12(a)(2), (updated July 3, 2007). We assert that wherever any aspect of a water body's quality exceeds the minimum level mandated by Water Quality Standards and necessary to support both designated and "existing" uses (as defined at 9VAC25-260-5), then no discharge may be allowed to degrade that quality without the proper finding of social or economic need.

Absent evidence to the contrary, waters should be assumed to exceed minimum quality standards and Tier II protections should be applied. Therefore, unless data indicate that impairment already exists for any measure of water quality, pollutants in excess of concentrations existing in the water may not be exceeded, in discharges regulated by either individual or general permits. Clearly then water body monitoring must be done before any new or increased pollutant discharges may be allowed under the General Permit here under review, these monitoring results must be submitted with the registration statement, and the SWPPP must demonstrate and DEQ must find that Tier II requirements will be satisfied, based upon these data.

Response 22c: *A section has been added to the ISWGP regarding antidegradation requirements for new or increased discharges to high quality waters (Part I B 10 - Special condition #10). The permit requires permittees to notify the Department of new outfalls or increased discharges from the facility. Possible outcomes of this notification and the subsequent evaluation of Tier II status by the Department are that the permittee will be notified that additional control measures and/or other permit conditions may be imposed at the facility to comply with the applicable antidegradation requirements, or the facility may be required to apply for an individual permit. This is consistent with EPA's final 2008 MSGP requirement for Tier II implementation.*

New dischargers are subject to an evaluation of Tier II status by the Department at the time the facility files a Registration Statement. We have added a sentence to the section 9 VAC 25-151-50 B 3 (Authorization to Discharge - Limitations on Coverage) stating that: "If authorization to discharge under this general permit will not comply with the antidegradation requirements, an individual permit may be required to allow a discharge that meets the requirements for high quality waters in 9VAC25-260-30 A 2."

While Tier II status in Virginia may not be to the full parameter by parameter basis, Virginia is more conservative than other states in that we assume a waterbody is Tier II in the absence of information to the contrary. In addition, bacteria, chlorine, and taste and odor criteria or fish consumption advisories are not used to place waters into the Tier I category. Furthermore, if ammonia and D.O. are determined to be better than water quality criteria (Tier II), then those parameters shall remain Tier II level, even if other parameters cause a Tier I determination.

Finally, the implementation of the antidegradation policy is currently under review by the agency, and at the October 2008 State Water Control Board meeting, the Board directed the staff to form an ad hoc advisory group to assist staff on development of new guidance for implementation of the antidegradation policy. Staff will ensure that antidegradation and its applicability to general permits will be discussed in this advisory group.

d. Tier I requirements under the antidegradation policy applies to parameters that already violate Water Quality Standards. As included above, under our comments on Limitations on Coverage, no permit may allow discharges of pollution that will cause or contribute to WQS violations and the General Permit may not cover a discharge unless it is shown to be in conformance with an approved TMDL.

Response 22d: *We have added a new subsection "e" to 9 VAC 25-151-50 B 3 (Authorization to Discharge - Limitations on Coverage) similar to what EPA included in their final 2008 MSGP that discusses coverage for new dischargers into impaired waters without an established or approved TMDL. If coverage is granted, then their discharges must be controlled as necessary to meet applicable water quality standards, in accordance with permit Special Condition #8*

(Water Quality Protection). We have also restored section "d" for dischargers into impaired waters with an established and approved TMDL. If coverage for these facilities is granted, then their discharges must also be controlled as necessary to meet applicable water quality standards, in accordance with permit Special Condition #8 (Water Quality Protection), and their SWPPP must also comply with Special Condition #7 (Discharges to Waters Subject to TMDL WLAs).

e. In all cases discussed above, the registration statement filed by an applicant must show that all Water Quality Standards will be met, and numeric limits must be specified in the SWPPP to ensure WQS compliance wherever technology-based limits are inadequate for this purpose. DEQ must review and verify the appropriateness of these limits, which must be incorporated, by reference, as requirements of the permit. We propose that wording be added to the General Permit at Section II.L as follows:

> "The registration statement and Stormwater Pollution Prevention Plan (SWPPP) submitted for coverage under this permit are hereby incorporated by reference into the permit and are enforceable conditions thereof. Modifications of the SWPPP during the life of the General Permit, required to continue to achieve compliance with this permit, will also be incorporated into the Permit and become enforceable conditions thereof."

Without such a condition, the General Permit cannot provide a "Reasonable Potential" that Water Quality Standards and other applicable requirements (such as TMDL allocations) will be met and will, therefore, violate the Clean Water Act and Virginia law. This incorporation of the registration statement and SWPPP acknowledges the reality that recent federal court decisions have recognized: that the registration or Notice of Intent for a General Permit is "a substantive component of a regulatory regime" and that, in the case of the General Permit for MS4s, the "NOI is a permit application that is, at least in some regards, functionally equivalent to a detailed application for an individualized permit." *Environmental Defense Center v. EPA*, 344 F.3.d 832 (9th Cir. 2003). We would argue that the reasoning for the MS4 General Permit is equally valid for this permit. We also note that in *Environmental Defense Center v. EPA*, the 9th Circuit determined that, in the MS4 context, it is "the NOIs, and not the general permits, that contain the substantive information about how the operator of a small MS4 will reduce discharges to the maximum extent practicable." This assertion is also certainly true of this permit in many respects, especially as it is accompanied by the detailed plans in the SWPPP.

The Second Circuit Court of Appeals, in reviewing the EPA General Permit for Confined Animal Feeding Operations (CAFOs), held that the terms of nutrient management plans required under the Permit were "*themselves* effluent limitations in fact." *Waterkeeper Alliance v.* EPA, 399 F.3.d 486 (2d Cir. 2005). Again, the nutrient management plans in that case are closely analogous to the SWPPPs required under this permit.

Response 22e: *The ISWGP Registration Statement that the applicant submits merely identifies where the facility is located and what types of activities are occurring at the site. The DEQ staff use the registration to determine where the facility is discharging, what antidegradation requirements apply to the facility, if the receiving waters are impaired, if there are threatened or endangered species impacted by the discharge, and the industrial sectors that are applicable to the facility. SWPPPs are not submitted by facilities at the time of the registration, but are maintained on site unless the facility is requested to submit the plan to the Department. SWPPPs are a permit requirement, so they are an enforceable part of the permit already. The permit that*

is sent to the facility includes the "general" permit requirements, and the sector specific requirements determined from the registration statement information. The ISWGP registration process is not the same as the small MS4 GP NOI process. The small MS4 GP NOI requires the applicant to identify the BMPs they propose to use, the measurable goals and who will implement each of the six minimum control measures that EPA laid out in the small MS4 general permit. The ISWGP requires none of this, and is in no way functionally equivalent to a detailed application for an individualized permit. We do not propose to make this change.

23. Clean Water Act and Constitutional Notice and Comment Requirements

a. "Congress identified public participation rights as a critical means of advancing the goals of the Clean Water Act in its primary statement of the Act's approach and philosophy. *See* 33 U.S.C. § 1251(e); *see also Costle v. Pacific Legal Found.*, 445 U.S. 198, 216, 100 S.Ct. 1095, 63 L.Ed.2d 329 (1980) (noting the 'general policy of encouraging public participation is applicable to the administration of the NPDES permit program'") *Environmental Defense Center v. EPA, 344 F.3.d 832 (9th Cir.* 2003).

This General Permit precludes the public from obtaining timely information about applications for coverage (registration statements and SWPPPs) and deprives them of the right to influence the permitting decision through public comment and hearings. We assert that this failure to provide meaningful public involvement before a discharge is covered under the General Permit violates the Clean Water Act.

Recent court decisions have affirmed that the Clean Water Act requires NOIs (or registration statements, as they are called in VA) to be subject to the Clean Water Act's public availability and public hearings requirements. *See Environmental Defense Center v. EPA*, 344 F.3.d 832 (9th Cir. 2003); *Waterkeeper Alliance v. EPA*, 399 F.3.d 486 (2d Cir. 2005). The Virginia DEQ can remedy this situation by providing public notice upon receipt of a complete registration statement and SWPPP, by soliciting and considering public comments, and where appropriate, holding public hearings. EPA and some states post notice of registration on their websites and this method would be a workable solution to enfranchise citizens to play their proper role in regard to this General Permit's application and enforcement.

Response 23a: *We will develop a system that allows us to post the Registration Statements on the DEQ public web site for 30 days for review by interested parties prior to granting permit coverage.*

b. In addition to the statutory requirements under the Clean Water Act, the U.S. Constitution also requires that due process be afforded to parties, before they may be deprived of life, liberty, or property.

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Milliken v. Meyer*, 311 U. S. 457; *Grannis v. Ordean*, 234 U. S. 385; *Priest v. Board of Trustees of Town of Las Vegas*, 232 U. S. 604; *Roller v. Holly*, 176 U. S. 398." Armstrong v. Manzo, 380 U.S. 545 (1965). In Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), the Supreme Court articulated three identifiable factors for assessing the constitutional requirements of due process. These are:

- First, the private interest that will be affected by the official action;

- Second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and
- Finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

The James River Association, the Shenandoah Riverkeeper, and the members of both organizations possess property rights that may be and often have been affected by discharges of polluted storm water from industrial sites. As expressed above, Congress judged that public involvement was an essential component of the Clean Water Act and was necessary for it to meet its vital objective and goals.

EPA and the State of Virginia acknowledge, when issuing individual pollution control permits that public notice and comment is required under CWA and State law. No demonstration has been made that the impact of stormwater discharges allowed under general permits are any less damaging that those for which an individual permit is required. Therefore, there is no technical or practical reason to give potentially affected parties less notice and opportunity to be heard in protecting their interests. Finally, the administrative burdens in providing public notice and the right to be heard need not be at all burdensome. The fact that other states, such as Vermont and Oregon have devised workable systems to provide due process should indicate that Virginia can do likewise.

Response 23b: *See Response 23a above.*

THE VIRGINIA FOREST PRODUCTS ASSOCIATION (VFPA) [J. R. (Randy) Bush, CAE, President]:

24. DEQ Should Continue To Strive To Make The Storm Water General Permit For Industrial Activity as Flexible As Possible in Order to Reduce Costs To Both the Agency and The Industry, Particularly Those Classified as Small Businesses.

Most of the facilities incorporated into Sector A: Timber Products over the past several years have experienced serious economic hardships based on a variety of factors, including the loss of secondary wood processing facilities to other countries, the reduction of exports, and the collapse of the housing market, to name just a few. In fact, the industry in general has been experiencing the worst market conditions in several decades, bordering on "depression" economics. An added factor is that the overwhelming majority of facilities included in Sector A are classified as small businesses … with many of them family businesses as well. Unlike larger corporations, many of these businesses do not have the employee base, either in terms of specialty knowledge or time resources, to efficiently address varying components of the program. With these constraints, the compliance expenses for small businesses are disproportionately costly and burdensome. All of these factors join together to create challenges for small businesses in Sector A: Timber Products. While we realize that these pressures should not exempt these businesses from compliance with the General Permit, at the same time we hope that consideration for the small business aspect and flexibility in addressing their situations can be incorporated into the permit administration and requirements.

Response 24: *We agree that the permit needs to be both protective of the environment and flexible enough in its requirements so that it is not a burden to the regulated community.*

Through our Technical Advisory Committee process, the ISWGP interested stakeholders and DEQ staff have worked to develop a proposed permit that we feel works for both considerations.

25. VFPA Supports the Comments for Sector A: SIC Code 2191 (Wood Preserving) as provided by the Treated Wood Council.

As mentioned previously, VFPA membership covers a diverse range of facilities that will be affected by the proposed amended regulations, specifically wood treating operations as well as those processing other wood products in Sector A: Timber Products. To save review time for DEQ, we agree with and would like to underscore those comments regarding wood treating facilities that have been submitted by the Treated Wood Council (TWC) under separate cover. If you require a copy of their remarks to be incorporated in our comments, please advise and we will be happy to comply.

Response 25: *See Responses 1, 2 and 3 for DEQ's response to the TWC comments.*

26. The Continued Benchmark Monitoring Requirement for Zinc at *Sector A: Timber Products - SIC 2421 – General Sawmills and Planing Mills* is Unnecessary and Should Be Removed.

While the proposed Multi-Sector General Permit revisions retains zinc testing requirements for certain timber processing facilities in Sector A, we do not feel this continued testing is warranted. The initial decision to incorporate this testing parameter by EPA, and its subsequent adoption by Virginia DEQ, was based on an extremely small sampling from EPA's unsuccessful Group Permit development in the early 90's. Not only was this sampling too small to arrive at any valid statistical conclusion for zinc testing, but this particular sampling group was centered in other areas of the country and not reflective of any sampling done in the Commonwealth. We are not aware of any sampling data that has shown zinc to be a problem within the Commonwealth's wood products facilities warranting its continued monitoring. This benchmark monitoring requirement is unnecessary and should no longer be required.

Response 26: *A review by staff of EPA's 1995 MSGP fact sheet and sampling data summary appear to support this comment. We agree and will remove the benchmark sampling for zinc.*

27. TSS Benchmark Monitoring Levels Should Be Increased From 100 mg/L to 150 mg/L.

Although EPA's MSGP maintained the 100 mg/L benchmark monitoring level for TSS for most of Sector A: Timber Products, EPA also felt that additional study was needed before requiring all Sectors to incorporate this requirement. EPA's review stated that many commenters expressed concern about the burden of additional TSS monitoring and questioned its value. Further, comments to EPA regarding the appropriateness of the 100 mg/L target included recommendations for levels up to 5 times greater (588 mg/L). EPA data also identifies that a significant number of test results show the 100 mg/L level is difficult to obtain. As noted, EPA is conducting a study on the effectiveness and levels of TSS monitoring and concluded it is appropriate to wait for the results of this study. Also, since exceeding benchmark values triggers mandatory action, it is imperative that the target level be reasonable for that circumstance. With the additional study being undertaken by EPA regarding the effectiveness of requiring all Sectors to monitor TSS, plus continued comments regarding the most appropriate benchmark level, and the potential costs of compliance for the 100 mg/L level, we feel the TSS level for Sector A: Timber Products should be increased to 150 mg/L. This would still provide effective protection until additional study and a more complete consensus is reached.

Response 27: *The EPA benchmark concentration of 100 mg/L for TSS was originally developed for the 1995 MSGP issuance, and was based upon the median concentration from the National Urban Runoff Program (NURP) data. EPA believed that the median concentration represented a concentration above which water quality concerns may result. A review of the Group Application data by EPA indicated that this concentration should be readily achievable by industry with the implementation of BMPS, many of which are designed for the purpose of controlling TSS.*

As stated in EPA's final 2008 MSGP Fact Sheet, EPA has charged the NRC with conducting a study of the storm water program, with a special focus on benchmark monitoring, its effectiveness, and potential alternative approaches for identifying water quality concerns or verifying the effectiveness of storm water control measures. EPA concluded that it is appropriate to wait for the results of this study before it significantly expands the amount of benchmark monitoring in the MSGP.

EPA also decided to retain the 100 mg/L TSS benchmark level, concluding that the 100 mg/L concentration is a reasonable benchmark. EPA believes that proper selection, design, installation, and implementation of control measures can reduce TSS concentrations in many cases. In other cases, TSS can be reduced by control measures such as bioretention, settling mechanisms, and other types of treatment devices. Most facilities permitted by EPA under their 2000 MSGP have been able to meet the 100 mg/L benchmark.

We are retaining the TSS benchmark concentration value of 100 mg/L for this reissuance.

28. <u>Waivers for Additional Benchmark Monitoring If Two Consecutive Monitoring Periods Have Been Found To Be Below Benchmark Values Should Have More Flexibility.</u>

In the proposed permit, waivers for further benchmark monitoring are available to facilities whose discharges are below benchmark concentration values for samples collected in ***two consecutive monitoring periods***. While we applaud this rational concept, we still recognize that because of the difficulty managing the testing regimens for small businesses and considering the problems associated with utilizing appropriate storm events, we would request that the regulation be modified to allow waivers for additional benchmark monitoring if any **two monitoring periods within the first year of the permit** are below target values.

Response 28: *There are only two monitoring periods in the first year of the permit. The first monitoring period is six months long, the remaining periods are each one year long. The benchmark monitoring periods are as follows:*

(1) July 1, 2009, to December 31, 2009
(2) January 1, 2010, to December 31, 2010
(3) January 1, 2011, to December 31, 2011
(4) January 1, 2012, to December 31, 2012; and
(5) January 1, 2013, to December 31, 2013.

Since we only require the permittee to conduct benchmark sampling and reporting once per monitoring period (essentially once per year), we are only allowing the waiver request if two consecutive periods are below the benchmark concentration. The waiver is not automatically granted, but will be evaluated based upon benchmark monitoring results, favorable compliance history (including inspection results), and no outstanding enforcement actions. The waiver can

also be revoked by the Department for just cause. We feel this is a fair and equitable waiver approach. No changes are proposed by staff.

29. <u>Testing For Effluent Limitation Guidelines from Discharges Resulting From Spray Down Or Intentional Wetting Of Logs At Wet Deck Storage Areas Should Be Required Only During Periods That The Process Is Being Utilized.</u>

The requirement for testing of effluent from discharges resulting from spray down or intentional wetting of logs at wet deck storage areas was initially developed by EPA and is primarily based on facilities based in other areas of the country, outside of Virginia. At these other facilities, spraying may be done over the entire course of the year, thereby driving concerns regarding effluent discharge during all periods. In Virginia, the spraying of log decks is not a prevalent practice, and under no circumstances are we aware of the practice done year around. For the most part, the practice is only done in the summer months to help prevent degrade of logs in excessive summer heat. The practice is also related to the amount of logs in storage. With more logs in inventory, the turn around time of utilization is increased, making degradation protection more necessary. Unfortunately market conditions, and timber supplies, have reduced log inventory to the point where few, if any, continue the practice. To require this test each period is excessive and an unnecessary expense, especially if the practice is not being used each period. We request that the testing be required only during periods that the spraying is actually done.

Response 29: *The permit requires that non-storm water discharges from wet deck storage areas meet pH limits of 6.0 - 9.0 s.u., and there be no discharge of debris. Permittees with these discharges must be in compliance with these limits throughout the duration of permit coverage. If the permittee is intentionally spraying or depositing water (without chemicals - chemicals are not allowed to be applied) on stored logs to deter decay or insect infestation, and there is a discharge from that activity, then the permittee must take a sample of the discharge from that activity once per monitoring period (essentially once per year), and must report that sampling to the Department. The sampling <u>is</u> only required when the spraying is actually done, and only if there is runoff from the spraying. The test is also simple and inexpensive. No changes are proposed by staff.*

30. <u>Effluent Limitation Guidelines for Discharges Resulting From Spray Down Or Intentional Wetting Of Logs At Wet Deck Storage Areas Should Be Allowed The Opportunity For Waivers On Further Testing If Results Are Below Effluent Limitation Guidelines.</u>

As mentioned in the prior paragraph, spraying of logs at wet deck storage areas is neither a prevalent practice nor one that has shown to be a problem in Virginia. We would like to recommend the regulations be modified similar to the waivers for benchmark testing to provide waivers for further effluent testing over the course of the permit if two successive tests show results in compliance with the target values.

Response 30: *EPA does not allow waivers for the required effluent limitation monitoring. These discharges must be monitored once during each monitoring period (essentially once per year). If there is a non-storm water discharge during the monitoring period from the wet deck storage area, then a sample must be taken and analyzed, and a DMR sent to the Department. If there is no discharge during the monitoring period, a DMR must still be submitted with "no discharge" indicated. No changes are proposed by staff.*

VIRGINIA MANUFACTURERS ASSOCIATION (VMA) [Brooks M. Smith, Hunton & Williams]:

31. Benchmark Monitoring Requirements

a. As DEQ acknowledges, the Proposed Permit is "generally modeled after EPA's proposed 2006 Multi-Sector General Permit." However, EPA's final 2008 Multi-Sector General Permit emerged with several significant changes from the draft. Among these changes, EPA dropped a proposed requirement for all permittees to perform benchmark monitoring for Total Suspended Solids ("TSS"). EPA's rationale for this change is set forth in the Agency's Fact Sheet at pp. 91-93. We urge DEQ to follow EPA's rationale and drop the proposed across-the-board TSS benchmark monitoring requirement. (We note that EPA's rationale was based, at least in part, on a National Research Council study that began in July 2006. The final report of this study was released in October 2008. Though broad in scope and challenging in its recommendations, this report does not alter EPA's decision in the final 2008 Multi-Sector General Permit or our recommendation here.)

Response 31a: *EPA removed their additional monitoring requirements (both for TSS and other parameters) for the final 2008 MSGP and will be doing further analysis of the data to determine if the additional monitoring should go in the next reissuance of their permit. We will remove the monitoring we added that was based on EPA's proposed 2006 MSGP additional monitoring. However, we are retaining the additional monitoring we added that was based on recommendations from our Technical Advisory Committee (TAC).*

b. In this same vein of benchmark monitoring, we note that EPA also changed its final permit to require the averaging of benchmark data over the calendar year. In particular, "EPA determined that it would not be appropriate to require corrective action after a single benchmark exceedance because of the high variability in stormwater monitoring results, which could lead to individual exceedances even in cases where the facility's discharge was generally below benchmark values." *See* EPA Fact Sheet at pp. 63 and 105. In addition, EPA included an option for permittees to justify benchmark exceedances based on local natural background concentrations. *See* EPA Fact Sheet at p. 103. We urge DEQ to take the same approach to averaging benchmark data and providing relief from high natural background conditions here.

Response 31b: *EPA allows the averaging of benchmark data after the permittee has collected four quarterly samples (one year of sampling). The proposed ISWGP only requires that one benchmark sample be taken per monitoring period (essentially once per year). Benchmark monitoring is used primarily by the permittee to assess the effectiveness of the SWPPP and the BMPs employed on site. If the benchmark monitoring result is above the benchmark monitoring concentration, the proposed permit requires the permittee to review the SWPPP and modify it as necessary to address any deficiencies that caused the exceedance. Since we only require one benchmark sampling value per monitoring period, it is unclear what or how we would average to achieve the suggestion. Any method we come up with would tend to distort the data and may cause the permittee to do extra corrective actions (when high values are averaged with subsequent low values), or no corrections when high values are averaged with preceding low values. We believe that the current benchmark monitoring requirements are sufficient to achieve what the benchmark monitoring is designed to do.*

We will add the EPA provision that provides relief from high natural background conditions.

32. Additional Monitoring in TMDL Waters

Like EPA, DEQ has proposed additional monitoring requirements for discharges to receiving waters subject to TMDLs. Part I.A.1.c.(3)(a) of the Proposed Permit provides: "Upon written notification from the department, facilities subject to TMDL wasteload allocations will be required to monitor such discharges to evaluate compliance with the TMDL requirements." Under the equivalent EPA permit, however, sampling may be discontinued if the first year of monitoring indicates that the pollutant of concern is not present, unless the TMDL specifically precludes this. We urge DEQ to provide a similar waiver.

Response 32: *A provision similar to that contained in EPA's 2008 MSGP has been added. We are requiring that the permittee sample for the first four monitoring periods (i.e., the first two years of coverage), and that the permittee request approval for the monitoring "waiver" to the department in writing.*

33. Conditions Requiring Corrective Action

Under the Proposed Permit, a permittee must take corrective action whenever there is any exceedance of a water quality standard. *See* Parts I.A.5.b.(2) and I.A.5.c. EPA, by contrast, requires the permittee to initiate corrective action whenever EPA determines that the permittee's control measures are not stringent enough for the discharge to meet applicable water quality standards. *See* EPA Multi-Sector General Permit, Section 3.1. We urge DEQ to follow the letter of EPA's permit, which helps to ensure that only the permitting authority, with full legal authority and technical expertise, will make the required "reasonable potential" determination.

Response 33: *This was a change EPA made for their final 2008 MSGP. We will add similar language.*

34. TMDL Wasteload Allocations

Part I.B.7 of the Proposed Permit requires permittees to incorporate measures and controls into their SWPPPs that are consistent with the assumptions and requirements of TMDL wasteload allocations (1) established by the State Water Control Board and (2) approved by EPA prior to the term of the permit. However, the Board's practice and procedure make clear that the allocation does not apply until a third step is successfully completed: (3) adoption of the wasteload allocations into the Water Quality Management Planning Regulation, 9VAC25-720-10 et seq. This is a vital procedural safeguard, and one that DEQ cannot ignore. The Proposed Permit needs to be revised accordingly.

Response 34: *According to the DEQ TMDL Section, once the TMDL is approved by EPA it is applicable to the permitted facility. The purpose of the Water Quality Management Planning Regulation (9 VAC 25-720) is to list by major river basin the EPA-approved and board-adopted total maximum daily loads (TMDLs) and the stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations contained in the existing water quality management plans (WQMPs). The step to adopt the wasteload allocation into 9 VAC 25-720 is not necessary for the TMDL to be applicable to the permitted facility. We propose to leave the section as written.*

35. Water Quality Protection

Part I.B.8 of the Proposed Permit empowers the Board to take "appropriate enforcement action" if there is evidence indicating that the discharges are causing or contributing to excursions of

water quality standards or TMDL wasteload allocations. A substantially similar provision was challenged by industry in an earlier EPA permit, and that challenge led to a settlement agreement pursuant to which EPA agreed to make changes that would provide permittees with "fair notice" and an opportunity for cure prior to the threat of enforcement. EPA's final 2008 Multi-Sector General Permit preserves this opportunity in Section 2.2.1. This provision empowers EPA to require corrective action, additional control measures or an individual permit (in lieu of coverage under the general permit) upon a determination by EPA that a discharge causes or contributes to an excursion of applicable water quality standards. Notably, the provision does not empower EPA to proceed immediately to enforcement. The Board's authority should be similarly constrained here.

Response 35: *We have modified the subsection to make it similar to the EPA final 2008 MSGP. See also Response 36c.*

VIRGINIA ASSOCIATION OF MUNICIPAL WASTEWATER AGENCIES (VAMWA) [Lisa M. Ochsenhirt, AquaLaw PLC]:

VAMWA has a number of concerns with DEQ's Proposed Regulation. However, the most pressing is the manner in which the proposal would address water quality standards and TMDL wasteload allocations from stormwater discharges. We believe this aspect of the proposal is both contrary to EPA guidance and fails to provide fair notice to POTWs and other industrial stormwater permittees of what is required to achieve compliance. VAMWA asks that DEQ re-write or delete the language as suggested below.

36. <u>The GP Fails to Provide Fair Notice of Required Compliance Measures for Water Quality Standards</u>

Several sections of the proposed Industrial Stormwater General Permit contain problematic language exposing permittees to potential noncompliance and enforcement without adequate notice of the underlying requirement:

• DEQ has added new, extensive text requiring corrective actions for exceeding a TMDL wasteload allocation or water quality standard. (Proposed Regulation at 835, GP, Part I, A.(5)(b)(2))

• Special Condition 7 states that "If a TMDL establishes a specific numeric wasteload allocation that applies to discharges from the facility, the owner shall incorporate that allocation into the facilities SWPPP, perform any required monitoring…and implement measures necessary to meet that allocation." (Id. at 837, GP, Part I, B(7)). This inappropriately seems to focus the numeric wasteload allocation as the compliance requirement when instead in the context of stormwater runoff it should establish a requirement to "implement an iterative, BMP-based program to address the WLA."

• Special Condition 8 states that: "The permittee shall select, install, implement and maintain best management practices (BMPs) at the facility that minimize pollutants in the stormwater discharges as necessary to meet applicable water quality standards.") (Id., GP, Part I, B(8)). This provision should be more clear that the permittee is in compliance so long as it is "implementing an iterative, BMP-based program to address the WLA."

• The SWPPP must also "include any more stringent measures necessary for the storm water discharges to meet applicable water quality standards." (Id. at 842, GP, Part III). This is vague provision that fails to give the permittee fair notice of what steps are required to achieve compliance with the 125-plus standards in effect. Again, the focus should be on implementation of an iterative, BMP-based program to address the WLA identified through TMDLs.

• Most concerning of all: "If there is evidence indicating that the storm water discharges authorized by this permit are causing, have the reasonable potential to cause, or are contributing to an excursion above an applicable water quality standard, an excursion above a TMDL wasteload allocation, or are causing downstream pollution…*the board may take appropriate enforcement action*, may require the permittee to include and implement appropriate controls in the SWPPP to correct the problem, and/or may require the permittee to obtain an individual permit…" (Id. at 837, GP, Part I, B(8), emphasis added) Enforcement is completely inappropriate as a response to the "reasonable potential" determination described in this provision. Under DEQ's standard permitting procedures, the usual and appropriate approach is that DEQ would establish an effluent limitation. In the context of storm-related discharges, it is well-established in federal and state regulation and policy that the appropriate form of effluent limitation is an iterative, BMP-based program. The concept of no notice and immediate enforcement, rather than an opportunity to establish a compliance program, offends the most basic notions of fairness and due process.

Combined, this permit language puts a permittee in an impossible position that will only lead to the accrual of environmental liability exposure for all of the industry sectors covered by this permit. VAMWA urges DEQ to avoid the "trap" that this permit language so unfairly and inappropriately creates and allow its permittees an opportunity understand the basis for DEQ's legal requirements and what action is required to avoid violations of the permit.

VAMWA suggests the following text changes to the regulation:

a. Edit Special Condition 7 to read: "…the owner shall perform any required monitoring and implement BMPs designed to meet that allocation."

Response 36a: *We have edited the condition as suggested.*

b. Edit Special Condition 8 to read: "The permittee shall employee an iterative, BMP-based program to select, install, implement and maintain best management practices designed to minimize pollutants in the stormwater discharge to address an exceedance of any applicable water quality standard or TMDL WLA at the request of the Department;

Response 36b: *We have modified the sentence to read: "The permittee shall employee an iterative, BMP-based program to select, install, implement and maintain best management practices (BMPs) at the facility designed to minimize pollutants in the storm water discharges, and to address an exceedance of any applicable water quality standard, effluent limitation, or TMDL waste load allocation." See also Response 20a.*

c. Edit the language from Special Condition 8 to delete "may take enforcement action…" (The text would read: "If there is evidence indicating that the storm water discharges authorized by this permit are causing, have the reasonable potential to cause, or are contributing to an excursion above an applicable water quality standard, an excursion above a TMDL wasteload allocation, or are causing downstream pollution…the board may require the permittee to include

and implement appropriate controls in the SWPPP to address the problem, and/or may require the permittee to obtain an individual permit…")

Response 36c: *We agree with the comment (see also Response 35). The sentence has been modified to read: "If there is evidence indicating that the storm water discharges authorized by this permit are causing, have the reasonable potential to cause, or are contributing to an excursion above an applicable water quality standard, an excursion above a TMDL wasteload allocation, or are causing downstream pollution (as defined in § 62.1-44.3 of the Code of Virginia), the board may require the permittee to take corrective action in accordance with Part I A 5 b and c, and include and implement appropriate controls in the SWPPP to correct the problem, or may require the permittee to obtain an individual permit in accordance with 9 VAC 25-31-170 B 3."*

d. Our view that the permittee should be afforded fair notice of any exceedance or likely exceedance of a water quality standard or TMDL WLA and an opportunity (without noncompliance and enforcement) to address that standard or WLA through an iterative, BMP-based approach is further supported by EPA guidance. Notably, DEQ's proposed Industrial Stormwater GP is inconsistent with EPA's views on incorporating WLAs into municipal and small construction NPDES permits. In 2002, EPA recognized that:

> **…because storm water discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare cases will it feasible or appropriate to establish numeric limits** for municipal and small construction storm water discharges. The variability in the system and minimal data generally available make it difficult to determine with precision or certainty actual and projected loadings for individual dischargers or groups of dischargers. **Therefore, EPA believes that in these situations, permit limits typically can be expressed as BMPs, and that numeric limits will be used only in rare instances.** (emphasis added) [EPA Memorandum (Wayland and Hanlon) "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs" (Nov. 22, 2002) at 4].

Stating a flat requirement to comply with water quality standard and TMDL WLAs – rather than a requirement to implement a program to address the standard or WLA – is the equivalent of incorporating all numeric water quality standards from the Board's Water Quality Standards Regulation, 9VAC25-260, as numeric limits in the Industrial Stormwater GP. This is wholly inappropriate.

VAMWA would note that, in several key respects, Virginia has gone much farther than EPA in its recent Multi-Sector GP. (United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit For Stormwater Discharges Associated With Industrial Activity (MSGP) (effective date, September 29, 2008)).

Although EPA does require that discharges "must be controlled as necessary to meet applicable water quality standards…," and with corrective action if necessary, EPA assumes compliance with standards so long as a permittee complies with the conditions of the MSGP. (MSGP at 2.2.1) If a TMDL is written that impacts a permittee, EPA does not require the permittee to adopt the WLA in their SWPPP, choosing instead to "…inform you if any additional limits or controls are necessary for your discharge to be consistent with the assumptions of any available

wasteload allocation in the TMDL…" (MSGP at 2.2.2.1) EPA's water quality standard assumption and the language in the TMDL text that clarifies that controls must be "consistent with the assumptions" of a TMDL WLA are preferable to the text proposed by DEQ. (EPA's "consistent with the assumptions" language is derived from federal regulatory requirements. See 40 C.F.R. 122.44(d)(1)(vii)(B)).

For these reasons, DEQ should revise its proposed Industrial Stormwater GP to: (1) delete the requirement that permittees must incorporate WLAs into SWPPPs; (2) revise any language that mandates that stormwater discharges must meet water quality standards and in essence incorporates all 125+ standards into the permit as numeric limits; and (3) delete any language that would subject permittees to enforcement for exceedance of a TMDL WLA or water quality standard. The only fair and reasonable approach is for the Department to notify the discharge of reasonable potential for or an actual exceedance of ambient water quality standards and require the permittee to implement an iterative, BMP-based program to address the matter.

Response 36d: *We have revised Special Condition 7 (Discharges to Waters Subject to TMDL Wasteload Allocations) to remove the requirement that the owner incorporate the TMDL allocation into the facility's SWPPP. We have also revised Special Condition 8 (Water Quality Protection) as described in Response 35 and 36c.*

37. DEQ's Proposed Monitoring Requirements Are Burdensome and Excessive

DEQ's Proposed Regulation mandates that facilities subject to a TMDL WLA monitor and report semiannually for the pollutant of concern if the DEQ notifies the facility that monitoring is required. Specific collection and testing protocols are included. (Proposed Regulation at 833, GP, Part I, A(2))

These extensive monitoring, testing and reporting requirements may be burdensome and excessive. If a permittee has a TMDL WLA, but is not a significant discharger of the pollutant of concern, the permittee should not be required to perform potentially expensive monitoring for the pollutant twice a year for the life of the permit. Better to forgo monitoring that effectively provides little new, useful information and instead direct limited public and private resources to address significant issues.

Moreover, if a pollutant of concern is present at the facility the proposed collection and testing protocol could likely result in an abnormally high and non-representative result. By requiring that a grab sample be taken during a measurable storm event during the first 30 minutes of discharge, permittees will be, in effect, be capturing the "first flush," when levels of the pollutant of concern are likely to be highest. This may not be an appropriate basis of comparison to a TMDL WLA, depending on the particular WQS, the applicable averaging or critical period, other sources of the pollutant in the watershed, etc.

As an alternative, VAMWA suggests that a permittee perform preliminary testing to verify whether the pollutant of concern is actually present in the discharge in excess of the TMDL WLA. If not, DEQ should waive additional monitoring.

Response 37: *EPA added a waiver provision for TMDL monitoring to their final 2008 MSGP. We have added a similar waiver into Part I A 1 c (3). We are requiring that the permittee sample for the first four monitoring periods (i.e., the first two years of coverage), and that if the pollutant of concern is not detected in any of the samples, the permittee may request to the department in writing to be waived from further TMDL monitoring.*

38. DEQ Has Not Given Existing Dischargers Adequate Time To Update SWPPPs and Submit Registrations Statements

The Proposed Regulation would require facility owners, including those covered by the 2004 Industrial Stormwater GP, to "prepare and implement" or revise their SWPPP before submitting a registration statement. Owners of existing facilities covered by the 2004 GP would be required to submit their registration statement "during the 90 day period prior to July 1, 2009." Owners of existing facilities with an expiring individual permit seeking coverage under the GP would be required to submit their registration statement "at least 30 days prior to the expiration of the individual permit, but not before April 2, 2009." All other owners of existing facilities would be required to submit by July 1, 2009. (Proposed Regulation at 825, 9VAC25-151-60)

DEQ's proposed time frame is too compressed. DEQ's Proposed Regulation will likely not be finalized until April or May, 2009, with an effective date of July 1, 2009. Until the regulation is finalized, a permittee will not be in the position to make SWPPP updates with any level of comfort or certainty. This means that DEQ has effectively given existing permittees less than 2 months to get their SWPPPs updated and their registration statements filed.

In contrast, DCR's GP for Small MS4s (effective date July 9, 2008) gave MS4 operators 180 days from designation to submit a registration statement, and until January 9, 2009 to review and provide a schedule for updating its existing MS4 Program Plan. (4VAC50-60-1240) EPA, in its MSGP (effective date September 29, 2008) gave existing dischargers until January 5, 2009 to revise existing SWPPPs and submit a Notice of Intent ("NOI") form. (MSGP at 1.3.1, Table 1-2)

VAMWA also objects to DEQ's requirement that existing dischargers review and update their SWPPPs before submitting a registration statement. Under the terms of their VPDES permits, POTWs are currently given 90 days from the permit effective date to review and update O&M manuals. Why would DEQ insist that SWPPPs (very similar in nature to O&M manuals) be revised before coverage can begin? Existing dischargers have SWPPPs in place now. They should be permitted to continue operations under these existing SWPPPs for up to 90 days after the effective date, or until October 1, 2009.

Response 38: *Since the general permit reissuance process is running so late, we agree that existing permitted facilities will not have adequate time to update and implement the new SWPPP requirements prior to submitting the Registration Statement. For existing facilities, we are changing the requirement and giving them until October 1st, 2009 to update and implement any revisions to the SWPPP. New facilities will still need to prepare and implement the SWPPP prior to submitting a registration statement. We have also changed the Site Map submittal requirement to require that existing permitted facilities submit the updated map as soon as practicable, but not later than October 1st, 2009. New facilities must still submit the site map with the registration statement.*

39. Nonstorm Water Discharges Should Not Be Subject To All of the Requirements of the Permit

On a related topic, authorized nonstorm water discharges should not be subject to the extensive effluent limitations, benchmark testing and monitoring requirements included in the Proposed Regulation. DEQ has authorized a number of nonstorm water discharges presumably because they are either public safety related (for example, discharges from fire fighting) or present a *de minimis* risk of introducing significant pollutants into surface water (for example, discharges

from washing a building without detergent). If this is the case, subjecting these discharges to all of the GP requirements is unnecessary and wasteful. (Proposed Regulation at 848, GP, Part III, D(3)). Notably, EPA's Multi-Sector General Permit only requires monitoring of nonstorm water discharges "when they are commingled with stormwater discharges associated with industrial activity." (MSGP at 6.1.8) VAMWA suggests that DEQ strike the proposed language at (D)(3). In the alternative, VAMWA recommends that DEQ revise the language consistent with the EPA MSGP.

Response 39: *This was from EPA's draft 2006 MSGP. Based on comments they received, EPA changed their requirement. We agree with the comment and will remove Part III D 3.*

40. Permittees Should Be Allowed Reasonable Discretion to Select BMPs

The previous version of the Industrial Stormwater GP allowed a permittee to consider new BMPs "to find the most cost-effective means of permit compliance for the facility." (Proposed Regulation at 845, GP, Part III, B(6)(b)) DEQ has revised this text to read: "The SWPPP shall incorporate, as appropriate, new BMPs or new applications of existing BMPs for the most effective means of achieving water quality protection." (Id.) Permittees should not be required to incorporate BMPs that are the "most effective." As written, "most effective" could be wrongly interpreted as a new, independent compliance standard rather than the target water quality condition itself. VAMWA suggests that the proper standard is that BMPs should be required "in compliance with the terms of this permit," and requests that DEQ re-write the language accordingly.

Response 40: *The language in the draft regulation (as modified by the ISWGP TAC to delete "cost") was from EPA's draft 2006 MSGP, and EPA removed that language completely for their final 2008 MSGP. We agree that the requirement could be wrongly interpreted, and since EPA removed the statement, we have decided to remove the sentence altogether.*

41. DEQ's SWPPP Requirements Should Be Streamlined

DEQ has included a number of edits to Part III of the Proposed Regulation regarding SWPPP requirements. Although these edits seem relatively minor individually, when read together, they significantly increase the regulatory burden on permittees. VAMWA asks that DEQ consider streamlining a number of these suggested requirements. Respectfully, VAMWA suggests that the focus should be on encouraging recalcitrant facilities to register, not on penalizing existing permittees.

a. For example, DEQ would require that a permittee document in the SWPPP "[a]ll maintenance and repair activities and dates…," including "the amount of time for maintenance and repair, and a description of the back-up practices that are in place should a runoff event occur while a BMP is off-line" and "a description of procedures and a regular schedule for preventive maintenance" of BMPs. (Proposed Regulation at 847, GP, Part III, C) VAMWA does not understand the need for this broad requirement. Why is it helpful to know how long a repair takes, particularly when the time needed can vary widely depending on any number of factors? Furthermore, why is it helpful to capture every repair done to a BMP, no matter how minor? This language should be scaled back to require recordkeeping for significant maintenance and repair jobs.

Response 41a: *We have modified the documentation requirement to be consistent with the requirement in EPA's final 2008 MSGP. We have changed the last sentence in the subsection as follows: "Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs,*

including the date(s) of regular maintenance, date(s) of discovery of areas in need of repair or replacement, and for repairs, date(s) that the BMP(s) returned to full function, and the justification for any extended maintenance or repair schedules."

b. DEQ's text would also require mandatory training on all topics for all members of the Pollution Prevention team. (Proposed Regulation at 846, GP, Part III, B(6)(b)(6)) Per the Proposed Regulation, PPT members have "[s]pecific responsibilities." Training should only be necessary, then, on these areas.

Response 41b: *EPA added this requirement for this reissuance of their MSGP (both the draft and the final). We believe it should be up to the permittee to decide if members of the Pollution Prevention Team (PPT) need training, and if so what training. We have decided to remove this requirement from the regulation. Members of the PPT will still receive training per the permit requirements if they work in areas where industrial materials or activities are exposed to storm water, or they are employees who are responsible for implementing activities identified in the SWPPP.*

c. *Lastly, DEQ has* changed the text that required an "evaluation" of BMPs as a part of routine facility inspections to an "assessment" of "how well" the BMPs are operating. (Proposed Regulation at 846, GP, Part III, B(6)(b)(5)) Again, why is it necessary to recharacterize this requirement? What does DEQ intend with regard to an "assessment?" Does DEQ expect a visual assessment or a higher-level assessment (chemical and/or biological)?

Response 41c: *EPA changed that requirement to an "assessment" for their draft 2006 MSGP, but dropped the requirement altogether for the final 2008 MSGP. We have deleted the "assessment" requirement also.*

For the final 2008 MSGP, EPA added a requirement that: "At least once each calendar year, the routine facility inspection must be conducted during a period when a storm water discharge is occurring." We have also added that requirement.

VIRGINIA TRUCKING ASSOCIATION (VTA) [P. Dale Bennett, Executive Vice President]:

42. DEQ should continue to maintain consistency with EPA's Multi-Sector General Permit.

We support the Department's efforts to model the Virginia VPDES permit after EPA's Multi-Sector General Permit. This approach promotes uniformity, which makes compliance less burdensome for our members, especially for those interstate carriers with facilities in multiple states.

Response 42: *We have been generally modeling Virginia's ISWGP after EPA's MSGP since EPA started issuing that permit in 1995. Since the EPA MSGP is the best source for EPA's current thinking on industrial storm water permitting, we will continue to use EPA's MSGP as a model in the future.*

43. DEQ should retain the no-exposure certification provisions as proposed.

We support the Department's decision to retain the no-exposure certification provisions as provided for under the EPA's Multi-Sector General Permit.

Response 43: *The no-exposure certification provision is actually part of the VPDES Permit Regulation (9 VAC 25-31). The ISWGP allows a facility to terminate permit coverage if they file a no-exposure certification with the Department.*

44. <u>DEQ should remove the benchmark monitoring requirements for Sector P from the proposed General VPDES Permit</u> in order to (a) Maintain consistency with the 2008 Multi-Sector General Permit issued by EPA, which does not require benchmark monitoring requirement for Sector P; and (b) Reduce the compliance burden and costs for an industry that is struggling to survive difficult economic conditions, especially those that are small businesses.

We urge the Department to remove the benchmark monitoring requirements for Sector P. The proposed 2009 General VPDES Permit includes a new requirement for facilities in Sector P to conduct benchmark monitoring for Total Petroleum Hydrocarbons (TPH) and Total Suspended Solids (TSS). However, EPA has decided to not include any benchmark monitoring requirements for Sector P in its recently released its 2008 Multi-Sector General Permit.

Removal of the benchmark monitoring requirement for Sector P from the General VPDES Permit will ease the compliance burden and costs for our members, especially for those that are small businesses struggling to survive in a bad economy. Many trucking operations can ill afford additional regulatory compliance costs during the difficult economic conditions we currently face. Last year's record-high fuel prices and soft freight demand have taken the deepest ever toll on the trucking industry with a record number of companies failing in the first three quarters of 2008. According to one leading trucking analyst, "the first three quarters of 2008 have already established a new record for the amount of capacity pulled from production within a single year. Never have more trucks been pulled off the road in a shorter period of time than in the first three quarters of this year." A total of 2,690 companies located throughout the U.S. with 5 or more trucks went out of business between January and September. And experts are predicting that conditions won't drastically improve in the near future. Imposition of any level of regulatory compliance costs at this time could have a significant negative impact on Virginia's trucking industry.

Response 44: *The monitoring requirements in the proposed ISWGP for Sector P were not derived from EPA's draft 2006 MSGP, but were developed by the Technical Advisory Committee (TAC) that assisted the staff with the development of the permit. Concerns were raised by the TAC over the quality of the storm water discharges from these facilities, and it was decided to require the TPH and TSS benchmark monitoring for this sector. The benchmark monitoring is only required once per monitoring period (essentially once per year), and waivers are allowed for facilities that test below the benchmark concentration for two consecutive monitoring periods. We do not believe that this required monitoring will be excessively burdensome or costly to the permitted facilities. No changes to the section are proposed.*

EPA has commented on the NMMM GP and wants a BM for TPH in there also. They have suggested a BM concentration of 100 mg/L. If we decide to go with that value, this GP BM concentration should be changed to agree with that value.