

Technical Advisory Committee for Amendment to 9VAC25-890 (MS4 Phase II General Permit)
10/11/16

Attendees

Role	Name	Affiliation	Contact Info
TAC	Frances C. Geissler	James City County – Stormwater Div	fran.geissler@jamescitycounty.va.gov
TAC	Jill Sunderland	HRPDC	jsunderland@hrpdcva.gov
TAC	Erin Hawkins	City of Lynchburg	erin.hawkins@lynchburgva.gov
TAC	Lisa Ochsenhirt	Aqualaw for VAMSA	lisa@aqualaw.com
TAC	Ginny Snead	ASCE	gsnead@louisberger.com
TAC	Jess Wenger	UVA	jsw6d@virginia.edu
TAC	Dan Frisbee	City of Charlottesville	frisbee@charlottesville.org
TAC	Peggy Sanner	Chesapeake Bay Foundation	psanner@cbf.org
TAC	Normand Goulet	NVRC	ngoulet@novaregion.org
TAC	Pamela Couch	US Army – Fort Belvoir	Pamela.j.couch2.civ@mail.mil
TAC	J. Alex Forasté	Stantec	Alex.foraste@stantec.com
TAC	Joni Calmbacher	City of Alexandria	Joni.calmbacher@alexandriava.gov
TAC	Jamie Brunkow	James River Association	jbrunkow@jrava.org
TAC	John Burke	Town of Christiansburg	jburke@christiansburg.org
TAC	Erin Rountree	City of Suffolk	erountree@suffolkva.us
TAC	Rebecca Napier	Timmons Group	rebecca.napier@timmons.com
DEQ Staff	Jaime Bauer	DEQ – CO	jaime.bauer@deq.virginia.gov
DEQ Staff	Allan Brockenbrough	DEQ – CO	allan.brockenbrough@deq.virginia.gov
DEQ Staff	Kathleen O’Connell	DEQ – CO	kathleen.oconnell@deq.virginia.gov
DEQ Staff	Fred Cunningham	DEQ – CO	frederick.cunningham@deq.virginia.gov
DEQ Staff	Kelsey Brooks	DEQ – CO	kelsey.brooks@deq.virginia.gov
DEQ Staff	Jeff Selengut	DEQ – CO	jeff.selengut@deq.virginia.gov
DEQ Staff	Kelly Miller	DEQ – SWRO	kelly.miller@deq.virginia.gov
DEQ Staff	Susan Mackert	DEQ – NRO	susan.mackert@deq.virginia.gov
DEQ Staff	Mason Harper	DEQ – CO	mason.harper@deq.virginia.gov
Public	Angela Gent	US Navy/DOD	angela.gent@navy.mil
Public	Sarah Diebel	US Navy/DOD	sarah.diebel@navy.mil
Public	Chris Schrinel	EEE	cschrinel@eee-consulting.com
Public	Sara Rilveria	EEE	srilveria@eee-consulting.com
Public	Doug Moseley	GKY Associates, Inc	dmosley@gky.com
Public	David Trimble	NOVA	dtrimble@nvcc.edu
Public	Ashley Hall	Stantec	ashley.hall@stantec.com
Public	Joe Battiatia	City of Hopewell	jbattiatia@Hopewellva.gov

1. Introductions & Roles

- I. Background on the Universe of MS4 Permits and Regulation Overview

- i. No Comments from TAC
- II. Permittee Comments Submitted for NOIRA
 - i. **TAC members requested full set of NOIRA comments be provided electronically**
 - ii. Sarah Diebel (US Navy/DOD) asked for clarification on VAMSA's comment concerning the "federalization" of state requirements; Lisa Ochsenhirt (VAMSA) and Jaime (DEQ) explained that the comment was about a concern permittees have about making it clear that they should not be cited by EPA under the VPDES permit for more state requirements that exceed the minimum federal MS4 permit requirements.
 - iii. Sarah (US Navy/DOD) asked if CBF provided recommendations for how the gap between the 2025 deadline for reductions and the end of the third permit cycle gap will be met; Peggy Sanner (CBF) explained CBF has suggested permittees purchase credit in advance of the 2025 deadline to meet that gap.
- III. MS4 Permittee Survey Results
 - i. **TAC requested that full slide presentation and survey results be distributed to the group electronically**
 - ii. Ginny Snead (ASCE) asked question about having a separate non-traditional permit to address difference in needs between traditional and non-traditional permittees, which some states do. Jaime (DEQ) responded that we have considered having separate section under each MCM within the GP to address different expectations for traditional and non-traditional permittees where appropriate. However, due to timing, it is not likely that the Department will pursue separate permits for traditional and non-traditional permittees.
- IV. Timeline for Phase 6 Model Revisions
 - i. Norm Goulet (NVRC) verified that the final date for the Phase 6 model has not been revised, but all of the other deadline dates are subject to review and revision.
 - ii. Question from Norm (NVRC) about Phase III WIP/Phase 6 model and disconnect between when the permit will be developed, any numbers that are revised, and EPA expectations. Jaime acknowledged that we have been discussing this issue with EPA and, as of now, they appear to understand and accept that the next phase of the permit will likely not be able to incorporate revised model data and/or WIP III changes.
 - i. Peggy (CBF) suggested incorporating any changes by reference to the Phase III WIP instead of directly incorporating numbers in to the permit. Allan Brockenbrough (DEQ) stated that referencing a non-regulatory document that has yet to be developed in the permit could create legal issues.
 - ii. Sarah (US Navy/DOD) asks about other solutions to this issue such as administrative continuance, although this will make 2025 gap worse. Jaime responded that (1) administrative continuance is an option, but agrees that it will make the 2025 gap worse. Another option would be issuing the GP and reopening it when the new numbers become available, but we would have to go through an 18 month regulatory development process again. Another option would be to let the requirements stand and address any changes in the third permit term. Fred Cunningham (DEQ) adds that we do not know extent of change, so there may not be a substantial impact.
 - iii. Ginny (ASCE) asks if there is an option to learn during TAC process from EPA what the extent/impact of changes to the model may be. Jaime (DEQ) responds that we can ask that question and mentions that modeling staff from EPA has volunteered to discuss the model with the TAC if we would like.
 - 1. The group did not respond positively or negatively to the suggestion.

- iv. Norm (NVRC) states that the model is not going to drive changes as much as the WIP revisions will, which will be developed 6 months after the model data is released (WIP development ~ June - Dec 2018.)
 - v. Fred (DEQ) states that it is important the permit not be administratively continued because it is essential to keep moving forward on the 35 percent reduction requirements for the Chesapeake Bay. Jaime adds that if the change is positive, regulated community may benefit from moving forward with current 35 percent. Norm (NVRC) says many of the MS4s he represents are of the opinion we should move forward and there will not be enough time to work any changes in to their planning given the short turn around between when the permit is released and when the registration statement is due. Fran Geissler (James City County) concurs – there are only ~3 months from issuance of permit to when the permittee needs to complete their registration statements, which is not enough time to make major changes to the permittees’ plans.
 - iii. Ashley Hall (Stantec) asked question about EPA’s review of the permit. Jaime answered that the May-July window is not how long EPA will have the permit, but when we expect to send it to them. EPA typically does a 30 day review of the permit. We do not plan to send something to EPA that the TAC has not discussed, so it is unlikely that any revised numbers that come out of the model and/or WIP III process will be incorporated in to the next phase of the permit.
- V. EPA’s Small MS4 Remand Rule and Impact it may Have on the Next Phase of the Permit
 - i. Peggy (CBF) asked if there is a difference between how the permit treats the CBTMDL and the LTMDL. Jaime answered that the reduction rates for the CBTMDL were public noticed as part of the permit, but for the Local TMDLs there is no specific reduction that must be met *during* the permit term. The review of the local TMDL condition as part of the permit issuance lacks the “measurable” component necessary under the remand rule.
 - ii. Norm (NVRC) asked for additional clarification on the impact of the remand rule on the permit; Jaime clarifies that the Local TMDL requirements are the primary issue because the Local TMDL condition in the current permit does not contain hard numbers or specific measurable goals/requirements that must be met during the permit cycle. If this section of the permit is not altered, we may not be able to issue the permit until local TMDL action plans go through a public participation that conforms to the state water control law and VSMP and VPDES regulations.
 - iii. John Burke (Town of Christiansburg) asked if we need to use the same process for the Bay and non-Bay TMDLs. Jaime (DEQ) says the two conditions do not have to be written in the same way.
 - iv. Erin Hawkins (City of Lynchburg) asked for clarification on whether or not DEQ would be able issue permit coverage if all aspects of the permit do not go through the public participation process. Jaime (DEQ) verifies that the permit could not be issued and that is the concern.
 - v. Fran (James City County) asked why the WLA in the Local TMDL does not count as a hard number. Jaime (DEQ) answered that it may not be sufficient to site the Watershed Management Planning Regulation in the permit because individual WLA are not specified in the WMP regulation. If there are ways to work those numbers in to the permit that might be a solution.
 - vi. Fran (James City County) stated that some permittees did have a public comment period and local participation process for their local TMDL Action Plans and wants to ensure

any changes do not nullify the work the permittees have already done. Jaime (DEQ) responded that public participation under the new rule must meet the full public participation requirements in the Clean Water Act and state laws/regulations and that the responsibility of the public participation requirement under the remand rule falls on the permitting authority (DEQ) not the permittees.

- vii. Dan Frisbee (City of Charlottesville) asked if the current Local TMDL action plans would be subject to the new requirement. Jaime (DEQ) answered that we do not know and that we will have better idea of what to expect in November when the rule is finalized.
- viii. Fred (DEQ) stated that the remand rule does not change the iterative process, what it does do is that when coverage is issued under the permit for Local TMDLs need to have the measurable goals for the progress over the permit cycle and it is for existing and new TMDLs.
- ix. Kelly Miller (DEQ) asked when public participation had to have happened because public participation is a substantial portion of the Implementation Plan development process and that might be a way to meet the remand rule requirements; Jaime (DEQ) answered that implementation plans are not regulatory documents so that process may not meet the requirements.
- x. Joe Battiata (City of Hopewell) asked what some of the options to meet the remand rule for the local TMDL might be. Jaime reiterated the suggestions on the “EPA’s Small MS4 remand rule slide” that listed possible options to address this issue.
 - i. Fran (James City County) stated that including a discrete list of BMPs could remove flexibility from permittees. Jaime concurred that that is true and it also would not allow permittees to incorporate emerging BMPs into their plans – there would be a five year lag for the use of innovative BMPs.
 - ii. Susan Mackert (DEQ) suggested incorporating a suite of BMPs in to the permit and if the permittee determines they want to use alternate BMPs, that permittee could go through the full public comment process at that time.
 - iii. Dan (Charlottesville) suggested that the permit could incorporate BMPs from the VA BMP Clearinghouse since they have been vetted. DEQ staff responded that although those BMPs have been approved through DEQ they have not been subject to public participation and may not meet the remand rule requirements.
 - iv. Kathleen (DEQ) stated that VA’s hearing process may allow the public appeal the entire permit, so we may want to be careful about the circumstances under which we modify/reopen the permit.
 - v. Jill Sunderland (HRPDC) stated that including WLAs in the appendix of the permit may not be a solution because the permit would have to be modified/reopened if a TMDL is modified. Fran (James City County) also pointed out that the original assumptions in the TMDL may not accurately reflect the current extent of an MS4 and there may be a disconnect between what is in the TMDL and the real reductions the permittee needs to make. Norm (NVRC) agreed that including the WLA may not work because of issues with early TMDL assumptions and revisions that may be coming up.
 - vi. Fred (DEQ) stated that EPA’s real objective for this rule is that (1) progress continues to be made and (2) the public can be involved in determining what is acceptable progress and this is what we should keep in mind when developing a solution.
 - vii. John (Christiansburg) asked for verification that including a suite of BMPs would demonstrate progress in and of itself. Jaime responds that the suite may be

enough or we could attempt to put a number to the reduction provided by each BMP.

- viii. Lisa (VAMSA) asked about when we might return to this issue because she wants to ensure VAMSA members have an opportunity to discuss the issue; Jaime says we will on determining next steps and a meeting schedule at the end of this meeting, but we may want to wait for the remand rule to be finalized before we return to discussing its impact.

VI. Open Floor Discussion

- i. Alex Forasté (Stantec) asked to return to the issue of the remand rule and the local TMDL and asked what information could be in guidance instead of being incorporated in to an appendix in the permit for Local TMDLs. Jaime answered that guidance does not go through the same regulatory process as the permit and we must be conscious of making sure the information that must go through the regulatory process is in the permit.
- ii. Norm (NVRC) suggested discussing an Annual Reporting Form template at a later TAC meeting. Jaime (DEQ) responded that this is something we have discussed and asked Norm if it would be mandatory or if it would be an option. Norm (NVRC) stated that it would be acceptable for the template to just be optional. Jaime suggested template might tie in with the e-reporting rule. Fran (James City County) stated that the form must be optional because permittees may want to continue using their own reporting method/format. DEQ staff agreed. Jaime stated that the template might help provide clarity as to what information is required in the program plan as opposed to the annual report of Action Plans.
 - i. Erin (Lynchburg) stated that she has received a checklist with her Annual Report review letter and she has appreciated receiving the checklist because it provides (1) documentation that the plan has been reviewed and (2) specific feedback beyond approval letter. Kelly (DEQ) stated she also uses the checklist as a communication tool for deficiency. Susan (DEQ) asked if that is something the permittees would like to receive. Norm (NVRC), Fran (James City County), and Pam Couch (US Army – Fort Belvoir) agreed that permittees would like to receive the checklist with their Annual Report Reviews. Dan (Charlottesville) stated that seeing a blank checklist would be helpful to permittees.
 - ii. **The TAC agreed that permittees might like to receive DEQ's internal checklist with their Annual Report Review letters.**
- iii. Dan (Charlottesville) asked to return to the GP reissuance process and how it lines up with revisions to the Bay model/WIP. He stated that for permittees to potentially have (1) additional reduction requirements as a result of changes to the model and (2) to have to account for the disconnect between the Virginia's three permit cycles and the 2025 deadline all in the third permit term may be very difficult for permittees. He asked that DEQ continue to honor the commitment to allowing the permittee three full permit cycles to meet reduction requirements.
- iv. Alex (Stantec) asked a question about the timeline for the development of the Phase 6 model and whether any of the information being put in to the model could be used by TAC to make decisions about the MS4 permit i.e. land cover data. Norm (NVRC) responded that the inputs are mostly BMPs and that the land use/land cover numbers will not be entered until December. EPA will be asking for comments on the land use/land cover data soon. Norm stated and DEQ staff agreed that the information being put in to the model will likely not be helpful to the TAC process.

- v. Joni Calmbacher (City of Alexandria) asked if the remand rule will affect how the permittees develop their program plans. Jaime answered that it not likely the development of the program plan will be effective because it appears that the current permit requirements for the MCMs are sufficiently specific and measurable. Fran (James City County) asked if there is a change to program plan will it have to go through the public participation process. Jaime (DEQ) responded that she does not think so because the program plans are implementation plans or demonstrations of how to comply with the permit, but is not 100% sure.
- VII. Public Participation (Non-TAC members)
- i. Sarah (DOD) stated that we need to be careful about any distinctions made between traditional and non-traditional permittees. Jaime (DEQ) stated that the primary concerns we have been with regard to the authorities non-traditional permittees have and do not have. Jaime (DEQ) stated that we will be mindful that requirements for both types of permittees will be the same, but should be aware that some of the language may need to be clarified for non-traditional permittees.
 - ii. John (Christiansburg) asked about including language that clarifies how nutrient credits may be used and how that impacts local TMDL requirements. He stated that construction projects are not putting BMPs in the local, impaired watersheds, but are instead purchasing credits elsewhere in the watershed. Allan (DEQ) responded that localities already have some options under the nutrient trading regs, but they may need to be fleshed out more. Erin (Lynchburg) stated they are experiencing the same issue and that the current language concerning the extent of the MS4's/locality's authority is unclear .
 - iii. Pam (Fort Belvoir) asked about the public comment requirement for the program plan in the permit and whether or not that might meet the public participation requirement under the remand rule since there are no specific details about what constitutes a public comment period in the permit. Jaime responds that we need to make clear what are the requirements are (1) for the permit, (2) the program plan, (3) the TMDLs, etc. DEQ staff does not think the program plan would not be subject to the public participation requirement under the remand rule as long as the permit contains the clear specific and measurable requirements and goes through the proper public participation process.

Vote to taken to (1) determine next steps and (2) wrap up the meeting early

- VIII. Next Steps
- i. Jaime (DEQ) suggested tabling the discussion of the Bay and Local TMDL requirements until later in the TAC process because it will allow things (such as the remand rule, some model information) to develop and be finalized.
 - i. Allan (DEQ) suggested covering these topics in December because they may take multiple meetings.
 - ii. Jamie Brunkow (James River Association) asked about the proposed meeting schedule and how often we will be meeting. Jaime (DEQ) responded that we will plan to meet about every six week through the spring. Peggy (CBF) requested that if we meet in January or February we try to schedule the meeting for Friday because the General Assembly will be in session.
 - iii. Ginny (ASCE) suggested we start with the administrative aspects of the permit for the next meeting in November. Kathleen (DEQ) concurred and suggested we start with definitions since that will have an impact on all other aspects of the permit. Norm

(NVRC) suggested holding the next meeting in December to allow DEQ staff an opportunity to compile changes for a strawman and get it out to the TAC and to allow the TAC enough time to review the strawman/suggested changes. Sarah (DOD) asked if the “interested parties” at the meeting will receive this information. Allan (DEQ) stated that they will be included in the mailing list

- i. TAC agrees to discuss administrative aspects of the permit, such as (1) definitions, (2) the base regulation, and (3) the registration statement at the next meeting.**
- iv. Erin clarifies that a presentation be provided as an email for TAC to take notes on.
- v. Erin (Lynchburg) requests that future presentations be sent to the group prior to the meeting. Jaime (DEQ) agreed to do this. Erin (Lynchburg) also asked how far in advanced they will receive documents for next meeting; TAC agreed two weeks in advance should be acceptable.

Action Items

- a. Full NOIRA comments should be distributed to group electronically (paper copy was provided at the meeting)
- b. Slide show presentation should be distributed to the group electronically
- c. MS4 permittee survey should be distributed to the group electronically that includes the questions, answers, and additional commentary.
- d. TAC requested Annual Report review checklist be sent to all permittees
- e. Schedule next meeting
- f. TAC requested strawman document(s) for next meeting at least two weeks in advanced of meeting; any slide-show or paper documents should be sent to the group electronically prior to the next meeting