

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

Meeting #2

12/02/16

Attendees

	Name	Affiliation	Contact Info
TAC Members	Fran Geissler	James City County	fran.geissler@jamescitycounty.va.gov
	Jill Sunderland	HRPDC	jsunderland@hrpdcva.gov
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	Ginny Snead	ASCE	gsnead@louisberger.com
	Jess Wenger	UVA	jsw6d@virginia.edu
	Dan Frisbee	City of Charlottesville	frisbee@charlottesville.org
	Joe Wood	Chesapeake Bay Foundation	jwood@cbf.org
	Normand Goulet	NVRC	ngoulet@novaregion.org
	Alex Forasté	Stantec	Alex.foraste@stantec.com
	Joni Calmbacher	City of Alexandria	Joni.calmbacher@alexandriava.gov
	Pat Calvert	James River Association	pcalvert@jrava.org
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	Erin Rountree	City of Suffolk	erountree@suffolkva.us
	Rebecca Napier	WSSI	rnapiet@wetlandstudies.com
DEQ Staff	Melanie Davenport	DEQ – CO	melanie.davenport@deq.virginia.gov
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	Allan Brockenbrough	DEQ – CO	allan.brockenbrough@deq.virginia.gov
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	Kelly Miller	DEQ – SWRO	kelly.miller@deq.virginia.gov
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	Keith White	Henrico County	Whi24@co.henrico.va.us
	Pat Bradley	Richmond DPU	Patrick.bradley@richmondgov.com
	Doug Fritz	GKY	dfritz@gky.com
	Hannah Somers	GKY	hsomers@gky.com

Base Regulation Discussion

(1) Definitions discussions

1. "Date Brought Online"

Dan Frisbee (Charlottesville) stated that this definition should be retained. Jess Wenger (UVa) concurs.

2. Program Plan

Jaime and Melanie discussed the potential impact of the MS4 remand rule on the program plan. Under the remand rule, the permitting authority may take one of two approaches: the "traditional" permit approach or the "procedural" permit approach. If the traditional permit approach is taken, all enforceable conditions must be in the permit. The permittee is still required to develop a program plan (what EPA refers to as a stormwater management plan), and the permit may include requirements that specify the information that must be included in the program plan. However, the plan itself will no longer be an enforceable document. Alternatively, if the procedural permit approach is taken, permittees will be required to submit an updated program plan for review by the Department, and once an approvable plan is achieved, each permittee's program plan would then go through the public participation process which includes the opportunity for the public to comment and request a public hearing. If no public hearing is requested, and once any public comments are resolved, the Department would be able to issue coverage under the general permit. If a public hearing is requested and granted, the permit and program plan would then have to be presented to the State Water Control Board for approval. Only after approval by the SWCB would the Department be able to issue coverage under the general permit. The procedural approach works very much like issuing an individual permit. The program plan would be incorporated into the permit as an enforceable document. The Department's preference at this time is the traditional permit approach.

1. Dan (Charlottesville) asked to clarify, based on our last discussion, that the Bay TMDL and MCMs will not have to be changed significantly based on the remand rule.
 - a. Jaime (DEQ) confirmed that this is accurate.
2. Jill Sunderland (HRPDC) suggested that flexibility could be built into the permit by allowing permittees to pick a subset of activities from a list in the permit.
 - a. Melanie Davenport (DEQ) suggested that might not work because any menu of BMPs would have to cover the scope of all the things any MS4 could do and might limit permittees.
3. Fran Geissler (James City County) asked if the program plan is necessary, or if it only should be submitted as part of the Annual Report.
 - a. Jaime (DEQ) discussed the difference between Annual Reports and Program Plans and wanting to ensure that difference is made clear in the permit.
 - b. Fran (James City County) asked if the GP is sufficiently specific and the permittee is submitting annual reports and the program plan is not enforceable does the Department still need to see the program plan/should the permittee be required to submit it?

- a. Jaime (DEQ) stated that it is a requirement to develop one, but submission of the plan does not have to be required.
 - b. Fred (DEQ) stated that it is important that we see the program plans, but the annual reports will be more important.
 - c. Dan (Charlottseville) and Norm (NVRC) asked for clarification that the program plan will act as an implementation plan.
 - i. Jaime (DEQ) agrees.
 - d. Fred (DEQ) stated that it is important that the public and DEQ be able to see program plans for transparency .
 - e. Jaime (DEQ) stated that there is a requirement in the current program that that program plan be on the permittee’s website and updated as appropriate
 - i. Fran suggested that the registration statement tells us where the plan is posted, but that there is not a requirement that it must be submitted with the registration statement.
 - f. Doug Fritz (GKY) stated that the requirement for the program plan to be enforceable came from an EPA push. Prior to the last permit, the plan just had to be submitted.
12. John (Christiansburg) asked if the next permit will include a table at the front of the permit, similar to the one in the current permit.
- a. Jaime (DEQ) responded that the current program plans should be up to date, so we likely will not have a need for the table at the front of the permit.
 - b. Norm (NVRC) agreed that the permittee’s programs are likely mature enough that we do not need the table at the front of the permit.
 - c. John (Christiansburg) asked to retain the table since it provides additional specificity as to when items are due to the Department.

3. Operator

- a. Jaime (DEQ) stated that we try to avoid duplicate definitions in our regs. This definition appears in the VSMP reg, so it is proposed that we strike it.
 - i. TAC agreed.

4. Physically Interconnected

- a. Jaime asked if we want to make any changes to this definition.
 - i. No comments from the TAC.

5. Non-traditional MS4

- a. Fran (James City County) stated that there may be traditional MS4s that look like non-traditional MS4s, so we should be careful about putting traditional MS4s in a box; particularly concerning defining “public.”
- b. Norm (NVRC) and Sarah (Navy) stated that the definitions may have more to do with powers (i.e. ordinances, fees), than features (i.e. public).
- c. Sarah (NAVY) offered to provide a sample definition for non-traditional
 - i. Submit this language to Jaime for review/inclusion
- d. Norm (NVRC) suggested defining non-traditional, but not defining traditional. Fran (James City County) supported this suggestion.

- e. Joe (Hopewell) asked if this is an issue that might be better handled in guidance/fact sheet.
- f. Ashly (Stantec) suggested this discussion may be premature and should be resumed after we have a better understanding of what the permit conditions will look like.

6. Point of Discharge

- a. Jaime (DEQ) explained that this definition would more clarify language in the current permit which uses either “point of discharge” or “direct discharge point.”
 - i. No comments from the TAC.

7. Service Area

- a. Lisa (VAMSA) stated that she is concerned the including a definition might negatively impact permittees that have already defined their service area. We should also consider how this definition relates to “regulated area” and ensure that it is explicitly tied to the “owned and operated” concept.
- b. Fran (James City County) asked if there is a definition of service area in the individual permits.
 - i. There is not a “service area” definition in the individual permits.
- c. Norm (NVRC) stated that we need to ensure we are consistent with existing policies and plans, as well as across programs (i.e. funding, grants) with this definition.
- d. Joe (Hopewell) asked if the definition would be the same for both traditional and non-traditional MS4s.
- e. John (Christiansburg) stated we need to ensure the definition is clear for new permittees.
- f. Fran (James City County) stated that they serve more than is regulated, so we need to be aware of that potential conflict when crafting this language.

8. Public

- a. Jaime (DEQ) suggested our definition for non-traditional permittees should match EPA’s regulations. Federal rulemaking interprets the public as being the resident and employee population of a facility within its fence line.
 - i. Alex (Stantec) and Erin (Lynchburg) suggested changing “fence line” to something like parcel boundaries or jurisdictional boundaries.
- b. John (Christiansburg) asked if the definition could include the households of facility users. Jess (UVa) disagreed and stated this language should not be added.
- c. Erin (Lynchburg) asked if the definition should be placed in guidance instead of in the permit.
 - i. Allan (DEQ) agreed that this might be appropriate.
- d. Melanie (DEQ) stated that the proposed definition may be overly prescriptive.
- e. Jeff (DEQ) suggested public may be anyone who lives at the facility or uses the facility.
- f. John (Christiansburg) suggested public is anyone who may impact your systems water quality.
 - i. Norm (NVRC) agreed.

- g. Fran (James City County) suggested that there should be an opportunity for permittees to define their own public.
- h. Dan (Charlottesville) suggested that the language in the current permit is sufficient.
 - i. Fran (James City County) agreed.

9. "POC" and "Transitional Sources"

- a. Jaime (DEQ) proposed that these definitions be moved from the TMDL section to the general definition section.
 - i. Lisa (VAMSA) suggested it may be confusing to move these definitions, since they only apply to the Bay TMDL. We need to ensure that the definition is not specific to the TMDL if it is going to be in the general definition section.
 - ii. Fran (James City County) stated that non-bay permittees had concerns about these definitions. Dan (Charlottesville) agreed that if a definition only applies to the Bay that either needs to be made clear, or the definition should stay in a separate section.
 - iii. TAC agreed that since "transitional source" only appears once in the Bay Section, it does not need to be in a separate definitions sections; it can be defined where it appears in the language.

(2) 9VAC25-890-10.A.

- a. Jaime (DEQ) explained that the intent of this language was to clarify that private systems cannot be covered under this permit. Clearly stating the scope of entities that can and cannot be covered under a VPDES permit is consistent with other VPDES permit language.
- b. Dan (Charlottesville) asked for clarification concerning whether or not that means permittees cannot allow interconnection between a private and public system.
 - i. Jaime (DEQ) stated that was not the intent of the language.
- c. Ginny (ASCE) suggested including this information in the fact sheet, not the permit
- d. Dan (Charlottesville) asked if a private system discharges to surface water and the surface water then enters the permittee's system (is channelized), is that discharge regulated?
 - i. Jaime (DEQ) responded that the initial discharge is not regulated. Once a discharge enters a surface water, it is no longer regulated.
 - ii. Erin (Lynchburg) asked if you have a collection system that discharges in the middle of that channelized stream, is the end of the channel regulated?
 - 1. Jaime (DEQ) answered that the discharge is regulated at the point it enters the channelized stream, not the end of the channel.

(3) 9VAC25-890-10.C.

- a. Dan (Charlottesville) asked for clarification about this language, but did not request any changes.

(4) 9VAC25-890-20.A

- a. Sarah (Navy) proposed adding language "discharge stormwater through point sources from the small MS4".

- i. Jaime (DEQ) stated that the permit only authorizes point source discharge, so this would be redundant.
 - ii. Sarah (Navy) suggested it would still be more consistent with the permit language/definitions.
- b. Pat Bradley (Richmond) suggested adding “pollutants” after discharge as a clarification; otherwise it can be read to mean that flow is regulated instead of pollutants.
 - i. Kathleen (DEQ) stated the definition of discharge already includes pollutants; adding “pollutants” would be redundant.

NOTE: During review of these meeting minutes, Pat Bradley provided further clarification of his comments in an email dated 12/16/2016. Specifically, he stated that while someone pointed out the term discharge includes “pollutants,” under 9 VAC 25-870-10, the definition of “discharge” when used without a qualifier means “discharge of pollutants.” However the language that was being discussed as part of 9 VAC 25-890-20 includes the qualifier “stormwater.”

(5) 9VAC25-890-20.B.

- a. Ashly (Stantec) asked about the enforceability of this language.
 - i. Jaime (DEQ) stated this language is consistent with other regulations.
- b. Lisa (VAMSA) stated that if the requirements for MS4s are unique, this section should not be boilerplate language since the standard for MS4’s is MEP, not a numeric limit. At a minimum 3, 4, and 5 of this section should not be included.
- c. Joe (Hopewell) asked if the purchase of nutrient credits meets the intention of this language.
 - i. DEQ staff stated that it would.
- d. Erin (Suffolk) stated that this language is redundant with the TMDL requirements. Pat (Richmond) stated that the only applicable standard is MEP and that water quality standards do not apply to MS4s, therefore water quality based effluent limitations (WQBELs) do not apply and that means that TMDLs do not apply (except to establish a LA to assist in describing the total load).

Note: Pat provided further clarification in an email dated 12/16/2016 in response to review of these minutes. Specifically, Pat provide the citation of 122.44(d)(1) stating that it applies where there is a need for a WQBEL – which means there is an applicable WQS – WQS do not apply to MS4s, only MEP. Given 122.44(d)(1) is not applicable then that means 122.44(d)(1)(vii), the TMDL/WLA language also is not applicable (See attached paper from WEFTEC 2015 proceedings).



MS4_MEP_WEFTEC20
15.pdf

- . Fran (James City County) asked how this language can be reconciled with the MEP standard.

- i. Fred (DEQ) stated that this language is in our regulations, so it may not be necessary to include it in the permit. Agrees that we need to review this language to reconcile MEP concept with what is otherwise in VPDES regs.

(6) 9VAC25-890-20.C.2/9VAC25-890-20.C.3

- a. Erin (Lynchburg) asked about including “de minimis” discharge on the list under 9VAC25-890-20.C.3. However, if including it would be redundant it can be removed from 9VAC25-890-20.C.2.
- b. Lisa (VAMSA) prefers including the list in the permit.
 - i. TAC agrees this is acceptable.
 - ii. Dan (Charlottesville) stated that the “or” in 9VAC25-890-20.C.3 should be moved to the end of the list.

(7) 9VAC25-890-20.E

- a. No Comment from the TAC.

(8) 9VAC25-890-20.F

- a. Jaime (DEQ) stated that the intent of this language is to make it clear that if a facility/site has a construction or industrial stormwater permit, those requirements supersede any MS4 requirements.
- b. Lisa (VAMSA) asked if the intent of this language is to make MS4s responsible for private facilities after their Construction GP permits are terminated.
 - i. Jaime (DEQ) clarified that this was not the intent of the language, but that a municipally owned site would either fall under the MS4 permit or a separate VPDES permit once the Construction GP is terminated.
- c. Doug (GKY) stated that when the language was written in the current permit, it was meant to address municipally owned industrial facilities and to clarify those facilities had to meet the requirements of their Industrial stormwater permit, not MEP. It did not take into account construction GP issues.
- d. TAC suggested to separate this section into two sections.
 - i. Either separate these sections into industrial and construction sections, or,
 - ii. Separate these sections into “if covered under another permit, that permit should be followed” and “upon termination of activities addressed above, revert back to MS4.”
 - iii. Doug (GKY) suggested that since construction activities are already addressed under MCM4, it may not be necessary to address those projects here. Instead this language could be used to address industrial facilities.

(9) 9VAC25-890-20.I.b

- a. Alex (Stantec) asked to alter/reconsider language that states “would then be required to cease activities.”
- b. Fran (James City County) suggested removing this section because it is redundant.
- c. Jaime (DEQ) suggested leaving “issue a notice of intent to deny coverage under the new general permit” and removing the second sentence.
 - i. TAC accepted this change.

(10) 9VAC25-890-30

- a. Jess (UVa) asked why the language states “90 days before” instead of providing a date for when the reapplication package is due to DEQ.
 - b. Kathleen (DEQ) stated that the permit may or may not be issued on a specific date (there may be delays) and that date could be rendered incorrect.
 - c. Allan (DEQ) stated that since the language is based on the expiration date of the current permit, and that date is known, we should be able to include a specific date in this section of the permit.
 - d. Melanie (DEQ) found that we do include specific dates in other regs.
 - e. TAC suggested that we include specific dates in the fact sheet/guidance.
- (11) 9VAC25-890-30.B.1**
- a. Suggested that “county or city name” be struck from this language.
- (12) 9VAC25-890-30.B.2**
- a. Jess (UVa) suggested this language should say MS4 contact person, not the operator (i.e. operator is UVa, but Jess is the contact person).
 - b. Jaime (DEQ) suggested adding a field for the “fee” contact. TAC agrees.
- (13) 9VAC25-890-30.B.3**
- a. Suggested that this language should not say “most recent,” there should be a date included.
- (14) 9VAC25-890-30.B.4**
- a. Norm (NVRC) suggested removing “2010” from this language and changing language to “most recent”.
- (15) 9VAC25-890-30.B.6**
- a. Suggested that this language should include “regulated”.

Registration Statement Discussion

(1) Form Layout

- a. Fran (James City County) suggested having an electronic registration statement, so it could be extracted to a database.
- b. Norm (NVRC) suggested using a fillable adobe pdf.
 - i. Erin (Lynchburg) agrees because it will allow the permittees to hyperlink information.

(2) List of TMDL Allocations

- a. Jaime (DEQ) stated the Department should now be able to provide applicable TMDL information to the permittees.
- b. Dan (Charlottesville) asked if there is a difference between “discharging” (item 4 on reg. statement) and “directly discharging” (permit language). He suggested for consistency the language should be “directly discharging” on the reg. statement.
- c. Erin (Lynchburg) asks what “Description of land use” means and what information the Department wants.
 - i. DEQ staff responds permittees may group land use information by watershed or by segment. We will allow flexibility depending on the permittees records.
 - ii. TAC asked if we typically ask other entities to tell us which TMDLs apply to them

1. Kathleen stated that we may ask MS4s for this information when we do not ask entities covered under other stormwater permits for it because of the size of MS4s.
2. Jaime (DEQ) suggested the reason this information was asked under the current permit/reg. statement was because DCR did not readily have access to TMDL information because the programs were located in different Departments. Additionally, at the time, DEQ did not have a list they could easily pull.
 - a. Norm (NVRC) stated it was also because some permittees were not familiar with TMDLs and needed to be made aware they were subject to TMDLs.
- iii. Jaime (DEQ) stated it may not be necessary for the permittees to reiterate TMDL information to us under this permit.

(3) Program Plan

- a. Jaime (DEQ) suggested the program plan does not need to be submitted with the registration statement. Joe (Hopewell) agreed since the Department would have just received the previous year's annual report and we would know the status of the program.
- b. Dan (Charlottesville) stated that whether or not we require the program plan with the registration statement would depend on which permit approach we take under the remand rule. If we take the traditional permit approach, it should not be necessary to submit the program plan with the registration statement.
- c. Sarah (Navy) asked if the program plan is intended to serve as a communication between the permittee and DEQ.
 - i. Jaime (DEQ) stated that if we follow the traditional permit approach we would still review the program plan, we might just review it at a different time in the process.
 - ii. Fran (James City County) asked if instead of submitting the program plan with the registration statement, it could be submitted with the annual report.
- d. This discussion is tabled until we determine the permit approach we are going to take.
- e. Doug (GKY) stated that, regardless of this discussion, we need to ensure we keep everything in the registration statement that is required under the federal guidelines.

(4) 9VAC25-890-30.B.8

- a. No TAC comments.

(5) 9VAC25-890-30.B.9

- a. No TAC comments.

(6) 9VAC25-890-30.B.10 and 9VAC25-890-30.B.11

- a. No TAC comments.

(7) 9VAC25-890-30.B.13

- a. Ashly (Stantec) asked if we need this language for permittees not in the Bay.
 - i. Department agreed that we do not .

- b. Norm (NVRC) suggested there may be canned language we can use for this section (i.e. in the construction GP).
- (8) 9VAC25-890-30.B.14
 - a. No TAC comments.
- (9) 9VAC25-890-30.C
 - a. No TAC comments.
- (10) 9VAC25-890-30.D
 - a. No TAC comments.

General Permit Language – Schedule Table

1. Suggested if program plan is submitted after reg. statement we should include language to indicate that permittees should keep operating under the current program plan until the new program plan must be submitted.
2. Inclusion of the schedule table may be dependent on where we land on certain provisions. Could be included in fact sheet or transmittal package.
 - a. Ginny (ASCE) stated the TAC asked for the schedule table because there were so many changes to the permit last time.
 - b. Erin (Lynchburg) stated that having the table has been very useful. However, as long as the table is accessible it should be acceptable.

Open Floor discussion

1. Alex (Stantec) asked if there was a better way to word “date brought online,” in the definition section. He suggested striking the last few words and end at “is properly functioning.”
 - a. Sarah (Navy) suggests the definition read “properly functioning as designed.”
 - b. Norm (NVRC) stated this is appropriate since localities will not bring BMPs online until they are functioning properly.
2. Pat (James River Association) asked if knowing the location of outfalls is required in the permit outside of the Special Conditions.
 - a. Jaime (DEQ) answered that it is.
3. Jaime (DEQ) asked the TAC about requiring service area boundary shapefiles once every five years, with exclusions for permittees that are not capable of submitting that information.
 - i. Sarah (Navy) stated there could be security concerns with this request and that should be considered.
 - ii. Kathleen (DEQ) asked if this information is needed for NEIEN reporting.
 1. Jaime (DEQ) stated that the shapefiles are not needed at this time for NEIEN (EPA reporting) but the information would be helpful for use in the Chesapeake Bay Watershed Model and for use by DEQ staff during program audits and when various questions arise.

- iii. Erin (Lynchburg) stated that the Department would have to provide additional details concerning the information that needs to be submitted.
- a. Jaime (DEQ) asked if we would need to give permittees time to prepare this information/how early we could request this information.
 - iv. Norm (NVRC) thinks we should give permittees time to prepare that information. Erin (Lynchburg) suggested that we include language that states that if the permittee has that information available, it should be submitted, but if not give the permittee time to develop it.
 - v. Doug (GKY) stated that there are non-traditional permittees that may not have GIS systems and may not be able to submit the requested information.
 - 1. Jaime (DEQ) stated that these permittees would be eligible for the exclusion.
 - vi. Ashly (Stantec) wants to ensure that were not requesting information over and over again in different formats, like the process that occurred for collecting historical BMPs.
 - 1. Norm (NVRC) agreed that the Department will have to be specific about the information we want.
- b. No decision made today concerning this request, but DEQ asked that the TAC consider this for a future meeting.

Next Meeting

- 1. Jaime (DEQ) stated that by the end of the year/first week January we will have additional language we discussed to TAC.
- 2. Lisa (VAMSA) asked if DEQ will provide strawman language for the next meeting, or not. TAC agreed having the strawman was helpful.
- 3. TAC agrees we will do MCMs at the January 20 meeting.
 - a. January 27 will be a definite meeting unless we complete our discussion of the MCMs on January 20.
 - b. We will plan to do Local TMDL discussion at the February meeting. TMDL staff from DEQ will be present at this meeting to provide additional technical assistance.