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**SUBJECT:** Technical Advisory Committee (TAC) Meeting to Discuss the 2019 Reissuance of 9VAC25-190 Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining

**TO:** TAC Members and DEQ Staff

**FROM:** Peter Sherman, Office of Virginia Pollutant Discharge Elimination System (VPDES) Permits, DEQ Central Office

**DATE:** August 28, 2018

A Technical Advisory Committee (TAC) meeting was held August 2, 2018 at the Virginia Department of Environmental Quality (DEQ), Piedmont Regional Office in Glen Allen. The meeting began at 10:00 AM. Those attending the meeting were:

<u>Name</u>	<u>Organization</u>
Walter Beck	Vulcan Materials
Rob Lanham	Virginia Transportation Construction Alliance
Tom Bibb	Virginia Department of Mines, Minerals and Energy
Brian Parker	Vulcan Materials
Mark Williams	Luck Stone
Allan Brockenbrough	DEQ CO VPDES Permits
Emilee Adamson	DEQ CO VPDES Permits
Peter Sherman	DEQ CO VPDES Permits
Elleanore Daub	DEQ CO VPDES Permits
Matt Richardson	DEQ CO VPDES Permits
Kristen Sadtler	DEQ CO Office of Enforcement
Troy Nipper	DEQ CO Office of Water Compliance
Morgan Clark	DEQ TRO Office of Water Compliance
Noel Thomas	DEQ VRO Office of Water Compliance

Handouts — Participants were provided with a mark-up of the draft proposed Nonmetallic Mineral Mining General Permit regulation (9VAC25-190) and information regarding the role of the TAC. A PowerPoint of the VPDES General Permit for the Nonmetallic Mineral Mining General Permit was used to review current requirements and potential changes.

## **Discussion**

After introductions, DEQ staff reviewed the role of TAC, provided an overview of the existing VPDES nonmetallic mining general permit, and led the group through a discussion of potential changes and issues that have arisen during the term of the current permit. A summary of the discussion is below. DEQ reviewed permit background as well as general permit conditions, limits, monitoring requirements and reporting requirements.

DEQ reviewed draft revised language and noted that some proposed changes are to increase consistency with other general permits. DEQ indicated that North American Industry Classification System (NAICS) codes will be added to the permit since they are the most current classification system and asked whether SIC codes should be removed or retained. The TAC suggested that DEQ include both SIC and NAICS codes in the permit since each is used in certain regulations.

DEQ indicated that a definition of “control measure” is being added, as U.S. EPA seems to be transitioning from “BMPs” to “control measure” language.

DEQ may consider removing the definition of “MS4” from the general permit since this definition exists in the VPDES regulation. TAC members indicated that the scope of MS4s is not always clear, for example, some local governments say that streams are part of their MS4, which is confusing to dischargers. The TAC noted that this issue has been raised in discussions with DEQ staff. One TAC member stated that the City of Richmond says that any stream not discharging to the James is part of its MS4, and added that there are fees for discharging stormwater to an MS4. Based on these observations, DEQ may retain the definition.

DEQ asked if there are issues associated with co-located facilities, since there have been some questions raised by regional office staff. Specific requirements for co-located facilities are not explicitly spelled out in the general permit (such activity is considered industrial activity). Under the general permit, discharges from co-located facilities are allowed if the discharges are similar to those from mineral mining and the facility is located on the mining site. One TAC member asked if others were aware of issues with collocated facilities. The registration statement does ask for identification of collocated facilities. DEQ asked if authorization should be more explicit (i.e., expressly added to the authorization to discharge).

DEQ noted new language specifying that a facility must “maintain” its mining permit, since such permits have a one-year term. Continuation of permit coverage has been edited to be more generic, consistent with other general permits. DEQ asked what evidence of a DMME permit is sufficient. Is the DMME cover page an option? One TAC member suggested using the “permit/license to operate a mine.” Another stated that DMME has a list of active permits that is searchable on the DMME website.

One TAC member pointed out that two counties are authorized to administer DMME requirements. Facilities in those counties have a DMME-authorized permit. DEQ asked what responsibilities do counties handle. Counties inspect and enforce performance. They must have minimum regulations/ standards consistent with DMME requirements, but the state DMME audits their program. One TAC member noted that localities inspect facilities but do not have as good an understanding of mines as DMME staff does. Fairfax County thought a mine had to have a construction permit. This happens frequently, but mining is exempt from construction permit requirements. Zoning staffs get confused. One TAC member indicated that his firm has a standard letter to deal with the issue.

A TAC member stated that erosion and sediment control laws do not apply to mining if the mining activity is covered under a mining permit.

DEQ stated that the Chickahominy watershed special water quality standards will be removed from the permit since they are no longer applicable to typical mining discharges. In addition, the State Corporation Commission entity number will be required based on the need to ensure that the proper, viable business entity has permit coverage. One TAC member asked why DEQ needs to know the SCC number. This ensures that permit coverage is only issued to the correct and active business entity. One member noted that DMME already does this. DEQ responded that this is standard procedure for water permitting.

A TAC member asked if it is possible that the VPDES nonmetallic mineral mining general permit can be combined with the DMME permit to eliminate redundancy. It has been done with coal mine permits. DEQ indicated that any such change would require changes to state code, MOUs, as well as considerable documentation and EPA approval, and would remain premised on ensuring protection of water quality. Such a change would be a long-term project.

DEQ noted that authorization under the general permit is now conditioned on information submitted with the registration statement, in addition to the conditions in the existing permit sections. One TAC member observed that TPH is being eliminated in the industrial stormwater general permit for certain sectors that did not exceed the specified threshold. Another noted that TPH monitoring is only for oil/ water separators, and the data do not show a level much over 1 mg/l. DEQ noted that some regional offices might favor continuing TPH monitoring. DEQ will consider the issue.

One TAC member stated that with big storms dewatering can take a very long time, since it is dependent on settling, and that facilities often cannot operate during such dewatering. The TAC member observed that North Carolina DEQ (NC) suspends some requirements during 10-year storm events, which helps to keep the mines operating (a 10-year storm equates to 4-inch storm event). The TAC member stated that nonmetallic mines can capture 50-year events given their site size but then cannot pump out, but must wait for settling. DEQ noted that that it appears that NC has additional limits in its general permit and that NC does not require a grab sample where a basin designed to contain or treat mine dewatering wastewater discharges in response to rainfall in excess of the 10-year, 24-hour storm. The TAC member offered that this runoff would be no different from runoff from a construction site during a large storm. Mining ponds are sized two

times larger than required by state erosion and sediment control requirements. DEQ indicated it would consider the issue.

One TAC member indicated that his firm had a stream divert into the mining pit. This is common with mine operations with nearby streams breaching into pit during large rain events. Another member observed that karst failures could take months to address.

One participant asked if we could remove flow monitoring for stormwater-only discharges. Facilities tend to plug in somewhat arbitrary numbers. One TAC member responded that fluctuating stormwater flow numbers are not unusual. Such monitoring is not required under the industrial stormwater general permit.

DEQ stated that the 2015 U.S. EPA Multi-sector General Permit includes new conditions for pre-mining, earth-disturbing activities. DEQ needs to determine if these new federal requirements are addressed in the existing general permit or in applicable DMME regulations/ permit requirements. If not, we will need to address them in the general permit. One TAC member pointed out that under DMME regulations, an operator or facility cannot disturb any part of a site area without a DMME mining permit and bonding, and must have erosion and sediment controls in place. DMME even considers cutting vegetation as mining. DEQ must assure EPA that DMME covers the same/ equal conditions. One TAC member observed that this is the same as the exemption of a construction general permit. DEQ stated that EPA's new conditions are very specific and EPA will likely require some level of documentation. DEQ will review pertinent requirements, develop a comparison and check regulatory coverage with DMME.

Minor changes have been made so that no dust suppression activities can be conducted during a storm event. One TAC member asked about language on line 376 addressing toxics. DEQ indicated that this language is boilerplate from federal regulations (i.e., additional conditions for mining). This language is in industrial facility permits, not municipal facility permits. It is a special condition.

DEQ pointed out that the TSS evaluation language for stormwater monitoring differs from the benchmark language used in the VPDES industrial stormwater general permit. In this general permit, if TSS levels exceed 100 mg/l the general permit requires the owner or operator to conduct an inspection, and to address any problems within 60 days. The industrial stormwater general permit requires an owner or operator to revise their stormwater pollution prevention plan (SWPPP) and implement the SWPPP if they exceed a benchmark. One TAC member asserted that mineral mines have two times the capacity needed, so requiring further BMPs or expanding capacity does not make sense. These types of facilities cannot really further modify their SWPPP. It is better to identify what is not working and address it. One TAC member asked whether an exceedance triggers an additional routine inspection. Another responded that the intention is that a routine inspection be completed in response to exceeding 100 mg/l. The group discussed specifying that where there is an exceedance a facility must conduct "a routine inspection within 5 days of becoming aware of the exceedance."

DEQ noted that the special water quality standard for the Chickahominy is being removed because it is no longer applicable to typical discharges from nonmetallic mineral mine facilities

(applicability is restricted to wastewater treatment facilities treating an organic nutrient source). DEQ also added BMP language for blasting (based on regional office concerns) and BMP language for flocculants that could pose aquatic toxicity (based on the 2015 MSGP). One TAC member observed that mines do use chemical flocculants and that the BMP language is unnecessary because mines cannot use chemicals without notifying DEQ on the registration statement. Another member also acknowledged the use of flocculants and added that his company provides DEQ with materials safety data sheets for such chemicals.

DEQ asked if we should change termination of coverage language to the “owner may request termination.” DEQ stated that we are removing the comprehensive site inspection, consistent with changes to EPA’s 2015 MSGP, and merging any unique provisions into the routine inspection provisions. In addition, we are removing the closure plan provision that refers to the O&M manual, since the general permit does not require an O&M manual.

DEQ pointed out that electronic reporting requirements are being phased in for the VPDES program, however, the permit requirements are not changing at this time. Changes will be made in the VPDES regulations (9VAC25-31-1020). DEQ will then mail out letters notifying facilities of the E-reporting requirements and schedule. DEQ has additional information on its website. The schedule is dependent on development of the E-DMR system.

One TAC member stated that NC requires DMR submittal once per year and facilities have until March to submit reports for the previous year. He noted that submitting DMRs by January 10 is challenging for companies that have multiple facilities that need to report. DEQ noted that all DMR data will be flowing to EPA’s ECHO systems and visible to the public. The TAC member noted that this is even more reason to report once per year and extend the report date past the 10<sup>th</sup>.

DEQ noted that the 2015 EPA MSGP (Sector J, sand and gravel) includes a nitrate/nitrite benchmark that we do not have in the nonmetallic mineral mining general permit. DEQ also indicated that the sampling waiver in Part II is not applicable to annual SW monitoring. In the housekeeping provisions, we have added some language from the EPA MSGP and VPDES industrial stormwater general permit. One TAC member pointed out that the industrial storm water general permit authorizes non-stormwater discharges and that list is not consistent with the new housekeeping language regarding pavement wash waters. Another TAC member stated that air permits also direct facilities to wash down. DEQ will look at authorized non-stormwater discharges and address any inconsistency.

One TAC member said he was a bit unclear about inspections and representative discharges and recommended moving visual inspections to the monitoring section. The group discussed removing sample times from the visual inspection requirement and possibly others. DEQ noted that collected samples need times documented to facilitate compliance review.

A TAC member stated that in the industrial stormwater general permit routine inspections are waived for Virginia Environmental Excellence Program (VEEP) E3 and E4 facilities, could we do that here since such facilities are meeting advanced environmental performance requirements. DEQ will consider this request.

DEQ stated that minor changes are included for Part III of the general permit.

A TAC member asked if DMR information and signatures could be included on one page.

There was some discussion of TAC members desiring for DEQ to consider NC-type provisions characterized as having no sampling required during 10-year, 24-hour storm. One participant pointed out small-sized construction BMPs required. There was some discussion about residence time and improvement (solids settling over time).

DEQ indicated that the agency is working to get a proposed general permit regulation to the Board for approval of public comment and a public hearing at the September 20<sup>th</sup> Board meeting, and, given the materials that must be presented, that it is not clear if there will be an opportunity to view a revised draft prior to proposal.