



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

SUBJECT: Technical Advisory Committee (TAC) Meeting to Discuss the 2021 Reissuance of 9VAC25-110 Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day

TO: TAC Members and DEQ Staff (listed below)

FROM: Peter Sherman, Office of VPDES Permits

DATE: November 7, 2019 (DRAFT)

A TAC meeting was held on October 18, 2019 at the Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060. The meeting began at 10:00 AM. Participants attending the meeting were:

<u>Name</u>	<u>Organization</u>
Jason Weakley	Virginia Department of Health
Stephen Elgin	Virginia Department of Health
Mark Inboden	Inboden Environmental
Allan Brockenbrough	DEQ - CO
Elleanore Daub	DEQ - CO
Peter Sherman	DEQ - CO
Clairise Shaheen	DEQ - SWRO
Mark Trent	DEQ - SWRO
David Kinder	DEQ - SWRO
Loan Pham	DEQ - TRO
Cathy Nicely	DEQ - NRO
Brandon Kiracofe	DEQ - VRO
Lynn Wise	DEQ - BRRO
Amy Dooley	DEQ - NRO

Information provided before the meeting included:

- Regulation with draft amendments and staff comments, VPDES General Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day 9VAC25-110;
- Agenda.

Discussion

Department of Environmental Quality (DEQ) staff reviewed the agenda and presented information (12 slides) regarding significant issues raised at the first TAC meeting, available Domestic Sewage Discharge (DSD) general permit data, coordination and implementation issues, and draft strawman regulatory language prepared for this meeting.

Select information presented includes:

- Three key issues include:
 - Requiring the use of licensed operators for non-single family homes (NSFHs);
 - How to ensure treatment system checks and good maintenance;
 - Should the permit allow forced discharges to facilitate sampling;
- The Virginia Department of Health (VDH) requires the use of licensed operators for single family homes (SFHs) and requires that operators visit each system twice per year;
- DSD discharge monitoring report (DMR) data for NSFHs indicates reasonable compliance rates, with a significant number of entries marked as no discharge, blank, or no sample;
- Allowing the practice of forcing a discharge to obtain a sample could result in more complete sampling data (VDH provided example criteria);
- DEQ has some nutrient data from a special study of non-significant DSD dischargers (and has shared this with interested TAC members);
- Coordination issues include but are not limited to:
 - Clarifying what constitutes a single family dwelling;
 - Clarifying the process for documenting no onsite solutions prior to issuing VPDES permits;
 - Improving the process for sharing permit issuance and permit limits with VDH;
 - Sharing lists of permittees and maintaining up to date information;
 - E-reporting.

DEQ noted that the draft general permit language provided to the TAC members prior to the meeting included new edits that address the use of licensed operators by NSFHs and allow forcing a discharge. DEQ indicated that the meeting summary from the first TAC meeting had been circulated and no comments/ edits had been received, thus the meeting summary will be posted during the week following this meeting. The summary below presents the general scope of and comments from the second TAC meeting.

Issues and Data Presented

DEQ reviewed the issues of how to ensure that discharging domestic treatment systems are regularly checked and properly maintained, and whether the general permit should require that NSFHs use licensed operators. DEQ noted that the use of licensed operators promotes good maintenance and that VDH uses this approach for SFHs. VDH removed their maintenance contract requirement in part because such contracts were difficult to track, and to provide flexibility to permittees to switch operators. Three options were presented for this general permit. These included requiring that NSFHs engage a licensed operator (removing the existing service contract and O&M plan alternatives), keeping the status quo for NSFHs but specifying two treatment system checks per year and checks of specific items (e.g., motor, blowers, chlorination), and maintaining the status quo but removing the O&M plan alternative for NSFHs.

DEQ observed that the VDH regulations specify that licensed operators should follow the operation and maintenance (O&M) plan if applicable, and asked how this is applied. VDH responded that this focuses on operators using the treatment system manual if one is available (newer systems normally have such manuals, older systems may not).

A DEQ participant stated that he has inspected 80 facilities and, in the majority of cases where noncompliance is identified, the facility has no relationship with a service contractor. The same is true for the non-submittal of DMRs. He supported having a professional working with each permittee.

Another DEQ participant asked how we would address permittees that cannot or will not engage a licensed operator. An example was offered of an NOV issued to a permittee who was non-responsive because he was illiterate.

One DEQ participant suggested that it seems reasonable that DEQ requirements should be consistent with VDH requirements, perhaps with flexibility for forcing a discharge. He noted that VDH has dropped the maintenance contract provision. Another DEQ participant stated that he does not like the idea of removing the O&M plan alternative for NSFHs since permittees that are responsible and maintain their systems may prefer this alternative.

VDH observed that implementing the licensed operator requirements remains challenging at times. A VDH participant noted that VDH has civil enforcement penalties, but in his district the department has not yet used this penalty authority for failure to engage a licensed operator.

DEQ participants acknowledged that they oversee some owners with multiple permits, some NSFHs subject to DEQ requirements and some SFHs subject to VDH requirements, and it seems awkward that these requirements differ in certain regards. Participants from NRO indicated that they have encountered the same issue with certain contractors.

DEQ pointed out that for NSFHs in 2018, 25 DMRs were not submitted (of 535). Several DEQ regional participants pointed out that this probably does not account for late submittals and, in many cases, this rate of submittal was due to substantial follow-up work conducted by the department.

A DEQ participant noted that most permitted facilities are occupied. Our warning letter list was mostly no discharge facilities. Permittees are still getting used to submitting paper DMRs. E-

DMR will not be successful for many permittees, and we should think about whether DMRs have improved water protection. NRO observed that requiring DMRs has increased permittee awareness regarding this general permit.

A DEQ participant stated that on a recent compliance call managers discussed whether it would be better to focus on treatment system maintenance or DMR submittal. The consensus was that data submittal (i.e., DMRs) does not have much value in achieving compliance since the majority of permittees here are homeowners and not businesses so DEQ enforcement tools are less effective; rather, the focus should be on proper operation and maintenance. DMR data should be kept on site. Another alternative could be to report only exceedances.

VDH noted that they require the licensed operator to submit results (report sampling and indicate work done).

A participant asked whether VDH requirements are an effective substitute for DMRs in protecting water quality. Another noted that under VDH regulations data and report submittal from the treatment system contractor serves as proof that a service agreement is in place.

VDH staff visit SFH permittees once per year (this can be reduced for permittees with a good compliance record). There is a \$75 cost, plus the requirement to use a licensed operator. Results are not reported on a DMR. Operators sometimes have their own forms. Effluent monitoring may consist of just the lab result sheets. Onsite monitoring must be electronic. VDH practice is not to force a discharge.

A DEQ participant pointed out that when occupied, these buildings discharge.

DEQ asked if VDH would consider changing their no forced discharge provision. A DEQ participant asserted that given the design of these systems, a forced discharge would be representative. He added that requiring maintenance logs has not worked well. Another DEQ participant suggested that DEQ could be silent on forcing a discharge.

A VDH participant asked whether DEQ would get pushback on requiring a licensed operator for NSFHs. DEQ responded that this is likely, but currently DEQ and VDH requirements differ.

With regard to access to licensed operators, VRO indicated that they have one licensed operator that does most of the permit work, and SWRO is the same. DEQ participants from these offices indicated that it does make sense to be consistent with VDH.

One participant observed that service contractors probably would not do this work without a contract. Thus, in most cases requiring a licensed operator will result in a service contract. Contractors can (and some do) send out reminders, but it is often difficult to get in touch with permittees. He noted that E-DMR would help service contractors, since once a permittee is signed up and the contractor is authorized to submit monitoring data the contractor can take over electronic submission.

VDH requires maintenance visits by the operators twice a year, with monitoring turned in once each year.

DEQ asked if there was consensus regarding DEQ taking an approach for NSFHs similar to VDH regarding the use of licensed operators and removing the ban on forcing a discharge. There appeared to be such agreement. DEQ noted that VDH had identified some criteria for allowing a forced discharge (from a field-testing policy). One participant observed that in forcing a discharge we would only be pushing through what is already in the system, similar to what occurs at times of system use and discharge.

DEQ SWRO has about 280 NSFHs, with about 50% non-residential. VRO has about 80% non-residential.

A participant asked how many permittees have an extra, unused connection. A DEQ participant from SWRO offered that 30% are purposefully adding a second connection with no residence to avoid the VDH SFH requirements. A participant noted that VDH SFH distance restrictions (between treatment systems, discharge point and channel of treated effluent) come into play (12VAC5-640-420), and DEQ does not consistently hold permittees to 500 feet separation (specified setbacks between wells and the channel of treated effluent to intermittent streams or dry ditches) perhaps because these restrictions are part of VDH regulations.

A DEQ participant suggested that permittees should be required to register based on existing structures at the time of permitting. If this changes (e.g., another dwelling is added), then their status can be changed as needed. Occupation of the house should not matter. One DEQ participant stated that many permittees actually want to build a second home, they are not intentionally trying to avoid VDH requirements.

DEQ presented a summary of DMR data for NSFHs for 2017-2018. Key takeaways include the fact that compliance rates appear to be reasonable; a significant number of records were reported as no discharge or blank/ no sample; and it is estimated 25 NSFHs did not submit DMRs for 2018. SFH data is not currently available, since VDH is developing and transitioning to a new data system.

A DEQ participant asked whether it would make sense and be feasible to have VDH use the DEQ E-DMR system (i.e., for VDH monitoring data to be submitted via DEQ's E-DMR system).

DEQ presented a summary of available nutrient data. Key points included the fact that nutrient data are based on a special study conducted by DEQ (this reflects a subset of non-significant dischargers); flow and TSS data are from DEQ's Comprehensive Environmental Data System (2013-2017); data do not reflect all DSD facilities (most appear to be NSFHs); and the average flow is about 400 GPD.

DEQ reviewed several implementation issues. One issue is clarifying what constitutes an individual single-family dwelling. This includes DEQ and VDH agreement on how to address the presence of a second but unused sewer connection.

A second issue is clarifying the process (applicable to proposed treatment works or treatment works not previously issued a VPDES permit) for determining and documenting when an onsite system permit has been applied for and VDH has determined that there is no available onsite

management alternative. At times, an onsite permit application cannot be accepted (may be incomplete), and technically the application is denied. This does not necessarily foreclose all onsite options, but can create confusion for DEQ.

An example is where a system designer desires a discharging system (because it is less expensive), and VDH does not expressly deny the application. The only requirement is for a TL3-capable system. Some VDH districts do not require an application, only the submittal of documentation of a courtesy review. DEQ regulations require that VDH provide documentation that application for an onsite system was denied. In some cases, a contractor may assert that no on-site alternative is available, so an application is never completed. Some VDH offices are not requiring an application or fee.

One VDH participant said that his district requires permittees to submit an application. He noted that it would be helpful for DEQ to clarify what DEQ needs (requires) from VDH to document that no onsite solutions are available. He acknowledged that VDH is having some internal debate regarding procedures.

A third issue is how best to maintain and share a list of permittees and keep that list current. The automatic renewal provision poses some challenges for DEQ in this regard.

A fourth issue is how can DEQ best indicate for permittees and VDH which limits apply, since some limits are conditional based on the receiving water flow or character or the method of chlorination.

DEQ asked that participants submit any other implementation issues and noted that the plan is to hold some calls with VDH to discuss these issues and explore whether a new or revised MOU would be beneficial. A DEQ participant stated that an MOU could address how regional VDH staff inform DEQ staff about which permittees are in compliance and which systems have new owners.

A DEQ participant asked if there is a way of coordinating enforcement with VDH so that VDH can help DEQ when DEQ has limited enforcement alternatives available.

Review of the Draft Strawman Regulation

The TAC reviewed the strawman regulation prepared for the meeting. Key discussion points are below.

Purpose; delegation of authority; effective date of permit (Section 20) – Draft edits would change the term of the permit to August 2, 2021 until July 31, 2026. One participant asked if we would make August 10 the due date for DMRs. Another pointed out that we should revise the annual monitoring period to be consistent with any change.

Authorization to Discharge (Section 60) – DEQ reviewed draft edits to the new sentence that seeks to clarify continuation for coverages based on automatic renewal. The TAC found this language to be an improvement over the initial draft.

Registration Statement (Section 70) – VDH commented in response to the TAC 1 draft regulation (for discussion at this second TAC meeting) that we need to work on better coordination regarding automatic renewal at the time of permit issuance, including confirmation of no VDH objection. Some VDH health districts and DEQ regional offices coordinate well, but others do not. This is not a regulatory issue, but is a coordination issue.

VDH also commented that general permits are still being issued without a formal letter from VDH that documents no onsite alternatives. A standard denial letter for a conventional system is not sufficient. VDH has a separate letter that specifically rules out the systems contemplated by the VDH discharge regulations. How can we best make it clear that DEQ has to have proper notification from VDH? VDH also suggested that in two locations within the strawman where registration statement is mentioned that “or combined application” be added, so that both are addressed.

One participant asked if it would be possible to develop a form that could be used when VDH is denying the availability of onsite alternatives. This could be supported by certification by the permit applicant’s contractor.

A citation correction was noted (line 211). This edit had been made in the draft regulation presented at the TAC meeting, but not in the draft sent out earlier to TAC members.

A participant pointed out that line 211 needs to be clear that for each applicant (proposed treatment facility or not previously VPDES permitted SFH and NSFH) there must be a denial letter indicating there is no onsite system available to serve that parcel of land.

DEQ discussed strawman edits to the registration statement requirements. The edits correspond with other permit changes that would require the use of a licensed operator for NSFHs in lieu of requiring a maintenance contract or O&M plan.

In two locations, VDH suggested amending the reference to VDH regulations from 12VAC5-640-500 to 12VAC5-640, to avoid having to make future changes if VDH modifies their regulations.

A participant stated that the State Corporation Commission information requirement is not included on the combined application, and asked if perhaps for DSD permittees requesting this information is more trouble than it is worth.

A participant asked if it makes sense to use only the combined application. One DEQ region indicated that they predominantly use the combined application.

A participant indicated that the permit requires for proposed treatment works an indication whether there are central sewage facilities available, and noted that it is not always clear when such facilities are available. Another participant suggested that we provide more guidance (e.g., look at the vehicle wash general permit for a possible example). Another suggestion was providing proof that the permitting authority has contacted the local government or utility.

General Permit (Section 80 Part I) – The draft regulation circulated for this meeting did not include changes to the effluent limits or monitoring requirements.

DEQ discussed strawman edits that would remove the maintenance contract and O&M plan alternatives for NSFHs, and would require them to use a licensed operator, as is required for SFHs under VDH regulations. DEQ indicated that the rationale for making this change for NSFHs would be that it is the best option to achieve system maintenance, which results in compliance, and it would make DEQ and VDH more consistent in requirements applicable under the DSD GP. DEQ identified some potential concerns regarding making this change, including cost, ensuring there are a sufficient number of licensed operators, and the lack of flexibility for permittees to self-implement. DEQ also would need to add the operator certification back into the E-DMR system.

DEQ mentioned that an alternative would be to maintain the status quo for NSFHs but specify two system service checks a year and specific items to be checked.

DEQ explained the strawman edits around line 333 to 410 reflect provisions that are consistent with the operation and maintenance requirements in the VDH regulations (12VAC5-640-500). DEQ asked how the O&M requirement in the VDH regulations is implemented. A VDH participant explained that operators must follow the O&M manual (if one exists – newer systems typically have such manuals).

A participant asked if it is better to require a contract, or should we mirror the approach used by VDH. He noted that service calls one-by-one does not seem to be an ideal approach, and any permit requirements must clearly specify who must submit the service and monitoring data.

A participant asked why the permit has limits for shellfish waters (i.e., is this a realistic scenario that would be allowed). One permit writer indicated that she has one permittee with such limits. Another asked if we should tighten up requirements for ephemeral streams. DEQ pointed out that the fact sheet explains that dissolved oxygen limits are not necessary in receiving waters with a flow >.2 MGD because of the relative de minimis discharge volume of these treatment systems.

Line 368 in the strawman would conditionally allow for forcing a discharge based on conditions in VDH's field-testing policy. One participant stated that one option is for the general permit regulation to be silent on the question of forcing a discharge to obtain a sample. He noted that VDH regulations provide that an operator should not force a discharge, so it may not make sense for DEQ to provide criteria for forcing a discharge.

The TAC reviewed edits around line 404, which reflect VDH language and requires that an operator who performs treatment system maintenance must have a Class IV or higher wastewater works operator license or an alternative onsite sewage system operator license. DEQ noted that this could be specified as a definition.

Line 487 includes edits regarding the submittal of monitoring results. One participant asked about the inclusion of E-DMR language. DEQ indicated that such language has not been added to the strawman yet. A participant observed that VDH is moving to a cloud-based system for

data management and that VDH regulations specify that monitoring data needs to be submitted to VDH. A participant asked if VDH data could be submitted through DEQ's E-DMR system. Another stated that contractors like to be able to use electronic data submittal (once they are authorized users) and that having one electronic system may be preferable because it is simpler. A participant stated that now is the time to integrate data submittal if that is desired, since DEQ is building the E-DMR system now

A participant asked about how to determine when a receiving water is an ephemeral stream or not. He indicated that VDH cannot always tell, so it would be helpful to have a separate monitoring sheet for limits associated with discharges to ephemeral streams.

Next steps: Circulate a meeting summary for review/ comment. A third TAC meeting is scheduled for December 18, 2019. Please provide specific input regarding the general permit to Peter Sherman at peter.sherman@deq.virginia.gov.