

**General Virginia Stormwater Management Program (VSMP) Permit for Discharges  
of Stormwater from Small Municipal Separate Storm Sewer Systems  
Regulatory Advisory Panel  
East Reading Room, Patrick Henry Building  
Richmond, Virginia  
August 22, 2012**

**Regulatory Advisory Panel Members Present**

Shelley Bains, VCCS  
Will Bullard, U.S. Navy  
Aislinn Creel, Timmons Group  
Michael Crocker, City of Waynesboro  
Thanh Dang, City of Harrisonburg  
Dan Frisbee, City of Charlottesville  
Doug Fritz, DCR  
Leroy J. Hansen, City of Suffolk  
Steve Hubble, Hanover County  
Adrienne Kotula, James River Association  
Jesse Maines, City of Alexandria  
Tim Mitchell, City of Lynchburg  
Chris Moore, Chesapeake Bay Foundation  
Doug Moseley, GKY and Associates, Inc.  
Lisa Ochsenhirt, Aqualaw  
John Olenik, VDOT  
Steve Plante, Loudoun County  
Jeffrey Sitler, University of Virginia  
Ginny Snead, DCR  
Michelle Virts, City of Richmond

**Facilitator**

Kristina Weaver  
Institute for Environmental Negotiations

**Agency Staff**

Michael R. Fletcher, DCR  
Matthew Gooch, OAG  
Burt Tuxford, DEQ  
Michelle Vucci, DCR

**Others Present**

Suzanne Ellison, VDOT  
Chip England, Hanover County

Mike Lawless, Draper Aden Associates  
Ryan Murphy, Chesapeake Bay Foundation  
Ashley Parks, EEE Consulting  
Peggy Sanner, Chesapeake Bay Foundation  
Bob Siegfried, URA  
Morris Waller, VDOT  
Christine Watlington, VDOT  
Ricky Woody, VDOT

### **Welcome and Introductions**

Ms. Snead welcomed members to the fourth meeting of the RAP. She reviewed the RAP charges and responsibilities.

Ms. Snead said that the latest revisions of the regulations were emailed to members the preceding week. She said that some are still in development, but that the basic concepts are included.

Ms. Snead said that the final meeting of the RAP would be on Thursday, September 6, 2012. She said that DCR would be accepting written comments until Wednesday, August 29. After that additional comments would not be accepted.

Ms. Snead said that following the September 6 meeting the next steps would be to put the final touches on the regulations prior to presenting them to the Soil and Water Conservation Board for consideration at their September 28 meeting. There will likely be two public hearings on the regulations scheduled for December.

Ms. Snead said that the regulations would be sent to EPA for review and concurrence in March, 2013. The goal is to have the new permit effective July, 2013.

Ms. Snead turned the meeting over to Ms. Weaver.

Ms. Weaver asked for group and audience introductions. She reviewed the ground rules for the meeting and the agenda.

### **General Discussion of Meeting Materials and Expectations**

Mr. Fritz reviewed the meeting materials. A full copy of his presentation is available on the DCR website. He noted the following:

- Draft sent out on Friday was not complete and did contain errors.
- Still haven't included all MS4 Program Plan requirements
- Still trying to better coordinate dates in the permits
- Still must address changes in regulated areas as a result of updated urbanized areas.

### *Summary of General Issues and Comments*

- Need for more clarification.
- The permit goes beyond the federal requirements established by the minimum control measures.
- Implementation schedules.
- Program implementation should be a higher priority than documentation given limited resources.
- Concern that a more prescriptive permit will reduce flexibility in program selection and may lead to compliance issues.

### *Clarification through Definitions*

- Added “federal facilities that operate an MS4” to the definition of ‘municipality.’” Definition will be added to 4VAC(50-60-1200)
- Added definition of “operator” to 4VAC50-60-1200 and utilized operator throughout permit to mean MS4 operator
- Clarified definition of “physically interconnected” in 4VAC40-60-1200.
- Did not define “public” but did provide EPA comments as guidance for interpretation.
- Did not define “local” but local should not be confused with locality. Local should be interpreted as having a relationship to your MS4.

### *The Permit does not exceed the federal permitting requirements*

- 4VAC50-60-400 D S. You must comply with any more stringent effluent limitations in your permit, including permit requirements that modify or are in addition to the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. [40 CFR 122.34 e.]
- 4VAC50-60-400 D S. You must comply with other applicable VSMP permit requirements, standards and conditions established in the individual or general permit developed consistent with the provisions of 9VAC25-31-190 through 9VAC25-31-250, as appropriate [40 CFR 122.34 f.]
- The permit must be written in such a manner to address impaired waters. TMDLs and to protect the receiving waters’ water quality standards.
- This permit directs programs towards addressing water quality impacts.

Mr. Fritz noted that dates for the mandates were not included in the draft and reviewed a proposed timeline. Copies of these charts are included in the full presentation.

Mr. Moore noted that the localities had spent a good deal of time on the Chesapeake Bay and other TMDLs. He suggested that the deadlines be staggered to 12, 18 and 24 months.

Concern was expressed about this timeline in relation to the nutrient trading regulations.

Ms. Snead said that the timeline for the nutrient trading regulations was still about two or three years away. She said that saying on track with the timeline was important given the consideration that this was a five year permit. She said that the regulations would be in place before the end of the permit.

Mr. Frisbee asked if this timeline meant that all requirements would have to be completed within the twelve month time frame. He said that was a significant amount of work to accomplish in the first year of a five year permit.

Ms. Virts said that localities would need time for to the MS4 components to be addressed.

Mr. Olenik said that VDOT had 12 TMDLs. He said that VDOT would need more than 24 months.

Mr. Hansen said that with multiple actions such as the General Permit, the Stormwater Regulations, the TMDLs and more that it was difficult to get the required authority at the local level in this timeline.

Ms. Kotula said that the James River Association would support the timeline as presented.

Mr. Hubble said that he would like to see a hybrid of the two charts.

#### *Implementation Should Take Priority Over Documentation*

- DCR understands the rationale behind these components and has attempted and continues to streamline the permit conditions, where appropriate, to address this concern.
- However, this is an NPDES permit. As such, documentation equates to compliance.
- Clear and enforceable permit conditions plus the development of written procedures as part of a MS4 Program Plan demonstrate the required documentation, what must be implemented and how it must be implemented.
- Documentation provides protection against enforcement and provides a method for determining implementation costs.

Ms. Weaver called for general comments. There were none.

Mr. Fritz continued with a review of the actual language and changes in the draft since the last meeting. This document was emailed to members prior to the meeting.

#### **Special Condition for TMDLs other than the Chesapeake Bay TMDL**

Mr. Fritz addressed TMDLs outside the Chesapeake Bay.

*TMDLs Other than Chesapeake Bay TMDL*

- Currently, approximately 60 TMDLs that include wasteload allocations to MS4, not including the Chesapeake Bay TMDL
- There are 2,343 impaired segments (river, estuary reservoir) scheduled to have TMDLs developed between issuance of this permit and 2018.
  - Not all involve MS4s
  - Many impaired segments will be combined into one TMDL

*Concepts being the Special Condition*

- Implementation of BMPs sufficient to address TMLD wasteload allocations will be an iterative process.
- Attempts to build upon what is already in the General Permit while removing what wasn't working.
- Outfall reconnaissance/field screening is more appropriate a part of the overall program.
- Operator owned properties must still be evaluated and monitored.

*The Permit Condition is Refining the Expectations*

- During last permit cycle, the requirement was to attempt to estimate the annual pollutant loadings.
- Given the variability in the pollutants of concern in the TMDLs and in stormwater, this was a little ahead of its time for inclusion in a General Permit.
- This time, time is being given to develop sufficient mechanisms to evaluate discharges using models and/or modeling.
- Allows for coordination with other MS4s.

*Expectations*

- TMDL Action Plans will have
  - A defined area of contribution from MS4 service areas
  - List of applicable parts of overall program, including legal authorities and existing BMPs, that address the pollutant of concern
  - A list of commitments that will be implemented to further address the pollutant of concern.
  - Continued monitoring of operator owned properties where the pollutant of concern is identified as a significant source; and,
  - A procedure for evaluation of the success in reducing the pollutant of concern's load toward meeting the WLA.

### *Current Schedule*

- Update MS4 Program Plans to address TMDLs issued prior to 2008 within 1 year.
- Develop new Action Plans for TMDLs issued between 2008 and 2013 within 2 years.
- Develop new Action Plans for TMDLs issued after 2013 within 2 years of notification by the Department.

### *Proposed Alternative Schedule*

- Update MS4 Program Plans to address TMDLs issued prior to 2008 within 2 years.
- Develop new Action Plans for TMDLs issued between 2008 and 2013 within 2 years.
- Develop new Actions Plans for TMDLs issued after 2013 and include them as part of the reapplication process.
- There are positives and negatives with this proposal.
- Still need to have further legal discussion.

Mr. Hansen said that he was concerned by the sampling. He said that he had previously noted concern with the concept of a PCB TMDL. He noted that the language says that all municipal properties that may be a significant source must be identified. He noted that the City of Suffolk controlled the right of way. He asked if this would now mean that the City is responsible from runoff from VDOT or Dominion, as well as agricultural. He said that this could create an unmanageable burden.

Mr. Mains said that he was also concerned with the PCB samplings.

Mr. Sitler asked about the analytical requirements of sampling. He noted that in a number of large locations, DEQ requires that the analysis be done by certified labs. He asked if that would be a requirement nothing that currently the University uses a combination of labs, students and others to gather data.

Ms. Ochsenhirt also expressed concern about the sampling.

### **Chesapeake Bay TMDL Special Condition**

Ms. Snead reviewed the Chesapeake Bay TMDL Special Condition.

### *Changes Made Based on Comments*

- Clarification and Included Tables
  - Table 1- Existing Source Loads
  - Table II – Total POC Reductions
  - This permit cycle – 5%

- Phosphorous as a surrogate – Table III
- Clarification: avg. land condition <16%
- Reapplication Package Requirements

Mr. Plante noted that the language on line 1185 of the draft did not seem to take into consideration the BMPs that were already on the ground.

Ms. Snead noted that those would have been existing prior to 2009.

Mr. Bullard said that any BMP built prior to 2009 did not get credit.

Mr. Fritz said that the credit was actually built into the table.

Mr. Frisbee asked for clarification regarding legal authorities mention on line 1180. He asked if those were new legal authorities.

Ms. Snead said that the intent was to identify existing authority and to determine what must be implemented.

*RAP Comments Not Addressed*

- Cooperative Agreements
  - Within same locality or within same or adjacent 8 digit HUC
  - Will make this correction to concur with 10.1-603.5.3.A
- 2009 Progress Run Basis
- Nutrient Trading Development Timeline
- Flexibility to Meet Special Condition
- Fiscal Resources Estimate for permit to meet TMDL
- Baseline Program

Mr. Hansen said that he was not sold on the concept of the 2009 Progress Run. He said that localities are responsible for addressing the increase in 2013. He said that he did not see how that fit into the General Permit.

Mr. Fritz said that the 2009 Progress Run was done without respect to any BMPs that were on the ground.

Ms. Snead said that staff would develop a couple of examples and present them at the beginning of the next meeting.

Several members expressed concern that credit was not being given for BMPs on the ground prior to 2009.

Mr. Frisbee asked if the language on line 1349 was appropriate for this permit. He said that this might be outside the scope of the permit.

(see the flip chart #5)

Ms. Weaver called for a litmus test regarding this concept as presented in the draft received prior to the meeting. There was not a high level of support for this language.

Ms. Virts said that she would be more comfortable with a revised version prior to indicating approval.

At this time the RAP recessed for lunch. Following lunch, Mr. Fritz continued with the discussion.

### **Minimum Control Measure – Presentation and Litmus Test**

#### *1 – Public Education and Outreach*

- Three “local” water quality issues impacted by stormwater. Flexibility built in to allow selection with examples provided. Note: at a minimum.
- Still requires using the public to develop the public education and outreach program. Does not describe how to provide flexibility.
  - As such, the recommendations to require development of local stakeholder groups was not implemented.
- Expectation of 20% of target population as a scheduling tool expressed.
- Clarification that 20% is based on equivalency not a separate 20% every year.

#### *Public Outreach*

- Allowance for program adjustments for observed issues through the permit cycle.
- Annual “evaluation” modified to “required only once prior to reapplication.”
- MS4 Program Plan requirements based on developing and implementing a program.
- Reporting requirements based on identifying and scheduling annual next year’s commitments and documenting previous year’s accomplishments.

There was general approval regarding this section.

#### *2 – Public Involvement/Participation*

- Considered the resource commitment comments regarding public involvement for MS4 Program Plan modifications as written.
  - As such, attempted to reduce the impact while still providing for public involvement.



- Public comment required at time of reapplication for coverage.
- Considering requirement of public comment prior to submittal of updated MS4 Program Plan.
- Methodology for MS4 Program Plan modification found at end of Section II. Draft language – still needs some cleaning up.
- Reduced public participation requirements from six to four per year.

There was general approval regarding this section with some concerns.

Ms. Kotula said that she did not believe this achieved public involvement. She said public comment was being gathered, but not necessarily public involvement.

Mr. Lerch said that it would be helpful to see the redraft of this section.

### *3 – Illicit Discharge Detection Elimination*

#### *Illicit Discharge – Outfall Maps*

- Federal requirement to map the MS4 outfalls.
  - No timeline on completion of map established by federal or state regulations.
  - If this were an individual permit, the outfalls would need to be mapped PRIOR to application submittal.
- What is an acceptable time frame to complete mapping?
  - Existing outfalls in urbanized areas previously identified in the 2000 Urbanized Areas.
  - Outfalls potentially located in the expanded 2010 Urbanized Areas.
- What should be mapped?
  - Outfalls
  - Points of Discharge

#### *Mapping Considerations*

- “Outfall” means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.
- “Point of discharge” means a location at which concentrated stormwater runoff is released.
- EPA has explained that it “recognizes that illicit flows may originate in one jurisdiction and cross into one or more jurisdictions before being discharged at an

outfall. In such instances, EPA expects the MS4 that detects the illicit flow to trace it to the point where it leaves their jurisdiction and notify the adjoining MS4 of the flow, and any other physical or chemical information.” 64 FR 68757

### *Mapping Considerations*

- MS4s are intertwined. DCR has an obligation to make sure that MS4 operators are held equally responsible for their contribution to the receiving waters. This is also the reason for the requirement to determine contributing regulated acreage.
- An MS4 operator’s legal authority may bend at its “point of discharge.” That point can be mapped. The operator may not have access to downstream properties in order to determine the discharge point to the receiving waters.
- The stormwater is discharged to receiving waters for which the MS4 operator has a regulatory obligation.

### *Then, there is the TMDL Catch 22*

- A repeated theme is TMDL inaccuracy. TMDLs wasteloads are based on contributing acres from the MS4s.
- DEQ has repeatedly asked for defined regulated areas so that they can more accurately allocate wasteloads to MS4s.
- 1222.34(e) (1) You must comply with any more stringent effluent limitations in your permit, including requirements that modify, or are in addition to, the minimum control measures based on an approved [TMDL] or equivalent analysis.
- These are water quality permits. In the world of TMDLs, impaired waters, anti-degradation and special protections, it is imperative that discharges and their receiving waters are identified.

### *Mapping Requirements*

- Two sections. Map and Corresponding Information Table.
- The map must include:
  - All outfalls with a unique identifier.
  - All known points of discharge including those physically interconnected to another MS4.
  - Receiving waters and 6<sup>th</sup> other HUCs.
- The information table must include:
  - The information included on the map
  - The estimated acreage served for each outfall
  - Identification if the receiving water is impaired
  - Listing of any applicable TMDL

### *Explanation on the Drawing Board*

Mr. Fritz included a drawing that showed an example of mapping. Members asked that this drawing or a similar example be included with the regulations.

*In light of all this...*

- Willing to add option that the MS4 operator may choose to map the points of discharges as outfalls.
- Recognition that mapping expanded areas will take time.
- Recognition that determining contributing acreages will take time.
- Proposed allowing up to 48 months to complete map and corresponding information table.
- Note: Chesapeake Bay TMDL Special Condition requires pervious and impervious acres be identified in two years.

*Illicit Discharge Detection and Elimination*

- Develop and implement written procedures. Some already have procedures. Some do not. Need to address the fact that some are already at implementation stage.
- Commit to a minimum number annually.
  - No number in the permit but remember the permit moves the outfall inspections from the TMDL special conditions.
  - Clarification of “flow estimation” as that being discharged from the MS4.
  - The permit does not include the requirement to begin investigating illicit discharges in a certain time frame (e.g. 48 hours)

There was general approval for the section without regard given to the mapping section.

(see the flip chart, I think #8)

*4 – Construction Site Runoff*

Ms. Snead reviewed MCM4.

- Reference Back to Statutory Definition to Include Exemptions for Land Disturbing Activities.
- Reference Back to Statute for Agreement in Lieu of a Plan
- Change persons holding a certificate of competence to a “certified plan reviewer” to address PE concern.
- Compliance and Enforcement
  - AIP Working added “as appropriate” added
  - Wording added to allow development of a progressive compliance and enforcement strategy.

Ms. Snead said that staff managed to include most comments received to date.

Mr. Bullard asked if the option for an alternative schedule for compliance documentation was available to federal facilities.

Mr. Fritz said that he thought it was because it was not related back to erosion and sediment control.

There was general approval for this section.

Mr. Hubble said that he would suggest, as he did at the first meeting, that Minimum Control Measures 4 and 5 be deleted. He said he thought this was duplicative.

Mr. Powers said that he was not concerned about the language being duplicative but would be concerned if this language went above and beyond the state requirements.

Ms. Ochsenhirt said that she was concerned about requiring an operator to follow up on any complaint. She said that complaints may be received that are not factually based or where the person making the complaint was mistaken.

#### *5 – Post Construction*

Ms. Snead reviewed MCM5.

- Added wording to allow progressive compliance and enforcement strategy.
- Added requiring development of written inspection and maintenance procedures.
- Added requirement for annual inspections unless an inspection schedule is developed based on facility type and maintenance needs.
- Edits to tracking requirements.

(flip chart)

There was general approval for this section.

Final concerns?

#### *6 – Pollution Prevention/Good Housekeeping*

- Daily Operation Procedure Timeline
  - Moved from 3 months to 18 months
  - To better coordinate with updated MS4 Plan, propose that it be 12 months
- Municipal Facilities
  - Identify specific facilities within 12 months
  - Provides ability to define which one's have the high potential of chemicals or other materials to be discharged.
  - SWPPP completions required in 4 years (48 months).

### *Nutrient Management Plans*

- This minimum control measures is for good housekeeping/pollution prevention of municipal facilities. As such it is inappropriate to have a permit requirement to require all properties in a jurisdiction to develop a nutrient management plan.
- The concern that without NMPs on all properties, the CB TMDL will not be met conflicts with the Chesapeake Bay WIP, which states “In addition, MS4 operators will be required to implement urban nutrient management plans on all lands owned and operated by the MS4 operator during the first five-year permit cycle.” WIP 1, Page 93.
- Requirement for all MS4 operators to not utilize phosphorous cleaning agents removed as the wash water cannot be discharged under this permit.

Mr. Lerch asked if special conditions relating to the Chesapeake Bay can count toward reductions.

Mr. Fritz said those were separate commitments.

Mr. Lerch asked about lands not owned by the locality.

Mr. Fritz said that was not part of this commitment.

There was general approval of this section

Ms. Ochsenhirt said that she appreciated the effort to address concerns, but that this section was too prescriptive and had too many requirements.

### *Training*

- Clarification that training is not required where the MS4 operator does not implement the activity requiring training.
- Requirement for annual training modified to biannual training.
- Training records must be kept for three years.

### *Still need*

- Clean up, MS4 Program Plan requirements and specific Annual Report requirements.
- Coordination of all permit conditions.
- Determine what needs to be submitted as part of Registration Statement.
- Review Evaluation requirements.
- Review Reporting requirements.
  - Working on template to use as an Annual Report
  - Will not be part of regulations so cannot force it to be used.

- Section III will remain the same. It is standard language.

### **Public Comment**

There was no public comment.

August 29 is the absolute last final deadline to get any additional comment to Doug and Ginny. Any after that will not be incorporated.

Next time consensus testing.

The next and final meeting of the MS4 General Permit RAP will be at 10:00 a.m. on Thursday, September 6, in the East Reading Room of the Patrick Henry Building.

Ginny we have things to put together to get back to you.

Making some decisions on schedules and timings of various plans.

In turn asking that you get comments and additional edits to us by August 29. Be our goal to a couple of days after that to get to you by 31<sup>st</sup>.

Work off what you sent or will you send clean.

Supporting materials for this meeting are available at:

<http://www.dcr.virginia.gov/lr3.shtml>