

**General Virginia Stormwater Management Program (VSMP) Permit for Discharges of
Stormwater from Small Municipal Separate Storm Sewer Systems (4 VAC 50-60-1200 et
seq.) [Part XV] Regulatory Advisory Panel (RAP)**
East Reading Room, Patrick Henry Building, Richmond
Tuesday, August 7, 2012; Meeting #3

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
Leroy J. Hansen, City of Suffolk
Joe Lerch, VML
Jesse Mains, City of Alexandria
Roy Mills, VDOT
Tim Mitchell, City of Lynchburg
Chris Moore, Chesapeake Bay Foundation
Doug Moseley, GKY & Associates, Inc.
Lisa Ochenshirt, Aqualaw
David Powers, Williamsburg Environmental Group
Paul Santay, Stafford County
Jeffrey Sitler, University of Virginia
William Street, James River Association
Michelle Virts, City of Richmond

Facilitator

Kristina Weaver
Institute for Environmental Negotiations

Agency Staff Present

David A. Johnson, DCR
Ginny Snead, DCR
Doug Fritz, DCR
Michael Fletcher, DCR
Matt Gooch, OAG
Burt Tuxford, DEQ

Others Present

Adrienne Kotula, James River Association
Ben Mack, Chesapeake Bay Foundation

Peggy Sanner, Chesapeake Bay Foundation
Morris Walton, VDOT
Christine Watlington, VDOT
Randy Williford, Loudon County

Welcome and Introduction

Ms. Weaver welcomed members and attendees to the third meeting of the RAP. She turned

Ms. Snead reviewed the charge of the committee. She noted that an additional meeting was added for Thursday, September 6 at 10:00 a.m. This is in addition to the August 22 meeting.

Ms. Snead reminded the RAP that the current permit expires in July 2013. She said that to have a permit in place the agency would have to meet certain milestones. The intent was to take the proposed regulations to the Soil and Water Conservation Board at their meeting in September.

Overview of Comments Received Regarding Last Meeting

Mr. Fritz reviewed the comments received since the July 25, meeting. He said he was receiving comments up until the day before this August 7 meeting.

EPA Expectations on all MS4 Permits

- Permit provisions should be clear, specific, measurable, and enforceable.
- Permits should include specific deadlines for compliance, incorporate clear performance standards, and include measurable goals or quantifiable targets for implementation.

Mr. Fritz said that some of the language in the draft was pulled from this guide and modified to fit the Virginia statute. Some was left out entirely as it was not applicable to Virginia.

Comments in General

- Grammar, typos, wording, references and general errors need to be cleaned up.
- Concern with the word “operator.” Mr. Fritz said that he agreed and perhaps “permittee” needed to be defined in 4VAC50-60-1200 as the MS4 operator in the permit.
- Requests to create a stand-alone section on MS4 Program Plan contents rather than include in each segment.

Mr. Fritz said that several comments had come in at the last minute and were not reflected in this discussion.

Minimum Control Measure 4 Comments

- Set regulatory threshold at 1.0 acres and greater. Remove ESC and CBPA regulatory size thresholds. Mr. Fritz said that it was believed implementing this would cause even more confusion.
- Clarify references in plans. This was implemented.
- Length to retain ESC plans after construction activity completed. Comments ranged from three months to five years. Five years was implemented.
- MS4 Program Plan – Allow for reference to documents rather than inclusion. Mr. Fritz said this was implemented provided that the MS4 Program Plan references location of documents and that documents are made available to the public upon request.
- Reporting requirements – Add total number of inspections. This was added.

Mr. Lerch asked about the requirement on line 60 of the draft that stated, “Within 48-hours of any runoff producing storm event.” He asked how a runoff producing event was defined and how that would work at the local level.

Mr. Fritz said that was the current language pulled from the regulations.

Mr. Sitler said that UVA had attempted to get that requirement relaxed. He said that it comes down to doing the best you can and maintaining records.

Mr. Powers asked if the requirement was already in the state regulation if it needed to be included in the permit.

Mr. Fritz said if the regulations are referenced, the meaning would be the same.

Mr. Powers said there could be an alternative approach written for localities.

Ms. Dang asked what would happen if the regulations change at a future date since this was written based on references in the current regulations.

Mr. Fritz said that the requirement would follow with the permit.

Mr. Street noted on line 82 the term “as appropriate” was inserted. He said that it was not clear what that meant.

Mr. Fritz said the attempt was to not that there are differing types of legal authorities.

Mr. Mills said that VDOT had submitted substantial comments but that he was concerned they were not reflected in this draft. He said that VDOT does not have legal authority over land beyond their right of way. VDOT does not have taxing authority to raise revenues to address these requirements.

Mr. Mills said that VDOT would recommend a dual path for the MS4 General Permit. One path for entities that have taxing authority and a second path for non-traditional MS4s that do not have legal authorities or taxing mechanisms. He said language should be included for non-traditional plans.

Minimum Control Measure 5 Comments

Mr. Fritz said that he attempted to clarify language where concerns had been expressed.

- Concern regarding differences between non-traditional and traditional MS4 operators. Language was added to address these concerns.
- Vagueness in requirements for inclusion MS4 Program Plan. Specific language was added.
- Tracking-Address and HUC. Added general location including address or latitude/longitude.
- Reporting. Added requirement to report annual long term inspection and enforcement numbers.

Mr. Bullard said that one question was what happens when inspection aren't done.

Mr. Street asked how it would be determined that an MS4 was in compliance.

Mr. Fritz said an added requirement of the plan would be to maintain records showing compliance with the schedule.

Concern was expressed that there was not sufficient time to develop a plan.

Chesapeake Bay TMDL Special Condition

Mr. Fritz said that he was still receiving comments regarding this issue.

- Cost of reductions to existing discharges.
- Accounting for growth from new sources and grandfathered projects.
- No delay in requiring reductions in areas not yet identified as regulated.
- Dislike of the Special Condition.
- Conformity issue with new Nutrient Offset/Trading statute.
- Desire to get full credit for work done outside of MS4 service areas – no baseline requirements.

What the Reduction Requirement Really Means

Table 6-4.1 Urban / Suburban Stormwater Scoping Scenario Level 2 Effective Net Reductions Using Phase 5.3 Land Loads

Existing Non-federal Urban Lands

Land Use Category	Practice Description	Level 2 Practice % Coverage	Effective Net Reduction Prorated Over Entire Land Use Category Acreage		
			N	P	Sediment
Impervious Urban High and Low Intensity	Impervious Cover Reduction	7.5%	0%	5%	6%
	Filtration Practices	7.5%	3%	4%	6%
	Infiltration Practices	8.0%	6%	7%	8%
	Total		9%	16%	20%
Pervious Urban High and Low Intensity	Impervious Cover Reduction	-			
	Filtration Practices	5%	2%	3%	4%
	Infiltration Practices	5%	4%	4.25%	4.75%
	Total		6%	7.25%	8.75%

Nutrient Reduction Efficiencies:

Impervious Cover Reduction: 2% N, 65% P, 85% Sediment (based on differences in Phase 5.3 Watershed Model no BMP loads for pervious/impervious average Virginia loads)

Filtration Practices: 40% N, 60% P, 85% Sediment

Infiltration Practices: 80% N, 85% P, 95% Sediment

Chesapeake Bay TMDL, Appendix S

- Where the TMDL does not provide a specific allocation to accommodate new or increased loadings of nitrogen, phosphorous, or sediment, a jurisdiction [State] may accommodate such new or increased loadings only through a mechanism allowing for quantifiable and accountable offsets of the new or increased load in an amount necessary to implement the TMDL and applicable water quality standards (WQS) in the Chesapeake Bay and its tidal tributaries.
- The Chesapeake Bay TMD assumes and EPA expects that the jurisdictions will accommodate any new or increased loadings of nitrogen, phosphorous, or sediment that lack a specific allocation in the TMDL with appropriate offsets supported by credible and transparent offset programs subject to EPA and independent oversight.
- *Offsets Baseline (for credit generators). That any point or nonpoint source generation a credit has implemented practices or met any reductions necessary to be consistent with the Chesapeake Bay TMDL allocations.*
- (a) For point sources generating credits, the TMDL assumes that the offsets baseline in the water quality-based effluent limit (WQBEL) included in that discharger's permit consistent with the applicable WLA in the TMDL. For some point sources, the baseline

will be a numeric limitation; for others, it will be a suite of BMPs determined to be protective of WQS.

- (b) **For nonpoint sources generating credits, baseline options should be consistent with the TMDL LA for the appropriate sector** and may be further defined in terms of load, geographic scale, minimum practices, and schedule of implementation and/or time needed to facilitate improved environmental compliance with WQS.

Concern was that this was not straightforward and that some localities would be punished. A member commented that the requirements were onerous for so little return and that resources would be wasted.

A member said that this was a huge problem for highly urbanized areas.

Small (Phase II) MS4 General Permit Applicability of WQBELs to MS4s

Ms. Snead reviewed the WQBELs relevance to MS4s.

Measurable Goals in the MS4 General Permit

- Measurable Goals Needed
 - Small MS4 Program Evolution
 - 2003 GP – Establish Programs
 - 2008 GP – Improve Programs
 - 2013 GP – Measurable Goals to Move Programs Forward
 - Accountability and Enforcement
 - Consistency of Programs
- Reasonable and Realistic Expectations
 - Implement-ability
- Non-Traditional Permittees
- Consensus-Compromise

RAP Comments from Meeting #1

Numeric WQBELs in Lieu of Narrative BMP Approach

- WQBELs Designed for End of Pipe not MS4s
- WQBEL Monitoring Cost Prohibitive, Labor Intensive, Highly Variable, Worker Safety
- MEP is Compliance Standard in the Clean Water Act
- Variability in Stormwater Monitoring Data make Numeric Limits “Operationally Impossible” for MS4s
- Numeric Standards Impractical: TMDL Calculations Themselves Use Model Basins and Study Averages for Stormwater/MS4.
- WQBELs Necessary.

WQBEL Development

- Apply to the Discharge Point: “End of Pipe”
- Development of Water Quality-Based Effluent Limits
 - Step 1: Identify applicable water quality standards
 - Step 2: Characterize effluent and receiving water
 - Step 3: Determine need for parameter-specific WQBELs
 - Step 4: Calculate WQBELs.
- Water Quality Model: Critical Condition Estimates
 - Steady State Model Recommended
 - Typically Low Flow Design Conditions
- Average Monthly Limit; Maximum Daily Limit

Clean Water Act

- 33 USC § 1342 (p) sets forth permit requirements
 - 3) Permit requirements
 - (A) Industrial discharges. Permits for discharges associated with industrial activity shall meet all...
 - (B) Municipal discharge. Permits for discharges from municipal storm sewers –
 - (i) may be issued on a system – or jurisdiction-side basis;
 - (ii) shall include a requirement to effectively prohibit non-stormwater discharges into storm sewers; and
 - (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.
- MEP is standard (end goal); WQBELs not a control

Nature of Stormwater

- Flow Conditions
 - 1 yr., 10 yr., 100 yr. Storm Event
 - First Flush
- Sampling
 - Outfall variability
 - Collection Methodology variability
 - Laboratory Method variability
- Legacy Pollutants
- MS4 Authority on Private Property

Summary

- WQBELs Application of MS4 not support by Clean Water Act
 - Standard is MEP
 - WQBELs not a control
- WQBELs Not Relevant for MS4s

- Monitoring Variability
 - Flow
 - Pollutant Concentration
- Low Flow Conditions
- Discharge Control

Ms. Snead asked that members submit written comments concerning WQBELs.

Mr. Fritz continued the review of the Minimum Control Measures.

Minimum Control Measure 1 – Public Education and Outreach

- An attempt to define the same expectations for everyone.
- Develop messages for three high priority issues.
- Identify and estimate the population that you are trying to reach.
- Develop messages specific to them.
- Does not require a 5-year schedule of events. However, does require sufficient implementation to reach 20% of each population annually.

Estimating your population

- Different for each type of MS4
- Depends upon the target audience
- Examples:
 - A town chooses to address home owner nutrient application:
 - Total population – Number of residences in town.
 - Colleges and Universities
 - A college chooses to address leading cars in the parking lots
 - Total population – Number of parking permits
- Transportation
 - VDOT chooses to address pet waste at their rest areas
 - Total population – Average daily visitors at the rest areas.

Many outreach programs are going to reach 100% of the target audience

<u>Highway</u>	<u>Facility Site Name</u>	<u>Mile Marker</u>	<u>County</u>	<u>2009 Avg Daily Visitation</u>
I-66 Westbound	Manassas	48	Prince William	1,580

BMP 1B(1) (a)	Public Outreach – Maintenance Lead Division
Measurable Goal(s)	<ul style="list-style-type: none"> ➤ <i>Goal:</i> Install message signs and mechanism for distribution of informational brochures at pet waste stations at safety rest stations and welcome centers regarding environmental effects of pet waste and encouraging pet owners to properly dispose of their pet waste. ➤ <i>Measure:</i> Number of signs installed and number of brochures distributed.
Milestone Yr 1	<ul style="list-style-type: none"> • Install message signs at pet waste stations on environmental effects and proper disposal of pet waste.
Accomplishments	<ul style="list-style-type: none"> • Pet waste stations similar to the DOGIPOT pet stations have been installed at all rest areas/welcome centers. The pet waste station is stocked with disposal bags as part of the normal maintenance operation. • Because of the review to determine which rest areas are to be closed, a decision on the placement of additional signage and mechanisms for distribution of informational brochures has been delayed.

In this case, is the number of brochures distributed an appropriate measurable goal?

Minimum Control Measure 2- Public Involvement/Participation

Why?

- Public concern about the openness of the process.
- Concern with consistency with federal regulatory public participation requirements.
 - Court case found that NOIs (Registration Statements) are the functional equivalent of permits under the Phase II General Permit Option.
- “You must make your records, including a description of your stormwater management program, available to the public at reasonable times during regular business hours (see 4VAC50-60-340 for confidentiality provision). You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice.” 4VAC50-60 D.7.b.

There are reasons for public involvement

- MS4 programs are under the most scrutiny in the NPDES permit world and expectations are high.
- Failure to adequately inform the public has lead to a perception that MS4 operators are doing little and a demand for more regulatory requirements.
- The public is paying for implementation of the MS4 Program required under the permit and it is expensive.
- Promotion, sponsor, or other involvement in a minimum of six local activities annually aimed at increasing public participation.
- The MS4 Program Plan shall include written procedures for implementing this program and these procedures must be incorporated into the SWMP document.

Mr. Frisbee asked on lines 37-38 of the DRAFT of the public participation document how this would be accomplished and how DCR would be notified.

Mr. Fritz said that the idea was to put the information out for public comment prior to notifying DCR.

Minimum Control Measure 6- Pollution Prevention/Good Housekeeping

- Specific to municipal activities, operations and facilities where the MS4 operator has control.
- Key areas
 - Daily or routine operations
 - Certain facilities
 - Nutrient Management
 - Training, training, training
- Illicit discharges from municipal activities, operations and facilities are still illicit discharges and unauthorized under this permit.

Concern was expressed that some of the training classes may not be applicable across the board.

VDOT believes the timing is an issue. Three months is not enough time.

A member asked that the term “cleaning agents” be clarified on line 162.

Minimum Control Measure 3- Illicit Discharge Detection Elimination

- Prescriptive
- The outfall map must be complete
- You must do outfall monitoring/field screening
 - Removing this from TMDL requirement
 - Putting it in Illicit Discharge
 - More appropriate
- Currently, no minimum number of annual field screening activities. Thoughts?
- Increased public awareness of illicit discharge reporting

A member asked if the definition of “outfall” was clear.

It was suggested on line 129 that the word “precipitation” be substituted for “rain.”

RAP Issues Identification and General Questions

Ms. Dang asked how this will be rolled out to localities.

Mr. Fritz said that around December, DCR will send a notice to all permit holders.

Mr. Mills expressed a concern regarding the speed of the process. He said that the potential impact may be greater than the VSMP regulations. He said that he did not believe there was adequate time to submit proper comments.

Mr. Mills said that he would recommend slowing the process down, even if that meant delaying the renewal of the permit for another year.

Ms. Snead said that she appreciated the concerns. She noted that the regulator process did not begin when it should have.

Public Comment

There was no additional public comment.

Next Step/Next Meetings

Ms. Snead asked that any comments be submitted to DCR by August 14 or before.

Ms. Snead said the next meeting would be on August 22 and the final meeting, which was added to the schedule, would be on September 6.

The meeting was adjourned.

Note: Supporting materials for these meetings are provided at <http://www.dcr.virginia.gov/lr3.shtml>