



Commonwealth of Virginia

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SUBJECT: Technical Advisory Committee (TAC) Meeting to Discuss the 2021 Reissuance of 9VAC25-115 Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities
TO: TAC Members and DEQ Staff (listed below)
FROM: Elleanore Daub, Office of VPDES Permits
DATE: September 17, 2019 DRAFT

A TAC meeting was held on August 1, 2019 at the DEQ Piedmont Regional Office. The meeting began at 10:00 AM. Participants attending the meeting were:

| Name | Organization |
|------------------|--|
| AJ Erskine | Bevans Oyster Company and Cowart Seafood Corp. |
| Kim Huskey | Ballard Fish & Oyster Company |
| Mike Osterling | Shellfish Growers of Virginia |
| Drew Hammond | DEQ - CO |
| Elleanore Daub | DEQ - CO |
| Peter Sherman | DEQ - CO |
| Troy Nipper | DEQ - CO |
| Loan Pham | DEQ - TRO |
| Joseph Bryan | DEQ - PRO |
| Jeanne Puricelli | DEQ - PRO |
| Emilee Adamson | DEQ - CO |

Information provided before the meeting were:

- Regulation with draft amendments and staff comments dated December 5, 2014, VPDES General Permit for Seafood Processing Facilities 9VAC25-115;
- Approval of TAC Membership from the DEQ Director;
- Role of the TAC
- Topics to discuss

Discussion

DEQ staff gave some background on the permit regulation and the rulemaking timeline. The Notice of Intended Regulatory Action was published earlier this year (POST NOTE: no comments were received except requests to participate on the TAC. All requestors were asked to participate). Staff plans on asking the Board for approval to go to public hearing on the draft amendments at the December 2019 State Water Control Board quarterly meeting. Then a 60-day public comment period will follow.

Summary of topics and draft regulation amendments:

Definitions (Section 10) –

There are several new stormwater related definitions that may or may not be included, depending on whether they will get used in the amended stormwater management requirements.

It was noted that oyster, clam or scallop shells are excluded from the definition of industrial waste. The industry considers shells a commodity (crab shells are considered waste).

POST NOTE: Later there was a discussion on whether aquaculture operations should specifically be excluded from the seafood processing facility definition.

Purpose; delegation of authority; effective date of permit (Section 20) - The existing permit has odd effective and expiration dates of July 24, 2016 – July 23, 2021. DEQ is working to get permit effective and expiration dates on a calendar year schedule to match expected reporting frequencies. In order for no overlap to occur between the old expiration date of July 23, 2021, the new start date should be July 24, 2021 and the expiration date will end on Jun 30, 2026 (the end of the second calendar quarter). The down side of this is that the next permit is just shy of five full years. Since the permit term cannot exceed 5 years, this is the best option.

Authorization to Discharge (Section 30) – One of the reasons an owner would not be authorized to get permit coverage would be if it exceeded a loading of 2,300 pound of total nitrogen or 300 pounds of total phosphorus per year. If a facility exceeded these levels, coverage under the Watershed General Permit to meet Chesapeake Bay Total Maximum Daily Load (TMDL) requirements would be required, as well as an individual permit. No seafood processing permittees discharge near this level. A monitoring study undertaken by DEQ verified that information. The levels discharged by seafood processing industries was well below the levels expected by the Watershed Implementation Plan. Because of that, this sector will not be asked to do TMDL nutrient monitoring like the industrial stormwater (ISW) general permittees are required to do.

This section also contains continuation of permit allowances for when coverage cannot be granted in time. If a complete registration statement is submitted on time, then an administrative continuance of permit coverage can be granted until DEQ does make a decision about permit coverage. The language changes presented simply make it consistent with other general permits and more generic in that specific (month/day/year) dates have been removed. DEQ will mail reissuance reminder letters in 2021 to remind permittees of their duty to re-register and will provide a specific due date at that time.

Registration Statement (Section 40) – DEQ is trying to make registration statement due dates of all general permits consistent as well. Typically, that is 60 days prior to expiration. To that end, the new

registration due date suggestion is 60 days prior to expiration instead of 30 days. The group did not think that 60 days is unreasonable particularly since DEQ can allow a different submittal date. The regulation allows submittal of registration statements until the expiration dates. Any submittals after the expiration date are also accepted but coverage is not retroactive and any discharge before DEQ is able to provide coverage is not authorized.

Other due dates were reviewed. There is a generic statement (draft section 40 A. 2. d) with no due date included in the draft that should be removed.

One question that will be added to the registration statement is the State Corporation Commission entity number. This is so DEQ can properly identify the owner in case of an enforcement action.

The outfall information question on the registration statement will include latitude and longitude. This is necessary because of EPA electronic-reporting (e-reporting) requirements. Staff explained that new e-reporting has several aspects that will affect permittees. A lot of permit information submitted to DEQ will be published on EPA's external website - Enforcement and Compliance History Online (ECHO). All compliance data and other information will be viewable by the public. There were concerns raised by the industry about this. DEQ explained that the data is first reviewed by DEQ compliance staff before being uploaded to EPA but there are occasional errors that can cause the public to misinterpret and misuse compliance data. Also, permittees will be required to start submitting Discharge Monitoring Report (DMR) data electronically (e-DMR). This requirement is expected to be completed by January 2021. Seafood permittees will be provided instructions on how to sign up for e-DMR sometime before the end of this year. In the future, permittees will also be registering for general permit coverage online. Staff showed the group the DEQ internal Comprehensive Environmental Database System (CEDS) where permit information is entered. Staff also demonstrated the ECHO database later in the day.

The group discussed whether a map was necessary since latitude and longitude are provided and GIS capabilities are available. Staff thinks the site map with building locations and water flow is useful but a topographic map is not. There may be ways to combine the water balance diagram with other site information.

Other general permits ask permittees to notify Municipal Separate Storm Sewer (MS4) owners at the time of registration if they discharge to the MS4. No seafood processing facilities discharge to the MS4 so this question has not been added.

General Permit (Section 50 Part I) – There are currently 27 effluent limits pages. Only 11 are in use right now. All the limits pages reflect the current effluent limits for the seafood industry. Many of the current permit limits fall under Part I A 1, which only has annual monitoring requirements and no limits. For those permits with limits, compliance is generally good. The most frequent compliance violation is failing to submit the DMR. Total suspended solids problems have often been tied to a need to clean out the sediment trap. No changes to effluent limits are needed.

Permittees will be required to use e-DMR in the coming permit term. Internet access should not be a problem for this industry. The permit should include the e-DMR requirement.

Small oyster growers currently do not require VPDES coverage. This was discussed during the 2016 TAC meetings and DEQ has been implementing that policy. Approximately 15 inquiries have been made over the past several years and all but one did not require permit coverage. Usually growers call DEQ because the Virginia Department of Health inspectors advise them to call the DEQ to determine whether permit coverage is needed. DEQ typically follows best management type practices as guidelines for making permit coverage determinations as follows:

DEQ has recommended where pre-washed oysters that are sorted and rinsed, usually outdoors on a covered dock or other rough enclosure with tumblers or by hand and the smaller oysters are returned to the river for grow out, a facility need not apply for a VPDES permit. DEQ recommended this due to the following conditions:

- 1) Oysters and oyster cages are initially washed over the oyster grounds;
- 2) The prewashed oysters are then graded in tumblers on a dock while water is sprayed over the oysters. Usually this water is pumped from and returned to the adjacent water body. There are negligible solids rinsed off the product because the shellfish are initially washed over the oyster grounds;
- 3) There is no processing (shucking) of the product. The oysters are sold whole;
- 4) The operation is small in volume (around 100 GPD) and product (around 10 bushels per day);

DEQ considers these operations as primarily aquaculture facilities (SIC 0273) and will not require these molluscan aquaculture facilities to get VPDES permits. The small amount of water sprayed over the tumbler while grading the oysters is often the same as the water it came from with de minimus pollution added. Even though DEQ does not require coverage, the facility is still discharging to state waters and any fish kills or water quality problems caused by the discharge is still the responsibility of the owner and subject to possible enforcement by DEQ.

This policy was discussed at length during the January 23, 2014 TAC meeting and DEQ did a number of site visits to establish these guidelines. The TAC consensus is to continue to not require coverage for these types of operations.

It might be helpful to put the information out to growers.

It was generally agreed that 10 bushels is a low threshold even for small producers.

Cage cleaning has at least once resulted in a citizen complaint regarding the odor of fouled cages at an aquaculture facility. The cage cleaning issue is part of a Virginia Marine Resources Commission (VMRC)/Natural Resources Conservation Service (NRCS) grant and water quality initiative to use best management practices for cages such as bringing them to land and letting the fouled cages dry. This might be useful to explore and possibly add these BMPs to the guidelines. Staff inquired as to if cage cleaning or housekeeping issues needed to be addressed in an Operations and Maintenance manual (O&M) for water quality issues. Currently there is no requirement for an O&M manual of this type but there are solids management requirements. Generally, the group thought these BMPs could remain in guidance.

Stormwater Management Part II – DEQ indicated that the existing seafood general permit includes very basic stormwater requirements. The federal Multi-sector General Permit (MSGP) as well as the VPDES Industrial Stormwater (ISW), Nonmetallic Mineral Mining General Permit (NMMM), and Concrete general permits have additional stormwater requirements. Overall, DEQ is working to make the general permits consistent with regard to stormwater regulations. The changes to the stormwater provisions in this draft reflect this objective. Having stormwater requirements for the 2091, 2092 SIC codes are needed because they fall under Sector U (Food and Kindred Products) of the EPA MSGP. Otherwise, these two SIC code industrial sectors would be required to get additional coverage under the ISW general permit. Overall, the stakeholders want DEQ to consider the level of stormwater requirements necessary for this industrial sector.

Generally the term “best management practices” has been replaced with “control measures.”

There is no benchmark (analytical) monitoring for this industry. Because of this, monitoring instructions and timing requirements are not needed for this permit.

In Part II A, the first new section is the addition of quarterly visual monitoring of stormwater quality. This requires a visual examination of the color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of stormwater pollution. The sample is timed such that it catches the “first flush” of stormwater to observe whether the control measures or BMPs are working properly. There were some concerns about this new addition, particularly if it applied to stormwaters associated with spent shells that are continuously ejected from the shucker house and then moved to a long-term storage pile. Is this activity excluded in the definition of stormwater associated with industrial activity? DEQ should clarify if this activity is subject to stormwater requirements. Stormwaters may be discharged from these areas and might exit through an outfall. These shells are shoveled away several times a day. DEQ will review the EPA Multi-sector general permit to see if there are any clarifications in that documentation and review the original reasons for the exclusion of shells from the definition of industrial activity. A review of some sites using this practice may be needed. DEQ will need to make some clarifications in guidance and/or in the fact sheet.

It was noted that stormwater requirements do not apply to sheet flow. Only stormwater exiting the site from discreet conveyance are regulated.

Another area of concern is the newly added “allowable nonstormwater discharges.” Is aquaculture considered an allowable discharge? DEQ stated that molluscan aquaculture has never been permitted by DEQ. The activity does not have effluent guidelines. If DEQ does recognize this in the regulation or guidance, aquaculture should be defined and take into consideration all stages of aquaculture (spawning, growing, harvesting). The VPDES status of aquaculture should be explained in the fact sheet. Perhaps exclude aquaculture in the definition of “Seafood Processing Facilities.” If aquaculture is specifically excluded in the definition, it would help to clarify the intent of allowable discharges since properly defining aquaculture is difficult.

Part II C, releases of hazardous substances or oil in excess or reportable quantities, is unneeded for this industry. Several other general permits do not include this language.

In Part II D, the introductory language should be moved to the beginning of Part II to specify that stormwater only applies to 2091 and 2092.

In Part II D, stormwater pollution prevention plan (SWPPP), deadlines, the new facilities are now required to have a SWPPP at time of registration.

In Part II D, SWPPP, contents of the SWPPP, site description, site map, the MSGP and ISWGP have additional locations to identify on the site map for Sector U (vents and stacks from cooking, drying, and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product, and broken product container storage areas). These may not be applicable.

In Part II D, SWPPP, contents of the SWPPP, site description, locations of stormwater outfalls, the drainage area is not needed and possibly the latitude and longitude didn't need to be repeated in the site description. Also, if the representative outfall concept is included the drainage area similarities are part of that determination. In the sampling data paragraph, the requirement for sampling data collected during the previous three years is not needed. The only sampling data is the visual monitoring, which is kept with the SWPPP anyway.

In Part II D, SWPPP, contents of the SWPPP, summary of potential pollutant sources, the MSGP and ISWGP says to document application and storage of pest control chemicals.

In Part II D, SWPPP, stormwater controls, the new language says that run-on must be regulated. This was questioned, although the group did not think run-on was a particular concern for this industry. Consider adding the words "if applicable" to the sentence that discusses the regulation of run-on.

In Part II D, SWPPP, stormwater controls, control measures, good housekeeping, the old language seems more appropriate for typical seafood plants. Consider keeping the first sentence and itemizing and keeping the old narrative after "typical problem areas include:....."

In Part II D, SWPPP, stormwater controls, control measures, eliminating and minimizing exposure, the list of items that shall be implemented (unless infeasible) is burdensome. Some sites are very small. DEQ should consider making this a "may" instead of a "shall" or "if practical" or consider the appropriateness of the requirements for this industry. For example, consider more generic terminology to "use BMPs" to prevent run-off of contaminated flows instead of "use grading, berming or curbing." No exposure certification (NEC) is a concept available to other industries and should be for this industry also. Would meeting these items qualify a site for "no exposure?" Would the aforementioned shells that are continuously ejected from the shucking house need to be covered to qualify for "no exposure?" Does the requirement for indoor "equipment cleaning" include cages? Seafood industry should qualify for consideration of a NEC.

In Part II D, SWPPP, stormwater controls, control measures, employee training, pest control is included in employee training in the EPA MSGP for sector U.

In Part II D, SWPPP, stormwater controls, control measures, dust suppression and vehicle tracking of industrial materials requirements are not appropriate for the seafood industry.

In Part II D, SWPPP, routine facility inspections, some of the additional sector U inspection areas are not included here. Other areas included are: loading and unloading areas for all significant materials; storage areas, including associated containment areas; waste management units; vents and stack emanating from industrial activities; spoiled product and broken product container hold areas; animal holding pens; staging areas; and air pollution control equipment. DEQ should consider the appropriateness of these to the seafood industry. Routine facility inspections are quarterly and now one must be done during a storm event. The requirement allows for more frequent intervals if specified elsewhere in the permit. There are no other intervals specified, so this may be deleted.

In Part II old section D, comprehensive site compliance evaluations were eliminated. However, the EPA MSGP has moved some parts of the evaluation to the routine facility inspections. DEQ wants to follow suit and add applicable items back to the routine facility inspections such as the conditions around the outfall, discharges at time of inspection and potential for pollutants entering the drainage system.

Staff asked if there was a representative outfalls provision in the permit because the draft did not contain the language. Representative outfalls can substitute for other stormwater outfalls and in those cases, the visual monitoring only need be conducted at the representative outfall. The group thought this should be included.

In Part II F, maintaining an updated SWPPP, SWPPP modifications are now due within 60 calendar days after the discovery, observation or event requiring a SWPPP modification instead of 30 days.

Part II G, nonstormwater discharges, requires an annual outfall evaluation for unauthorized discharges. This seems a bit redundant as previously unidentified discharges are part of the routine facility inspections. Any unauthorized discharges should be eliminated. Perhaps this can be combined with the routine facility inspections.

The balance of stormwater wording changes were less significant and were not discussed at any length.

It does not appear another meeting is necessary but the TAC can decide once the language is resent after making changes discussed today.

Thanks to all the TAC members for their service.