

Watershed General Permit for Nutrient Trading (9VAC25-820) – 2016 Reissuance
1st TAC Meeting
May 4, 2015, 10:00 am
DEQ Piedmont Regional Office

Minutes

Attendees

Allan Brockenbrough, DEQ-CO
Elleanore Daub, DEQ-CO
Alison Thompson, DEQ-NRO
Kathleen OConnell, DEQ-CO
Dawn Jeffries, DEQ-VRO
John Kennedy, DEQ-CO
James Grandstaff, Henrico County
Bill Purcell, VMA
Beth Sprengle, Wetlands Studies and Solutions
Chris Pomeroy, VAMWA
Jaime Mitchell, HRSD
Shannon Varner, Troutman Sanders
Andrienne Kotula, James River Association
Rich Gullick, Rivanna WSA
Jason Erickson, Dominion
Peggy Sanner, Chesapeake Bay Foundation
Elizabeth Andrews, DEQ-CO
Patricia Gleason, EPA Region III

Discussion

After introductions, the role of the TAC was reviewed along with rules for reaching consensus, etc. The NOIRA was published in February and the comments received were shared with the TAC along with comments received on DEQ's previous Trading Ratio Study. It is DEQ's intent to incorporate the results of the Trading Ratio Study in the current rulemaking.

Staff walked the TAC through the working draft of the proposed regulation (4/26/15 version) that had been previously provided. Most of the proposed changes were grammatical or administrative in nature and generated little discussion with just a few exceptions. The following issues were discussed:

1. The definition of "Tributaries" was changed to be consistent with HB1536 (2015). The definition now relies on the designations included in the Chesapeake Bay TMDL rather than the tributary strategies.
2. References to the Water Quality Improvement Fund throughout the regulation were changed to the Nutrient Offset Fund to reflect current state code.

3. Part I.B.3.C was modified to allow owners with aggregate registrations for facilities for which the wasteload allocations consist entirely of “permitted design capacities” to generate credits. This change was made to be consistent with current state code.
4. The Schedule of Compliance was modified to provide limit effective date of January 1, 2022 for the Phase 2 Total Nitrogen reductions assigned to HRSD. All other Phase 2 Total Phosphorus limits would be effective on the permit effective date of January 1, 2017. New Delivery Factors would be implemented in the last year of the permit cycle in order to minimize impact on existing trade agreements.
5. New sampling types were introduced for the middle two flow tiers included in the permit. These sample types would require that 3 daily composites taken during a calendar week would be combined into a single sample for analysis. The intent was to provide representative sampling over a greater period of time without increasing the analytical costs. Such a change would also make it more difficult for a discharger to game the sampling schedule. The change was considered consistent with EPA’s 4/16/14 technical memo *entitled Evaluation of Sampling Variability in Chesapeake Bay Wastewater Treatment Plant Discharges*. This proposed change generated a significant amount of discussion. One participant voiced objections to the EPA memorandum and stated that the data analyzed in the memo did not support the conclusions. There were also objections that the additional compositing was burdensome although some facilities are performing more frequent sampling for operational control purposes. The proposed requirement to take 3 samples/week, two days apart within a 5-day work week makes it impossible to comply if a sampler malfunctions and it also potentially causes issues with non-continuous discharges. DEQ staff requested that the TAC submit alternatives that would address the issues discussed in the previous paragraph. One TAC member also agreed to provide his analysis and objections to the EPA memorandum.
6. The draft permit (Part I.E.3) includes modifications that would require that in calculating TN concentrations, $\frac{1}{2}$ the QL would be used for all parameters <QL. Currently, if only one of the TN constituents was below QL, that particular constituent is treated as a “0”. This allows for a permittee to potentially choose a high QL so that low level concentrations could be treated as “0”. The TAC indicated that this could cause yet another discrepancy with their individual VPDES permits and would prefer that DEQ specify maximum QLs for TN constituents. TAC members agreed to provide QL values that they thought could reasonable be obtained for consideration.
7. The draft permit (Part II.B.1.b) includes modifications (1) to the reflect the transfer of the responsibility for certification of nonpoint source credits from DCR to DEQ and (2) to include some exceptions to the existing 2:1 NPS-to-PS trading ratio recognized in EPA’s 2/12/14 technical memorandum *Accounting for Uncertainty in Offset and Trading Programs*. This issue also generated a significant amount of discussion. The regulated community indicated that the 2:1 trading ratio is overly restrictive in light of the conservative nature of the TMDL, unnecessarily limits trading opportunities and could be relaxed further to recognize case-by-case science based determinations. The environmental community expressed procedural and technical concern with DEQ’s recent approval of a pilot credit program for an oyster aquaculture project and indicated that rigorous criteria were needed for future case-by-case determinations.
8. A wholesale replacement of Part III of the general permit has been made to reflect changes to the general permit boilerplate language over the past 10 years. No changes to the Part III language have been made to reflect any individual issues with the watershed general permit.

9. Proposed wasteload allocations reflecting the continued implementation of Appendix X to the Chesapeake Bay TMDL (*Staged Implementation Approach for Wastewater Treatment Facilities in the Virginia James River Basin*) have been added to 9VAC25-820-80. These WLAs reflect the TMDL Phase 2 WIP input deck for the Chesapeake Bay Model. After checking with Rich Batiuk of the EPA Chesapeake Bay Program, it was determined that the Phase 2 DO-based TN WLAs for HRSD will be controlled by the additional 1.0 million pound/year reduction referenced in Appendix X rather than the facility specific WLAs included in the input deck (which were based on an effluent concentration of 6.0 mg/l).

A spreadsheet with various alternative TP WLAs was provided to the TAC. The first proposal was based on the Phase 2 WIP input deck which reduced the basis for the municipal WLAs to 0.4 mg/l and did not make any reductions to the industrial WLAs. Three alternative allocation scenarios were provided for consideration. All three reduced the MeadWestvaco WLA to reflect a local TMDL and made no changes to the Tyson Foods – Glen Allen and Chickahominy WWTP WLAs because they are already at near 0.10 mg/l. Additional changes in Alternatives #1 thru #3 were as follows:

Alt. #1 – Applied and additional 18.9% reduction to all facilities except Tyson and Chickahominy

Alt. #2 – Reduced HRSD to 0.5 mg/l to be consistent with upper James municipal WLAs and then applied an additional 10.2% reduction to all facilities (including HRSD but excluding Tyson and Chickahominy)

Alt. #3 – Same as Alt. #2 with the following exception. Industrial WLAs were reduced 10.2% in aggregate and reallocated to 164% of the individual facilities 5-year max load (2010 – 2014). This allocates sufficient WLA for all industries to comply under present conditions but includes no consideration of which facilities invested in upgrades, future changes in production, etc. Special consideration may be also necessary for the J H Miles and the Sustainability Park WLAs under this scenario to account for changes in operations since allocations were originally made under the tributary strategies. DEQ-VRO staff will also look at upgrade/production issues at Mohawk Industries.

A copy of the spreadsheet will be provided to the TAC and also be distributed to the James River facilities. Staff will first check the WLAs for Moores Creek and Richmond to make sure that they are independent of trades reflected on the current registration list.

Any written comments by the TAC were requested by May 22nd. DEQ staff agreed to check on the availability of any documentation on the determination of delivery factors and to provide the TAC with the TP WLA spreadsheet and a copy of the load graphs shown during the meeting.

The next TAC meeting is scheduled for 10:00 a.m. on Tuesday, June 9, 2015 at DEQ's Piedmont Regional Office.