



COMMONWEALTH of VIRGINIA

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SUBJECT: Technical Advisory Committee (TAC) Meeting to Discuss the 2018 Reissuance of 9VAC25-193 Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Concrete Products Facilities

TO: TAC Members and DEQ Staff (listed below)

FROM: Eleanore Daub, VPDES DEQ Central Office

DATE: June 22, 2017

A TAC meeting was held on June 22, 2017 at Virginia Department of Fire Programs Training Room in Glen Allen. The meeting began at 10:00 AM. The TAC members attending the meeting were:

<u>Name</u>	<u>Organization</u>
Walter Beck	Vulcan Construction Materials and Virginia Transportation Construction Alliance
Cliff Bocchicchio	Titan America
Mike Deyo	Allied Concrete Products
Tom Foley	Vulcan Materials
Jay Lipscomb	Branscome
Trieste Lockwood	Virginia League of Conservation Voters
Chris Monahan	Lane Construction and Virginia Paving
Allan Brockenbrough	DEQ CO VPDES Permits
Eleanore Daub	DEQ CO VPDES Permits

<u>Others Present</u>	<u>Organization</u>
Wade Sillery	Branscome
Kevin Crider	DEQ – BRRO VPDES
Troy Nipper	DEQ - CO Water Compliance
Kathleen OConnell	DEQ – CO Water Enforcement
Matt Richardson	DEQ – CO VPDES
Azra Bilalagic	DEQ – PRO Compliance
Amy Dooley	DEQ – NRO Compliance
Alison Thompson	DEQ – NRO VPDES
Richard Shortridge	DEQ – SWRO Compliance
Steve Long	DEQ – TRO Compliance

Handouts – Draft 9VAC25-193 language, NOIRA comment from Nansemond Pre-cast (other NOIRA comments received were requests to be on the TAC and were not distributed in the meeting as all TAC volunteers were accepted to the TAC).

Discussion

After introductions, DEQ staff led the group through the regulation with suggested changes. A summary of the discussion is by regulation (9VAC25-193) section number below.

Section 10 Definitions – DEQ suggested the definition of MS4 be deleted as the same definition is in the permit regulation which is incorporated by reference in all general permits. Also, suggested inserting the definition of “minimize” from the industrial stormwater general permit (ISWGP) as follows: “Minimize means reduce or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.” Later in the meeting it was suggested the NAICS code be included with the SIC codes in the definition of "Industrial activity."

Sections 15 (Applicability of incorporated references), 40 (Effective date) and 50 (Authorization to discharge) – The dates are changed to reflect the upcoming permit. In Section 50 small changes were made in response to enforcement suggestions. In fact, throughout the regulation date changes and enforcement staff suggestions have been made.

Section 50 (Authorization to discharge) and 60 (Registration Statement) - Complete registration statements are due July 1, 2018 but complete registration statements will be accepted until the expiration date of September 30, 2018 to be eligible for administration coverage continuance. No objections were heard about these dates.

Section 60 (Registration Statement) - DEQ asked if removing the requirement to submit any current VPDES or VPA current numbers is really still needed? All of the concrete products facilities that were once covered under a VPA (“no discharge”) certificate have been covered under the VPDES permit and staff knows or can easily find out what previous permit numbers were if necessary. There was consensus to this change.

The definition of “no discharge” was discussed and whether it applied to process water, commingled process and stormwater, stormwater or everything. There was a mixture of responses; hence the need for clarification.

DEQ NRO requires DMRs for an entire site that is submitted as “no discharge” which is preferable as a reminder of the requirement as well as Stormwater Pollution Prevention Plan (SWPPP) maintenance in case of a 24-hour 25-year flood event.

The industry described another “no discharge” situation at a concrete plant in the Chickahominy River basin that, because of stringent special standards in the Water Quality Standards regulation (9VAC25-260-310 m), could not discharge its process water, the stormwater was “no discharge” but the facility still needed a VPDES or VPA permit. That special standard was amended to be

specific to facilities treating organic nutrient sources to the Chickahominy and was adopted by the Board in January 2016 but is still undergoing Executive Review and has not been published as final yet. Eventually this plant will be able to discharge their process water.

The Fact Sheet was checked for clarification on “no discharge” and it says “In the cases where either the process wastewater which may be commingled with noncontact cooling water or storm water runoff, or the storm water associated with industrial activity are retained in a treatment/storage system which operates in a "no-discharge" mode, this general permit prohibits any discharge of pollutants to surface waters from such system except in the case of a storm event which is greater than a 25 year-24 hour storm event.” This special condition only applies to those operations which the permittee had designated as "no-discharge" in the accepted registration statement. Suggestions were made to define “no discharge” and “treatment/storage system.” The industry reinforced that any DMR paperwork relief would be appreciated. It was also suggested DEQ check the nonmetallic mineral mining general permit for 24-hour 25-year discharge “no discharge” requirements. Consider also that block and brick plants have different set of treatment system (no basins). No consensus reached except that “no discharge” and “treatment system” should be defined.

In question #7, DEQ suggested we ask what the settling basins are lined with (concrete or clay) instead of just whether they are lined with concrete or any other impermeable material. Knowing what the basins are lined with will help with future decisions on this requirement. There were no objections to this but was suggested to not include stormwater ponds in the question as it implies that stormwater ponds must be lined.

In question #9, DEQ asked whether the noncontact cooling water system information and questions were needed. There was consensus that these systems were not in use anymore and anything in the regulation and permit related to this could be deleted. If someone needed coverage for a geothermal system, they could apply for coverage under the VPDES Non-Contact Cooling Water General Permit. NOTE: Since the TAC meeting DEQ has discovered there is one facility with a cooling water outfall.

Another change DEQ suggested was in question #16 where the MS4 owners have been asking DEQ to require the facilities that discharge to the MS4 to notify the MS4 owner at the time of registration rather than within 30 days after coverage. The notification (an email or letter from the permittee to the MS4 owner) would be included in the registration but no response from the MS4 would be required. There was frustration from the industry that the MS4s are using the information to charge stormwater fees and that sometimes it doesn't seem the discharge is going to the MS4, rather to a stream, but yet the MS4 is telling them the stream is part of the MS4. DEQ explained that the MS4 is required to keep track of all discharges to the MS4, even the permitted ones and that they are able to charge fees. This issue of whether or not a stream is or is not part of the MS4 is a gray area and any site specific disagreement of what constitutes a stream vs. the MS4 can be discussed with DEQ. DEQ wanted to keep the requirement as is but agreed to add clarification in guidance about what is required in the notification and what is an MS4.

Later in the meeting, DEQ staff suggested we add latitude and longitude to the registration statement. NOTE: Latitude and longitude for the outfalls is included in question #13.

Finally, in DEQ wants to allow for electronic submittal of registration statements. There were no objections to this.

Section 70 Part I (General Permit) – DEQ suggested some additions be made to the second opening paragraph to include that the authorized discharge is in accordance with the information submitted with the registration statement in addition to the cover page, effluent limitations, monitoring, special conditions, storm water management and conditions applicable to all permits. The reference to the registration statement (or applications in individual permits) is being added to this opening paragraph in all permits because the information in the registration statement is what we base our decision to allow coverage under the permit. No comments were made about this change.

Section 70 Part I A 1 (General Permit) – DEQ explained that prior to 2013 the process water monitoring frequency was monthly. For the 2013 reissuance, the monitoring frequency was change to quarterly based on good compliance history for the industry as a whole. Reduced monitoring per EPA is granted only for exemplary performance. Compliance data was checked again and a number of inspection monitoring data (particularly pH because pH adjustment chemicals are not replaced) and warning letters and Notices of Violation have gone out (140 WL or NOV). The problems are not with just a few facilities, the problems are statewide. However, the DMR data was generally good. So there is a discrepancy between the DMR data and the inspection data. Because of that DEQ is recommending the monitoring data go back to monthly with the allowance that any facility in good standing is allowed to continue with the quarterly monitoring. It was countered to keep the monitoring a quarterly but add what events were needed to revoke the quarterly monitoring and revert back to monthly. There was a discussion about what was a case decision and to avoid making a case decision, the criteria for revocation of reduced monitoring had to be spelled out in the permit. Then it was discussed what the criteria would be to trigger monthly monitoring. Individual permit revocation of reduced monitoring is when a notice of violation (NOV) is issued. Some thought one warning letter (WL) should not trigger monthly monitoring or a WL unrelated to effluent quality should not trigger monthly monitoring. On the reverse side, how long must a facility remain in good standing before being allowed reduced monitoring again after a revocation had occurred? Later in the meeting, DEQ was asked if they considered how the effluent data violations compared to the inspections data (number of inspection monitoring violations vs total number of inspections). DEQ reported that the effluent data violation rate looked good for most of the industry and compliance issues were seen at only a few sites. The inspection monitoring data, warning letters and notices of violation were statewide and not focused on only a few sites. No consensus was reached on these issues, but DEQ agreed to consider all the comments and questions while working on new language.

Section 70 Part I A 2 (General Permit) – Consensus was reached to remove the noncontact cooling water limits page and the ammonia and chlorine limits from Part I A 1 since we decided in the discussion under Part 60 (Registration Statement) that these systems were not in use anymore and anything in the regulation and permit related to this could be deleted. NOTE: Since the meeting, staff has found one concrete general permit with a cooling water discharge.

Section 70 Part I A 3 (General Permit) – The iron monitoring that was in the 2008 general permit (and priors) was removed from the permit during the 2013 reissuance because of naturally high background levels in soil. It was pointed out that iron is not in North Carolina’s permit. However, iron is found in slag, fly ash and in concrete. The use of fly ash as an additive to concrete is variable and currently is not as easy to obtain with many coal fired plants going to natural gas. EPA’s multi-sector industrial stormwater general permit still has iron at 1.0 mg/l as a benchmark for this sector. EPA may require DEQ to include it.

Chesapeake Bay TMDL nutrient monitoring will not be included. The industry reminded us that they had done nutrient monitoring back in the 1990s and it was shown not to be a problem. Staff pointed out that DEQ was doing nutrient monitoring for all the general permits (except in the ISWGP which had a permit condition to do the nutrient monitoring) under a grant to verify the assumptions of the Bay TMDL.

The ISWGP Bay monitoring was semi-annual for two years (4 samples). The ISWGP also increased all the benchmark and effluent monitoring to semi-annual to match the Bay monitoring. DEQ is not suggesting at this time to increase the stormwater monitoring to semi-annual for this industrial sector.

DEQ staff questioned whether the benchmark monitoring corrective actions should have a reference in Part II (Stormwater Management). It was suggested DEQ should look at the nonmetallic mineral mining permit to see how it is handled in that permit.

Section 70 Part I B (General Permit) – Special Condition # 8 can be deleted if we are removing the cooling water limits.

Special condition #9 was discussed with a concern from staff that waste or leftover concrete removal is not being managed well at some sites. This concrete is not being removed often enough and becoming an enforcement issue because of high pH and solids. The industry responded that sometimes it is just not economical to bring in a crusher more often to recycle large amounts. DEQ staff suggested expanding the operations and maintenance requirement for solids management and disposal procedures to include a plan and schedule for leftover concrete removal. DEQ needs to consider what the waste regulations require.

Special condition #11 was discussed in light of a comment received from the industry on the one foot freeboard requirement. The concern with this condition is the unnecessary documentation. An inspection log must be maintained with the date and time of the inspection, the weather data including the occurrence of a measureable rainfall event, the printed name and the handwritten signature of the inspector, the freeboard measurement in inches, a notation of observation made, and any corrective measures, if appropriate, taken. The industry believes this is unnecessary record keeping. They understand that if the settling pits discharge they are required to take a water sample. So why does it matter if they document one foot or three inches of freeboard? In any event if water spills out compliance sampling is required. Further, they maintain that this condition is applicable to those facilities that operate in a “no discharge” mode and this condition should be eliminated if a facility operates in a discharge mode. This may be a holdover from the VPA permit for the “no discharge” facilities. DEQ countered that freeboard is useful for

minimizing overflow in a storm event which can affect water quality if untreated process water gets into the stream. This can occur at times when the plant is not staffed and there is no one to take a sample or lower the settling pit level through the treatment system. It was pointed out that the freeboard doesn't protect against most rain events and this reporting requirement is what often causes a lot of problems during inspections even though they visually check the freeboard daily. DEQ questioned why including the freeboard information on a form when daily walk around checks are being done anyway. Some plants have floats that automatically turn on pumps when the pit water level gets too high to lower the pit levels via the treatment system. There may be some opportunity for relief for those types of systems. It was suggested that DEQ check other states' permits to see if they also have this requirement. It was suggested that the reporting requirements simply ask if the freeboard is below 1 foot with no specific measurement in inches. The industry pointed out that the pH chemical level is checked, but a measurement is not required to be written down by the permit so it isn't an inspection violation if it's occasionally forgotten. Another suggestion was to increase the freeboard (e.g., 2 feet) but only report a measurement once per week. There was no consensus on this issue but DEQ will look at the notification requirements to see if some relief can be provided there and will check other states' concrete permit freeboard requirements.

Special condition #14 was discussed in light of the statute that requires the settling basins to be lined with concrete or other impermeable materials for facilities built after 1998. It was agreed that requiring concrete for all basins would be very expensive and not required under the statute (although the group was reminded the original language for this bill only included "concrete" as the liner and "other impermeable materials" was added later). It was also agreed that maintaining integrity of the liner is difficult when using heavy equipment to remove solids; although a trained equipment operator can do it properly. The frequency of pit maintenance can vary from daily to annually depending on production. Portable plants are almost always lined with clay which is suitable for these temporary situations. The purpose of the statute was questioned by the industry, if there really is a groundwater quality concern and noted that Texas promotes pervious pits to encourage groundwater recharge. DEQ has seen one site where the process water appeared to be leaching into the receiving stream from a clay bottomed pit. One idea was to include in the O&M manual a requirement to checking the integrity of the liner. Wording suggested was "integrity should be maintained throughout the permit term."

DEQ staff noted that the requirement in this special condition that regardless of the date of construction, all settling basins used for treatment and control of process wastewater or process wastewater commingled with storm water that are expanded or dewatered for major structural repairs shall be lined with concrete or any other impermeable materials, is difficult to enforce as DEQ has no knowledge of when major structural repairs occur.

Special condition #15 - DEQ suggested to add that dust suppression spraying stockpiles should not be done during inclement weather. The industry countered that lightweight materials need a lot of moisture. Suggestion was made to check the nonmetallic mineral mining general permit for wording regarding no ponding, pooling or runoff of dust suppression or spraying stockpiles.

Special condition #16 – DEQ suggested adding a definition of "QL" as this definition is standard in all permits. A suggestion was made to check the definition in the petroleum general permit.

Special conditions #17 describes TMDL implementation. It states that the facility shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL. Staff pointed out that the ISWGP has much more detailed language for facilities that discharge into TMDL waters. What if a concrete plant is listed in a total dissolved solids or PCB TMDL? There are no requirements to monitor as there are in the ISWGP. TMDL monitoring can be costly. DEQ didn't think a PCB TMDL would be applied to concrete plants. It is possible a TDS TMDL would be applied but likely not during this permit term (a study is ongoing in NRO). DEQ staff will have to reexamine this.

Special conditions #20 describes temporary closures at inactive sites and waives all stormwater management activities. DEQ staff pointed out that the ISWGP requires the annual comprehensive to still be conducted. It was thought that this might be because inactive site closures requires removal of all industrial material exposed to stormwater on the site and the closure plan must be implemented which would mean a comprehensive exam is not needed. The ISWGP also includes contact information and certification if waiver requests are submitted. The ISWGP also has a paragraph that the Board retains the right to revoke this waiver with cause.

Part II (Stormwater Management) – DEQ noted that not all the storm water changes had been made in the draft presented today. The 2013 concrete permit was effective before the 2014 ISWGP was effective so there are a lot of differences in language between the ISWGP and the concrete stormwater management section. DEQ staff is not sure if we will make the language consistent if the requirements are basically the same.

DEQ noted that “storm water” was going to be changed to “stormwater” throughout the regulation based on the 2014 industrial stormwater general permit.

Part II A (Stormwater Management) - DEQ was asked if they used the stormwater information submitted with the DMRs and if that could be revised similarly to the nonmetallic mineral mining permit which does not require rain date, duration and inches. That TAC determined that the information was not useful. Several DEQ staff in the room stated that they did use that information. No consensus was reached.

A comment was received during the Notice of Intended Regulatory Action about concerns with attempting stormwater sampling not during daylight hours and the danger associated with that and trying to get a sample in the first 30 minutes. The consensus was that most permittees should be able to get a stormwater sample during daylight hours sometime during the annual reporting period. Problems arise when they wait until the end of the year and are forced to quickly get a sample as the stormwater events are coming to a close for the year. DEQ staff pointed out the ISWGP has a 30 minute – three hour time frame instead of the 30 minute – one hour time frame. This should help some of the concern raised in the comment letter.

Part II B (Stormwater Management) – DEQ staff suggested copying the representative outfall language from the ISWGP as it is clearer. Also discussed was the purpose for the runoff coefficient and it was thought it because a representative outfall with the biggest drainage area should be chosen.

Part II D 2 (Stormwater Management) – DEQ staff noted that the ISWGP has language about corrective action after visual examinations show problems. Concrete has limited instructions and requirements for corrective action. The industry stated that best management practices are reviewed and revised when visuals indicate problems and suggested to check the nonmetallic mineral mining permit for language.

Part II F (Stormwater Management) – DEQ staff mentioned that the ISWGP has a sentence about construction stormwater not being regulated under this concrete permit. This brought up a question asked of DEQ from one construction site manager who was having trouble with the concrete trucks washing the trucks in non-designated areas and they thought the concrete wash-out fits into the concrete general permit. The group did not think this fit into the concrete general permit which applies to the concrete products plant and not the construction site. The construction site must provide a washout basin and maintain it (waste is buried or hauled away – not discharged). The concrete trucks wash out the chute before entering the roadway.

Part II G (Stormwater Management) –The good housekeeping requirements in paragraph 6. f. (2) describes how regular sweeping or covered storage must be employed if fly ash is being handled. There was a discussion about fly ash vs bottom ash and the level of fine granular solids that are part of all types of stored material at a concrete site, including concrete or cement. Coal bottom ash is used all over the country as an aggregate and is considered a beneficial use. The industry considers bottom ash to be a larger particle size (not powdery) although one facility had taken extra measures to cover and contain bottom ash that was being used at the site. Powdery material would have to be covered or contained in a silo. DEQ countered that there are a significant amount of fines in the bottom ash and the fine granular solids should be defined. The industry suggested changing the term “fine granular solids” to “cementitious” solids.

DEQ staff pointed out in paragraph 6. f. (4) (a), which describes spill prevention measures to include barriers and secondary containment provisions, that the ISWGP includes here procedures for plainly labeling containers (e.g., “used oil,” “spent solvents,” “fertilizers and pesticides,” etc.) that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur.

Part III Y (Conditions Applicable to All Permits) – DEQ is changing all general permits to allow for permit coverage to be transferred automatically if the current permittee notifies the department within 30 days of the transfer of the title instead of 30 days in advance of the transfer. This timing is more reasonable with property transfers where the parties rarely know for sure 30 days in advance of the transfer occurring.

Other – DEQ was asked if this permit could be a 10 year permit. Staff explained that only VPA (no discharge) permits are allowed 10 year permits. VPDES 5-year term is dictated by statute and regulation (9VAC25-31-240, Code of VA § 62.1-44.15, Clean Water Act 402, 40 CFR 122.46).

DEQ was asked to consider adding hydro-demolition to the allowable covered activities. The pollutants are similar and it is an activity occurring in Virginia. To date, DEQ has not covered

this activity (although we were going to cover it in one instance) and it was thought that best management practices were advised for this temporary activity in the past.

There was a question about localities and their authority to regulate pollutants. DEQ staff explained that they have general authority to protect citizen health and safety and have some authority to regulate under the MS4 permit.

DEQ staff explained to the group that EPA has finalized an electronic reporting rule. Basically, this means that all DMR data must be submitted electronically and all the DMR and other compliance data will be available to the public on EPA's Echo database. In the past, only the data for the major facilities was uploaded to EPA's database, but now the minors and general permit data must be uploaded. It is unknown exactly when e-DMR will be available for the general permit holders but DEQ is working to meet the electronic reporting rule requirement. The due date for compliance for ISWGP's is July 2018 so the other general permits will be sometime after that.

DEQ staff brought up one concern from inspections where they noticed that some permittees would walk to the outfall quarterly and if they saw no discharge would report "no discharge" for the entire quarter even though a discharge may have occurred during that quarter. So essentially, no attempt was made to obtain a sample during a discharge event. There had been some confusion at one site where there was a discrepancy between the permittee and DEQ about where and when process and stormwater sampling that were not completely commingled should be sampled. Generally, the group thought that everyone understood they must take a sample if they discharge during the reporting period. DEQ will look at the O&M manual requirements to see if sampling schedule and requirements should be added.

The next step is for DEQ to write a meeting summary and update the regulation based on our discussion. It is unknown whether the July 6 meeting will occur but the group was asked to keep it on their calendars for now. DEQ plans to take the regulation to the State Water Control Board for approval to go to public comment and hearing in the October – December time frame. That would put the publication for public comment and hearing early in 2018 with adoption at the latest in June 2018. The permit expires September 30, 2018.

Thanks to all the TAC members for their service.