Combined Minutes – Meeting 3 & 4 – January 20 and 27, 2017

Technical Advisory Committee for Amendment to 9VAC25-890 (MS4 Phase II General Permit)

Attendees – 01/20/17

Name	Affiliation
Fran Geissler	James City County
Jill Sunderland	HRPDC
Erin Hawkins	City of Lynchburg
Lisa Ochsenhirt	Aqualaw for VAMSA
Ginny Snead	ASCE
Jess Wenger	UVA
Dan Frisbee	City of Charlottesville
Joe Wood	Chesapeake Bay Foundation
Normand Goulet	NVRC
Alex Forasté	Stantec
Joni Calmbacher	City of Alexandria
Adrienne Kotula	James River Association
John Burke	Town of Christiansburg
Erin Rountree	City of Suffolk
Rebecca Napier	WSSI
Melanie Davenport	DEQ – CO
Jaime Bauer	DEQ – CO
Allan Brockenbrough	DEQ – CO
Kathleen O'Connell	DEQ – CO
Fred Cunningham	DEQ – CO
Kelsey Brooks	DEQ – CO
Jeff Selengut	DEQ – CO
Kelly Miller	DEQ – SWRO
Ed Stuart	DEQ – NRO
Brian Powell	US Navy/DOD
Sarah Diebel	US Navy/DOD
Chris Schrinel	EEE
Kay Cabe	EEE
Ashley Hall	Stantec
Grace LeRose	City of Richmond
Ben Custalow	Greeley + Hansen
Jessica ???	Aqualaw
David Grandis	Office of Attorney General

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Jill Sunderland	HRPDC
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Lisa Ochsenhirt	Aqualaw for VAMSA
Jess Wenger	UVA
Dan Frisbee	City of Charlottesville
Peggy Sanner	Chesapeake Bay Foundation
Joe Wood	Chesapeake Bay Foundation
Normand Goulet	NVRC
Alex Forasté	Stantec
Ashley Hall	Stantec
Joni Calmbacher	City of Alexandria
Adrienne Kotula	James River Association
John Burke	Town of Christiansburg
Erin Rountree	City of Suffolk
Rebecca Napier	WSSI
Pam Couch	US Army – Ft Belvoir
Melanie Davenport	DEQ – CO
Jaime Bauer	DEQ – CO
Allan Brockenbrough	DEQ – CO
Kathleen O'Connell	DEQ – CO
Fred Cunningham	DEQ – CO
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Chris Schrinel	EEE
Grace LeRose	City of Richmond
Ben Custalow	Greeley + Hansen
Hannah Somers	GKY & Associates

TAC Meeting #3 – 01/20/17

Minimum Control Measures

Part 1.B
- Fran (James City County) suggested "all" be removed from the text added to this section: "The operator shall utilize **all** legal authority provided by the laws and regulations of the Commonwealth of Virginia to control discharges to and from the MS4. This legal authority may be a combination of statute, ordinance, permit, specific contract language, order or interjurisdictional agreements."
    o Dan (Charlottesville) agreed "all" should be removed.
- Lisa (VAMSA) suggested the language struck from this section should be retained: "protects water quality in the absence of a TMDL wasteload allocation, ensures compliance by the operator with water quality standards, and satisfies the appropriate water quality requirements of the Clean Water Act and regulations in the absence of a TMDL WLA." If it is removed, it reads as if permittees must meet water quality standards, not MEP.
    o Jaime (DEQ) responded that there is language later in the permit that may address this concern.

Part 1.C
- Part I.C.1.a – Fran (James City County) asked about the request for the "title of the personnel or positions" and stated that information may change to often to be useful. Suggests asking for managing division instead.
    o Erin (Lynchburg) suggested leaving it as Department
- Part I.C.2 – Fran (James City County) asked about the "review and approval" language in this section. It indicates that the program plan is enforceable. Asked for further clarification about whether or not the program plan will be an enforceable document.
    o Jaime (DEQ) stated that the permit lists what must be in the program plan, but the details of the program plan, which are not explicit in the permit, would not be enforceable.
    o Dan (Charlottesville) asked for clarification on this issue, i.e. if the permit states the program plan must include 4 activities, the program plan lays out 4 activities that meet the permit requirements, would it matter if the permittee changed those activities without notifying and/or receiving approval from DEQ?
        § Jaime (DEQ) agreed that change would not be enforceable as long as it still met the permit requirements
- Part I.C.1.e – Erin (Suffolk) asked for clarification about what information needs to be included in the "summary of revisions."
    o Jaime (DEQ) stated that if a change is made to the program plan it should be included in the summary
    o Erin (Lynchburg) stated that this is redundant with the annual report requirement; updates should be included there, not in the program plan.
    o John (Christiansburg) asked if this language means that when he turns the program plan will he be an affirmative approval form the Department
        § Jaime (DEQ) confirmed that this was the intent
    o Jaime (DEQ) stated the Department intends to look at the program plans and ensure they meet the permit requirements.
    o Fran (James City County) stated it is still unclear what is and what is not enforceable.
    o Jaime (DEQ) asked for the permittees to provide input on how the permittees view the role of the program plan under the current permit

- § Erin (Lynchburg), Jess (UVa), and Fran (James City County) clarified that under the current permit if the program plan is changed it is reported in the Annual Report. Permittees view it as a planning document.
  - o Lisa (VAMSA) reiterated the request for clarity in the permit about how permittees demonstrate compliance: if the permit calls for 4 activities, the permittee has to do 4 activities, regardless of the specifics in the program plan.
  - o John (Christiansburg) asked to clarify if the program plan would list what the permittee plans to do, but would not lock the permittee into those specific elements.
  - o Fred (DEQ) stated that based on the remand rule, the permit will be the only enforceable document. The program plan should serve as a planning document for the permittee, but Annual Reports will document progress on meeting the permit requirements, not on meeting any details in the program plan.
  - o Melanie (DEQ) stated that due to the remand rule changes the program plan is not of as much important to the Department as it was under the 2013-2018 permit.
    - § Norm (NVRC) stated that this is not how the current text reads
  - o Jaime (DEQ) asked the TAC if there is agreement that we have a section in the permit that states what should be in the program plan.
    - § TAC did not voice disagreement to this proposal
- Part I.C.1.ii – Dan (Charlottesville) suggested changing "required" in "A description of the BMP(s) and/or strategies that the permittee is required to implement in order to demonstrate compliance with the permit conditions in Part I.D of this permit."
  - o Erin (Lynchburg) suggested changing this to "plans" instead of "is required." Jill (HRPDC) suggested "considers." John (Christiansburg) suggested "anticipates."
    - § TAC supports "anticipates"
- Part I.C.2 – Fran asked if the requirement for program plan approval should be in the permit.
  - o Erin (Lynchburg) asked that we define what "approvable" means to make it clear that the requirement for the Program Plan is that it meets the requirements laid out in the permit.
  - o Jaime (DEQ) suggested the requirement read: "review to ensure the MS4 Program Plan includes the items as required by the permit"
  - o Adrienne (JRA) reiterates request that we keep in mind "approval" indicates the document will be enforceable and to keep that in mind as we move forward.
- Dan (Charlottesville) asked if the 6 month update means that the program plan will be updated to meet the new permit requirements by this date. Fran (James City County) asked if that plan should be submitted with the renewal instead.
  - o Jaime (DEQ) stated that DEQ needs to determine how the requirement to submit a revised program plan with the reapplication package in the current permit will work with this new requirement
  - o Jaime (DEQ) asked if the concern about this requirement is that it is not enough time to revise the program plan to reflect any new permit requirements
    - § Dan (Charlottesville) stated his intention was to both clarify the intent of this language and to ensure we keep this deadline in mind as we move through the permit. Depending on the final set of permit requirements, we may want to adjust this deadline
- Part I.C.3 – Jill (HRPDC) stated that the 6 month deadline for all SOPs might be difficult for permittees
  - o Erin (Lynchburg) suggests that we return to the issue of deadlines after we've worked through all the MCMs

- o Jaime (DEQ) stated that we do not have to make everything due at once – we can stagger the deadlines
- Part I.C.4 – Allan (DEQ) stated that we should look at the word "approved" again in this requirement.
  - o Erin (Lynchburg) suggested instead of saying the "approved" program plan we can say "the most recent" program plan.
- John (Christiansburg) asked if under the new program requirements, if he makes a revision to his program plan, would he resubmit it to DEQ
  - o Jaime (DEQ) stated that the revision would not be submitted to DEQ
  - o John (Christiansburg) agreed that approved should be changed to "most recent"
  - o Jaime (DEQ) suggested that the language be changed to "in place as of the effective date of the permit." The intent of the language is to tell permittees that they should keep doing what they're doing until the revision are due.
    - § Kathleen (DEQ) suggested "the current and effective program plan."
    - § Allan (DEQ) suggested "The MS4 program plan currently in effect."
- Part I.C.5 – Dan (Charlottesville) asked if there is a formal time frame within which DEQ will respond to permittees about the MS4 program plan
  - o Jaime (DEQ) stated that there will not be a specific time frame in the permit because DEQ does not want to regulate itself through the permit
  - o Norm (NVRC) suggested that the language be changed to read "30 days after acceptance by DEQ"
    - § Kathleen (DEQ) suggested "30 days after notification by DEQ"
  - o Kathleen (DEQ) suggested that we do not need this requirement since there is already a requirement that the plan be on the permittee's website and a requirement that the plan on the website must be updated.
  - o Fran (James City County) asked if the requirement to have the program plan on the website is necessary. She stated that the public does not appear to access James City County's plan often.
    - § Ginny (ASCE) stated that this requirement came from EPA as the program plans should be accessible by the public. Jaime (DEQ) stated that the rate at which the public access the program plan may vary by permittee.
    - § Fred (DEQ) asked if the requirement in the permit is that the program plan has to be hosted or is it that the public must be able to easily request the document
      - Under the current permit the program plan must be hosted on the website
      - Ginny (ASCE) suggested that could be changed and the requirement could be to either post the program plan or have a contact person through which the public can request the program plan
    - § Jess (UVa) stated that she likes the requirement because it allows her to easily access other permittee's program plans to get ideas
  - o Joe (CBF) asked if DEQ will review every update to the program plan, or just the initial submission with the new permit.
    - § Jaime (DEQ) stated that the intent was just to review of the initial update to the Program Plan to ensure compliance with the permit requirements
    - § Joe (CBF) suggested that the permit language include a date by which the program plan must be updated on the website if changes are made i.e. every 6 months.

- Norm (NVRC) stated that since the program plan is not an enforceable document, there should not be a requirement that it is updated regularly.
- Part I.C.6 – Jaime (DEQ) stated that per our discussion, the TAC would prefer to have any revisions to the program plan summarized in the annual report, not the program plan
  - Allan (DEQ) suggested we strike "in accordance with" in the last sentence of this section
  - Norm (NVRC) suggested changing "protect water quality" to "protect water quality to MEP"
- Part I.C.7 – Erin (Suffolk) asked how this requirement will apply if the program plan is not an enforceable document.
  - Jaime (DEQ) and Melanie (DEQ) agree this section should be changed since the program plan is not enforceable.
  - Fran (James City County) asked if the intent of this language is to allow permittee to request changes to the permit mid-cycle.
    - § Jaime (DEQ) stated that it does and it would require the permit to be reopened
  - Lisa (VAMSA) asked if DEQ could request changes to the program plan, would that mean the program plan is enforceable.
    - § Erin (Lynchburg) stated there could be an issue if the permittee and DEQ disagreed about whether a specific element of the program plan met the permit requirements
    - § Ashley (Stantec) stated that if the permittee changes their program plan and it still meets the permit requirements, the permittee is in compliance. If the Department does not feel the action is sufficient, that is an issue with the permit.
      - Fred (DEQ) agreed
  - Kathleen (DEQ) asked if the permit includes a boilerplate reopener statement
    - § Jaime (DEQ) stated it does in Part III of the permit
- Part I.C.8
  - Ginny asked if there could be a section for what is required in the program plan and a section for what is required in the annual report. So instead of being Part I.D the MCMs would start at Part I.C.E
  - Jill (HRPDC) stated Part I.8.a.iii is redundant with Part I.C.8.f
    - § Jaime (DEQ) stated these requirements are not the same. One is triggered by the annual report, while the other is an update included with the annual report.
      - Jill (HRPDC) suggested combining the requirements
    - § Erin (Suffolk) asked if there is a difference between how these two requirements will be implemented in practice
      - Jaime (DEQ) stated that the difference is one addresses what changed within the program year and one addresses any changes that took place after the program year
  - Allan suggests adding "with the annual report" to Part I.C.8.f
  - Erin (Lynchburg) asked if Part I.C8.f specifically applied to the MCMs and not the TMDLs. If the requirements in Part I.C.8.f are needed for both the MCMs and TMDL, suggested that it be added to the TMDL update section so what is necessary for the TMDL updates are listed separately.
    - § Ginny (ASCE) agreed that structuring the permit this way would not only be helpful for permittees, but for DEQ and EPA
    - § Jess (UVa) agreed it is helpful to report on the MCM and TMDL separately
    - § TAC agrees this organizational change is acceptable

- o Part I.C.8.c – Dan (Charlottesville) stated that "effectiveness" in this section should be changed to "appropriateness."
    - § Erin (Lynchburg) and Jess (UVa) agreed with this change
    - § Joe (CBF) asked how an "appropriateness" evaluation might differ from an "effectiveness" evaluation
        - • Erin (Lynchburg) provided an example of a planned event that is canceled due to inclement weather. The permittee would state it would still be an appropriate practice, but would not necessarily be effective
- o Erin (Lynchburg) asked to change Part I.C.8.f to "a summary of modifications to the minimum control measures."
    - § Jaime suggested changing the language to "a summary of changes to the program plan outside of Part I.C.8.d and Part I.C.8.e above."
- o Erin (Lynchburg) suggested changing "effectiveness" in Part I.C.8.f.ii to "appropriateness"
- o Erin (Lynchburg) asks for clarification on the use of "analysis" in Part I.C.8.f.iii and Part I.C.8.f.v. She suggested changing that term to "discussion" or "review" or "explanation."
    - § TAC favors "explanation"
- o Joe (CBF) asked if there is a quantitative approach that can help to evaluate substitutions made in the program plan after DEQ's initial review, similar to what might be possible for structural BMPs
    - § Jaime (DEQ) responded that for many of the MCM's there is not a quantitative measure that can be used
    - § Norm (NVRC) agreed that for non-structural BMPs there is not a way to apply a hard number to evaluate effectiveness
- o Part I.C.8.g – Fran (James City County) asked whether or not permittees should report more than they need to in order to meet the permit requirements.
    - § Jaime (DEQ) responded that once the program plan is no longer enforceable, there may not be a downside to reporting practices that go "above and beyond" the permit requirements
- o Erin (Lynchburg) asked if there is the potential that additional practices may become requirements in the next permit.
- o Joe (CBF) asked if there is a compromise that could be reached so that additional activities are counted for WIP reporting, but it does not create a double-edged sword for permittees
    - § Jaime (DEQ) agrees that the TAC should consider that there could be a way to word it so that there is a compromise
    - § Norm (NVRC) asked how that would work with MEP. If a practice is possible one year, it changes the "maximum."
    - § Fran (James City County) stated James City County experienced this issue as part of the TMDL. The County was already doing voluntary stormwater activities that exceeded what was required at the time and was not allowed to count that towards their TMDL. She stated that these "above and beyond" activities may be captured in the TMDL reporting as well.
    - § Lisa (VAMSA) asked what DEQ's goal is with this requirement
        - • Jaime (DEQ) stated the Annual Report is meant to report what the permittee accomplished during the reporting period. Anything accomplished should be included

- Fran (James City County) suggested DEQ offer a rewards program for permittees that exceed the minimum requirements.
    - § Dan (Charlottesville) suggested that this information could be included to meet Part I.C.8.c and there does not have to be a separate requirement
- Part I.C.9 – TAC felt the inclusion of this language was appropriate

MCMs
- Jaime (DEQ) suggested we move the definition of public to the fact sheet or a definitions section
    - o Ginny (ASCE) suggested moving it to the definitions section
    - o Norm (NVRC) asked if there was a definition in the previous permit
        - § There was not a definition of "public" in the previous permit
    - o Alex (Stantec) suggested keeping the information in the permit not moving it to the fact sheet
    - o Dan (Charlottesville) stated that either was fine as long as the expectations are clear
    - o Jaime (DEQ) stated that the benefit of moving this discussion to the fact sheet is if a permittee has an alternate idea. If the definition is in the permit there will be less flexibility
    - o Fran (James City County) stated that there can be different "publics" for different aspects of the MS4
    - o Jaime (DEQ) stated the current plan is to include the discussion/definition of public in the fact sheet

MCM 1 – Publication Education and Outreach
- Table 1 – Fran (James City County) asked if the table needs to be this specific
    - o Norm asked if we can add a bullet that says "or other method supported by the program plan."
        - § Jaime stated that the clear, specific, and measurable requirements need to go through the public review process and adding that bullet point would not meet the remand rule requirements
    - o Lisa (VAMSA) suggested broader categories, such as: Written Materials (Brochures, etc.), Community Events (list of options, etc.), Electronic Communications (list of options, etc.)
- Adrienne (James River Association) asked about the previous permit's requirement to reach 20% of the target audience and why it was removed.
    - o John (Christiansburg) stated the 20% was difficult to determine/document
- Joe (CBF) asked if there is a way to define a minimum for what is "appropriate" –how do we know if more action is needed? He suggested including more specifics about (1) what the message of the program is and (2) is the permittee achieving MEP.
    - o Erin (Lynchburg) asked if the bar is the three high-priority stormwater issues
- Joni (Alexandria) suggested retaining the requirement to explain why the high-priority issues were chosen and keeping example of high priority issues
    - o Ginny (ASCE) suggested having categories of high-priority issues permittees can choose from with examples of each
- Ginny (ASCE) suggested adding "signage" after "vehicles" under the first bullet point in Table 1
- Joni (Alexandria) asked for clarification on the intent of "advertised"
    - o Jess (UVa) provided an example used at UVa where ads in buses are used to promote good housekeeping
    - o John (Christiansburg) suggested using "publicize" instead of "advertise"

- Lisa (VAMSA) suggested rearranging the bullets to have broader categories, which will allow for more flexibility. **VAMSA will develop example categories**
  - TAC supports the development of broader categories with specific examples
- Joni (Alexandria) asked if we need to include additional specificity about the number of times something has to be done
  - Jaime (DEQ) is unsure how this language would be crafted without being too restrictive
- Joe (CBF) suggested including details of what needs to be included in an outreach message
  - Adrienne (James River Association) suggested that this might be captured in the struck language
- Kay (EEE) suggested including "electronic media" should be included as a category
- Dan (Charlottesville) asked if the 3 high-profile issues have to be different every year
  - Jaime (DEQ) stated they do not and the language will be clarified to make that clear
- Erin (Lynchburg) stated that 1.c should be changed from "strategies" to "issues and strategies"
- Joni (Alexandria) asked if every message needs to have a different strategy
  - Jaime (DEQ) stated that is not the intent of the language. Each issue could use the same method.
- Erin (Lynchburg) asked if permittees could jointly develop outreach materials under 1.d and then execute the projects separately
  - Norm (NVRC) and Jill (HRPDC) stated that this is how they run their regional programs
- Fran (James City County) stated that meeting 1.e.vi might be difficult and the dates should be reported with the annual report
  - Jaime explained that the intent was to ensure if a change is made, it is planned
  - Jill (HRPDC) suggested the language be changed to "anticipated permit year"
- Erin (Suffolk) asked if the use of "annually" throughout this section means the permittee should resubmit the program plan and stated this language implies this will have to be documented annually. She suggested striking the use of "annually"
  - Fred (DEQ) asked if the intent was to require modification only if the proposed plan was deemed inappropriate
  - Dan (Charlottesville) stated this would be captured in the requirement to evaluate the appropriateness annually and does not need an additional requirement in this section
  - TAC suggested changing 1.b to read "~~Annually~~, the permittee shall identify no less than three (3) high priority stormwater issues and use one or more of the communication methods listed in Table 1 below "each reporting year" to increase the public's knowledge of the high priority stormwater issues including how to reduce stormwater pollution.
  - TAC suggested removing "No later than July 1st of each year" from 1.e
    - § Jill (HRPDC) stated that this information should be in the program plan section and stating it separately was redundant
      - Jaime (DEQ) stated the intent was to clarify for each MCM what should be in the Program Plan because the previous section was not sufficiently specific
  - TAC suggested adding "is intended to" to e.ii ("An explanation of how each education or outreach strategy is intended to positively impact stormwater discharges")
  - TAC suggested changing "target audience" to "public in e.iv and e.vi
  - Joni (Alexandria) asked if e.iv is still asking the permittee to estimate the size of the public and suggested this language be struck
    - § Erin (Lynchburg) supported the striking of this language
    - § Joe (CBF) agreed it may be appropriate to strike this language, but asked that language be included that still requires permittees to meet a wide/diverse

audience. Suggested potentially including a requirement to use different communication methods

- § Dan (Charlottesville) suggested retaining language that requires a diverse communication strategy
  - o Fred (DEQ) asked how specific e.vi needs to be and Norm (NVRC) stated the making this requirement too specific could be an issue because these dates could be highly variable
    - § Norm (NVRC) suggested removing "dates" because it is too specific
    - § Erin (Lynchburg) suggested striking the requirement, since the activities must at least occur within the reporting period
  - o Ed (DEQ) asked about including multi-lingual outreach efforts to address the diversity issue Joe (CBF) raised
- Jaime stated we will consider striking f.iii based on previous conversation
- Erin (Suffolk) suggested changing "effectiveness" to "appropriateness" in f.iv based on previous conversation
  - o Jaime stated she will review the language throughout the permit to ensure the consistent use of "effectiveness" vs. "appropriateness"

MCM 2 – Public Involvement and Participation
- Fran (James City County) asked about allowing public to provide input on the MS4 program plan – should it be ongoing, should it be prior to reissuance?
  - o Jaime (DEQ) stated that DEQ may not specify and will allow the permittee flexibility
- Dan (Charlottesville) asked to strike "approved" from b.ii
- Dan (Charlottesville) asked if the intent of b.iv and b.v is for the permittee to have a mechanism for these requirements or to report the procedures
  - o Jaime (DEQ) stated that our expectation is that permittees have a procedure/mechanism that allows the public to report issues to permittees. Agreed that for v. saying "procedure" may be more appropriate
- Jaime (DEQ) asked if incorporating a requirement that the permittees provide links on a webpage instead of directly hosting documents would pose a technological challenge to permittees
  - o Jaime (DEQ) stated we will ask staff if this is an option based on what we know permittees are doing through annual reports
- TAC suggested replacing "procedure" with "steps"
- Jaime (DEQ) asked if having a dedicated stormwater page requirement is would be an issue for permittees
  - o Dan (Charlottesville) stated that three months might not be enough time for permittees that do not currently have a website
- Joe (CBF) asked if there is a requirement for permittees to respond to the public as part of a.v
  - o Jaime (DEQ) states that the expectation is that permittees will respond to comments they receive from the public
- Jaime (DEQ) stated that she will review the issue with "annually" in 2.c that was covered as part of the TAC's discussion of MCM 1
- Norm (NVRC) stated that having a list of allowed practices will limit innovation
- Ginny (ASCE) asked if we can change the table to examples
  - o Jaime (DEQ) stated this would not address the "specific" requirement under the remand rule
- Fran (James City County) asked what participating on "environmental advisory committees" means. Fran asked if a board appointed advisory committee would meet this requirement

- o Kathleen (DEQ) stated the board would count under the requirement
- Norm (NVRC) asked if we could have a list of broader categories similar to the one proposed for MCM 1
- Dan (Charlottesville) asked if the city provides financial support to citizen groups would that meet the requirement
    - o Fran (James City County) suggested including an option to support citizen monitoring
- Jaime (DEQ) stated we can either make the list more expansive or change it to categories
- Alex (Stantec) asked if we could include language that states "including but not limited to…"
    - o Jaime (DEQ) stated this would not meet the remand rule requirement
- Joe (CBF) asked if the requirement is for four distinct opportunities or if it is 4 different items from the list i.e. does a single waste pick-up count as one. Could the permittee do 4 waste pick-ups and meet the requirement? Or would a recurring waste pick-up count as one event?
- Jill (HRPDC) asked if permittees can have one activity that meets the requirements of both MCM 1 & MCM 2
    - o Jaime (DEQ) stated we have allowed that in the past
- Dan (Charlottesville) asked if the opportunity in .d could be multiple types of events
    - o Jaime (DEQ) stated the permittee could do the same set of events annually
- Fran (James City County) asked if based on DEQ's review of annual reports if this is an area where we have seen issues in the past
    - o Jeff (DEQ) stated more permittees are doing a variety of events
- Lisa (VAMSA) suggested that the requirement could be for the permittees to do a certain number from the table and one activity could be an innovative practice to provide some flexibility to permittees
    - o Norm (NVRC) stated that the flexibility issue may be less of an issue for this MCM than MCM 1 because most permittees are likely exceeding this requirement
    - o Jaime (DEQ) asked for clarification about this proposal. TAC agreed this could be an acceptable approach.
- Joe (CBF) stated there is not an event he could think of that would not fall under the first bullet point
    - o Norm (NVRC) stated that if the first bullet point in Table 2 is interpreted broadly, having the list is not an issue. Suggested moving the first bullet point to the end of the list.
- John (Christiansburg) suggested the requirement be no fewer than 4 activities from at least two different categories
    - o Jeff (DEQ) stated that if we say 4 activities and require they must be different it could negatively affect non-traditional permittees which may have more limited opportunities
    - o Alex (Stantec) stated if a permittee has a specific, pressing issue it might make sense to allow all events to cover that same topic
- Erin (Lynchburg) asked if the fourth bulletpoint in Table 2 can read "promote" instead of "implement." Also asked if the bullet that says "present stormwater materials to schools" can be changed to read "provides stormwater…" since the permittee does not go into schools and present the material
    - o John (Christiansburg) suggested this bullet should include additional language that ensures the materials are actively used, i.e. "an active school curriculum"
- Norm (NVRC) suggested that for all bullet points that say "sponsor" we change to "promote and/or sponsor"
- Joe (CBF) suggested categories to frame what is needed by this MCM. Suggested permittees be required to do at least one outreach event that covers (1) Monitoring Cleanup or Restoration Opportunity, (2) Education Event, (3) Disposal/Pollution Prevention Event

- Jaime (DEQ) suggested based on earlier discussion changing f.i to a link to a stormwater page where information can be found
  - TAC did not disagree
- Norm (NVRC) asked if can change the program plan section to a requirement that the program plan should document information included in the previous section?
- Jaime (DEQ) removed "No later than July 1st of each year" based on discussion of previous MCM
- Fran (James City County) suggested changing h.iv to the "estimated" number of individuals reached
  - Erin (Suffolk) asked what purpose this requirement serves for DEQ
  - Jaime (DEQ) asked TAC if they feel there is a benefit to this requirement
    - § Erin (Suffolk) suggested this is an internal activity for permittees that does not need to be reported to DEQ. It would be covered as part of the appropriateness evaluation
  - Jaime (DEQ) stated that it assists DEQ in evaluating the effectiveness of the program, but agrees that DEQ does not benefit from permittees submitting wild guesses
  - Joe (CBF) asked if a number is the best measure of success. Suggested instead having a requirement that permittees evaluate whether the event was a success
    - § Fran (James City County) stated the metric may vary by event/activity i.e. the metric could be weight of waste collected or gallons of oil
    - § Jaime (DEQ) suggested changing the requirement so that the Annual Report requires permittees identify (1) an appropriate metric and (2) how the event performed
      - TAC agreed this was more appropriate. To avoid issues with the remand rule, we should include/describe elements of that metric and provide examples as guidance, i.e. A direct measure of materials collected, number of people reached
- Joe (CBF) stated that even if the event was a failure the permittee is still in compliance. Language should be included that requires permittees to reconsider the activity in subsequent years
- TAC asked question about why the measure of audience was included in the permit
  - Jeff (DEQ) stated the intent of the number was to determine long term trends and is a carryover from the previous permit
  - Jaime (DEQ) stated that based on the flexibility in the permit it has not served this purpose

MCM 3 – Illicit Discharge Detection and Elimination
- Lisa (VAMSA) suggested adding language that states "system owned and operated by the permittee." Also questioned whether "points of interconnection" with other permittees should be included. Requiring their inclusion would require substantial revisions to maps that are mostly complete and it is not clear what "point of interconnection" means (i.e. is every VDOT culvert a point of interconnection?
  - Fran (James City County) asked if we can keep the mapping requirements from the last permit
  - Jaime (DEQ) stated that the intent of the mapping requirement is to allow the permittees to identify the source(s) of an illicit discharge
    - § TAC stated that the current mapping requirement allows them to do that

- Jess (UVa) asked about "discharge to surface waters." For outfalls that connect to underground streams, the permittee would prefer to identify the "point of discharge" as the location where the stream in the pipe resurfaces.
    - Jaime (DEQ) stated that the "discharge to surface waters" would be each point where an outfall discharged to the piped stream.
    - Jess (UVa) provided an example of the issue she is attempting to address: UVa has a location where a stream is piped under a building and there are 12 rooves that drain to the underground, piped stream at approximately the same location. During an audit, EPA stated the permittee should map those outfalls and their drainage areas separately. Since the permittee cannot survey those drains individually and their drainage areas essentially overlap, the permittee argued there is no practical benefit to doing this. They can only inspect the flow/identify an illicit discharge at the point where the river surfaces and would prefer to map a single, total drainage area for this point.
    - Dan (Charlottesville) suggested stating a stream in a pipe should not be considered a surface water
    - Fred (DEQ) suggested incorporating language that allows exceptions for inaccessible outfalls
    - Jess (UVa) suggested language such as "for mapping purposed, where an outfall discharges to a surface water that is not accessible, it should be mapped where the stream surfaces"
        - § Jaime stated the issue may be less the mapping of the points and more the mapping of the drainage area. DEQ will craft language that address this issue and will present it to the TAC
        - § Norm (NVRC) asked if we can develop a threshold that allows permittees to aggregate drainage areas i.e. if two outfalls have drainage areas that have a 90% overlap, can the drainage area be mapped once?
            - Fran (James City County) asked if this is a sufficiently significant issue to warrant specific permit language
    - Lisa (VAMSA stated that for 3.a.i.2 we should retain the struck language. Where a discharge leaves the permittees system is the edge of the system.
        - § Ginny (ASCE) asks if the use of "jurisdictional boundary" is appropriate here
            - Jaime stated DEQ is attempting to determine how to word that. Also considering the census urbanized area or MS4 service area. The intent is to capture the regulated area
    - TAC suggested we continue this discussion next week and return to Base Reg issues

Base Reg
Service Area Definition
- John (Christiansburg) proposed to add language to the service area definition that includes "at a minimum" to allow flexibility for permittees
- Lisa (VAMSA) stated that the service area is the drainage area that sends stormwater to your system. The regulated area is the service area in the urbanized area. The regulated area is a subset of the service area
    - Melanie (DEQ) stated that while this might be clear to permittees, DEQ needs to have a definition in the permit to ensure it is applied consistently
    - Norm (NVRC) agreed it needs to be defined in the reg, especially as the Phase III WIP develops

- o Lisa (VAMSA) stated that it is defined in guidance, so it is not necessary to have it in the reg. Also "service area" does not appear elsewhere in the permit language
  - § Jaime (DEQ) stated it appears in the Bay TMDL language
  - § Melanie (DEQ) stated that it needs to be defined for consistency.
- Fran (James City County) stated the MS4 service area is the regulated area
  - o Kathleen (DEQ) stated that does not match the federal regs. There are both regulated and unregulated MS4s
- Joe (CBF) asked if service area is not defined in the reg, is it not enforceable?
- Fran (James City County) asked where the urbanized area requirement for a Phase II permittee occurs
  - o Jaime (DEQ) and Melanie (DEQ) explained it is in the federal rule for how a regulated MS4 is designated. Melanie explained the process the states go through to designate permittees based on the census information we receive
- Melanie (DEQ) stated we can define "service area" or "regulated area," but there needs to be a clear definition of the area permittees are responsible for
  - o Dan (Charlottesville) stated we should define "regulated area" in the reg, not service area
- Jaime (DEQ) stated DEQ will put together language to define "Regulated Area." We will discuss what DEQ develops at a subsequent meeting

High-Priority Facilities definition
- Joni (Alexandria) asked about the high-priority facilities definition and whether each high-priority facility needs a SWPPP. Instead of including what a high-priority facility is in the permit language, it should be moved to the definitions section
  - o Dan (Charlottesville) stated that not all high-priority need SWPP. The facility also has to have a high-probability of discharging. Also suggests changing language to "municipal high-priority facilities." Also change "activities including" to "the following activities"

Alex asked about Authorization to discharge 3-5.
- Department stated that we would strike 3-5 under B. Add additional language about the MEP to this section. Propose language that if the permittee is not meeting MEP they would not be eligible.

TAC requested Jaime resend the invite for next week's meeting

TAC Meeting #4 – 01/27/17

MCM 3 – Illicit Discharge Detection and Elimination
- Peggy (CBF) asked about the change from "applicable TMDL" to "EPA approved TMDL"
  - Jaime (DEQ) stated there have been questions about what is an applicable TMDL. The process of TMDL approvals has changed and EPA approval is now the final step in TMDL approval.
  - Peggy (CBF) has concerns about inconsistencies that might occur between TMDLs that are approved by the state and TMDLs that are approved at the federal level. At the time the last permit was issued the state water control board only approved the local TMDLs, not the Ches Bay TMDLs so we wanted to ensure both were covered.
    - § Jaime (DEQ) stated that if the intent is to cover state and/or federally approved TMDLs we need to make that clear
  - Dan (Charlottesville) asked if the local TMDLs need to be approved by EPA now before they are complete
    - § Melanie (DEQ) provided an overview of the Ches Bay TMDL approval process vs. the Local TMDL approval process. The CBTMDL consent decree was between EPA and the non-profits, the state was not party to the consent decree. EPA approved the CBTMDL, the State Water Control Board did not. For our local TMDLs we use to go to EPA first and then the State Water Control Board for final approval. Now we go to the State Water Control Board first and EPA second for all TMDLs so the process is consistent between the CBTMDL and Local TMDLs
    - § Jaime (DEQ) stated we will check with our TMDL staff to ensure this is properly captured
- Jill (HRPDC) asked about ii.4 and whether it is redundant with the requirement to include that information in the map. Stated it makes sense to either include it as part of the map or the table
  - Jaime stated that instead of identifying the HUC on the map it will only be part of the information table
  - Erin (Lynchburg) stated this clarified a question about the name and location of the receiving stream
    - § Jaime (DEQ) stated that on the map the name of the receiving stream should be associated with the outfall
  - Erin (Suffolk) asked if we completed the TACs discussion of the drainage area of the points of connection
    - § Lisa (VAMSA) had a question about the goal(s) of mapping points of interconnection
    - § Jaime stated that the goal is to identify outfalls that discharge to stream that is outside the boundaries of MS4's jurisdiction
  - Jaime (DEQ) asked if the TAC felt there is confusion about the terms "point of discharge" vs. "point of interconnection"?
    - § Lisa (VAMSA) stated that there are situation where a permittee discharges to a private system before the flow discharges to a stream, which is different than when a permittee discharges to another permittee
    - § Erin (Suffolk) stated that a "point of interconnection" should only refer to when a permittee's system connects with another permittee's system
      - Jeff (DEQ) stated that historically DEQ has defined a "point of interconnection" as when a system connects to another regulated MS4. A "point of discharge" covers connections to private systems

- § Lisa (VAMSA) says the concern is that, depending how these terms are used, it would require permittees to map 1000s of points where a permittee may "interconnect" with VDOT ditches, pipes, culverts, etc.
- § Jaime stated we will use "point of discharge" for this section. The intent is to identify the last place where permittee has control of the discharge
- § Erin (Lynchburg) suggested that we wrap the requirement in 3.a.i.3 into 3.a.i.2 unless we want to distinguish on a map between the two
    - Erin (Suffolk) stated that we should not make any substantial changes to how the mapping requirements in the last permit. Permittees should not be required to recreate the effort from the first permit
    - Jaime (DEQ) stated the distinction is not important to DEQ, so that is not the intent of the language. Agreed DEQ will review 3.a.i.3
    - Erin (Suffolk) stated 3.a.i.2 should be points of discharge, not points of interconnection
        - o Dan (Charlottesville) stated the points we may want mapped may be within the permittee's jurisdictional bounds, but outside the permittee's system i.e. a private system
        - o Jaime (DEQ) stated we will look at the "point of discharge" language again to make sure we accurately capture all of this information
- o John (Christiansburg) asked that we make sure the lettering convention is consistent throughout the permit. There are some errors in the marked-up version
- o Ashley (Stantec) asked if discharges that leave the permittee's system and discharge at the end of another system (private, another permittees) are regulated
    - § Lisa (VAMSA) stated the mapping of outfalls/points of discharge is a tool to assist permittees in determining the drainage area
    - § Jaime (DEQ) stated the flow is regulated because it does, eventually, discharge to state waters
    - § John (Christiansburg) provides an example
        - TAC clarified that a point of interconnections is always a point of discharge, but a point of discharge is not always a point of interconnection
    - § Erin (Lynchburg) asked if the points of interconnections that need to be mapped would be captured in the outfall screening process and keep this in mind as we move forward
- ii.d – Erin (Lynchburg) asked if the permittee will have to update the map as soon as reports are published. Stated it is more practical to set a time for how often the maps will have to be updated to incorporate new reports (i.e. quarterly, monthly, etc)
    - o Erin (Suffolk) suggested the requirement should match the requirement to update the map annually
        - § Erin (Lynchburg) agreed that updating the map annually makes sense, but wants to ensure this timeline makes sense with how TMDL updates work.
        - § Melanie (DEQ) suggested incorporating a certain date i.e. if we want the map to be updated monthly the requirement should say something such as "the update should incorporate any TMDLs available by the 10th of the month…"
        - § Jaime (DEQ) suggested that permittees ensure the maps are up to date annually, using June 30 as the cutoff date.
            - Erin (Lynchburg) supported aligning the map update with the annual report, using information that is available at the time

- - John (Christiansburg) suggested that there be a requirement for the map and table to clearly have a revision date associated with it
- Jaime (DEQ) summarized the primary concerns the TAC had with 3.a are: (1) the use and definition of point of discharge vs. point of interconnection, (2) EPA TMDL approval replacing "applicable TMDL", and (3) when the map must be updated

3.b
- Jaime (DEQ) stated that any discharge not on the list provided in the definition of "authorized non-stormwater discharges or flows" could be subject to this requirement
  - o Jess (UVa) stated non-traditionals do not have ordinance or other legal mechanism. As a state agency they are not permitted to have policies the replicate state laws.
    - § Jaime (DEQ) asked for additional clarification on this issue
    - § Jess (UVa) explained they have an SOP from their Department, but during an EPA inspection EPA felt this was insufficient. EPA wanted a policy from the University administrators, which their lawyers have determined is not allowable under state law
  - o Norm (NVRC) stated there may be similar issues with DoD facilities
    - § Pam (US Army) stated they have a policy memo the Garrison commander signs, but it is not clear if this would meet this requirement. They have not been audited by EPA
  - o Jaime (DEQ) suggested this may be an appropriate place in the permit to differentiate between requirements for traditional permittees and non-traditionals
  - o Peggy (CBF) suggested using "binding mechanism"
  - o Jaime (DEQ) stated that for non-traditionals we could have a requirement that permittees have a process to contact appropriate authorities to enforce the law
    - § Jess (UVa) stated that is how the University currently operates and that would be an acceptable requirement
  - o Lisa (VAMSA) stated the current language tried to capture this issue by saying "to the extent allowed by federal, state, or local law…," although this did not appear to be effective in protecting non-traditionals

3.c
- Jaime (DEQ) stated this section will be updated based on language developed to address non-traditionals
- Norm (NVRC) asked about the change to "eliminate." Would prefer "address" is retained.
  - o Dan (Charlottesville) stated there are certain discharges that are transitory or one-time events and those cannot be eliminated, but they can be addressed
  - o Erin (Lynchburg) suggested "minimize"
    - § Jaime (DEQ) stated this may not pass EPA
    - § Peggy (CBF) asked if this means using the word "address" would not be strong enough
      - Erin (Lynchburg) stated that it should because it was approved in the current permit
    - § Pam (US Army) asked if 3.c.v clarifies this issue, since it specifically mentions how permittees should treat transitory discharges. Supports retaining eliminate
    - § Adrienne (JRA) stated "eliminate" should be retained since this language is discussing policies and procedures and the goal should be to eliminate illicit discharges. 3.c.v can be used to discuss a more realistic set of activities permittees can use to address different types of discharges
    - § Peggy (CBF) stated that we are discussing a plan to "prevent" discharges. Suggested using "prevent" instead of "eliminate"

- § Lisa (VAMSA) stated the concern is that this language could create an issue for a permittee during an audit. If the discharges are not "eliminated" or "prevented" it could create an issue.
- § Joni (HRPDC) suggested language such as "the plan's goal is to eliminate"
  - Jaime (DEQ) suggested the "plan is designed to." We would keep the word eliminate, but add "the plan is designed to prevent."
  - Lisa (VAMSA) stated she is not sure VAMSA would be comfortable with "prevent." Prefers "eliminate" if language is changed to "the plan is designed to…"
  - Jill (HRPDC) stated this is an issue we should be careful with because permittees cannot control 3rd parties
  - Dan (Charlottesville) agreed "prevent" is beyond the scope of this MCM
  - Peggy (CBF) asked if the suggestion of the "designed to" language means the TAC is comfortable with retaining "eliminate"
    - o Dan (Charlottesville) stated he prefers eliminate to prevent, but prefers "address" to "eliminate"
    - o Peggy (CBF) stated she is uncomfortable with the use of "address" because it could mean "look at" and does not necessarily require the permittee to take any actions
  - John (Christiansburg) suggests dividing this language into two sentences i.e. the plan is to detect and identify illicit discharges with the intent of eliminating those discharges. The plan shall include the following information to address illicit discharges using the following procedures. Suggested retaining how permittees should address different types of illicit discharges as a separate subsection
    - o Adrienne (JRA) suggested "detect, identify, and address through the procedures identified below"
    - o Norm (NVRC) supported John's (Christiansburg) idea of splitting the language into two sentences to resolve any unnecessary confusion
  - Jaime (DEQ) point out in the federal reg it is an "illicit discharge detection and elimination plan."
    - o Peggy (CBF) suggested changing the language to "detect, identify, and address with the goals of eliminating."
    - o Sarah (Navy) stated the goal of the program is to eliminate the "illicitness" of the discharge, not the actual discharge
    - o Erin (Suffolk) stated "address" is in the current permit. Have there been comments this this language is insufficient
      - § Jaime (DEQ) stated that it was edited as a clarification.
    - o John (Christiansburg) suggested we change the language to "take action to mitigate"
    - o Norm (NVRC) asked for the reason this change was made
      - § Jaime (DEQ) stated it was in response to the remand rule. We can return to using "Address" and add "with the intent to eliminate illicit discharges"
- o Ed (DEQ) suggested 3.c read "eliminate ongoing unauthorized stormwater discharge"
  - § Adrienne (JRA) stated adding "ongoing" would be acceptable if "including illegal dumping" was retained

- o John (Christiansburg) suggested retaining "address" and defining it if we receive comments from EPA that the use of that term is insufficient
- o Jill (HRPDC) stated 3.c refers to an IDDE plan. She understands the procedures the permittee will use to detect and eliminate/address illicit discharges is not a "plan" but an SOP that is part of the program plan. Suggested this may be creating confusion.
  - § John (Christiansburg) asked if the procedures can be a separate document
    - • Jaime (DEQ) stated that would be acceptable
- o Pam (US Army) stated the goal is to avoid language that would allow EPA to penalize a permittee for not "eliminating" one time events cause by third party actors. The language needs to protect permittees from this.
- • 3.c.i.3 – Jaime (DEQ) asked about change to the permit language and whether 50 outfalls per year is enough of an effort for large permittees.
  - o Jill (HRPDC) stated it is a disproportionate burden to small permittees to require all 50 outfalls be inspected annually. Suggested requiring permittees to inspect a percentage of outfalls, which would allow these permittees to create the prioritization schedule discussed under 3.c.i.(1).
  - o Brian (Navy/DoD) suggested having a requirement that each outfall is screened at least once per permit cycle without a requirement to review a certain number each year
    - § Adrienne (JRA) agreed that there should be language that every outfall must be screened at least once during the permit term
    - § Norm (NVRC) and Jill (HRPDC) disagreed with this suggestion. For some permittees that would be a significant change, a significant burden, and not all outfalls are accessible
    - § Adrienne (JRA) suggested resolving this issue by providing more specific language for how permittees prioritize their outfalls to ensure permittees are reviewing a diverse set of outfalls
    - § Lisa (VAMSA) stated that the goal of the language is to try to find a reasonable balance. Agreed we may need to alter the requirement for a prioritization schedule
    - § Jaime (DEQ) stated that the concern with the current language is if a permittee has 500 outfalls, there is nothing to say they cannot review the same 50 every year. Agreed we need to find a balance with the language so that permittees can concentrate on old/problematic outfalls, but ensure that the permittee is not ignoring parts of their system which may need attention
    - § Erin (Lynchburg) stated she would prefer to leave the language broad because the permittee's systems are highly variable
    - § Adrienne (JRA) suggested a table of choices for how to prioritize
      - • Erin (Lynchburg) states that this is what is in the list. Recommended changing 3.c.i.(1) to read "could include, but not limited to such criteria as" so the list provided is not viewed as definitive
      - • Norm (NVRC) suggested changing language to "criteria such as"
      - • Jaime (DEQ) asked if there are any common criteria that could be included in the list. Agreed to Norm (NVRC) suggested change to "such as"
      - • Lisa (VAMSA) stated that VAMSA could develop model language for this section
      - • Jill (HRPDC) suggested that the language could be changed to require permittees to provide a rationale for their prioritization choices
        - o Sarah (Navy/DoD) suggested "prioritized schedule of field screening activities and a rationale for activities based on criteria such as"

- o Jaime (DEQ) asked if the consensus was to leave the language regarding 50 outfalls per year as it appears in the current permit
    - § Peggy (CBF) stated the Phase I permits require permittees to inspect 20% of their outfalls annually with the expectation that by the end of year 5, the permittee will have inspected all of their outfalls. Stated that with this requirement the effort would be proportionate to the size of the MS4 and would still allow the permittee to prioritize their outfalls
        - Norm (NVRC) stated that is a significant increase in resources, especially if we keep the term "point of discharge." Asked how much value that would be gained. Permittees have gone through multiple permit cycles and know where they need to concentrate their effort to identify illicit discharges
        - Jill (HRPDC) stated there can be an advantage to screening the same outfalls multiple times based on conditions around an outfall i.e. an old outfall in a commercial district should be visited more than a new outfall that only receive residential discharge. Hitting all of the outfalls may not help permittees find illicit discharges
- o Adrienne (JRA) asked is 3.c.i.(3) should say "a schedule to screen a minimum of 50 outfalls and points of discharge *annually*"
- o Jaime (DEQ) asked the TAC how we should treat "points of discharge." If a permittee has more than 50 outfalls it would not change the current screening requirements
    - § Norm (NVRC) stated we should remove "points of discharge." It could create difficulty and does not add value
    - § Peggy (CBF) suggested retaining "points of discharge" as part of a requirement to inspect 20% of "outfalls and points of discharge" per year that would not necessarily require the permittee to inspect 100 percent of outfalls and/or points of discharge
    - § Jess (UVa) asked how they would handle underground pipes if "points of discharge" were incorporated into the screening program. She would have to go to her neighbors MS4 to inspect the discharge, which her neighbor is already inspecting. Or, it would require her to inspect every drop inlet that could lead to the underground "point of discharge"
    - § TAC suggested removing "points of discharge"
- o Lisa (VAMSA) stated that 3.c.iii may be redundant with the public reporting requirements under MCM2
- o Erin (Lynchburg) requested that we retain the struck language in 3.c.iv that reads "discharges authorized under a separate VPDES or state permit require no further action under this permit"
    - § Jaime (DEQ) stated she struck the language because a discharge covered under a VPDES permit is no an illicit discharge. This language is redundant
    - § Erin (Lynchburg) stated she was more comfortable if this language is reiterated here
    - § Jeff (DEQ) stated this language was included because DCR wrote the last permit and VPDES permits were administered by DEQ
    - § Brian (Navy/DoD) asked if this language is consistent with other VPDES permits. For facilities that have multiple permits would they have to react differently depending on whether the outfall is covered by the industrial permit or the MS4 permit, even if the spill response is handled by the same team
        - Jaime stated this situation has not been considered with regard to this language, but we will take a look at it. Suggested permittee could develop a SWPP that always addresses both sets of requirements

- o Erin (Suffolk) asked about the purpose of 3.c.viii.(b)
  - § Jaime (DEQ) felt it would be useful to identify how the discharge was identified; could help evaluate program effectiveness
  - § Erin (Suffolk) felt it would be clear in the dry weather screening report where those illicit discharges came from. Erin (Lynchburg) felt it was duplicative with the annual report requirement
    - Jaime (DEQ) stated we will look more closely at this language. Stated we want to be careful we are not asking the permittee to report something they are not required to track
  - § Jeff (DEQ) asked if this could act as a mechanism in the permit to ensure that if there is a citizen complaint, it is clear the permittee responded/reacted to it
    - Jaime (DEQ) stated that this was not the intent, but it could be used for that
- o Erin (Lynchburg) stated "as needed" should be added after "methodologies for conducting a follow up." Not all incidents will need a follow-up
  - § Jaime (DEQ) agreed with this, but stated we would have to define what "as needed" means if we want to make this change. Otherwise it may not meet the remand rule requirements. Attempted to address Erin 's(Lynchburg) concern through viii.(d)

3.d
- • Jaime (DEQ) explained 3.d.ii was added because DEQ received questions about whether or not permittees needed to notify other MS4s of interconnections annually/repeatedly

3.e
- • 3.e.iv – Erin (Lynchburg) asked why "spills" were specifically mentioned
  - o Jaime (DEQ) stated the intent is to clarify that spills are an illicit discharge if they enter the MS4. Clarified that an illicit discharge does not necessarily have to be intentional
  - o Lisa (VAMSA) stated this language suggests the MS4 would be responsible for sanitary sewer overflows, when that is the responsibility of the sanitary sewer authority/permittees.
  - o Erin (Lynchburg) asked if any spill on the road would be reportable under the MS4 program as part of the Annual Report
    - § Jaime (DEQ) stated it would be if the contents of the spill reach the MS4 system
  - o Jill (HRPDC) asked if all spills should be covered under the SWPP at a high-priority municipal facility
    - § Jaime (DEQ) referred to the definition of "illicit discharges." Jaime stated that anything that is a non-authorized stormwater discharge entering the MS4 should be reported
      - Jaime (DEQ) stated she included "spills" in the permit language to ensure permittees recognize that the definition includes spills
      - Kathleen (DEQ) suggested changing language form "or spills" to "including spills" so it does not appear to be a separate idea
  - o Dan (Charlottesville) asked for clarification on what "reaches the MS4" means. If the spill does not reach the gutter it is not an illicit discharge?
    - § Jaime (DEQ) agreed. Major spills are addressed under Section III.G of the permit
    - § Pam (US Army) asked to clarify that a spill that does not reach the MS4 does not have to be reported under this permit
      - Jaime (DEQ) stated this is correct
    - § Jaime (DEQ) clarified that the requirement under MCM 3 is an annual report requirement. The requirement under section III.G of the permit is an immediate reporting requirement
  - o Melanie (DEQ) asked if the old language has caused confusion

- § Jeff (DEQ) stated spills have always been implicitly included in this requirement and are only considered if they reach the MS4 system
- Dan (Charlottesville) asked if 3.e.i should say "June 30th" not July 1st"
  - o Jaime (DEQ) agreed this change was correct
- Erin (Lynch burg) asked if 3.e.iv.(4) and 3.e.iv.(6) were asking for the same information and to only retain one
  - o Jaime (DEQ) agreed
- Dan (Charlottesville) requested that we review the language throughout this section and ensure we remove "points of discharge" where it appears
- Joni (Alexandria) requested changing 3.d.i from immediately to a specified number of business days
  - o Pam (US Army) suggested within 2 weeks to be consistent with the inspection notification time frame
    - § Erin (Lynchburg) supported this time frame
    - § Jaime (DEQ) stated she would check with staff to see if this matched DEQ's inspection procedure
  - o Peggy (CBF) suggested 7 business days which would be consistent with a FOIA request

MCM 4 – Construction Site Stormwater Runoff Control

Jaime (DEQ) stated that the goal of the proposed language in this section is to remove any language that is redundant with the VSMP regulations. The intent is also to reduce the possibility of conflicts between the VSMP regs and the MS4 permit

- Pam (US Army) stated that as a federal entity there needs to be something in the reg that specifically addresses the relationship between the state regs and federal entities because of issues they have experience in the past with requirements to adopt standards and specs
  - o Melanie (DEQ) stated that there have been statutory changes since the last permit was regarding standards and specs.
  - o Jaime stated that one of the three sections addresses permittees that are not VSMP authorities and do not have standards and specs
- Peggy stated that the concept of the three sections to address different types of permittees is acceptable. Asked what happens if the VSMP regs are amended or changed. Suggested including language that cites regs and says "as amended"
  - o Melanie (DEQ) stated that if we need to make this change we would have to reopen the permit. Cannot include "as amended" since it would be a self-modifying permit
  - o Norm (NVRC) stated that reopening the permit might create additional issues. Suggested finding a way to write the permit that would not require it to be reopened if the VSMP regs change
  - o Peggy (CBF) asked if the federal law requires that we develop these requirements to be consistent with the state ESC requirements
    - § Jaime (DEQ) stated that this is how we run the program and want to ensure it is clear that that is the intent
  - o Melanie (DEQ) stated we will talk to our policy/reg staff to see if there is a way to craft the language so that the permit will not have to be reopened if the ESC/VSMP law changes
- Melanie (DEQ) asked why this requirement (MCM 4) is in the permit
  - o Jaime (DEQ) stated that construction site runoff control is required by the federal MS4 regs and there have been issues with non-traditionals that defer to the state's E&S program
- Melanie (DEQ) asked if localities have to implement an ESC programs
  - o Kelly (DEQ) stated that they do

- Kelly (DEQ) asked why the non-traditional permittees were not subject to the county's regs
  - Jaime (DEQ) explained that most non-traditional are state and federal authorities, not subject to the counties
- Melanie (DEQ) asked about the expectation for the non-traditionals that do not operate under annual standards and specs
  - Jaime (DEQ) stated that DEQ is the VSMP authority and permittees must perform maintenance and inspect their projects. DEQ retains the enforcement authority, but permittees must perform the inspections
- Pam (US Army) asked whether federal facilities in tidewater Virginia are subject to the 2,500 sq ft CBPA requirement
  - Adrienne (JRA) stated that there was an executive order that federal facilities follow state laws, which meant that they should follow the CBPA requirements where applicable
  - Sarah (Navy/DoD) stated that they view that requirement as applying to localities. Since they are on federal land it does not apply. They interpret the CBPA requirements as guidance and are not legally required to meet the 2,500 sq ft requirements
  - Jaime (DEQ) stated DEQ will look into this issue. If this requirement is not applicable to federal facilities, it may not be applicable to state facilities. If CBPA does not apply to federal facilities, but does apply to state facilities, we may need to have separate sections for state and federal facilities under MCM4
    - § Sarah (Navy/DoD) asked If we could add "where applicable" to 4.iii to resolve this potential issue
      - Jaime (DEQ) stated we would break 4.iii into two sections if necessary to avoid confusion about what "where applicable" might mean
  - Peggy (CBF) asked if any of the other facilities meet the CBPA requirements
    - § Pam (US Army) stated they voluntarily look at the CBPA requirements internally, but it is not required. They were told by DEQ that the state does not want to review plans less than 10,000 sq ft
- Erin (Suffolk) asked what the VESCP document are
  - Jaime (DEQ) said the ESC program was approved by the state at some point. The documents submitted for that approval would be the VESCP documents. They should be incorporated by reference into the program plan
    - § Melanie asked whether or not permittees could locate those documents
      - TAC agreed that would be difficult for many permittees
  - Erin (Suffolk) stated this is redundant with the subsequent requirements
  - Jaime (DEQ) asked what documents permittees regularly use to implement the E&S program
    - § TAC responded: SOPs, Ordinances, Inspection forms, Plan review checklist(s), Green Book
  - Norm (NVRC) suggested DEQ determine what documents we may really want to see and specifically request those
  - Jill (HRPDC) asked if we could just require the inclusion of the approval letter
    - § Jaime (DEQ) stated that from a program evaluation standpoint that does not tell DEQ how the program will be run/implemented
  - Erin (Lynchburg) asked if the permittees can work on this issue and provide DEQ with a more specific response at a later time
    - § TAC agreed we will return to this issue
- Lisa (VAMSA) stated that the information required under this section is reported through the VSMP. Reporting it as part of the MS4 requirements is duplicative

- o Jaime (DEQ) stated that DEQ is trying to find the balance between double reporting and streamlining activities for permittees. Explained that when the Annual Reports come in we need to be able to evaluate compliance with the permit – if the reporting is done elsewhere, the Annual Report is no longer a complete account of whether or not the permittee is meeting its permit requirements. However, we will keep this issue in mind.
- John (Christiansburg) asked if there is a requirement that inspector are certified
  - o Erin (Lynchburg) said this requirement is under MCM 6

MCM 5 – Post-Construction Stormwater Management

Jaime (DEQ) explained that this section mirrors the changes to MCM 4. We will review this section for any of the issues that were raised in our discussion of MCM 4.

- John (Christiansburg) stated they are a town that is a VSMP authority
  - o Jaime (DEQ) stated we will review this language to determine how to address towns that have adopted a VSMP program
- 5.b.ii – Lisa (VAMSA) asked if this addresses BMPs. Stated the definition of a "Stormwater management facility" is unclear
  - o Jaime (DEQ) stated the intent was to refer solely to structural BMPs. This requirement would not cover non-structural BMPs such as street sweeping
  - o Lisa (VAMSA) asked if we can use the term "structural BMP"
  - o Jaime (DEQ) stated "stormwater management facility" is consistent with the current permit language and the VSMP regs. There is also a definition for control measure that addresses the "structural BMP" concern
  - o Lisa (VAMSA) asked what would be a stormwater management facility that was not a BMP
    - § Norm (NVRC) suggested a peak flow facility
  - o Jaime (DEQ) stated we will review this language to see if stormwater management facility is sufficient or if we should change the term
- Jill (HRPDC) asked about the BMP warehouse and whether that will allow permittees to report non-structural BMPs
  - o Jaime (DEQ) stated it will include non-structural practices
- Dan (Charlottesville) suggested using "structural stormwater management facilities"
- Adrienne (JRA) stated we should review this section with the CBPA issue we identified under MCM 4 in mind
- Dan (Charlottesville) stated that the current permit allows for an alternative inspection schedule, provided it is included in the program plan. Proposed retaining that flexibility.
  - o Jaime (DEQ) stated that option was struck to create consistency with the VSMP regs
  - o Dan (Charlottesville) stated that the VSMP regs do not differentiate between permittee-owned and privately-owned inspection frequency requirements. The requirement is that an inspection must be performed at least once every five years, regardless of the ownership of the facility. As a result, we could retain the flexibility of the alternative inspection schedule and still be consistent with the VSMP regs.
  - o
- Lisa (VAMSA) stated that VAMSA members felt that the deadlines in 5.b.ii were too short
  - o Peggy (CBF) asked what the permittees suggested instead
  - o Lisa (VAMSA) suggested 12 or 18 months for a project that requires a capital expenditure
    - § Jaime (DEQ) said we would put the max time agreed upon and not a range, since a range is not enforceable
    - § Norm (NVRC) stated that the verification requirement was once a year

- § Lisa (VAMSA) stated that the 30 day limit could run into a practicality issue (i.e. if the permittee determines during a January inspection that they will need to do additional plantings, it does not make sense to perform those actions until the spring)
- o John (Christiansburg) suggested the language provide time frames or allow for a proposed schedule
    - § Pam (US Army) stated they would be contacting the Department constantly
    - § Erin (Lynchburg) stated this will create a lot of work/paperwork for the permittee and DEQ for minimal gain
- o Jaime suggested "12 months or provide something to the Department in writing" to match with the Bay verification process
    - § Erin (Lynchburg) stated 18 months is more reasonable
    - § Norm (NVRC) suggested written justifications for the maintenance time frame could be included in the Annual Report
    - § Erin (Lynchburg) asked why permittees cannot certify in the annual report that they have met the BMP requirements
        - • Jaime (DEQ) stated that the Annual Reports are a way for DEQ to review how the permittee's program is implemented and we need to know if maintenance is taking a full five years or longer to be done
- • Pam (US Army) asked if permittees could use the funding cycle as a justification, since insufficient funds are not a sufficient reason to not meet the permit requirements. Asked if this could be a compliance issue
    - o Lisa (VAMSA) stated that is why an 18 month timeline is better. Allows permittees to incorporate funding requirements into the next years' cycle, while also providing time to go out to bid, etc.
    - o Rebecca (WSSI) stated the intent is to have a schedule, not necessarily to have the action completed
- • Erin (Lynchburg) suggested 5.b.iv be struck
    - o Jess (UVa) stated having categories is preferable if this paragraph is kept
- • Lisa (VAMSA) stated there is a difference between a maintenance need and a corrective action to fix an issue. The current language mixes the two.
    - o Dan (Charlottesville) stated the distinction may be between restoration and maintenance
- • Erin (Lynchburg) asked if the maintenance referred to in this section is meant to include routine maintenance. If so, the list provided is not inclusive. Suggested not having the definition for maintenance included in the permit language since what is required is in the BMP specs
    - o Jaime (DEQ) stated removing this information could create an issue with retrofit BMPs that do not meet the clearinghouse standards
    - o Erin (Lynchburg) asked if – similar to the MCM 2 discussion – we could have categories of maintenance (i.e. trash collected, grass clipped). Preference is still to strike this 5.b.iv.
        - § Jess (UVa) stated categories are preferable because there are activities they do daily (i.e trash collection) and reporting each daily trash collection event separately would be burdensome.
- • Erin (Lynchburg) suggested changing "inspection and maintenance" in 5.b.iii to "inspection and enforcement" or "enforcing maintenance requirements." Does not want the text to indicate the permittee is doing the maintenance. Permittees are responsible for enforcing the maintenance requirements
- • Norm (NVRC) asked what is done if jurisdictions do not have a maintenance agreement for a facility

- Adrienne (JRA) asked if there should also be a requirement under 5.c for permittees to identify when a facility is part of a local action plan
- Dan (Charlottesville) asked if 5.e only covers CGP projects
  - Jaime (DEQ) said it would and all other BMPs should be entered into the BMP warehouse under 5.f
- Dan (Charlottesville) asked if CGP BMPs are reported as part of that process
  - They should not be
  - Pam (US Army) asked how federal facilities would use these systems. She assumes their contractor reports this information
    - § Fred (DEQ) stated there is no reason for any entity to report BMPs in the warehouse that are part of the CGP process
- Sarah (Navy/DoD) stated there is a challenge for non-traditionals to ensure that BMPs are appropriately assigned to federal facilities/lands and not to the county
- Fred (DEQ) asked how this information is used
  - Jaime (DEQ) stated this information goes to Bill Keeling, but the MS4 program will use it internally
- Pam (US Army) stated she is unsure that her contractors are accurately reporting BMPs under the CGP
  - Jaime (DEQ) stated that if the reporting of a BMP is required under the CGP, it should not be reported to the BMP Warehouse. We are attempting to avoid double counting
  - Fred (DEQ) stated the Department is not terminating CGP permits until we have BMP information
- Jaime (DEQ) asked if the concern with this section if 5.e or 5.f
  - Sarah (Navy/DoD) stated the DoD BMPs have not been appropriately captured
  - Fred (DEQ) stated that issues with historical information should not occur as we move forward and is a separate concern
- Erin (Lynchburg) asked if 5.e is for the construction BMPs what do we do with BMPs less than an acre in jurisdictions subject to the CBPA
  - Jaime (DEQ) stated it would be reported under 5.f
- Pam (US Army) asked if 5.f is for only structural or all BMPs
  - Jaime (DEQ) stated it should be all BMPs, including non-structural BMPs
- Dan (Charlottesville) asked if there is anything they want to get credit for under the Bay TMDL they should report it under 5.f
  - Jaime (DEQ) stated that the BMPs reported under 5.f are not just those implemented to meet the Bay TMDL, but Bay TMDL BMPs should be reported to the BMP Warehouse
- Erin (Lynchburg) and Adrienne (JRA) asked if we are trying to streamline all the reporting requirements into this section of the permit, despite some BMPs not falling under MCM 5 (i.e. street sweeping
- Pam (US Army) asked why this section does not include requirement for stormwater plan review
  - Jaime (DEQ) stated that the beginning of the section about implementing a VSMP would cover this, but we will review the language
  - Dan (Charlottesville) says this is covered as part of the program plan requirements under 5.g
- Lisa asked if the total number of stormwater management facilities inspected should just include permittee owned facilities and private facilities. Reiterated concern about whether this should include daily activities
  - Jaime (DEQ) stated it should be both

- Erin (Lynchburg) asked if there should be a requirement to have written procedures in the program plan to lay out a comprehensive maintenance plan instead of having the maintenance deadlines in the permit
    - Pam (US Army) stated this is how they currently run their program
    - Jaime (DEQ) stated that based on the current language the permittee could have an inspection plan, but perform no actual maintenance
- Lisa (VAMSA) stated VAMSA will review this issue and submit more specific language to DEQ
- Jeff (DEQ) stated that we have language in the current permit (MCM 5.d.(5) that states the permittee must have written procedures for inspection and maintenance
    - Jaime (DEQ) stated we will look at refining what an appropriate maintenance plan looks like
- Joni (Alexandria) asked for clarification about what the total number of enforcement action and maintenance activities requirement will look like. Could the permittee provide certification that the maintenance and enforcement was done.
    - Jeff (DEQ) stated that the number is useful to show that the permittee is following up on maintenance issues
    - Joni (Alexandria) stated she would look more closely at this section and provide alternative language
- Pam (US Army) suggested reviewing/revising language under 5.g.ii to address non-traditional permittees that do not have enforcement authorities

Wrap Up
- Next meeting will cover MCM 6 and the Chesapeake Bay TMDL Special Condition
- Lisa (VAMSA) verified that Jaime will send draft language to the TAC at least two weeks prior to the meeting
- Next two meetings will be on 02/24 & 03/03 at 9:30am at DEQ's Piedmont Regional Office