

Technical Advisory Committee for Amendment to 9VAC25-890 (MS4 Phase II General Permit)
 Meeting #9
 05/10/17
 DEQ Piedmont Regional Office

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Part II. TMDL Special Conditions

A.1

- Sarah (Navy) asked if there was a reason why just the phase I WIP was incorporated
- Jaime (DEQ) responded the Phase I WIP was used to refer back to the L2 scoping run
- Ginny (ASCE) doesn’t think the Phase II language is any different
- Various TAC members stated that Phase I was the moment of commitment from the State
- Sarah (Navy) the concern is Federal facilities are treated differently in Phase I and Phase II WIPs
- Ginny (ASCE) stated that the Phase II WIP language was changed for Federal facilities
- Jaime (DEQ) proposed adding the Phase II to the language
- TAC consensus for proposal

A.2 Strike Area Served

- TAC consensus - okay

A.3

- Jaime (DEQ) changed table numbers to 3a, 3b, 3c and 3d
- Dan (Charlottesville) asked if summing all the numbers goes beyond the intent
- Allan (DEQ) clarified 40% of the expanded 2010 urban area
- Allan (DEQ) asked if the column G footnote should state as calculated in column F
- Jaime (DEQ) concurred

A.4

- Joe (Hopewell) asked if a project purchased credits that is assumed to be ok
- Jaime (DEQ) responded yes
- Ginny (ASCE) stated it isn't runoff but the load
- Jaime (DEQ) responded the 16% is there because some didn't use 0.45 lb TP/ac/yr
- Ginny (ASCE) stated the load is 0.45 not percent cover
- Jaime (DEQ) the concern is that just referencing 16% wouldn't cover all situations
- Ginny (ASCE) stated having both is confusing
- Norm (NVRC) stated 0.45 is cleaner
- Peggy (CBF) asked why can both be used
- Sarah (Navy) stated permittees are determining what their % land cover is and 16% helps in understanding the goal line
- Joe (Hopewell) asked doesn't item 4 above apply to new construction activities so 0.41 applies
- John (Christiansburg) stated .45 relates to projects under Part II C
- Joe asked if a project starts in 2018 it only has to hit 0.45
- Doug (GKY) stated the condition came from the Chesapeake Bay Preservation Act program. 0.45 represents no net increase for those localities that were not using the 16%
- Jaime (DEQ) stated condition 4 is trying to get back to a level playing field for all programs. There is no intent to allow projects to go over 0.45 except as allowed in the VSMP regulations.

A.5

- TAC consensus – okay
- Norm (NVRC) commented back to condition 4 maybe it would be clearer if Part II.C was referenced
- Peggy (CBF) asked could the code section be referenced in 4 like it is in 5 for clarity
- Fred (DEQ) replied we could put it in B. resulting TP load under 0.45
- Jaime (DEQ) made language change
- Peggy (CBF) stated make 4 and 5 similar in referencing codes
- Jaime (DEQ) made language change
- TAC consensus –okay with changes

A.6

- TAC consensus – okay

A.7

- TAC consensus – okay

A.8

- TAC consensus – okay

A.9

- TAC suggested to change language to “change one or more” and drop d

- Jaime (DEQ) changed language
- Joni (Alexandria) asked does this lock permittee into a snapshot of what is approved at this time and locks out new BMPs
- Jaime (DEQ) responded the intent is to allow new BMPs and we are still working through the language to insure this is the case.

A.10

- Peggy (CBF) suggested allowing for compliance geographically with existing regulations add 'and consistent with any geographic limitations based in any regulations'
- Jaime (DEQ) asked if regulation already dictates geographic area
- Peggy (CBF) asked if it isn't in the permit is there potential for permittees to use credits outside the intent of the existing regulations
- Allan (DEQ) suggested adding ' and shall not be in contravention of local water quality'
- Lisa (Aqualaw for VAMSA) asked why doesn't the code reference cover all of this
- Peggy (CBF) responded the code section is very general
- Peggy's (CBF) concern is that this language seems to imply that an MS4 can apply credits anywhere. In the trading regulations, credit application is more geographically restricted
- Allan (DEQ) responded there is language relating to MS4s in the proposed regulation. It is there but not stated directly
- Peggy (CBF) asked if she could propose language to clarify the intent. The language is seeming to say contradictory things between regulations
- Norm (NVRC) proposed adding 'acquired through nutrient credit exchange' in f2
- Allan (DEQ) responded this language applies to sediment and exchange doesn't address sediment
- Norm (NVRC) stated the language is so generic
- Allan (DEQ) agreed, but stated it was pulled straight from the regulation
- Jill (HRPDC) suggested taking out reference to approved Action Plans in the introductory paragraph
- Dan (Charlottesville) asked for clarification that the compliance plan is not a 1 to 1 with the TMDL action Plan
- Norm (NVRC) stated if you don't use trading DEQ doesn't have to approve it, if you use credits DEQ has to approve it
- Allan (DEQ) responded DEQ has to approve use of credits under the trading draft regulations, suggested putting Code Section 62.1-44.19:21 F language into MS4 10h
- Ashley (Stantec) responded that if the annual reports state credits are being used then that is where DEQ can approve the use of credits
- Allan (DEQ) responded it is pretty clear that DEQ has to approve the use of credits
- Erin (Lynchburg) asked what happens 3 years into the permit term, and a permittee decides they need to use credits, how can we do that. Ask for approval then and get DEQ to approval then
- Jaime (DEQ) responded anytime a permittee needs to shift strategies then the action plan gets updated to reflect the change. But if using credits, you need to get written approval from DEQ
- Peggy (CBF) suggested using a simple approval letter to meet requirements of the code
- Allan (DEQ) agreed
- Fred (DEQ) asked can that approval be outside the MS4 permit/action plan
- Allan (DEQ) responded yes submit letter, get approval and cite it in annual report
- Erin (Lynchburg) suggested that the language drafting could take a while, and it would be better to go back talk to people and make recommendations
- Allan (DEQ) suggested replacing the action plan with compliance plan from the code
- Jaime (DEQ) asked if that satisfies the TAC
- Joe (Hopewell) asked if there was a scenario where DEQ would say a permittee couldn't trade if all conditions were met
- Allan (DEQ) responded if all rules were met don't see why DEQ would not approve the request
- Joe (Hopewell) stated as long as all meeting all the rules trade should be okay

- Ashley (Stantec) asked why is approval process necessary
- TAC (various) responded because the code requires it
- Allan (DEQ) and Norm (NVRC) suggest leaving action plan language to not confuse the situation
- Norm (NVRC) suggested adding approval by DEQ and provide particulars in guidance
- Erin (Lynchburg) stated as long as a letter submission to DEQ and an approval letter back is okay
- Jaime (DEQ) suggested adding 'provided the use of credits has been approved by the Department'
- TAC consensus – okay with that change

10a.

- TAC consensus – okay

10b.

- TAC consensus – okay

10c.

- Erin (Lynchburg) concerned that calendar year is used when the permits operate on the fiscal year
- Jaime (DEQ) responded the concern is noted and staff is well aware of the disconnect
- Erin (Lynchburg) asked how to reconcile and align the different calendar years
- Jaime (DEQ) responded we could put specific example in the guidance document
- Allan (DEQ) stated there is a 6 month disconnect since point source trading looks backward at previous calendar year and MS4 reduction requirements are to be in place by July 1st and forward aligning to fiscal year.

10d.

- Erin (Lynchburg) suggested changing “he” to “permittee”

10e.

- Jaime (DEQ) asked if this should reference the watershed general permit for clarity

10f.

- Erin (Lynchburg) asked for clarification on why sediment credits can't be associated with phosphorous credits
- Allan (DEQ) responded the intent is that if you use phosphorous credits to meet VSMP criteria, the associated TN and TSS credits get retired and you can't re-use them
- Erin (Lynchburg) suggested putting some clarifying language to show intent instead of a straight code reference
- Allan (DEQ) asked what if we refer to the regulation
- Jaime (DEQ) changed language
- Ginny (ASCE) stated that using Phosphorous as a surrogate is confusing
- Jaime (DEQ) suggested that where clarification needs to come is in relation to land disturbance
- Joe (Hopewell) suggested language 'sediment credits associated with Phosphorous purchase are not available'
- Doug (GKY) asked don't you already have language that retires N
- Allan (DEQ) responded that language is vague
- Joe (Hopewell) responded this language is reinforcing that the credit isn't available
- Erin (Lynchburg) asked can't this be handled in guidance

- Jaime (DEQ) thinks there is a way to craft the language
- Peggy (CBF) proposed language
- Sarah (Navy) suggested saying what can be done rather than what can't be done
- Norm (NVRC) suggested letting DEQ rework language
- Jaime (DEQ) responded DEQ will review the language and adjust as necessary

11.

- Dan (Charlottesville) suggested adding 'percent removal efficiency for all 3 pollutants of concern'
- Jaime (DEQ) made changes to language
- Pam (Army) commented that strategies was struck out in some places and left in others
- Jaime (DEQ) struck the left over language
- Joe (Hopewell) commented that not every BMP or strategy will have a removal efficiency, maybe a credit but not a percent
- Jill (HRPDC) responded that is addressed in the language above
- Joni (Alexandria) questioned the dates
- Jaime (DEQ) changed the language to refer to the Chesapeake Bay TMDL reductions

12.

- TAC consensus – okay

13.

- TAC consensus – okay

14.

- TAC consensus – okay

Local TMDLs

B.1

- TAC consensus – okay

B.2

- TAC consensus – okay

B.3.c

- Jaime (DEQ) proposed clarifying the language
- TAC consensus – okay

B.4 Bacteria TMDLs

- Norm (NVRC) commented that there must be a better way to get at the differences between traditional and non-tradition than using VSMP
- Jaime (DEQ) asked for thoughts on adding 'these are examples and not meant to be limiting'

- Ashley (Stantec) asked if this language has been run by DEQ's TMDL implementation team
- Jaime (DEQ) responded regardless if a TMDL implementation plan is developed the WLA is what it is. The TMDL group has not specifically vetted the language but they are aware of it
- Jessica (UVA) asked if policy language for non-trationals could be added
- Norm (NVRC) suggested using the example language so any new or innovative BMP can be added in the future
- Fred (DEQ) agreed
- Peggy (CBF) suggested eliminating the police enforcement on homeless population category
- TAC Consensus to remove and go with type of activity grouping instead of source groupings
- Jaime (DEQ) stated the concern is that we want to link it up with the source
- Ashley (Stantec) suggested using human oriented instead of homeless populations

B.5 Sediment/Phosphorous/Nitrogen TMDLS

- Dan (Charlottesville) asked if stormwater management thresholds should be included as well
- Jaime (DEQ) replied yes
- Jaime (DEQ) changed language
- John (Christiansburg) asked can localities outside the Bay use Bay BMPs
- Jaime (DEQ) responded yes

B.6 PCBs

- Jaime (DEQ) commented that non-trationals have additional expectations if they are identified as a source. They should do more than just source identification
- Pam (Army) responded we already do via RCRA and other programs
- Sarah (Navy) agreed with Pam. There are other programs that are taking care of that issue
- John (Christiansburg) asked doesn't 6a say if you own or operate it
- Jaime (DEQ) responded just wondering if we need to give a nod to the additional activities RCRA or not
- Sarah (Navy) responded I don't think traditional/non-traditional should matter, don't call them out separately
- Doug (GKY) asked can't a line be added saying when you are the responsible party you must include a description of what you are doing
- Jaime (DEQ) responded we will add language along the line of Doug's suggestion
- Joe (Hopewell) asked if it is a given that you would be identified in the TMDL as a source
- Lisa (Aqualaw for VAMSA) asked PCB TMDLAP is specific about what to include is that cumulative, doesn't item 3 address this
- Jaime (DEQ) responded item 3 may address this, but based on further discussion with TAC both may be needed
- Jaime (DEQ) added language
- Doug (GKY) commented truth of the matter is that this permit is concerned with keeping it out of stormwater not if it is cleaned up or not
- Jaime (DEQ) responded we will think about the language further
- Jaime (DEQ) commented the intent of 3 is general and if POCs are present then include the extra items in 4,5 and 6
- Norm (NVRC) asked is there a way to tie it back to the implementation plans
- Jaime (DEQ) responded we could tie PCB back to say action plans should include any source controls or actions required by the TMDL
- Jaime (DEQ) commented we will look into this further and adjust the language
- Sarah (Navy) asked if there are no BMPs does public participation still need to occur
- Jaime (DEQ) responded the intent is to public notice even if there are no BMPs. We will change the language

Part I.E.4.

E.4.2

- John (Christiansburg) commented that some towns have their own programs. Need to adjust the language for those entities
- Jaime (DEQ) added language to address this
- Erin (Lynchburg) commented that in 5 there is language about towns, keep the language consistent with this
- Jaime (DEQ) responded we will give a nod in item 5 to follow land disturbing threshold
- Doug (GKY) asked if I am a school board is the county or city the ones doing the inspections
- Jaime (DEQ) responded yes, however there is some expectation that the permittee will inspect their own projects
- Jaime (DEQ) commented we are not sure how to handle alternative inspection programs in the existing language
- Erin (Lynchburg) asked why does a school board have to do inspections as well as the city inspections. Why double up on the inspections
- Doug (GKY) commented that the Federal Register discusses this and you are allowed to rely on the city inspectors but that process needs to be identified
- Jessica (UVA) commented that the previous permit language reaches the intent
- Jaime (DEQ) agreed and will roll previous language into current draft language
- Pam (Army) commented that the construction General Permit has different requirements than the MS4 relating to runoff producing events vs. qualifying/measurable rain events
- Jaime (DEQ) responded that language came out of the VSMP regulations
- Doug (GKY) commented that he thinks it is the E&S law that is the issue. The regulations conflict
- Jaime (DEQ) responded we will put terminology explanation in the fact sheet

Part I.E.5

- Adrienne (JRA) asked why does MCM4 only ask for compliance with inspections not the rest of the E&S program while MCM5 is asking for compliance with inspections and the rest of the program
- Jaime (DEQ) responded good point, we will have to look at the language

E.5.d.v

- John (Christiansburg) asked is that “directly discharged to”
- Jaime (DEQ) replied yes
- Joe (Hopewell) asked we have a number of old farm ponds that were never stormwater basins, is there a process to convert them to a stormwater pond
- Jaime (DEQ) responded you would have to look at the expert panel for retrofitting those basins and look at receiving incremental credit
- Erin (Lynchburg) asked these are VSMP ones greater than 1 acre
- Jaime (DEQ) responded yes

E.5.i.iii

- Jaime (DEQ) stated what we are looking for are large maintenance activities, not grass cutting
- Lisa (Aqualaw for VAMSA) asked could we say corrective maintenance actions
- Joe (Hopewell) asked is it a given that these are our BMPs and not all BMPs
- Jaime (DEQ) responded the intent is MS4 owned BMPs
- Norm (NVRC) commented I thought we settled on corrective action last time
- Doug (GKY) commented so we are looking at repairs and not maintenance
- Norm (NVRC) suggested striking number and just say description

At this time it is expected that this is the last meeting of the TAC. Once the draft permit is prepared and sent to EPA, Jaime will send the draft permit to the members of the TAC as well.