



COMMONWEALTH of VIRGINIA

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SUBJECT: Technical Advisory Committee (TAC) Meeting to Discuss the 2016 Reissuance of 9VAC25-115 Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities

TO: TAC Members and DEQ Staff (listed below)

FROM: Elleanore Daub, Office of VPDES Permits

DATE: January 23, 2014

A TAC meeting was held on December 19, 2014 at the DEQ Piedmont Regional Office. The meeting began at 10:00 AM. Participants attending the meeting were:

Name	Organization
Ann Arseniu Gallivan	J.C. Walker Brothers
AJ Erskine	Cowart Seafood Corp. and Bevans Oyster Co.
Michael J. Oesterling	Shellfish Growers of Virginia
Denise Mosca	Consultant
Allan Brockenbrough	DEQ – CO
Elleanore Daub	DEQ - CO
Burt Tuxford	DEQ - CO
Kathleen O’Connell	DEQ - CO
Deanna Austin	DEQ - TRO
Loan Pham	DEQ - TRO

Information provided either before the meeting or at the meeting were:

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

Discussion

DEQ staff gave some background on the permit regulation and the rulemaking timeline. Staff plans on asking the Board for approval to go to public hearing on the draft amendments at the March or June State Water Control Board quarterly meeting. Then a 60-day public comment

period will follow and will be held either this spring or summer. While two TAC meetings have been scheduled, we hope to only need one.

The TAC discussed the draft proposal as follows:

Definitions (9VAC25-115-10) – DEQ only adds definitions that are not in the VPDES Permit Regulation (9VAC25-31). DEQ proposed adding a definition of ‘shellstock’ and ‘shellstock shipper’ modified from the National Shellfish Sanitation Program’s definitions. This definition began the discussion about whether oyster tumbling, rinsing and sorting for the smaller operations needs to be covered under the general permit. The discussion about the need for coverage was initiated by a pollution complaint from homeowners living adjacent or nearby this type of activity. DEQ visited several of these operations and determined that the owners did not need coverage. In addition, as more and more oyster growers were getting inspected and certified for shellstock shipping by the Division of Shellfish Sanitation (DSS), DSS would first clear with DEQ that the owner did not need coverage. During the last permit term, DEQ continued to inform DSS that the owners did not need coverage under a VPDES permit. DEQ’s reasoning was that DEQ considered this type of activity primarily aquaculture and molluscan aquaculture does not require a VPDES permit because it does not fall under the concentrated aquatic animal feeding operations effluent guidelines. From a water quality perspective, DEQ reasoned that the oysters rinsed and graded (sorted) usually in tumblers on a dock had negligible solids because the shellfish are initially washed over the oyster grounds. Usually the rinse water is pumped from and returned to the adjacent water body. The oysters are sold whole and there is no processing (shucking) of the product so no pollutants are added to the discharge that cause water quality impacts. These operations are generally small in volume (around 100 gallons per day) and product generated (usually less than 10 bushels per day). Each shellstock shipper that contacted DEQ was told that DEQ would examine whether coverage was needed during the next reissuance of the Seafood Processing General Permit.

If coverage under the general permit was determined to be necessary, DEQ staff proposed that the owners of these types of operations (the defined shellstock shippers) could get ‘automatic’ permit coverage and would not be required to register or pay a fee. The permit ‘limits’ could be best management practices (BMPs) that reflect the existing practices that make the water quality impact negligible (initially rinsing over the beds, using small volumes of water and having a small production (e.g., less than 10 bushels, but this value was considered by the group to be too small). DEQ was reminded that very few of the owners that fall into this new category know about the possibility of VPDES coverage requirements, and an outreach would be necessary through various venues.

Concerns were raised about starting to mix the currently exempt molluscan aquaculture aspect with VPDES permitting. The group discussed separating or exempting the aquaculture steps (e.g., seed and nursery husbandry) from the interstate commerce aspect of the activity (i.e., selling of the market size oysters). However, there were concerns that regardless of the defined separation, the activity as a whole is still the same activity with the same water quality impact. Aquaculture might then need to be defined which led to more concerns since there are many steps in aquaculture and other definitions or understood meanings of aquaculture currently exist with other agencies (e.g., VMRC and VDACS). There was a suggestion to exempt all aspects of

the oyster aquaculture operation (seed, nursery growing and harvest) and just cover a smaller population of oyster harvesters (or buyers) that are not involved in growing oysters. However, this was not the population DEQ was trying to cover under the permit. After repeated attempts to properly exempt oyster aquaculture or steps in the oyster aquaculture from VPDES permit coverage, or recognize it in any way in the regulation the group ultimately decided that the current DEQ practice of not requiring VPDES coverage was the proper procedure and that no changes to the permit regulation were needed. Suggestions to write VDH a letter to exempt the oyster aquaculture industry as a whole or provide a permit shield of any kind in the regulation was decided against and any shellstock shipper would have the option to apply and pay for VPDES coverage and follow the requirements of the permit.

Registration Statement (9VAC25-115-40) - The group discussed the question that asks for information on use of chemicals at the facility (9VAC25-115-40 C question #15). The existing registration form states that the applicant does not need to list FDA approved sanitizers but Question #15 of the regulation does not exclude that listing. Also, the special conditions (9VAC25-115-50 Part I B 2 of the permit) state that there shall be no chemicals added to the water or waste to be discharged other than those listed on the owner's accepted registration statement. There are many FDA approved sanitizers but dilute chlorine solution is the main sanitizer and can be used to clean anything from tables or equipment to entire rooms that vary in size. DEQ also routinely approves the USDA approved food additive polyphosphate solution as an added chemical. DEQ staff asked whether the use of these chemicals should either be acknowledged in the regulation or whether the chemicals should be discussed on the registration statement. The DEQ staff consensus was that the regulation should not state that a pollutant (like chlorine) that has a very low water quality criterion concentration is always acceptable, rather the permittees should be required to list all chemicals (even chlorine) on the registration statement as well as their concentrations. DEQ would then make a determination as to whether it is protective and thus appropriate to allow coverage based on the chemical, the concentration and the receiving stream dilution. The industry representatives reminded staff that the industry is required to use sanitizers by the Virginia Department of Health (VDH) and were concerned that this suggested change to the registration statement presented a conflict and also might inhibit their getting coverage under the permit. DEQ staff thinks they need the information to make an informed decision about water quality protection and rather than deny coverage, permittees may have to change the way they operate (e.g., hold the discharge to allow chlorine to evaporate). A suggestion was made to acknowledge the VDH requirement for disinfection in the fact sheet.

Discharge outfall information (9VAC25-115-40 C question #10) was expanded to list the specific information currently asked for on the registration statement form (seafood process, receiving stream, flow and days per year of discharge for each outfall).

A new addition to the registration statement was a question (9VAC25-115-40 C at draft question #15) asking whether a stormwater pollution prevention plan had been prepared. This was added primarily as a reminder, especially for new permittees who don't know they have SWPPP deadlines for preparation and implementation since they haven't been issued the permit yet. Also see stormwater pollution prevention plan discussion below.

Another new addition suggested by DEQ staff is the allowance to submit registration statements either by postal or electronic mail. There was no objection.

Stormwater Pollution Prevention Plans (SWPPP) - The permit contains deadlines for preparation, updates and implementation of SWPPPs for the owners of seafood processing facilities falling under SIC codes 2091 and 2092. The current permit required owners currently covered by the permit to update and implement revisions to the SWPPP within approximately 5 months of reissuance of permit coverage and owners applying for coverage for the first time were required to prepare and implement the SWPPP prior to submitting the registration statement. Staff discussed the possibility of making the deadlines for update, preparation and implementation the same for all permittees (existing and new). Consensus was that 60 days from permit issuance or reissuance to update, prepare and implement a SWPPP was reasonable. DEQ staff did not want the SWPPPs to be submitted to the agency; rather they would be reviewed during DEQ inspections.

DEQ asked the group whether this industry should be required to monitor for nutrients to conform to the Chesapeake Bay Watershed Implementation Plan (WIP) since this was required for owners covered under the Industrial Stormwater General Permit (ISWGP). The consensus was that the WIP only studied and discussed the covered owners under the ISWGP, that other general permits were considered insignificant to the load and the monitoring was not required. It was suggested that DEQ note that in the permit fact sheet.

DEQ asked the group whether the SWPPPs should be updated to match Sector U (Food and Kindred Products) prohibitions of non-stormwater discharges, additional site map details for stormwater exposed cooking vents and stacks, dry product transfer lines, animal holding pens, spoiled product and broken product storage, boiler blowdown, cooling tower overflow and blowdown, ammonia refrigerant purging and vehicle washing and clean-out operations. Sector U also requires inspections of these similar areas. Sector U also includes storage of pest control chemicals in the summary of potential pollutant sources. In addition, all other stormwater sectors have a list of allowable non-stormwater discharges which is missing from this permit. The group consensus was that the allowable non-stormwater discharges should be listed and that the stormwater and process water requirements of the existing permit either covered the additional Sector U items or the additions were unnecessary for this aspect of the food and kindred products industry.

DEQ inquired as to whether quarterly visual examinations were being done or if language needed to be clarified in that respect. Consensus was that these visual examinations were being conducted and language did not need to be changed.

Other – Other items were mentioned but not discussed at length. The following represents a summary of those items:

Applicability of incorporated references (9VAC25-115-15) – This is added in section 15 of the regulation so dates do not need to be added to CFR references.

Purpose (9VAC25-115-20) – Dates changed to reflect the upcoming permit term and clarify where stormwater applies (SIC 2091 and 2092).

Authorization to Discharge (9VAC25-115-30) – Section reformatted to match other general permits including the new TMDL language that recognizes that the discharge must be consistent with the assumptions and requirements of an approved TMDL. DEQ will need to add to paragraph C the specific sections of the Clean Water Act that are applicable (i.e., §§ 301, 302, 306, 307, 318, 403, and 405 (a) and (b)). These sections of the Clean Water Act refer to standards and enforcement of the VPDES program.

General Permit Limits Pages (9VAC25-115-50) – All dates throughout the regulation reflect the new permit term (July 24, 2016 – July 23, 2021). Nothing has changed in the federal effluent guidelines; therefore limits have not changed.

The term ‘bottom fish’ was discussed as to what this term meant. Examples from the Federal Effluent Guidelines at 40 CFR 408 Subparts U and V are flounder, ocean perch, haddock, cod, sea catfish, sole, halibut and rockfish (which is probably not our rockfish or striped bass *Morone saxatilis* rather *Sebastes sp.*) for conventional processing and whiting and croaker for mechanized processing. These examples are in fact, fish that are primarily deep sea or bottom dwellers and bottom feeders. If another type of fish is processed that is not separately listed in 40 CFR 408 (e.g., tuna), DEQ would likely inform the permittee that the Part I A 1 effluent limit page (seafood processing not limited elsewhere) was applicable to the operation.

It was suggested that the term ‘raw material’ be defined because for some seafood processes it means the material in the form in which it was received for processing (e.g., whole fish) but for oysters it is the weight of the meat after shucking.

General Permit Special Conditions (9VAC25-115-50 Part I B)– special condition #7 - The quantification level for BOD should be one significant digit (i.e., 2 instead of 2.0). Special condition #10 – as discussed in the SWPPP paragraph above, the conformance with the Chesapeake Bay WIP should be discussed in the fact sheet of the permit. New special condition #11 – termination of permit coverage instruction was added.

Conditions Applicable to All VPDES Permits (9VAC25-115-50 Part III) – In condition A (Monitoring), added the requirement that samples must be analyzed in accordance with the Virginia Environmental Lab Program (VELAP) adopted by the General Assembly in 2009. The General Assembly directed the Virginia Division of Consolidated Laboratory Services (DCLS) to establish a program to certify or accredit environmental laboratories that perform tests, analyses, measurements, or monitoring required pursuant to the Commonwealth's air, waste, and water laws and regulations. In condition B 2 (Records) references to sewage sludge should be deleted as this is not relevant to this industry. In condition I 3 (Reporting of noncompliance) emergency reporting was updated. Condition L (Duty to comply) should be deleted as DEQ has been deleting boilerplate items that are not relevant to general permits. In condition Y (Transfer of permits) DEQ will remove references to modifications or revoke and reissue since these are not done with general permit coverage and give the board an opportunity to waive the 30 day advance notification for ownership changes.

It was decided by the TAC that at this time, it does not appear another meeting is necessary. DEQ will email and hard copy mail the meeting minutes and another draft of the regulation based on today's comments to the TAC early in 2015.

Thanks to all the TAC members for their continued service.