

Municipal Separate Storm Sewer System (MS4) General Permit Technical Advisory Committee (TAC) Meeting

June 19, 2007

- *State Parks * Soil and Water Conservation * Natural Heritage**
- * Outdoor Recreation Planning * Land Conservation**
- * Dam Safety and Floodplain Management**
- * Chesapeake Bay Local Assistance**



Regulatory Process Overview

Background Information

- MS4 General Permit is a regulation of the Virginia Soil and Water Conservation Board
- This is the first amendment to this permit since the EPA approved the transfer of program administration authority from the State Water Control Board (DEQ) to the Virginia Soil and Water Conservation Board (DCR) effective January of 2005.
- On December 9, 2007 the current MS4 General Permit expires (effective December 9, 2002).

Regulatory Process

- On September 28, 2006, the Board gave DCR authority to initiate a regulatory action to amend the MS4 General Permit.
- Regulatory actions are comprised of three primary steps: the Notice of Intended Regulatory Action, the Proposed Regulations, and the Final Regulations.
- Routinely under the Administrative Process Act (APA) this takes about 2 years.
- Amendments to this General Permit are exempt from the full APA (§2.2-4006 subsection A9 of the Code of Virginia).
- An abbreviated APA process is still required (Public input remains, Administrative review is reduced).

- The General Permit shall be exempt from the APA if the Board:
 - Provides a Notice of Intended Regulatory Action (NOIRA),
 - Forms a technical advisory committee composed of relevant stakeholders to assist in the development of the General Permit,
 - Provides notice in the Virginia Register of Regulations and receives oral and written comment,
 - Conducts at least one public hearing on the proposed General Permit.
 - Publishes in the Register both the proposed and final regulations.
 - At least two days in advance of the Board meeting where the regulation will be considered, a copy of the regulation shall be provided to members of the public that request a copy.
 - A copy of that regulation shall be made available to the public attending the Board meeting.

- The EPA will also require review of the proposed and final General Permit regulations.

Proposed Timeline

- On September 28, 2006, the Board gave DCR authority to initiate a regulatory action.
- On February 13, 2007, the NOIRA was posted to the Regulatory TownHall.
- The 30-day public comment period opened on March 5th and closed on April 4th.
- We mailed out approximately 340 notices of the NOIRA and the Regulatory Town Hall sent notices to 738 individuals.
- We received 8 comments and 16 requests to be placed on the TAC during the comment period.

- TAC has been developed and the Institute of Environmental Negotiation has been selected to provide facilitation services. (Frank Dukes)
- First meeting - June 19th at the Virginia Science Museum
- Second Meeting – July 26th
- Third Meeting – August 22nd
- We will post information from each meeting on the Policy, Regulations and Public Comments portion of DCR's website at: <http://www.dcr.virginia.gov/lawregs.shtml>

- Proposed regulations to the Board - September 20th. (File by Sept. 26th with the Registrar; Publish on October 15th in the Register)
- 60-day public comment period - October 15th through December 14th
 - EPA will also review during this time period
 - We also have newspaper publishing requirements (federal) during this time period
- Final regulation to the Board - January 18th (tentative)
- Expect to have the amended General Permit regulation in place in March

Review of the Notice of Intended Regulatory Action (NOIRA)

Small MS4 General Permit NOIRA

1. First official step in the regulatory process
2. Placed on the Regulatory Town Hall on February 13, 2007
3. Describes the purpose, legal basis, and the scope of the regulatory action

Purpose

To amend the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Sewer Systems

Legal Authority

Federal Clean Water Act
(33 U.S.C. 1251 et seq.)

Virginia Stormwater Law
(Va. Code 10.1-603.1 et seq.)

Why Amend the Permit?

- Current General Permit expires on December 9, 2007
- Federal Clean Water Act and Virginia Stormwater Management Law and Regulations specify that any permit cannot exceed a term of five years
- All regulated systems must have permit coverage, either through an individual permit or under the General Permit

NOIRA Purposes Include:

1. Defining minimum standards for a Small MS4s
2. Clarifying documentation requirements for stormwater management programs
3. Updating registration statement requirements
4. Establishing BMP implementation requirements
5. Establishing reporting schedules and methods/forms
6. Defining monitoring requirements
7. Establishing program evaluation requirements

8. Establishing standard language for the development, implementation and enforcement of a stormwater management program, including the following six minimum control measures:

1. Public education and outreach
2. Public involvement and participation
3. Illicit discharge detection and elimination
4. Construction site stormwater runoff control
5. Post-construction stormwater management in new development and redevelopment
6. Pollution prevention/good housekeeping for municipal operations

National Pollutant Discharge Elimination System (NPDES)

Program Overview

The History of MS4 Permitting Regulations

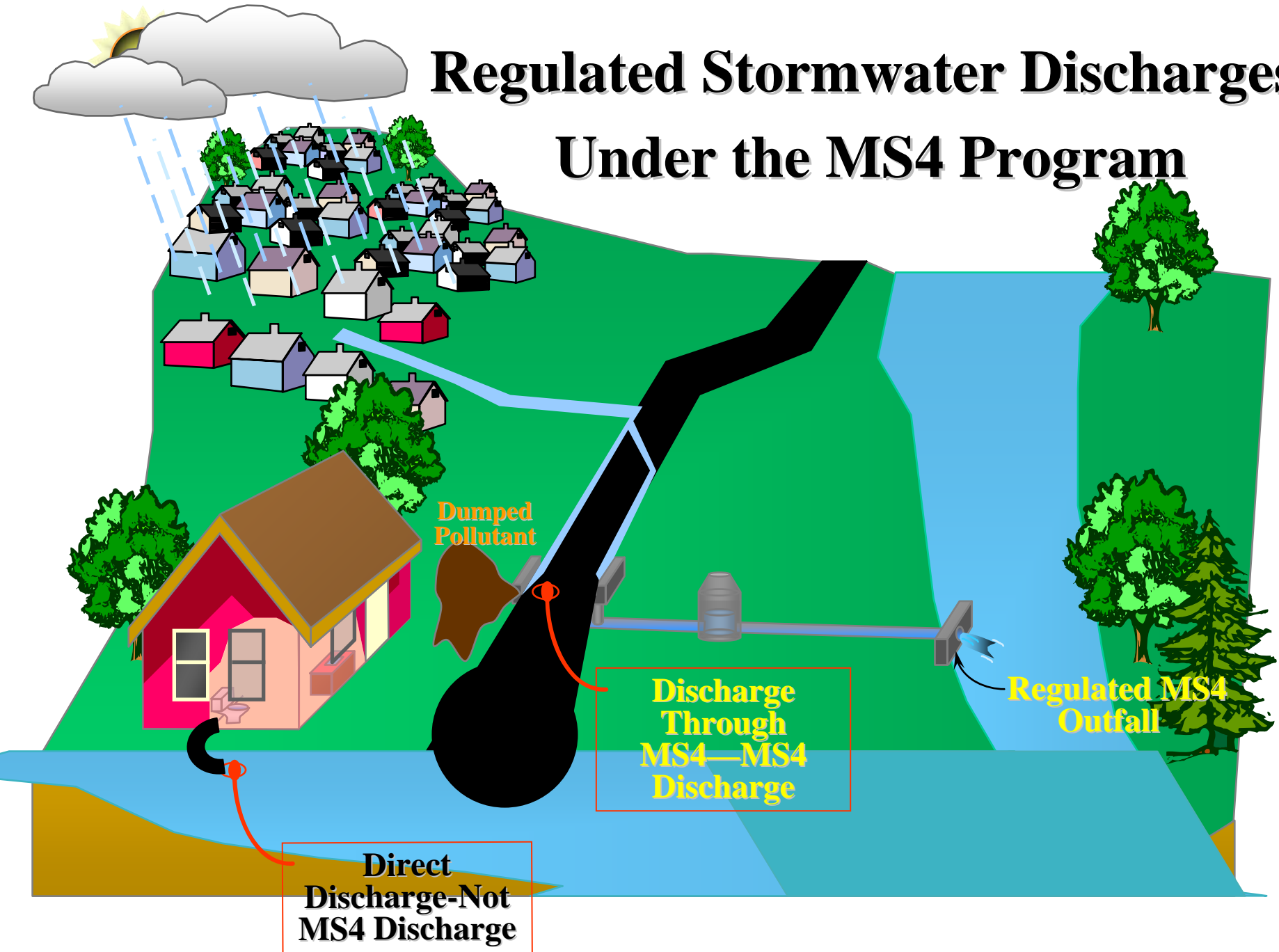
- In 1972, Congress amended the Federal Water Pollution Control Act (Clean Water Act) to prohibit the discharge of any pollutant to waters of the U.S. from a point source discharge unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit.
- A permit is a license
 - Issued by the government
 - Granting permission to do something that would be illegal in the absence of the permit (e.g., driver's license)
 - There is no right to a permit and it is revocable for cause (e.g., reckless driving)
 - A NPDES permit is license to discharge

- In 1987, Congress amended the Clean Water Act to require implementation, in two phases, of a comprehensive national program for addressing stormwater discharges.
 - In 1990, EPA promulgated “Phase I” of the comprehensive national stormwater program by requiring NPDES permits for municipal separate storm sewer systems (MS4) serving a population of 100,000 or more
 - In 1999, EPA promulgated “Phase II” of the stormwater permitting program by expanding it to include MS4 discharges from smaller municipalities (Small MS4s) in urbanized areas. Small MS4s were required to apply for coverage under the NPDES program prior to March 10, 2003

MS4 Definition

- A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
 - (i) Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body
 - (ii) Designed or used for collecting or conveying stormwater;
 - (iii) Which is not a combined sewer; and
 - (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.
- “Today’s rule does not regulate the county, city or town. Today’s rule regulates the MS4. Therefore, ... if that county does not own or operate the MS4 systems, the county does not have to submit an application or develop a stormwater management program.” Federal Register: December 8, 1999, Volume 64, Number 235, Page 68750

Regulated Stormwater Discharges Under the MS4 Program



Discharges are authorized under either an individual or general permit

Individual Permit

- One application submitted-One permit issued
- Appropriate where site-specific limits, management practices, monitoring and reporting, or other facility-specific permit conditions are needed
- Coverage valid for five years from date of issuance. Permittee given 5 years coverage.
- Required of Phase I MS4s

General Permit

- One permit issued many applications submitted
- Appropriate where multiple dischargers require permit coverage, sources and discharges are similar, permit conditions are relatively uniform
- Permit must identify:
 - Area of coverage
 - Sources covered
 - Application process (Notice of Intent)
- Permit valid for five years from date of issuance. Permittee may not be given 5 years coverage during first permit cycle.

Technology-and Water Quality-Based Effluent Limitations

Technology

Goal: “Zero Discharge”
(Performance)

40 CFR §§122.44(a)&(e)

“Maximum Extent Practicable”

Relationship: Technology-based effluent limits are developed for all applicable pollutants of concern. If these limits are not adequate to protect water quality, then water quality-based effluent limits must be developed.

PER FEDERAL REGULATION: THE MOST PROTECTIVE EFFLUENT LIMIT MUST BE INTEGRATED INTO NPDES PERMITS

Water Quality

Goal: “Fishable/Swimmable”

40 CFR §§122.44(d)

TMDL WLA

Applicability of Water Quality Effluent Limits in MS4 Permits

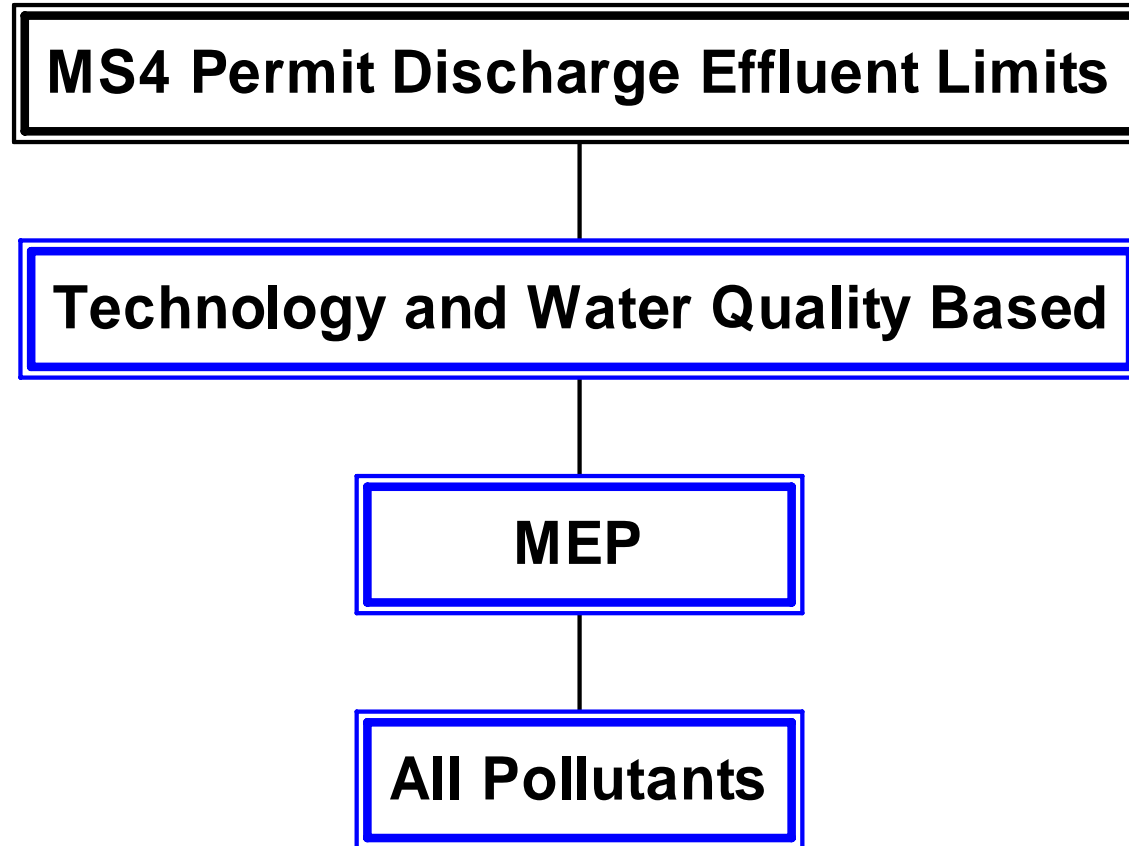
- Comments from EPA Region III Water Protection Division and EPA Office of Regional Counsel in Letter to DCR regarding draft MS4 Phase I permits dated June 26, 2006.
- “As part of the promulgation of MS4 Phase II requirements, EPA officially clarified the relationship between sections 301(b)(1)(C) and 402(p) of the Act for all municipal dischargers (small, medium and large):
 - T]oday's rule specifies that the ‘compliance target’ for the design and implementation of municipal storm water control programs is ‘to reduce pollutants to the maximum extent practicable (MEP), *to protect water quality, and to satisfy the appropriate water quality requirements of the CWA.* 64 F.R. 68722, 68753-54 (emphases added).“

- “The first component, reductions to the MEP, would be realized through implementation of the six minimum measures.
- The second component, to protect water quality, reflects the overall design objective for municipal programs based on CWA section 402(p)(6).
- The third component, to implement other applicable water quality requirements of the CWA, recognizes *the Agency's specific determination under CWA section 402(p)(3)(B)(iii) of the need to achieve reasonable further progress toward attainment of water quality standards according to the iterative [Best Management Practices] process*, as well as the determination that State or EPA officials who establish TMDLs could allocate waste loads to MS4s, as they would to other point sources.”
- “As a result, it is clear that EPA intends all municipal dischargers to achieve both technology-based and water quality-based limits.

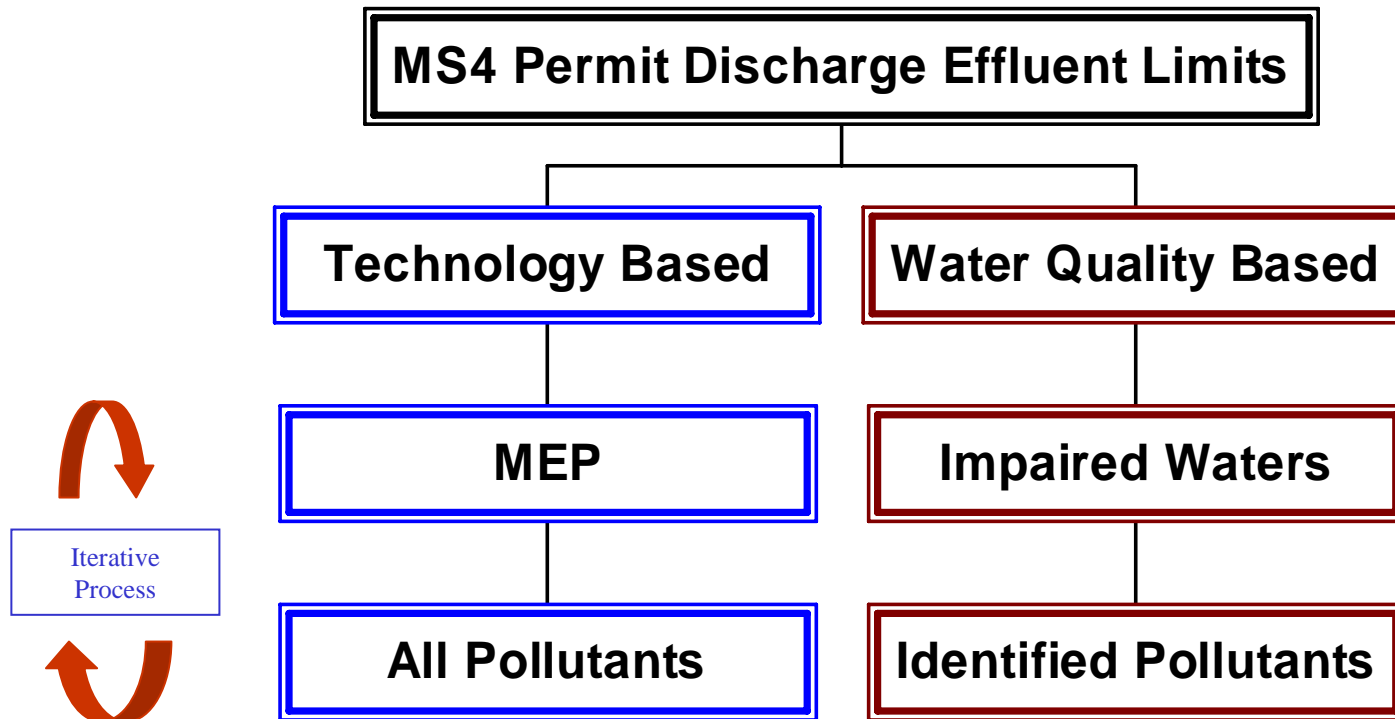
Integrating Effluent Limits into Stormwater Permits

- Difficult to develop actual numeric discharge limits.
- Utilize Iterative Process approach to addressing pollutant load reduction.
 - Develop measurable goals
 - Implement Best Management Practices (BMPs)
 - Evaluate BMPs for effectiveness meeting measurable goals
 - Refine BMPs, if necessary to improve BMP effectiveness in meeting measurable goals
- Consistent with EPA’s “Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits.”

Common View of MS4 Effluent Requirements

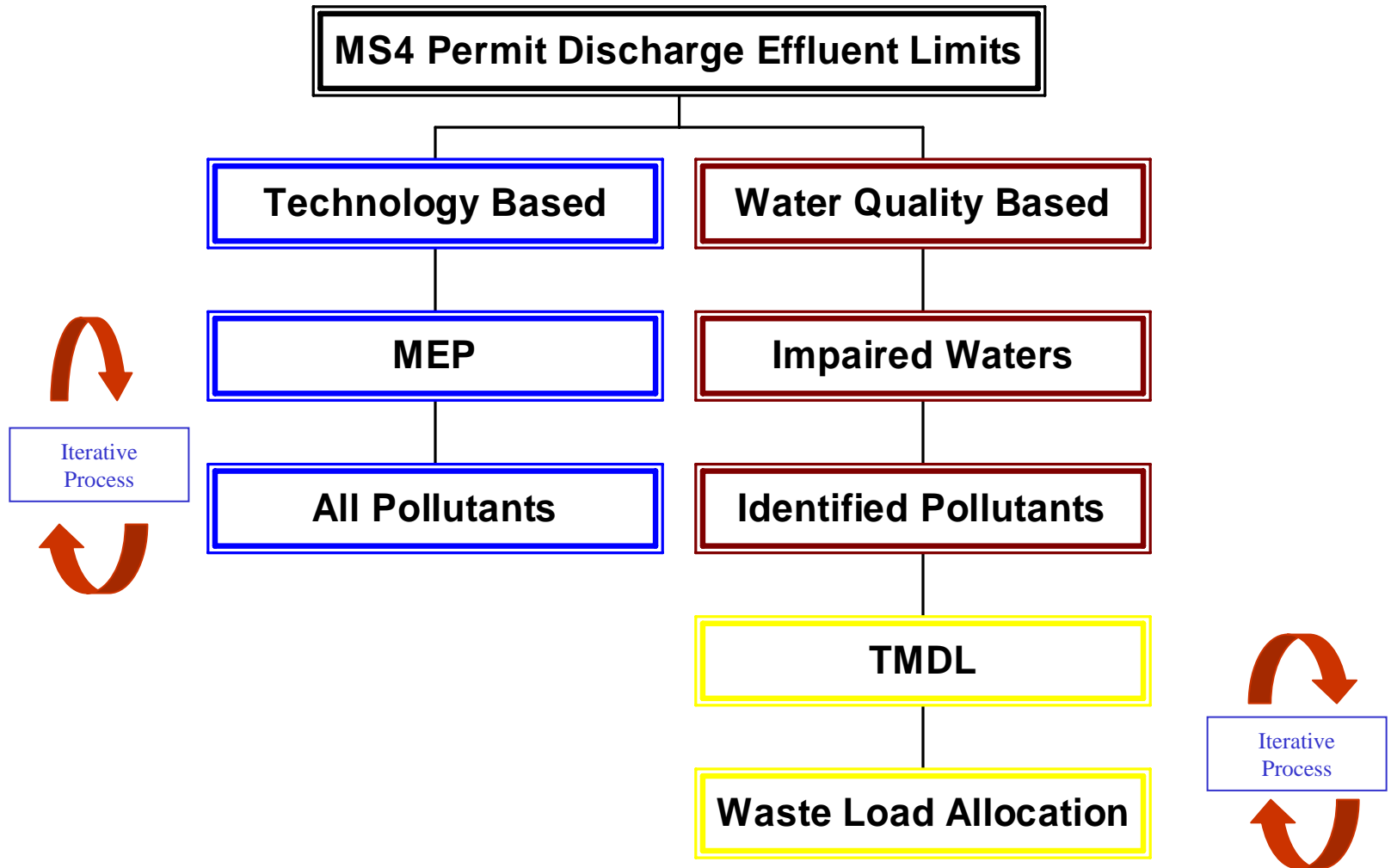


Regulatory View of MS4 Effluent Requirements



How do we
implement Iterative
Process?

Complete View of MS4 Effluent Requirements



Summary of Small MS4 Regulatory Requirements

- Develop and implement a Stormwater Management Program
- Designed to reduce the discharge of pollutants from the MS4 to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, State Water Control Law and the Virginia Stormwater Management Act.
- Implement six Minimum Control Measures
 - Public Education and Outreach on Stormwater Impacts
 - Public Involvement / Participation
 - Illicit Discharge Detection and Elimination
 - Construction Site Stormwater Runoff Control
 - Post-Construction Stormwater Management in New Development and Redevelopment
 - Pollution Prevention / Good Housekeeping for Municipal Operations
- Evaluate, Assess, Revise (if necessary) and Report

Other States' MS4 Programs

General Comments

- All permits incorporated the federal requirements for the six minimum control measures.
- Water quality requirements were extremely varied.
- Specificity in permits varied, not only among permits, but within permits.
- Permits often relied on other state statutes to integrate minimum standards.
- NC (NCG230000), WV, MD, NY, MS, PA, TN, RI

Public Education and Outreach on Stormwater Impacts

- Majority of permits did not provide clear measurable goals for a permittee to address.
- States such as Mississippi and Rhode Island set specific protocols in how to develop the education and outreach programs using decision processes and strategies.
- Maryland provided examples in the general permit of what should be considered during the program development.
- North Carolina provided specific objectives.
- Pennsylvania developed an elective protocol that permittees could adopt and follow (Protocol was established for all Minimum Control Measures).

Public Involvement / Participation

- All general permits require compliance with State public notice requirements.
- New York's general permit requires review of annual reports in a public meeting, collection of public comments and inclusion of public comments in the annual report.
- Many permits either require or recommend development of stakeholder groups to assist in program development and participation efforts.
- Maryland's permit requires sponsorship of annual stream clean-up or restoration activities.

Illicit Discharge Detection and Elimination

- North Carolina requires storm sewer system component mapping in addition to outfalls and establishment of a public reporting mechanism.
- Rhode Island requires all outfalls be “tagged”.
- Maryland and Mississippi require field screening of MS4 outfalls.
- Tennessee requires that stormwater runoff from “hot spots” be addressed so as to limit pollutant loading.

Construction Site Stormwater Runoff Control

- New York, Rhode Island and Tennessee require that programs be designed to be consistent with the state's NPDES construction stormwater general permit.
- North Carolina relies exclusively on the construction general permit.
- Maryland and Pennsylvania rely on additional state statutes.
- Tennessee requires permittee staff certification and additional program requirements for priority construction activities located in high quality waters and impaired waters.

Post-Construction Stormwater Management in New Development and Redevelopment

- Maryland, North Carolina and Rhode Island set minimum standards through various statutes and state manuals.
- Pennsylvania provides model ordinance until watershed plans are developed and implemented by counties and municipalities as required under additional state statute.
- North Carolina requires establishment of Nutrient Sensitive Waters protection measures.
- Tennessee requires the establishment, protection and maintenance of stream buffers.

Pollution Prevention / Good Housekeeping for Municipal Operations

- North Carolina requires development of an inventory and annual review of all stormwater generating facilities owned and operated by the permittee.
- Rhode Island requires development of specific pollution prevention plans for activities associated with industrial activity.
- West Virginia requires chemical monitoring for activities associated with industrial activities.
- New York requires that permittees follow management protocols outlined in a State manual.
- Pennsylvania protocol requires facility inspection.

Water Quality Effluent Limits

- Requirements are all over the map.
- Majority do not allow discharges to cause or contribute to water quality impairments.
- Most require:
 - Evaluation of existing program
 - Incorporation of additional elements, if necessary
 - Consistency with the TMDL
 - Evaluation of effectiveness of meeting TMDL discharge requirements.
- Some do not include any language on TMDLs.
- Others do not allow coverage under a general permit if a waste load is allocated to the MS4.



- On December 9, 2002, the Virginia Department of Environmental Quality (DEQ) issued the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems. The General Permit will expire on December 9, 2007.
- Coverage under the General Permit began on March 10, 2003.
- On January 29, 2005, administrative oversight of the MS4 program was transferred to DCR from DEQ.

Existing Virginia Regulations

Chapter 60-Virginia Stormwater Management Program Permit Regulations

- **Part I-Definitions, Purpose and Applicability**
- Part VI-VSMP General Program Requirements Related to MS4s and Land Disturbing Activities
- Part VII-VSMP Permit Applications
 - 4VAC 50-60-400. Small Municipal Separate Storm Sewer Systems
- Part VIII-VSMP Permit Conditions
- Part IX-Public Involvement
- Part X-Transfer, Modification, Revocation and Reissuance, and Termination of VSMP Permits
- Part XI-Enforcement of VSMP Permits
- Part XII-Miscellaneous
- Part XIII-Fees
- **Part XV- Part XV-General Virginia VSMP Permit for Discharges of Stormwater From Small MS4s**
- **FORMS**

Part XV-General Virginia VSMP Permit for Discharges of Stormwater From Small MS4s

- 4VAC 50-60-1200. Definitions
- 4VAC 50-60-1210. Purpose; Delegation of Authority; Effective Date of the Permit
- 4VAC 50-60-1220. Authorization to Discharge
- 4VAC 50-60-1230. Permit Application (Registration Statement)
- **4VAC 50-60-1240. General Permit**
- Forms

Virginia General Permit for the Discharge of Stormwater from Small MS4s

- Designed to provide maximum flexibility in local program development without defining actual minimum standards or establishing conditions for meeting permit requirements.
- Will expire prior to permit reissuance.
 - Permit will be administratively continued
 - Permittees must submit a new, completed registration statement prior to expiration of current permit
 - Permittees do not know what they are applying for
 - Regulations cannot be changed to address this issue
 - Must address this issue as part of this development process
 - In the meantime, DCR is developing guidance on how to complete the Registration Statement.
 - New permit will need to address submittal of new plan.