

**Virginia Soil and Water Conservation Board
Municipal Separate Stormwater Sewer System (MS4)
Technical Advisory Committee (TAC)
Science Museum of Virginia
Richmond, Virginia**

MS4 Technical Advisory Committee Members Present

William Bullard, Department of Defense Regional Environmental Coordination
Shelley Clinger, Virginia Community College System
David Crawford, Cabell Brand Center
Thanh H. Dang, City of Harrisonburg
J. Michael Flagg, Hanover County
Amber Foster for William H. Street, James River Association
J. Douglas Fritz, Virginia Department of Conservation and Recreation
Jack E. Frye, Virginia Department of Conservation and Recreation
Mike Gerel, Chesapeake Bay Foundation
Julia Hillegass, Hampton Roads Planning District Commission
Steve Hubble, Stafford County
David Kennedy, Christopher Newport University
Charles Martin, Virginia Department of Environmental Quality
Wayne O. Nelson, Town of Christiansburg
Kristel F. Riddervold, City of Charlottesville
Lalit Sharma for Diana Handy, City of Alexandria
George Simpson, Roanoke County
Jeffrey A. Sitler, University of Virginia
Robert C. Steidel, City of Richmond
James Talian, City of Lynchburg
Charles E. Van Allman, City of Salem
Randy Williford, Loudoun County
Gary Woodson, City of Suffolk
Ricky C. Woody, II, Virginia Department of Transportation

MS4 Technical Advisory Committee Members Not Present

Paula Estornell, US EPA Region III
Mark Smith, US. EPA Region III

Facilitator

Dr. Frank Dukes, Institute for Environmental Negotiation, UVA
Bob Batz, Institute for Environmental Negotiation

DCR Staff Present

David C. Dowling, Policy, Planning and Budget Director

Ryan Brown, Policy and Planning Assistant Director
Michael R. Fletcher, Board and Constituent Services Liaison
C. Scott Crafton, Stormwater Compliance Specialist
Carrie Hileman, Policy and Planning Intern
Moirra Croghan, Environmental Manager II
Elizabeth Andrews, Office of the Attorney General

Others Present

Larry Land, Virginia Association of Counties

Opening Remarks and Welcome

Mr. Dowling opened the meeting and welcomed members and guests on behalf of the Virginia Soil and Water Conservation Board and the Department of Conservation and Recreation.

Mr. Dowling reviewed the agenda as well as resource notebooks provided for members.

Mr. Dowling introduced the facilitator, Dr. Frank Dukes from the Institute for Environmental Negotiation.

Dr. Dukes said that his role as facilitator was to make sure that everyone had a voice and was able to participate and share concerns.

Dr. Dukes asked members and staff to introduce themselves and to give one desired outcome from the TAC process. Goals mentioned were:

- Increased practicability and the reduction of costs
- A balanced set of regulations
- A balanced program
- Better integration and understanding of the program
- Make sure efforts point toward water quality improvements
- Clarity and further understanding
- A better understanding of the impact on localities
- Understanding of expectations of regulations
- Working to be regionally consistent
- Water quality issues
- Consistency with the Erosion and Sediment Control program
- How the information will be appropriately disseminated
- What additions will be added in the next phase of the permit
- Long-term planning
- How the MS4 regulations will affect operations
- Clear and consistent guidance
- Make sure stormwater is sustainable with community development programs

- Integration with other ordinances

Dr. Dukes said that the goal of the TAC was to develop a definitive set of recommendations to move forward to DCR staff.

A member asked if the initial comments on the Notice of Intended Regulatory Action (NOIRA) could be shared as a starting point. The member also asked that the MS4 TAC be updated regarding the work of the Stormwater Management TAC.

Mr. Dowling said that the comments would be made available in summary form.

Mr. Dowling said that the Stormwater Management TAC had been working since May 2006. He said that staff are discussing the best way to bring those draft regulations forward in order to make sure that the Stormwater and MS4 regulations are integrated where appropriate.

Mr. Dowling explained that the Stormwater Management TAC had been working on different portions of the regulations. The Stormwater TAC is developing water quality and quantity criteria, developing criteria for a qualifying local program, and working on fees associated with permits.

Mr. Dowling said that the MS4 TAC is working specifically on modifications to the small MS4 general permit. He noted that DCR also intends to open up the construction general permit regulations in the next few months

A member said it would also be useful to hear what DCR believed to be the weak points in the current permit structure.

Mr. Dowling said that would be articulated as issues are brought forward.

Regulatory Process Overview

Mr. Dowling gave an overview of the regulatory process.

- 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 the 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).

A member asked whether the December deadline would be changed.

Mr. Fritz said that DCR does not have the ability to change the December deadline. He said staff are developing guidance for localities with regard to filing. He said the intent is to provide for localities a placeholder to meet the requirements of the federal regulations.

Dr. Dukes said that this was one of the larger concerns expressed by members, as well as issues regarding budgeting and the timing of the registration.

Mr. Dowling reviewed the 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.

Mr. Dowling reviewed the 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 Town Hall.
- The 30-day public comment period opened on March 5th and closed on April 4th.
- DCR mailed out approximately 340 notices of the NOIRA and the Regulatory Town Hall sent notices to 738 individuals.

- DCR 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.
- First meeting – June 19th at the Science Museum of Virginia
- Second meeting – July 26th
- Third meeting – August 22nd
- DCR 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 September 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
 - DCR also has newspaper publishing requirements (federal) during this time period
- Expect to have the amended General Permit regulation in place in March

Review of the Notice of Intended Regulatory Action (NOIRA)

Mr. Brown reviewed the Notice of Intended Regulatory Action.

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. et seq.)

A member noted that there was confusion with the initial consolidation of the stormwater management program, particularly regarding to what degree authorities were delegated to the local governments. The member asked if this was being addressed.

Mr. Brown said that the other Stormwater Management TAC was dealing with Part III of the regulations that addresses how a local program operates.

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 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 evaluations 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

At this time the committee took a break.

National Pollutant Discharge Elimination System (NPDES)

Mr. Fritz gave an overview of the National Pollutant Discharge Elimination System (NPDES)

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 in 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

Discharges are authorized under either an individual or general permit

- | <u>Individual Permit</u> | <u>General Permit</u> |
|---|--|
| • One application submitted – One permit issued | • One permit issued many applications submitted |
| • Appropriate where site-specific limits, management practices, monitoring and reporting, or other facility-specific permit conditions are needed | • Appropriate where multiple dischargers require permit coverage, sources and discharges are similar, permit conditions are relatively uniform |

- Coverage valid for five years from date of issuance. Permittee given 5 year coverage
- Permit must identify:
 - Area of coverage
 - Sources covered
 - Application process (Notice of Intent)
- Required of Phase I MS4s
- 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

<u>Technology</u>	<u>Water Quality</u>
Goal: “Zero Discharge” (Performance)	Goal: “Fishable/Swimmable”
40 CFR §§122.44(a)&(e)	40 CFR §§122.44(d)
“Maximum Extent Practicable”	TMDL WLA

WLA 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

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):
 - Today’s rule specifies that ‘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 (emphasis 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 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.

Mr. Fritz reviewed charts showing the common, regulatory and complete view of MS4 effluent requirements. A copy of these charts is available from DCR.

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

A member asked what happened if the stormwater system discharged into a combined sewer?

Mr. Fritz said that in that situation, DCR does not regulate the system.

Mr. Fritz said that the rules are not intended to regulate the locality, but the MS4, itself.

A member asked Mr. Fritz to comment on the beginning of the program where several rural counties opted out of the program because they did not own or operate an MS4.

Mr. Fritz said that a significant number of counties, primarily along the I-81 corridor were granted exceptions. He said that he could not comment on why some were allowed to opt out and others were not.

Mr. Fritz said that DCR would rely closely on 2002 guidance document from the EPA. A copy of this document was provided for members.

A member asked if counties not covered by a permit, but that may have a wasteload allocation, can use the permit as a tool.

Mr. Fritz said that if the localities do not have a permit, they would not get a wasteload allocation.

Other States' MS4 Programs

Mr. Fritz gave a review of other state 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).

Dr. Dukes asked if there were particular states the committee should review.

Mr. Fritz said there were good and bad elements throughout the programs. He said that the approach taken by Mississippi and Rhode Island took an interesting approach to permits.

A member asked if Mr. Fritz had reviewed Oregon or Washington State.

Mr. Fritz said he had reviewed those programs in the context of individual permits.

Mr. Fritz agreed to make other state plans available for review.

A member asked if EPA might issue a uniform set of guidelines.

Mr. Fritz said that EPA has not to date defined “maximum extent practicable.” He said that he expected guidance and technical assistance from EPA, but not regulations.

Mr. Fritz said the original thought behind the MS4 development was to provide maximum flexibility at the local level.

A member said it would also be helpful to know what other localities were doing.

A member suggested the TAC could develop a guidance document.

Mr. Dowling noted that the primary mission of the TAC was to modify the general permit information, not just to provide guidance.

Mr. Fritz said that Part VII of the regulations embodies the federal regulations with regard to MS4s and sets the standard for what is in the general permit.

Public Involvement/Participation

- All general permits require compliance with State public notice requirements.
- Many permits either require or recommend development of stakeholder groups to assist in program development and participation efforts.
- 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.
- 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 improvements.
- 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.

A member asked about the budget amounts and personnel allocations moved from DEQ to DCR when the program was reassigned to DCR.

Mr. Fritz said that DCR now has 15 staff members for construction, stormwater and MS4s.

Mr. Frye said about \$270,000 was transferred based on permit collections. The General Assembly allocated 15 positions to fund with permit fees.

Mr. Fritz said that when the program was transferred from DEQ to DCR the stormwater management regulations were meshed. He said that those localities with permits issued by DEQ would continue to abide by the DEQ requirements. Permits issued through DCR will follow DCR requirements.

A member said it would be helpful to get a summary of existing programs.

Mr. Fritz said that there were a significant number of localities working to pass local regulations.

At this time the committee recessed for lunch.

Review and Discussion of Existing Regulations

Mr. Fritz reviewed the existing regulations.

Chapter 60 – Virginia Stormwater Management 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
 - 4 VAC 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

Mr. Fritz said that for this NOIRA, the sections opened were Part I, Part XV, and FORMS.

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

- 4VAC 50-60-1200. Definitions
- 4VAC 50-60-1212. 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.

- 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

Review of Issues and Concerns by TAC Members

Mr. Brown gave a summary review of issues and concerns raised by TAC members in pre-meeting interviews with Dr. Dukes. He noted that many of these concerns were already acknowledged by Mr. Fritz and program staff.

Regulatory Concerns

Fairness and Consistency

- Need to ensure that the permit places localities on equal footing with one another, i.e., that one locality does not have five requirements while another has 50.
- Ensure that adequate lead-time is built in if localities are going to be required to expand their efforts. Locality budgets often have timeframes that do not allow immediate action to be taken in response to new requirements.
- Believe that the permit should be written to provide motivation to localities to comply.
- These permits can be resource-intensive and need to be written to allow localities to conserve financial resources while still meeting program goals; i.e. localities dislike unfounded mandates. Also need to ensure that local taxpayers can see that they are getting their money's worth.
- Need to make sure that localities have flexibility.
- Would like to ensure that all localities are facing similar requirements.
- Make sure that localities have adequate time to come into compliance.
- Ensure that it is clear how this permit relates to the previous permit and future permits.
- Make sure that the permit that comes from the TAC is definitive and complete so that everyone understands what is proposed to the Board for adoption.

A member asked if the registration statements would be reviewed by staff or by the Board and asked for a clarification of the process.

Mr. Fritz said that the plan is for DCR to review for consistency with the regulations. He said that staff would recommend localities get public comment before submitting.

Mr. Frye said that the review is done in the central office, not 8 different regional offices.

A member asked if, once the program is approved, if there was a similar review on a five-year cycle. He asked if there was a follow-up review.

Mr. Fritz said EPA recently published guidance on reviews. He said that DCR would rely on regional staff for follow up for portions of the programs where regional staff already conduct review such as for compliance with the Virginia Erosion and Sediment Control Law.

Measurable Goals

- The permit needs to improve water quality and to be able to measure improvements – less emphasis on qualitative descriptions and more on quantitative results.
- Can we get more performance-based standards?
- Want to ensure that permit requirements are set out clearly to allow permittees to accurately gauge their compliance.

Water Quality Standards TMDLs

- Want to make sure that this permit is consistent with the water quality standards.
- Want the permit to help us meet water quality standards and Chesapeake Bay goals.
- Linkages between TMDLs and MS4 permit should be made clearer – we have a waste load allocation that will set the goal; TMDL monitoring that will be required should be consistent with the permit.
- How do multi-jurisdictional TMDLs interact with the permit?

Stormwater Management Programs

- Monitoring needs to be considered carefully. It is very expensive for the localities.
- Different types of monitoring need to be considered, and the timeframes for outfall monitoring needs to be thought through.
- The public education portion should include a game plan for a positive educational process that will decrease stormwater runoff and improve water quality.
- Would like a clearer description of what is needed and required.
- Would like to set a clear calendar, spelling out when plans are required to be submitted.
- How do the stormwater regulations currently under review impact this permit?

Reporting

- Want to make the reporting requirements specific and meaningful. Localities want to know that DCR is using the information provided.
- Make the requirements of the annual report clear. The current process leaves too much to discretion – would much rather see it clearly defined than vague or convoluted.
- Need to make sure the permit does not require duplicative or unnecessary reporting.
- Can web-based reporting be included?
- Localities have a responsibility for reporting illicit discharges- how does this match up with DEQ's responsibility for industrial discharges?

A member asked if the system was discharging into state waters not covered by TMDLs if there would be no monitoring.

Mr. Fritz said that was correct. He said the current interpretation was that the monitoring requirements apply to waters where there is an impairment that has been identified in an approved TMDL and in which a WLA has been assigned to the regulated small MS4.

Dr. Dukes asked if the revised regulations should have a provision to make sure that BMPs are effective and working?

Mr. Fritz said that localities should participate in the implementation plan. He said that if an MS4 is assigned a wasteload allocation by the regulation, then monitoring is required.

Mr. Fritz said that he hoped the TAC could address the issue of wasteload allocations in the permit. He said that there is a need to bring wasteload allocations into the stormwater management plans developed under this permit.

A member asked about the State's obligation for monitoring.

Mr. Fritz said that the State DEQ would continue to do the ambient monitoring on streams.

A member asked if the registration form could be modified for the applicant to identify whether there is a TMPL established and whether there is an assigned wasteload. The member suggested this be in the application or in an accompanying fact sheet.

Mr. Dowling said that the objective of the TAC is to address how the MS4 permit interacts with TMDL situations and wasteload allocations.

Mr. Dowling said that it was important for the TAC to look at the general permit.

Dr. Dukes asked if staff would bring back draft language that the TAC could discuss.

Mr. Dowling said that staff hoped to do that and to address problems that have been identified.

Mr. Brown continued with the list of concerns.

Programmatic Concerns

- We need help in meeting measurable goals.
- We would like to know what DCR is thinking about regarding this permit and the MS4 program. What are its goals, short and long-term?
- DCR needs to take more enforcement actions. There are violations all over the place right now that are not being enforced against.
- It would be helpful to have a locality liaison at DCR to assist localities with this program and others.
- Believe that DCR should finish Phase I program revisions before addressing Phase II.
- How is the new December 7 reapplication deadline being treated?
- What methods can localities use to fund MS4 programs? If fees, how can fees be collected?

Other Related Concerns

- What has been developed in other states? What examples might serve as model permits?
- Interest in knowing what DCR has learned from the Phase I MS4 program.
- Will localities be required to develop TMDL's themselves?

- Until homeowners are held responsible directly, we are spending a lot of money on a small benefit.
- Would like to see tributary strategies and Chesapeake Bay goals met.
- The MS4 issue is beginning to get a lot of attention around the country.
- Many localities are looking at taxes in order to fund MS4 programs.
- Would like to see the green/blue books (E&S and Stormwater Handbooks) revised.
- It is reported that DEQ is intending to push TMDL designation to localities – is this true?

Dr. Dukes asked if DEQ would be pushing TMDL designation to localities.

Mr. Martin said that DEQ has not done that, but also has not ruled it out.

Mr. Fritz said that the federal and state regulations require the development of TMDLs at the state level.

A member said that he would like to see a formalized relationship between the localities and DCR particularly with regard to oversight and review of programs. He said that without that, the relationship could be adversarial.

Mr. Fritz said that the bottom line was that DCR is the regulatory authority. He said that there is room to move forward and work together. He said that his office is careful in telling a locality to do something or in recommending something. He said that DCR staff are answering questions in terms of technical assistance but are the regulators at the same time.

Dr. Dukes said that it would be valuable for the TAC to hear how DCR would like the interaction to take place.

Mr. Dowling said that the intent of forming the TAC was to hear from stakeholders how the general permit should be developed. He said that DCR would consider the concerns we received and start developing a draft for the TAC's review.

Dr. Dukes asked for other concerns.

A member said he would like to see guidance on how to address the potential that urbanized areas would be increasing in size following the 2010 census. Should that be anticipated or should localities wait until the next permit deadline.

A member asked about the dates. If the permit is not final until March would the general permit start with the December deadline or the March deadline?

Mr. Fritz said there would be an established effective date of when the permit becomes effective, but that in the meantime coverage under the general permit can be administratively continued for those who have submitted their complete registration statement.

Mr. Fritz said that currently the reporting date is the anniversary date of the permit.

A member said that he would propose that the reporting date be moved to at least 90 days past the anniversary date for the purposes of collecting information.

A member said that, in the past, there had been considerable lag time from the date of application to when the locality was informed.

Mr. Fritz said that the applications will be due in December and that programs are covered until a response is received from DCR.

A member asked if the reporting date could be moved to a fiscal year basis.

Mr. Fritz said that not all localities are on the same fiscal year.

A member asked to clarify the extension of the existing permit. He said that, as he understood it, if a new registration statement is filed the old permit would continue but that no new BMPs would be filed as a part of that registration statement.

Mr. Fritz said that staff were currently writing guidance on how to submit complete registration statements prior to the approval of the regulations.

A member asked about three aspects of annual reports. He asked Mr. Fritz for:

- general feedback on what has been submitted thus far
- staff preferences for what they would like to see in the future
- will the number of annual reports change?

Mr. Fritz said that first, the reports are too long. He said that for programs with limited resources, too much time is spent on reporting.

Mr. Fritz said that he has discussed with the agency IT representatives the possibility of developing a database to allow all programs to submit reports electronically.

Mr. Fritz said that there would be additional annual reports.

Mr. Dowling said that his recommendation would be that reports be filed annually but that the amount of information required be reduced.

A member said that the federal regulations give an option for other entities to address minimum standards. He said that the regulations should allow for a relationship without the formal establishment of MOUs.

A member noted that there are localities ready to move ahead with web based reporting, and expressed a hope that there would be a way to partner with them so that their efforts would not be in vain.

Mr. Frye said that DCR would like to do that. However he said that DCR did not yet know if this was technically feasible.

Dr. Dukes said that as the TAC moves forward it would be necessary to test for consensus. He addressed items of concern for the next meeting

There should be a more in depth look at what other states are doing. Specifically Rhode Island and Mississippi.

A member asked if the TAC could also see the North Carolina program.

Mr. Dowling said that the programs will be posted for review or distributed via email.

A member asked if DCR staff thought that the general permit would change so significantly that what has been done in the past would not be considered.

Mr. Dowling said that the issue is that there are six criteria that need to be considered. He said staff would take an internal look at what has been done.

Mr. Dowling said that staff would be willing with the TAC's concurrence to develop a reaction draft for the TAC to review at the next meeting.

A member asked if there was confidentiality associated with the draft regulations.

Mr. Dowling said that the drafts were public documents for discussion, but noted that it was important to make sure that they are labeled as a draft or working document if distributed to others.

At this time the committee took a break.

Following the break, Dr. Dukes said that the following had been identified as the key elements for a successful regulation.

1. The regulation meets the federal requirements
2. Water quality is protected
3. Benchmarks are established
4. The approach is balanced

Dr. Dukes asked if there were other items to add to the list.

Members identified the following additional items:

5. Encourages a partnership approach to improving water quality among the agency and MS4 jurisdictions and operators
6. Integrates programs efficiently
7. Consistent with (but not dictated by) Phase I requirements

Mr. Fritz said that this is a continuing process of streamlining all the regulations. This TAC is dealing with one element at a time rather than several programs.

Dr. Dukes thanked members for attending and for participating in the discussion. He noted that the next meeting of the TAC would be Thursday, July 26 beginning at 9:00 a.m. at the Science Museum of Virginia.

The meeting was adjourned.