

**VIRGINIA DEPARTMENT OF ENERGY  
MINED LAND REPURPOSING**

**GUIDANCE MEMORANDUM<sup>1</sup> No. 14-05**

**Issue Date: November 23, 2005**

**Subject: Permitting Process – Watersheds with Adopted Total Maximum Daily Loads**

As of December 1, 2005 the Mined Land Repurposing (MLR) will implement the following steps regarding permit applications in watersheds with adopted benthic Total Maximum Daily Loads (TMDLs)<sup>2</sup>. For the purposes of this guidance memorandum, “TMDL watershed” means a watershed with a benthic TMDL report adopted by the Virginia Department of Environmental Quality.

1. The MLR will forward a copy of any application that involves National Pollutant Discharge Elimination System (NPDES) point(s) or Best Management Practices (BMPs) located within a TMDL watershed to the Environmental Protection Agency’s (EPA) Region III Office in Philadelphia for review. The EPA through its oversight of the States’ water quality standards pursuant to the Clean Water Act<sup>3</sup> requires copies of all such applications.
2. Each application that involves NPDES points within a TMDL watershed will be evaluated by the MLR for conformity with the TMDL report<sup>4</sup> and compliance with the waste load allocation (WLA) included in the TMDL. New NPDES points will only be approved when the receiving stream has available WLA.
3. Each application that involves BMPs within a TMDL watershed will be evaluated by the MLR for conformity with the TMDL report.
4. When the MLR performs cumulative hydrologic impact assessments (CHIAs) for permitting actions in a TMDL watershed, each CHIA shall include the

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<sup>1</sup> This Memorandum is to be considered a guideline issued under the authority of § 45.1-230.A1 of the Code of Virginia which reads:

"In addition to the adoption of regulations under this chapter, the Director may at his discretion issue or distribute to the public interpretative, advisory or procedural bulletins or guidelines pertaining to permit applications or to matters reasonably related thereto without following any of the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.). The materials shall be clearly designated as to their nature, shall be solely for purposes of public information and education, and shall not have the force of regulations under this chapter or under any other provision of this Code."

<sup>2</sup> The Virginia Department of Environmental Quality is responsible for TMDL reports and maintains electronic copies of approved documents at the following address: <http://www.deq.state.va.us/tmdl/>

<sup>3</sup> Pursuant to 33 USC § 1313.

<sup>4</sup> Where a TMDL as been approved, NPDES permits must contain conditions consistent with the requirements and assumptions of the wasteload allocations in the TMDL – see 40 CFR §122.44(d)(1)(vii)(B)

evaluation for conformity with the TMDL report and compliance with the adopted waste load allocation set under the TMDL report.

The following provides general guidance for processing, review, and findings of permitting actions in a TMDL watershed:

### Step 1: EPA Notification

Each application will be screened by the Division's Technical Services Section to determine if existing permitted areas or proposed permit areas are located within a TMDL watershed. The reviewer will compare the permit boundary to the TMDL watershed boundaries, as maintained on the MLR network. If the application involves an area that is or may be located within a TMDL watershed, the application will be routed to the agency's TMDL coordinator.

The TMDL coordinator will -

- Evaluate the application for conformity with the TMDL report and compliance with the waste load allocations (WLAs) included in the TMDL. The evaluation will be conducted in accordance with the Technical Services Section's time standard on application review.
- Determine if the application involves new NPDES points or BMPs within a TMDL watershed boundary. If so, it will be copied to the U.S. Environmental Protection Agency representative<sup>5</sup>. The permit applicant may be requested to make copies of certain sections of the application for EPA<sup>6</sup>.
- Forward comments received from EPA to the permit applicant.
- Whenever biological water quality goals are obtained for a TMDL watershed (before, during, or after implementation), the TMDL coordinator will petition EPA to approve an amendment to the WLA for that watershed.

### Step 2: Waste Load Allocations

New NPDES points located within a TMDL watershed may be approved by the MLR when the receiving stream has available WLAs. The TMDL coordinator will track assigned and available WLAs and provide that information electronically to MLR Staff through a MLR network folder. The TMDL coordinator will also make that information available electronically, upon request, to other agencies, applicants, and interested parties.

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<sup>5</sup> The EPA representative's address is 3WP11, USEPA Region 3, 1650 Arch Street, Philadelphia, PA 19103-2029

<sup>6</sup> EPA will review and provide comments as appropriate within 30 days

Prior to approval of new NPDES points within a TMDL watershed, the MLR Water Quality staff will confer with the TMDL coordinator and/or consult the WLA information folder<sup>7</sup> to determine that a WLA is available.

Applications that involve NPDES discharge points within TMDL watersheds with total dissolved solids (TDS) WLAs shall include a plan to monitor TDS and conductivity at designated outfalls. The monitoring should be designed to assess TDS loading, but shall not include the assignment of effluent limits. The TMDL coordinator and Water Quality staff will use the monitoring to track loadings and evaluate conformity with the adopted TMDL.

Loadings for other WLAs will be tracked using results of routine NPDES monitoring. When tracking indicates that WLAs are being exceeded, the MLR will request the permittee to revise the BMPs to reduce waste loads.

### Step 3: BMPs

A BMP approach will be used in Virginia to meet WLAs in lieu of altered effluent limitations for permitted coal mine point source discharges.

The Virginia Coal Surface Mining Reclamation Regulations (VCSMRR) require active mining operations to use sediment control measures and BMPs to prevent additional contributions of solids to stream flow and to minimize erosion to the extent possible. The measures include practices carried out within and adjacent to the disturbed mining area and consist of the utilization of proper mining and reclamation methods and control practices, singly or in combination. These methods and practices include, but are not limited to –

- 1) Disturbing the smallest area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation;
- 2) Stabilizing the backfill material to promote a reduction in the rate and volume of runoff;
- 3) Diverting runoff away from disturbed areas;
- 4) Directing water and runoff with protected channels;
- 5) Using straw, mulches, vegetative filters, and other measures to reduce overland flow; and,
- 6) Reclaiming all lands disturbed by mining as contemporaneously as practicable.

In addition to the use of sediment control measures and BMPs within the disturbed mine area, the regulations require coal mining haulroads to be designed and constructed to ensure environmental protection appropriate for their intended use. In a watershed where pollution load reductions for solids are necessary for active mining operations to meet an approved TMDL, haulroad design, construction, and maintenance shall be performed in consideration of the TMDL. This may include paving haulroads and/or increasing the size of haulroad sumps.

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<sup>7</sup> Electronic WLA tracking format & information will be made available soon after 12-01-05.

Reduction in the sedimentation and mineralization of runoff attendant to mined land erosion and strata exposure can be achieved with sediment control measures and BMPs. Operation and reclamation plans mandated by the VCSMRR can be designed and developed to incorporate a BMP approach for meeting WLAs and pollution load reductions included in a TMDL. This approach will be implemented in Virginia in lieu of altered effluent limitations for permitted coal mine point source discharges.

#### Step 4: CHIAs

When CHIAs are performed for permitting actions that involve new NPDES discharge points in TMDL watersheds, the CHIA should document the availability of WLAs, list the WLA values, and identify remaining WLAs. If BMPs are being utilized to reduce waste loads, a description of the BMPs should also be included.

Should you have any questions regarding this guidance document or the topics of this memorandum, please contact the MLR at (276) 523-8100.