Bauer, Jaime (DEQ)

From: Whitehurst, June [June.Whitehurst@norfolk.gov]
Sent: Monday, March 30, 2015 9:14 AM
To: Bauer, Jaime (DEQ)
Cc: Davenport, Melanie (DEQ); Hall, Cynthia; Ricks, David; Broad, Richard; Mullen, Dale G. (DMullen@mcguirewoods.com); Whitney Katchmark (wkatchmark@hrpdcva.gov)
Subject: City of Norfolk MS4 Permit - VA0088650
Attachments: 2015-03-27 Ltr to David Paylor-DEQ.pdf; NorfolkComments.docx

Jamie:

Attached, please find the Norfolk-specific preliminary comments regarding our draft MS4 permit – VA0088650. HRPDC submitted Regional comments to you on March 25th. As part of the Regional negotiations for the Phase I permits, Norfolk played an active role in developing these comments. However, due to the size of the documents, I have not included them in this e-mail. I request that you incorporate their March 25th letter and supporting appendices as part of our comments. I will send a full version of the documents to you through the mail today.

Thank you for your consideration of our comments. I look forward to meeting with you on April 13th.

June Whitehurst
Environmental Programs Manager
City of Norfolk
Public Works Operations
2233 McKann Avenue
Norfolk, VA 23509
757-823-4005

NORFOLK

Department of Public Works

March 30, 2015

Mr. David Paylor, Director
Virginia Department of Environmental Quality (DEQ)
P.O. Box 1105
Richmond, VA 23218

Re: City of Norfolk, VA0088650 Draft Permit

Dear Mr. Paylor:

The City of Norfolk (City) has received the referenced draft permit for preliminary review and comment. We appreciate DEQ's willingness to allow us this opportunity prior to the draft permit moving toward the formal public comment period. As you may be aware, the City has worked diligently with the Department of Conservation and Recreation (DCR), since 2006, in an attempt to negotiate a revised permit that will not only improve water quality, but also be sustainable for our residents and the Commonwealth of Virginia.

The Hampton Roads Phase I communities, Norfolk, Virginia Beach, Newport News, Hampton, Chesapeake and Portsmouth, have pooled resources through the Hampton Roads Planning District Commission (HRPDC), to draft comments. These comments were outlined to DEQ in the attached letter dated March 25, 2015. We are confident that the Norfolk-specific comments and the comments outlined in the HRPDC letter will allow us the opportunity to begin negotiations as a Region or individually on our specific needs.

We remain concerned about the operational and budgetary impacts this permit may have on the City and our residents. We are estimating the new permit requirements, including the Chesapeake Bay Total Maximum Daily Load reductions, will cost the City approximately $35Million, over the next 5-year permit cycle, above and beyond the existing programs.

As a waterfront community in the Coastal Plain, Norfolk has unique challenges addressing both water quality and quantity. Due to these challenges, Norfolk's limited resources are allocated to not only meeting regulatory requirements, but also addressing intense flooding associated with sea level rise, land subsidence, and storm impacts. These natural geographic challenges need to be considered when developing individual permits.

We do not believe the draft permit, in its current form, is ready for public comment. We are requesting DEQ delay the formal public comment period until negotiations have taken place between the City and DEQ staff. This extension would allow you and the City the critical time to develop a consensus on permit parameters.

Thank you for your consideration of these proposed amendments to the referenced permit. The City will continue to work closely with DEQ to find reasonable solutions or alternatives that will benefit water quality. We look forward to meeting with DEQ staff to begin negotiations.

Upon review of the comments, if you have any immediate questions or need further clarification, please contact June Whitehurst, Environmental Programs Manager via e-mail at june.whitehurst@norfolk.gov or by phone at (757) 823-4005.

Sincerely,

David Ricks, P.E.
Director

Enclosure: Norfolk Comments
HRPDC Letter Dated March 20, 2015 to Jamie Bauer

Copy: Melanie Davenport, DEQ Water Division Director
Jamie Bauer, Environmental Specialist II
Cynthia Hall, City of Norfolk Deputy Attorney
June Whitehurst, Public Works Environmental Programs Manager

City of Norfolk
Preliminary Comments on the January 23, 2015
Draft VA0088650 Permit and Fact Sheet

Effective Date of Permit and the Annual Reporting Period

Throughout the permit, execution, implementation, and reporting timeframes or deadlines may be conflicting based on the effective date of the permit. Once negotiations have been finalized, DEQ will need to review these timeframes to ensure they are not conflicting.

Nevertheless, the City supports the goal of finalizing negotiations so that the permit's effective date aligns with the beginning of the City's 2016 fiscal year (FY) or closely thereafter. For tracking and budgetary purposes, the City supports the timeframe outlined in Part I.E of the permit that requires the annual report be submitted on October 1st of each year and cover the previous fiscal year. However, if negotiations cannot be finalized prior to July 1, 2015, the City requests to have the first permit reporting year cover the timeframe from the effective date through June 30, 2017, and reporting timeframes adjusted accordingly.

A. Part I.A.6 - MS4 Program Plan (p. 4)

The permit requires the City to "maintain, implement and enforce the MS4 program plan." The draft MS4 Program Plans for the Phase I municipalities in Hampton Roads were drafted but never finalized; nor were these a requirement under the existing permit. During the reapplication process in 2006, the Department of Conservation and Recreation (DCR) requested that the Phase I municipalities draft a MS4 Program Plan outlining future permit requirements in an effort to avoid placing program specifics in the final permit. This document was intended to be finalized and incorporated by reference with the new permit in 2006. Therefore, the City requests DEQ provide one year from the effective date of the permit to develop and implement an MS4 Program Plan consistent with the new permit.

Additionally, throughout the draft permit, there are various references to the MS4 Program Plan, the Annual Report, and the TMDL Action Plans. These various references confuse the scope of the individual documents. The intent of MS4 Program Plan was to explain the details of the various programs and identify the roles, responsibilities, and procedures for implementing Permit requirements. The Annual Report is intended to outline specific tasks that were accomplished within the specified Permit year. The TMDL Action Plans are designed to establish the framework regarding how the City intends to meet load reduction requirements either for the Bay TMDL or local TMDL. These plans should be recognized as different documents, all under this Permit.

Under section *19. Special Condition Rationale* of the Fact Sheet, DEQ requires the permittee to develop a "Stormwater Management Plan (SWMP)." This Permit does not reference a "SWMP," but uses the phrase "MS4 Program Plan" instead. To ensure consistency, please modify the references in the fact sheet to MS4 Program Plan.

B. Part I.B.1 – Stormwater Management Planning (p. 6)

This section of the Permit (Part I.B.1), which requires the City to submit a list of Capital Improvement Projects (CIP), should be deleted. The requirement is duplicative and the timeframe established conflicts with the Action Plan requirements. Localities will provide a list of stormwater projects 24 months after the Permit effective date as part of the Bay TMDL Action Plan as outlined in Part I.D of the permit.

C. Part I.B.2.a.1 – MS4 Program Implementation (p. 6-7)

This section requires the City to implement programs that are consistent with the Erosion and Sediment Control law and the Virginia Stormwater Management Act. The City requests removing this section of the permit. Since the City is required under state law to implement and ensure compliance with both programs, it is unclear why this would be placed in the permit. By placing these requirements in the permit, the municipalities are left vulnerable to enforcement of state law by federal regulators. In other words, the EPA can override DEQ's program review process utilizing the MS4 permit as the enforcement mechanism.

Reporting bullet 3 requires the municipalities to develop a strategy to address maintenance of controls on residential lots. The City recommends moving this reporting requirement to part I.B.2.h.2.a.1, where residential BMPs are addressed.

Reporting bullet 4 requiring a list of "Grandfathered" land disturbance activity within the first annual report should be removed from the permit. This requirement conflicts with Part I.D of the permit under Action Plan development, where the municipality is given two years to identify the grandfathered projects.

D. Part I.B.2.b – Retrofitting on Prior Developed Lands (p. 7)

This section of the permit (Part I.B.2.b) requires the City to construct 7 retrofit projects to meet the requirements of Part I.D of the permit. Since the intent of this section is to address the TMDL requirements, this section of the permit should be removed as it is duplicative of Part I.D., and the number of retrofits identified is arbitrary. As outlined in the Fact Sheet, this number was developed by DEQ staff based on their best professional judgment and in comparison to other municipalities. Neither the City nor DEQ has the knowledge to determine if 7 retrofits will ensure the City meets the TMDL requirements of the 5% load reduction. Norfolk is actively working on the development of the Action Plan, which will directly impact and ultimately drive what environmental retrofits and projects the City will plan in the future.

E. Part I.B.2.c – Roadways (p.7)

Part I.B.2.c.1 requires the City to develop an accurate list of permittee maintained roads, streets, and parking lots. The list is supposed to include the street name, the miles of roadway not treated by BMPs, and miles of roadway treated by BMPs, no later than 12 months after the effective date of the Permit. The Localities request that this deadline be extended to 24 months

after the effective date of the Permit to allow localities to develop the list in coordination with the Action Plan. Additionally, the City requests removing the requirement to report the parking lots in Part I.B.2.c.1. This section is specific regarding roadways.

Part I.B.2.c.2 requires the City to develop and implement written protocols to maintain roads, equipment maintenance areas, and material storage areas to minimize pollutant discharges. The City requests removing both "equipment maintenance" and "material storage" areas from the list. The high priority City facilities, where equipment maintenance and material storage occurs, will be addressed as part of the SWPPPs that are required in Part I.B.2.i.2. Additionally, the Fact Sheet outlines "equipment storage," which is conflicting with the permit requirement.

Part I.B.2.c.3 requires the City to store bulk material covered from precipitation. This requirement should be removed from the permit. The BMP best served to protect water quality regarding bulk material storage will be outlined under Part I.B.2.i.2 of this permit during the development of the SWPPPs for the high priority sites. For example, the City of Norfolk currently holds an Industrial VPDES permit for our Public Works yard where sand and salt are stored. The salt is covered from precipitation, but the sand is not covered. The City has implemented a series of BMPs on site including routine sweeping, grit separators and a retention pond to prevent the sand and other bulk materials from reaching the natural waterways. It is not feasible to cover the bulk sand due to the ongoing use of this bulk storage for the City's Asphalt Plant operations.

F. Part I.B.2.d– Pesticide, Herbicide, and Fertilizer Application (p.8)

Part I.B.2.d.1 of the Permit requires the City to identify all permittee lands where nutrients are applied to a contiguous area of more than one acre within a 12-month timeframe. The City requests an extension on this permit requirement so that it may be developed in coordination with the Chesapeake Bay TMDL Action Plan.

Part I.B.2.d.4 of the Permit requires the City to report the number of acres that are managed under Integrated Pest Management Plans ("IPM"). Additionally, bullet 3 under the Reporting Requirement for this section requires the City to report the number of acres managed under the IPM. The City requests that this requirement be removed or clearly justified or explained in the Fact Sheet.

G. Part I.B.2.e.1– Illicit Discharges and Improper Disposal (p.9)

Part I.B.e.1 requires the City to prohibit, on a case-by-case basis, any individual non-stormwater discharge otherwise allowed under the paragraph that is determined to be contributing significant amounts of pollutants to the MS4. The City requests further explanation on what is considered a "significant amount" of pollutants.

As a reporting requirement of this section under bullet 1, the City is required to provide a list of illicit discharges identified, the source, a description of follow-up activities and whether the illicit discharge has been eliminated. The City requests that a summary of the identified illicit discharges that exceed the reportable quantity be included in the Annual Report and the details of

each be made available upon request. This requirement is duplicative since illicit discharges that exceed the reportable quantity threshold are required to be reported to DEQ within 24-hours of discovery and the City must provide detailed information in the 5-day letters as required in Part II of the Permit.

H. Part I.B.2.e.2– Illicit Discharges and Improper Disposal – Sanitary Sewer Inspections (p.9)

Since the City of Norfolk does not have a combined system, it is not appropriate to include maintenance and inspection activities performed on the sanitary sewer system in the stormwater permit. Any remaining sanitary sewer cross connections or infiltration within the storm sewer system may be identified through the dry weather monitoring program, storm water system inspection program, and industrial/commercial inspection program. Additionally, DEQ has identified an inspection frequency for the City of Norfolk orders of magnitude greater than the rest of the Region. In the Fact Sheet, DEQ justifies this requirement to ensure the City continues to perform these inspection. However, the City has been completing these inspections as required by the State Water Control Board Enforcement Action – Special Order by Consent since 2001. Since this is required under the Consent Order, this parameter is duplicative from both an implementation and enforcement standpoint and should be removed from the Permit.

I. Part I.B.2.e.3– Illicit Discharges and Improper Disposal – Floatables (p.9)

Part I.B.2.e.3 requires the City to develop a program to reduce the discharge of floatables. Additionally bullet 4 under this reporting requirement requires site surveys; however this reporting requirement is not consistent with the permit requirement. It is more consistent to move this requirement to Part I.B.2.j of the Permit, since the City continues to address litter through public education and outreach campaigns. The City also requests to report on the implementation effort of the litter prevention programs verses site surveys.

J. Part I.B.2.f– Spill Prevention and Response (p.10)

Part I.B.2.f requires that a list of spills be included in each Annual Report. This section should only refer to spills that exceed the reportable quantity requirement.

K. Part I.B.2.g– Industrial and High Risk Runoff (p. 10-11)

Part I.B.2.g. requires the City to implement a program to identify and control pollutants in stormwater discharges to the MS4 from industrial and high risk runoff facilities (e.g., municipal landfills; other treatment, storage or disposal facilities for municipal waste; hazardous waste treatment, storage, disposal, and recovery facilities; facilities that may be subject to EPCRA Title III, Section 313); and any other industrial or commercial discharges the permittee determines are contributing a substantial pollutant loading to the MS4. The introductory paragraph including the types of facilities that are considered high risk for runoff such as landfills and waste management sites, does not coincide with the permit requirements presented

in Part I.B.2.g.1-6. For example, in Part I.B.2.g.6.b of the Permit, automotive service shops are considered high risk runoff facilities.

The Permit should not specify the types of industrial facilities to inspect; the City should be given the flexibility to use best professional judgment to determine which facilities pose the greatest risk of polluting their MS4. The City has an Environmental Crimes Task Force program that is considered an exemplary industrial inspection program by the EPA. This program is coordinated through out Fire Marshal's office, but includes trained staff from Departments throughout the City. The City should be authorized to continue this exemplary program and not divert limited resources to perform duplicative inspections.

L. Part I.B.2.g.2 through 5– Industrial and High Risk Runoff (p. 10-11)

The City objects to the items outlined in Part I.B.2.g.2 through 5 in the permit. The requirements outlined in these sections are duplicative of the state's VPDES Industrial Inspection program. Discharge and effluent limits, housekeeping requirements, and other Permit conditions are set and inspected by DEQ in the applicable discharge permits. Requiring the City to divert limited local resources from proven programs such as Norfolk's Environmental Crimes Task Force to micromanage the state's program is ineffective, inefficient, and may be inconsistent or confusing to permit holders. Furthermore, there is no legal justification for shifting these responsibilities from the state to the localities and could potentially expose the City to public criticism, enforcement action, or litigation.

The City requests DEQ modify these sections to remove the duplicative efforts and allow the City to develop a program and a priority list of facilities that is considered high risk and based on actual impairments; not necessarily those covered under VDPES. The City is proposing to implement an industrial/commercial inspection program that includes sites that are not otherwise covered by a well-established existing state program. Additionally, the City has always welcomed the opportunity to coordinate with DEQ to conduct site inspections, where applicable.

The City requests Part I.B.2.g.2 be removed from the Permit. This section is duplicative of the state VPDES Industrial program. The City currently considers these tie-in areas in the Dry Weather Monitoring program. However, since the permit holder inspects/monitors these sites twice per year and DEQ monitors at a minimum once every 5-years, this would be a duplication of limited City staff resources with no added value.

The City requests Part I.B.2.g.3 be removed from the Permit. Reviewing programs for permit compliance is the responsibility of DEQ and duplicative of the state VPDES Industrial program. DEQ staff review the DMR data each year, and where necessary takes the applicable enforcement actions.

The City requests Part I.B.2.g.4 and Part I.B.2.g.5 be modified to state that, "when identified or discovered", the City provided the pertinent information to DEQ regarding the discharge.

The City requests Part I.B.2.g.5.d be removed from the Permit. As stated above, the City should not be responsible for monitoring the DMR reports required under the terms of the state VPDES Industrial program. Again, this would require limited City resources to monitor all VPDES permits to ensure DMRs are reported per the terms of the permit and report to the state each time one is not received. There is no added value to this permit requirements.

M. Part I.B.2.g.6 - Industrial and High Risk Runoff (p. 11)

The City requests Part I.B.2.g.6.b be modified and incorporated in the program as outlined above under section I of these comments. The City should be authorized to prioritize industrial and commercial inspections based on criteria such as impairments or historical complaints/inspection findings. Automotive facilities, as specifically identified in the list, may not contribute to local impairments nor are they areas identified as "significant" in the opening paragraph of this section which included landfills, hazardous waste storage facilities, EPCRA Title III sites, etc.

N. Part I.B.2.h – Stormwater Infrastructure Management (p. 11-14)

The City requests that under Part I.B.2.h of the Permit, DEQ further clarify the requirements or intent for "stormwater management facilities." In other words, as outlined in 9VAC25-870-10, the definition of storm water management facilities could be interrupted to include parking lots, roadways, pipes, ditches, structures and structural best management practices. The City believes DEQ is utilizing the term "stormwater management facility" to mean traditional structural best management practices. This is further evident under Part I.B.2.h.2 of the Permit where DEQ references private stormwater management facilities. Please clarify in the Fact Sheet or the permit the intent of this section.

Part I.B.2.h.1.a requires the City to provide "adequate" long-term operation and maintenance. The word "adequate" is vague and not clear with regard to permit requirements; therefore the word should be removed or further clarified.

Part I.B.2.h.1.d requires the City to continue its storm sewer inspection program and inspect 100 percent of the MS4 system during the Permit term. The City defines the MS4 system to include all roadways, ditches, structures, curb lines, etc. The City generally reviews the system during day-to-day operations or based on complaints and addresses problems upon identification. These service requests and/or work orders are tracked in a number of different methods depending upon the matrix. The administrative effort it will take to formally ensure that 100% of the system is inspected will take limited resources away from conducting repairs and maintenance in high priority areas to formally inspect those areas that, through historical knowledge or professional judgment, may not be necessary.

Norfolk is a coastal City prone to severe flooding due to sea level rise, land subsidence, storm activity, and an aged infrastructure. For the health and welfare of the residents, it is imperative that the City utilize these limited resources to address true operation and maintenance problems verses meeting this permit requirement, which will require intense tracking.

The City requests DEQ consider modifying this portion of the permit to continue to evaluate the condition of their MS4 system using local knowledge and maintenance activities instead of inspecting 100% of the MS4 system during the Permit term. The City will prioritize their extremely limited resources to the portions of the MS4 system that are in need of improvement. The City will continue to document system maintenance and provide DEQ with a summary of the maintenance activity such as the number of catch basins serviced, number of street-sweeping miles, and the number of city-owned BMPs maintained, etc.

Part I.B.2.h.1.e requires the City to dispose of wastes and wastewaters associated with stormwater system cleaning in accordance with local, state, and federal laws and regulations. Localities are required to comply with the state law for proper disposal; it is unclear why this would be a Permit requirement.

Furthermore, the City has received conflicting information from various DEQ inspectors on "proper disposal" of decant water from the system cleaning trucks. In an effort to ensure compliance with state law and permit requirements, City staff coordinated with DEQ in an effort to obtain guidance from the state regarding their expectations on disposal. Norfolk has only received verbal direction from DEQ on suggested disposal methods with the promise of formal guidance. The City is requesting that the DEQ provide language in the Permit authorizing the decanting of this water back into the system, through the use of approved BMPs. For example, as discussed with DEQ regulators, Norfolk was authorized to decant the water through a structural BMP prior to discharging to a natural waterway.

Part I.B.2.h.1.f requires the City to obtain all necessary state or federal permits to complete necessary activities. Localities are required to comply with the state and federal laws associated with obtaining permit; it is unclear why this would be an additional Permit requirement. By placing this additional requirement in the permit, DEQ is leaving the municipalities vulnerable to enforcement of state law by federal regulators.

Again, the City requests DEQ further clarify the intent of Part I.B.2.h.2 with regard to the definition of "stormwater management facilities."

Part I.B.2.h.3 requires the City to map the "MS4 outfalls." However, the MS4 outfalls are not clearly defined in the permit nor in the state law/regulation. It is suggested that DEQ consider using a proposed DCR definition from 2006 that more clearly identifies an outfall as a "Major outfall." DCR proposed the definition of outfall as meaning "a municipal separate storm sewer system outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or, for municipal separate storm sewers that receive stormwater from lands zoned for industrial land use (based on comprehensive zoning plans or the equivalent) or actual industrial land use, an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more)." Clearly defining "outfall" allows the City to ensure compliance with specified permit requirements.

In Part I.B.2.h.5.b of the Permit, DEQ uses the term "stormwater controls." DEQ should define this term.

In the specific reporting requirements of Part I.B.h.d., the City is required to submit written inspection and maintenance procedures with the initial Annual Report. It is unclear why the City should submit these procedures since they will be submitted as part of the MS4 Program Plan.

In the specific reporting requirements of Part I.B.h.d, the City is required to report a list of activities including inspections, maintenance, and repair of stormwater infrastructure. Depending on the stormwater management facility definition, the City captures this data in multiple database systems. Providing a comprehensive list of these tasks each year is an extensive administrative task. The City suggests providing a summary of the work completed and have the database on hand for inspection upon request.

As outlined in the beginning of the comments, the reporting requirements under bullets 5-7 under this section will need to be confirmed once the effective date is finalized.

O. Part I.B.2.h – Stormwater Infrastructure Management (p. 16)

Part I.B.j.4 requires the City to post the MS4 Program Plan on the website no later than 30 days after the effective date of the Permit. As discussed above, there is no specified timeframe for the development of the MS4 Program Plan. The City suggests stating that "the Permittee post the MS4 Program Plan within 30 days of Plan approval."

P. Part I.B.2.l.1.a – Dry Weather Monitoring (p. 17)

Part I.B.2.l.1.a. of the Permit requires the City to screen a minimum of 100 of the City's MS4 outfalls each year. The City requests changing the language of this section of the Permit to allow the City to inspect MS4 structures, which would include catch basins and outfalls, and not limit the inspections to only "outfalls." Again, the City would use professional judgment to determine the areas of concern for screening based on complaints, industries of concern, etc. The City requests removing or modifying the last sentence of Part I.B.2.l.1.a. to allow for screening locations further upstream.

Q. Part I.B.2.l.2 – Wet Weather Monitoring (p. 18)

The wet weather screening program required in Part I.B.2.l.2 and bullet 3 under the reporting requirements should be removed from the Permit. This requirement is duplicative of part I.C.1 of the Permit.

R. Part I.C.1 – In-Stream Monitoring (p. 19)

The City appreciates DEQ's willingness to replace those monitoring requirements of Northern Virginia that are not feasible in a tidal area with the proposed Regional Monitoring Program. The City requests DEQ consider making minor modifications to the proposed requirements that

may be conflicting with proposed programs as outlined in detail in the HRPDC comment letter included by reference to these comments.

S. Part I.C.2 – Structural and Source Controls Compliance Monitoring and Tracking (p. 20)

The City believes that DEQ's intent for this section is to track structural best management practices. However, as stated previously, the word "stormwater management facilities" needs to be clearly defined to ensure that the localities are not tracking pipes, ditches, basins, etc. Based on the broad definition of the term stormwater management facilities, it is estimated to cost the City more than $15million or more to develop accurate maps of private storm water systems within the geographic boundary of the City of Norfolk.

T. Part I.D – TMDL Action Plan and Implementation (p. 20)

Part I.D.1 of the Permit identifies the "James River Basin" as the segment-shed for Norfolk's MS4 drainage area. Approximately one-fourth (1/4) of Norfolk's MS4, including drainage to the Ocean View beachfront (Willoughby Spit to Little Creek) and Little Creek, drains directly into the Chesapeake Bay or the "Coastal Basin." Additionally SB1203, passed by the 2015 General Assembly and signed by the Governor, requires that the Little Creek drainage area be removed from the "James River Basin." Therefore, this portion of the Norfolk MS4 should be excluded from the "James River Basin" and loads adjusted accordingly.

Please see comments regarding this section in the HRPDC letter included by reference. It is common knowledge that the Chesapeake Bay Model has major discrepancies at this time and is unable to reflect local data. Due to the limitation of the model, it was built to be used for planning efforts, not regulatory compliance. During the Watershed Implementation Phase II process, DCR made some vague assumptions about current implementation, even after the localities provided data as requested. Therefore, the mechanism that drives permit regulatory compliance is based on a flawed model designed at a large scale that includes incorrect assumptions. The City strongly requests DEQ consider the comments and alternative methods outlined in the HRPDC letter to address the TMDL requirements for regulatory compliance. Moving forward, the City is confident that DEQ will be able to correct some of the discrepancies in the TMDL process that have occurred in the past.

U. Part I.F – Definitions (p. 28)

As mentioned previously, the City requests DEQ add a clear definition of both "outfall" and "stormwater management facilities."

Additional Fact Sheet Comments

A. 9. System Description & Activities (p. 3)

The City requests DEQ ensure that the MS4 listing under this section is correct. Tidewater Community College informed the City that their MS4 coverage area does not include areas within the geographic boundary of the City of Norfolk.

B. 19. Special Condition Rationale – Part I.A.3 Legal Authority (p. 7)

The Fact Sheet requires the permittee to implement and enforce the "stormwater management plan." This Permit does not reference a "stormwater management plan," but uses the phrase "MS4 Program Plan" instead.

C. 19. Special Condition Rationale – Part I.A.7 (p.8)

As outlined in the permit comments, the MS4 Program Plan and the Annual Report should be considered two separate documents. The City's draft MS4 Program Plan was developed upon request of DCR in anticipation of a new permit in 2006; this permit was never issued and the MS4 Program Plan never updated nor finalized. The City is requesting one year to update the MS4 Program Plan with the permit requirements. Additionally, the City is requesting DEQ ensure these various documents remain separate to avoid confusion as outlined in the comments.

D. 19. Special Condition Rationale – Part I.B.2.i) City Facilities (p.11)

The Fact Sheet states that the City must develop a stormwater pollution prevention plan for "all city facilities with greater than two-acres of impervious surface for potential retrofit opportunities." This requirement is not set in the permit and therefore should be removed from the Fact Sheet.

E. 19. Special Condition Rationale – Part I.B.2.l) Water Quality Screening Programs (p.12)

The Fact Sheet states that the "DEQ staff asked the permittee to provide information on the number of outfalls screened during dry weather conditions for the last five years, however no information was provided." On November 6, 2014 a letter was sent from the City Environmental Program Manager, June Whitehurst to Melinda Woodruff, DEQ Tidewater Regional Office requesting further clarification on the request and providing as much information as available. As drafted, the Fact Sheet implies that the City did not respond to the request for information. Please modify this language.