





FY2021 NPS BMP Manual Briefing

Virginia's 319(h) Program

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Good morning, thank you for joining today's briefing on DEQ's Nonpoint Source BMP Manual. The NPS BMP Manual is the document Grantees who are managing 319(h) funding from DEQ must use to administer cost-share assistance on agricultural, residential, and urban lands. Other programs at DEQ, like Water Quality Improvement Fund Program projects, may also use the BMP Manual.

The Manual we'll be discussing today is not yet effective. The BMP Manual is considered a "guidance document" and before it can become effective it must go through a public comment period. That period is open now through June 24. We've only put the Manual through this process once before (last year). We did receive comments, but they did not impact our ability to make the Manual effective immediately after the close of the public comment period because the comments received didn't meet the conditions that would have required us to delay the effective date for another 30-day period. Those conditions that need to be met would be comments asserting that the guidance document is contrary to state law or regulation, or that the document should not be exempted from the provisions of the Administrative Process Act. Kelly, link to APA, please. Like last year, we think we'll get comments, but they won't meet the conditions needed to delay the BMP Manual's effective date.

Note re: NPS funding and using 319/NPS interchangeably throughout the presentation. NPS can refer to more than 319(h) funding, such as the Clean Water Revolving Loan fund or Water Quality Improvement Fund grants; however for the purposes of this webinar consider NPS funding to mean the 319(h) funding DEQ receives from the EPA to address nonpoint sources of pollution. The term TMDL is also used here and there as well. Generally we've been moving in the direction of referring to implementation projects/plans funded by 319(h) as NPS or 319(h)-funded as a more inclusive term because not all implementation plans are based on a TMDL. Still, if you're a grantee working on a project based off of a TMDL implementation plan, I can see where you'd use TMDL instead of NPS or 319. Again, just for the purposes of this presentation, think of NPS and 319 as one in the same.

Outline

1. Practice Specification Changes
2. Impacts to NPS from VACS Changes
3. Extreme Acts of Nature (EAN) Policy
4. Changes to DCR Tracking System to Address Septic
5. Non-Residential Septic Policy
6. Changes to Variance Process for Septic Practices
7. New Resources for Septic
8. Timeline for Manual Release

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Purpose: provide an update on changes made to the BMP Manual since last year's version. This is an update we usually would have provided at the Partners Meeting, which has been postponed due to COVID-19. The Partners Meeting is a day-long meeting the NPS program holds once a year with all of our current grantees and occasionally prospective partners. The audience for today's webinar is a bit broader though since we've invited many prospective partners. With this topic its hard not to get a little too "inside baseball." It is technical, but feel free to submit questions via chat and we'll stop periodically so we're keeping everyone up-to-speed.

A little about the voice behind the slides: I'm Lauren Linville. I work in DEQ's Central Office in Richmond helping to coordinate implementation projects that are managed by my counterparts in the regional offices. I'll be co-presenting today with Nicole Sandberg, also in DEQ's Central Office, and Roland Owens, from DEQ's Northern Regional Office. I'll admit, I'm relatively new to DEQ and thus still getting familiar with the dozens on dozens of eligible BMPs and their associated quirks. It is very likely we'll hear from some of my more experienced colleagues who can chime in, especially during Q&A so that we're getting you the correct/best information. We want you all to walk away feeling briefed, but understand if there are some gray areas that persist in your understanding. As what happens every year, it's hard to predict exactly how a policy change will play out in the field. We hope its without negative unintended consequences, but there are no guarantees other than we'll address them to the best of our ability. We appreciate your patience and understanding.

Here's an outline of what we'll cover today. I'm going to lead with change to BMP specifications, then will discuss VACS/NPS topics, before moving into mostly septic topics. Nicole Sandberg will take over for topics 2 and 3. Roland Owens will demo changes in the VACS Tracking System for topic 4. I'll cover topics 5-8.

1. Practice Specification Changes

Specifications as separate document:
[NPS BMP Specifications](#)

FY2020 BMP Manual TMDL Ag Specifications

SL-6AT: Small Acreage Grazing Systems for TMDL Implementation.....	SL-6AT
SL-10AT: Pasture Management for TMDL Implementation.....	SL-10AT
WP-2T: TMDL Support for Stream Protection.....	SL-6AT
EM-1T: Small Scale Manure Composting for Equine Operations – Static Systems.....	EM-1T
EM-1AT: Small Scale Manure Composting for Equine Operations – Aerated Systems.....	EM-1AT

TMDL Agricultural BMPs:

- Discontinued SL-10T and WP-2T

FY2021 BMP Manual TMDL Ag Specifications

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Major structural change: we detached the specifications from the BMP Manual. In previous years BMP specifications were in Section V of the Manual...about 47 pages into an already really large document. We're hoping making the specifications their own document will make it easier to find what you need.

We also made the change due to the guidance document process we discussed earlier. The Specifications don't fit the definition for a "guidance document" thus can be changed without having to go through a public comment period. This isn't to say we will be willy-nilly making changes to the Specifications without stakeholder input, but it will give us the flexibility to change (or not to change) Specifications between BMP Manual versions.

We only had two change in the TMDL Agricultural BMP Practices so let's get those out of the way now:

SL-10T and WP-2T were discontinued.

For the SL-10T, we compared the SL-10 vs SL-10T when DCR converted the SL-9 to an SL-10. We determined that the differences were negligible. The biggest difference was SL-10T required a nutrient management plan in addition to a grazing management plan (required by SL-10). DEQ decided that there was no value added to maintain to essentially identical practices. So we discontinued SL-10T as a separate specification.

For WP-2T, we opted to clarify language regarding eligibility for WP-2N/W versus keeping a separate specification (see page 6). In short:

319(h) can only fund the 10-year lifespan for WP-2N/W. 5-year life plans options are not eligible

319(h) can fund the buffer incentive payments following the specification and participant cap

319(h) cannot be used to exceed 100% of the practice cost

1. Practice Specification Changes Continued

Septic BMPs:

- Created RB-2P (see page 17 of NPS BMP Specifications)

Table RB-2P: Connection to Public Sewer with Pump, rates based upon average total practice cost of \$18,000.

% of Median Family Income	No Fiscal Stress* Rate	No Fiscal Stress* CS Cap	Fiscal Stress** Rate	Fiscal Stress** CS Cap
> 120% or no income verification	50%	\$9,000	50%	\$9,000
100-120%	55%	\$9,900	65%	\$11,700
81-100%	60%	\$10,800	70%	\$12,600
61-80%	65%	\$11,700	75%	\$13,500
40-60%	75%	\$13,500	85%	\$15,300
<40%	80%	\$14,400	90%	\$16,200

* Located in locality with No Fiscal Stress (average, below average, or no FS)

** Located in Locality with Fiscal Stress (high or above average FS)

We created an RB-2P: Connection to Public Sewer with Pump specification. It's on page 17 of the Specification document (look at the PDF file page number, not the document's page number which is just the specification code). Below you'll see the cost share table for that. We created it based on feedback that there was a need for an RB-2 with grinder pump in situations where a home sits at a lower grade than the street/road, and/or is further away from the sewer line. It may also be needed to connect to public sewer when there's a low-pressure sewer system instead of a gravity sewer system. Based on research, we figured the average total practice cost was \$18,000 and based cost share rates off of that amount. Lifespan is 10 years. Most of the other language in the specification is the same as the existing RB-2 specification.

We worked with DCR so that the practice will show up in the Tracking System effective July 1. Note: all currently executed agreements should have language in them referencing when we added RB-3R and allowed its use to replace any RB-3 when appropriate. The same applies for RB-2 and RB-2P. If you currently have RB-2 in your contract, you may replace it with RB-2P where necessary.

1. Practice Specification Changes Continued

Septic BMPs:

- RB-3R changed to RB-3M (See page 24 of NPS BMP Specifications)
- Split into Levels 1&2

	Level 1	Level 2
What maintenance actions it covers	<ul style="list-style-type: none"> • Replacing filters and/or pumps • Removing roots from septic tank and/or d-box • Flushing conveyance and header lines, and/or • Re-leveling a d-box 	<ul style="list-style-type: none"> • Any items from Level 1, plus at least one of the following: <ul style="list-style-type: none"> • Replacing sewer, header, and/or conveyance lines • Replacing a d-box
Lifespan	5 years	10 years
Total practice cost	\$2,000	\$4,000

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See page 24 of the PDF file (again not the document page number which reference the BMP code). We changed name to be more intuitive. M = Maintenance. Because maintenance actions that don't require a permit can vary so much, we split allowable maintenance actions into two levels: 1 & 2 with different lifespans and costs. Level 1: any maintenance actions listed in the level 1 box. Level 2: any action listed in the level 2 box, PLUS at least one maintenance action listed in the level 2 box.

In DCR Tracking, RB-3R will be 'retired' effective 7/1/20. RB-3M will only be active as of 7/1/20.

1. Practice Specification Changes Continued

Septic BMPs:

- Added language in RB-3/3M, RB-4/4P, and RB-5 clarifying cost-share is not authorized for new homes or additions

Cost-share is not authorized:

- i. For construction of a new septic system or existing system upgrade on a lot to accommodate replacement of a residence with a new house or mobile home, nor for the permitted expansion of an existing septic system to accommodate the addition of a bedroom(s) being added to a residence.

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An additional point of clarification, we've never allowed for cost-share to cover a new system or existing system upgrade. The rule has always been and remains that cost-share can be provided to repair/replace a failing system that is already in place. A good example: someone buys a three-bedroom house with a failing system. They're going to expand the home to a five bedroom house so the septic system will be upgraded to accommodate additional bedrooms. Cost-share is only eligible for the costs to upgrade what was the existing system just serving the three bedrooms. The cost to upgrade the system with the two additional bedrooms cannot be added to the cost to fix the three-bedroom system to determine that participant's cost share.

1. Practice Specification Changes Continued

Septic BMPs:

- Using the [VDH Condition Assessment Form](#) in place of previous inspection forms – for permitted and non-permitted practices
- Replaces [NPS Cost-share Program Septic System Inspection Form](#)

Cost-Share Applications for “maintenance” (non-permitted) repairs must include a copy of [VDH Condition Assessment Form](#) completed by VDH, OSE, a licensed installer, or a licensed operator (if applicable).

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Rationale for requiring the use of the VDH Condition Assessment Form: this is a form already required by VDH for RB-3M, RB-4/4P, and RB-5. We are extending its use to other practices because its more comprehensive than the NPS Inspection Form. The VDH Condition Assessment Form can be filled out by whomever is authorized to do an inspection. The form doesn't have to be submitted to VDH for RB-1/2 and 3M, although they'd welcome the information.

1. Practice Specification Changes Continued

Septic BMPs:

- Most specifications now include inspection and inspection ports as eligible costs
- Added to:
 - RB-3 (inspection port only)
 - RB-3M
 - RB-4/4P

Inspection language

For inspection of the distribution box or multiple boxes, or other components of the system to determine if the effluent is being properly distributed to the drainfield, and to assess if components of the system are functioning properly.

Inspection port language

For the installation of an inspection port (three-inches or larger pipe or structure that allows access to the septic tank for the purpose of measuring sludge and scum accumulation) or an effluent filter. Cost-share for these components would apply to systems that have a pre-2000 septic tank. In accordance with 12VAC5-610-817 (Maintenance), as of July 1, 2000, all septic tanks shall be designed for routine inspection without being uncovered or have an effluent filter or be designed for reduced maintenance.

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We've added language regarding inspections and inspection ports as allowable costs in some specifications. In regards to inspections, these had already been an eligible cost included for RB-1s, but weren't necessarily called out for in other practice specifications as an allowable cost. You'll now find the inspection language in RB-3M and RB-4/4P specifications.

Inspection ports also hadn't been called for as an allowable cost, although through research with Charlie Lunsford it seemed clear that it should be an allowable cost. You'll find the inspection port language in RB-3/3M and RB-4/4P.

2. Impacts to NPS from VACS Changes

- 319(h) limited to 10 year lifespan for WP-2N/W
- 319(H) funds allowed for SL-7
- Variances allowed for jointly-funded; not allowed for 100% 319(h)-funded
 - Using 319(h) funds to exceed DCR's participant cap
 - Maintaining participant cap if 100% 319(h)-funded

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- This is a reminder that DEQ limits funding for WP-2N/W (Stream Protection with Wide/Narrow buffer) to a 10 year lifespan and cannot support a 5 year lifespan.
- SL-7: DEQ has changed its policy regarding funding of SL-7 and now can fund the full VACS practice as written. Meaning no restriction that can only be used with new stream exclusion practices.
- DEQ doesn't have a variance process set up for Ag practices and thus if a practice is fully funded with 319(h), we won't allow variances. We are going to work with DCR to see how their variance process operates and re-assess setting up an Ag variance policy in the future.
- If a project is jointly funded, will use DCR's variance process. DCR is implementing a participant cap of \$100k. DCR's variance process allows for the exceeding of the participant cap (\$100k/year) but not the BMP CS % (e.g. 75%, 85%). Jointly funded practices will be allowed to exceed the VACS participant cap but not the 319(h) participant cap (\$100k).
- If a practice is jointly-funded using 319(h) and VACS, then there's the possibility for a participant to receive more than \$100k in assistance between the two programs. This is allowable as long as the funding they receive fits within the participant caps for VACS and 319(h) and the VACS cost share %.
- If an Ag practice is fully funded with 319(h) dollars, then the participant cap is still \$100k.

2. Impacts to NPS from VACS Changes Continued

- Example of participant receiving more than \$100,000 from VACS and NPS funding

A WP-2W costs \$200,000

Specification practice cap limits cost-share to 80% of practice cost (\$160,000)

VACS cost-share: \$100,000 (max participant cap)

NPS cost-share: \$60,000

If variance to receive \$125,000 from VACS approved, then NPS cost-share limited to \$35,000 if jointly funded.

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DCR switched from a practice cap to a participant cap of \$100k. If a practice is jointly-funded using 319(h) and VACS, then there's the possibility for a participant to receive more than \$100k in assistance between the two programs. This is allowable as long as the funding they receive fits within the caps for each program.

In this example the total cost of a practice is \$200,000.
The specification limits cost-share to 80% or \$160k

VACS could provide \$100k and 319(h) could provide \$60k

IF a variance is provided for VACS then the amount of 319 is limited by the maximum cost-share amount (\$16k) minus the VACS amount provided (\$125k). In this case the maximum 319 funding would be \$35k.

3. Extreme Acts of Nature (EAN) Policy

DCR policy allows for cost-share on EAN destroyed practices

- A new contract is established that extends the lifespan and provides funds to fix the practice
- Jointly-funded and solely VACS-funded: eligible
- Solely 319-funded: not eligible due to restrictions for federal funds

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“Extreme Act of Nature” (EAN) shall mean some sudden and irreversible act of nature that could not have reasonably been foreseen or prevented. Examples include floods, drought, fire, and exceptional storms like hurricanes and tornados. Generally, such events should be supported or documented by actions that could include a Governor’s drought disaster designation or weather records that document excessive rainfall, floods, tornados or other such events.

Currently a process is not established on how allow the VACS EAN policy to work for fully funded 319 practices. Part of the issue is how to account for the O&M in the future if there is a non EAN practice failure. Thus if a practice is fully funded with 319(h), DCR’s current EAN procedure is not allowed and the participant would have to repair the practice without cost-share assistance. We are going to work with DCR to see how their process operates and re-assess setting up similar policy in the future.

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4. Changes to DCR Tracking System to Address Septic

- Roland Owens, Data Analyst with DEQ, Northern Regional Office (formerly of DCR)

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Roland Owens provided a live demonstration of changes made to the DCR BMP Tracking System to reflect changes made to DEQ practices. There are no notes for the live demonstration, but there is a video recording of his demonstration available. Please contact Lauren Linville (lauren.linville@deq.Virginia.gov) for that. You may also contact Roland Owens directly (clyde.owens@deq.Virginia.gov) with any questions about the Tracking System changes.

5. Non-Residential Septic Policy

- Still not eligible (see page 39 in NPS BMP Manual)

Non-residential structures: For the purposes of this program, only non-complying discharges from or septic systems for structures whose primary use is as a residence, house, home, or single-family dwelling unit are eligible. Eligibility is not dependent on ownership, historical use, or permitted use (VDH or otherwise) of the structure served by a septic system or the source of the non-complying discharges. The NPS Program cannot extend eligibility to non-residential properties due to EPA's requirement that funds support BMP implementation for EPA-approved implementation plans (IPs), which do not give credit toward IP goals and milestones for septic BMPs installed on non-residential properties. As such, DEQ will not consider requests for BMPs serving septic systems at non-residential structures.

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Last year's BMP Manual had text that DEQ was considering changes to eligibility that would allow non-residential properties to receive cost-share assistance for addressing failing or failed septic systems. DEQ staff spent the year collecting non-residential requests and researching the viability of expanding eligibility. Staff determined that DEQ could not extend eligibility to non-residential properties due to EPA's requirement that 319(h) funds support BMP implementation for EPA-approved IPs, of which none give credit towards IP goals and milestones for septic BMPs installed at non-residential properties. In short, since EPA won't credit work done on non-residential properties, eligibility cannot be extended.

The slide shows the language in the Manual now to address the issue. We encourage partners to use it when they have to decline requests for septic cost-share at non-residential properties.

6. Changes to Variance Process for Septic Practices

- See Section 4.4 (page 12) of the NPS BMP Manual
- Highlights
 - Specific info to include in variance request
 - To whom to submit requests
 - Variance approval evaluation criteria
 - Approval process

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Roland covered the ways he and Nicole have worked together to update the Tracking System's handling of septic variances. In this slide, I'll cover what changes we made to the BMP Manual regarding the variance process. In short, we're providing more detail on what's required from grantees for variance requests and what the process looks like post-request. If you want to follow along in the Manual text, navigate to the bottom of page 12.

The first change you'll notice is that we've listed the information needed to accompany your request. Most are straight forward. I'd like to emphasize a few bullets that help give us really necessary info to evaluate a request:

1. (fourth from the bottom) An explanation of why the practice cost will exceed the cap. There's usually a reason, it could be a smaller lot size requiring more labor because they can't get larger machinery back there or they need to spend more on non-standard/lowest cost materials.
2. (third from the bottom) An itemized cost estimate for the entire practice with the total estimated practice (cost) listed clearly. Should align with reasoning for cost exceeding the cap. Also provides more context about the situation.
3. (second from the bottom) Your (the grantee's) determination/opinion/stance/whatever of where the cost required for the practices seems reasonable. In short, do you support their request or not and why?

This section also outlines to whom to send the request. It goes to the NPSgrants email address which is monitored daily by me. We'll review your request to make sure it has all the right info and then make a decision based on the criteria listed. We've said it could take up to 30 days for us to approve the variance request, but these have usually been moving much faster than that, especially if we have all the info.

Once we reach a decision, we'll communicate it back to the grantee and to DCR Data Services who will update the Tracking System so that it reflect the decision. We'll do this within two days and DCR has said it should be a fast turnaround for them to update Tracking.

7. New Resources for Septic Projects

- [VDH Permitting Process with DEQ NPS Program](#)
- [Summary Table of Required Licensure](#)

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These are two new resources that can help grantees navigate the requirements and rules for septic BMPs.

VDH Permitting Process is a useful document for grantees to understand when a practice requires a permit and when it doesn't.

The Summary Table of Required Licensure breaks down the different types of licenses septic providers in Virginia may hold (as received from the Virginia Department of Professional and Occupational Regulation) cross referenced against the required licenses for different septic practices.

8. Timeline for Manual Release

5-25-20: Published on Town Hall and open comment period begins

6-24-20: Open comment period closes

7-1-20: Effective date

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This is the approximate schedule for the Manual Release. As we discussed at the top of the presentation, the Manual is now out for public comment on Town Hall. We're not anticipating to receive any comments that would cause us to have to do another public comment period, so we're looking at the period closing on June 24th and then having the Manual become effective July 1, 2020, the start of the next program year.

We are working with DCR to send over BMP information for updating the Tracking System and tentatively expect BMPs to be available for sign up by early-mid June. We don't have an exact date yet, but will send an update through the NPS coordinators when we know they're all in and made available.

Questions?



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