

**STATE OF MARYLAND DEPARTMENT OF THE ENVIRONMENT
WATER MANAGEMENT ADMINISTRATION**

**General Permit for Discharges from
Marinas including Boat Yards and Yacht Basins**

RESPONSE TO COMMENTS

The Maryland Department of the Environment (MDE), herein referred to as "Department" has made a final determination to reissue the State/National Pollution Discharge Elimination System(NPDES) General Permit for Discharges from Marinas including Boat Yards and Yacht Basins, Permit **No. 10MA (NPDES No. MDG99)** to meet federal requirements and to protect water quality. A public notice on the tentative determination to reissue the permit was published on August 27, 2010 in the Maryland Register and in seventeen newspapers throughout Maryland during the weeks of August 24 & 30th, 2010. The Department held a public hearing concerning the tentative determination on Wednesday, September 29, 2010 at 11 am in the Terra Conference Room at the Department, 1800 Washington Blvd, Baltimore, MD 21230, and received comments on the draft permit through October 5, 2010.

Responses to comments received by the Department regarding the draft permit are provided in this document. The comments received on the draft permit and the associated responses have resulted in changes to the final permit. A summary of the major changes to the permit include the following:

- Increased the time allowed to obtain storm water samples (from 15 to 30 minutes after the beginning of the storm event)
- More clearly defines the facilities eligible for permit coverage.
- Clarified that ballast water and gray water are not prohibited or regulated by this permit
- Eliminated the requirement to remove sacrificial anodes prior to washing boat bottoms. This was included in the draft as it will aid in decreasing the presence of lead in wastewater discharges; however, it is no longer a requirement.
- Modified the method for notifying the facility user of the permit requirements - the permit is now more flexible and allows the permittee to choose the more feasible approach for their site and operation.
- The permit will be effective March 1, 2011 and includes an extension of the time facilities must submit their notice of intent for coverage under this permit from 60 days to 90 days after the permit effective date.
- Extended the timeframe (to 18 months after permit effective date i.e., September 1, 2012) for which facilities must start monitoring boat bottom wash water discharges.
- Permit limits for oil and grease and for suspended solids are effective March 1, 2013
- Permit limits for metals (copper, lead, and zinc) are effective March 1, 2015
- Modified the frequency of submitting discharge monitoring forms to the Department from four times a year to only twice annually.
- Eliminated conditions which were intended only as recommendations. This was to ensure that any recommendations were not perceived as requirements.
- Clarified definition of persistent foam so that permittees who use a soap which is not known to be toxic and does not result in persistent foaming may be utilized

- Reduced the number of years a facility must keep records and other information on monitoring from five to three years consistent with federal regulations.
- Addressed concerns related to regulation of bilge water discharges. This permit does not regulate discharges from the vessel; however, if this water is brought from the vessel to land, discharges to waters of the State must meet the effluent limitations in the permit.

Because of the numerous comments received and the range of topics covered, responses have been composed on a topical basis to minimize repetition. The comments received from the public have not been repeated in this document in their entirety due to their volume. Paraphrasing of the comments has been used in this document to express the topics contained in the comments. The Department has made its best effort to review and consider each comment received and has created this written document to address the significant comments. A majority of comments centered around several primary topics. Responses for those topics have been grouped and provided based on the following categories:

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A. Category: About the Creation of this Permit

Concerns raised in public comments:

Subcategory – Authority & Jurisdiction

- You are putting a burden on the marina operators.
- In 1977 the North American Treaty Organization moved us from transportation over to the recreation industry category.
- Recreational boating marinas only seem to be included, along with the large commercial vessel maintenance and repair activities.
- We are in the transportation vessel category rather than recreational boat category.
- Marina feels that the permit is the only thing being drafted not the regulation.
- Permit shouldn't apply to me as my volume is very small: The volume of the boat wash water discharge is given no consideration.

Department's response to comments:

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the U.S. and regulating quality standards for surface waters. As authorized by the CWA, the National Pollutant Discharge Elimination System (NPDES) permit program controls water pollution by regulating point sources that discharge pollutants into waters of the U.S. As the governmental agency responsible for regulating wastewater and storm water discharges to ground and surface waters of this State, the Department regulates these discharges through permits.

NPDES permits became a requirement as of November 16, 1990. The U.S. Environmental Protection Agency (EPA) Regulations at [40 CFR §122.26\(b\)\(14\)\(viii\)](#)¹ require that certain services incidental to Water Transportation (Standard Industrial Classification (SIC) Industry Group 449) obtain a storm water discharge permit to comply with the CWA. Within this group, SIC Code 4493 applies to establishments, commonly known as marinas, engaged in operating docking and/or storage facilities for boat owners. Facilities with this classification include:

- *Marinas*
- *Boating clubs with marinas*
- *Sailing clubs with marinas*
- *Yacht clubs with marinas*
- *Boatyards that provide storage and incidental repair.*

This regulation does not separate recreational boating and large tanker marinas in its definition. As it is defined by the SIC, there is no limitation on the types of vessels/boats: rather, applicability is determined by the activity and any resulting waste discharge/exposure. While the SIC definition of marina identifies who is required to obtain coverage under this permit, the size of a facility is not a determining factor of applicability, rather, rather it is determined based on activity type.

¹ Pg. 208 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=26&TYPE=PDF>

Furthermore, U.S. EPA Regulations at [40 CFR §122.28\(a\)\(2\)](#)¹ allows for the issuance of general permits to sources meeting the criteria established therein. The Department has determined that marinas are sources that meet such criteria.

These regulations are in place to protect the environment from discharges which have the potential to negatively affect the waters of the State. Storm water from certain activities at “water transportation facilities” in 40 CFR 122.26(b)(14)viii is considered an industrial wastewater and this discharge to waters of the State must be authorized by NPDES permits.

There is no de minimus volume established in federal regulations for the discharges regulated by this permit. Marinas have the capability to wash any boat (topside or boat bottom) coming out of the water and onto their property. Boats washed at a marina and then placed on a trailer to leave the facility could potentially result in a large volume of wastewater regardless of property size or number of slips. Many conditions of this permit have been developed based on documents obtained from other states (see administrative record) and are reflective of discussions with current permittees during site visits and meetings.

If a facility requests coverage via an individual NPDES permit, the Department will review the application in order to determine if the facility should be covered under a separate permit. If a facility meeting the criteria for coverage under this permit fails to apply, the facility will be in violation of state and federal regulations and subject to enforcement. If a facility has no point source discharges of wastewater and no exposure of pollutants to storm water per [40 CFR §122.26\(g\)](#)², they must submit a No Exposure Certification to the Department under the conditional exclusion for “no exposure” of industrial activities and materials to storm water.

Subcategory – Public Participation

- **Do not understand how a permit can be close to being passed without the “homework” completed. [Believes] revisions were drafted in vacuum. Determinations are being made without their [boating community’s] input.**
- **Request additional time to be spent working within marine community to create a realistic document to be understood and implemented effectively.**

Department’s response to comments:

Pursuant to U.S. EPA Regulations at [40 CFR §124.10](#)³, the Department has conducted a public participation process for the public to comment on the draft of this permit. The Department has made extensive efforts to involve the public and interest groups in the development of the draft permit. The Department has reviewed and taken into consideration each significant comment offered by the public and has incorporated changes into the final permit. The events identified in Table 1 below demonstrate the reasonable effort made by the Department to develop a permit that best suits the needs

¹ Pg. 224 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=28&TYPE=PDF>

² <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=26&TYPE=PDF> pp 222

³ <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=124&SECTION=10&TYPE=PDF> pp 311

of the affected community and satisfies the state and federal requirements to protect the waters of the State:

Table 1: Public Participation Timeline

WHEN	WHERE	WHAT	WHO
Jan. 5, 2010	State-wide	Department sent letter of request for current permittees to provide comments on terms of the existing permit	Permittees covered under permit 02MA for Discharges from Marinas
Feb. 17, 2010	Annapolis	Department attended DNR's Clean Marina open forum	Department, Certified Clean Marina (owners)
Feb. 19, 2010	Cambridge		
Feb. 23, 2010	Havre de Grace		
Mar. 2, 2010	Galesville	Department met with DNR at facilities	DNR, local Marinas
Apr. 12, 2010	Baltimore	Department met with DNR Clean Marinas to review draft permit	Department, DNR
May 14, 2010	Annapolis	Department met with Marine Trades Association of Maryland (MTAM)	Department, MTAM, MTAM legal council
May 20, 2010	Baltimore	Department met with Baltimore County Marine Trades Association (BCMTA)	Department, BCMTA
Jun. 3, 2010	Baltimore	Department held teleconference with MTAM and DNR	Department, DNR, MTAM
Jun. 10, 2010	Baltimore County	Department conducted site visits to marinas discussed during May 20 th meeting	Department, BCMTA, Marina owners
Jun. 17, 2010	Ocean City	Department conducted site visits to marinas	Department, Marina owners
Jun. 22, 2010	Annapolis, Kent Island, Cambridge	Department conducted site visits to marinas	Department, Marina owners
Jul. 8, 2010	Annapolis	MTAM sponsored educational forum to discuss draft permit	Department, MTAM, Public
Jul. 15, 2010	Port Annapolis	Department met with focus group to discuss latest draft of permit	Department, MTAM, DNR, Diver, Paint Manufacturer Representative (Paint rep.)
Aug. 5, 2010	Annapolis	Department met with MTAM-selected focus group to discuss latest draft of permit	Department, MTAM, BCMTA, DNR, Paint rep.

WHEN	WHERE	WHAT	WHO
Aug. 24, 2010	State-wide	Notice of Tentative Permit Determination and Public Hearing	COMMENT PERIOD PUBLIC NOTICE
Aug. 27, 2010			
Aug. 30, 2010			
Sep. 10-20, 2010	State-wide	Department sent letters to facilities potentially subject to permit	DNR's Facility List
Sep. 29, 2010	Baltimore	Department held Public Hearing to discuss draft permit	Department, Public
Oct. 5, 2010	END OF PUBLIC COMMENT PERIOD		
Oct. 21, 2010	Baltimore	Department presented to Shipbuilding Community of Baltimore Port Alliance	Department, USGS, EPA, DNR

The Department will continue to work with the affected community through outreach and publicized information on its website, as well as, work alongside of the Department of Natural Resources (“DNR”) through their Clean Marina Initiative. The effective permit issued in January 2002 expired in 2007 and although it has been administratively extended, facilities not currently covered and wishing to gain coverage must now obtain an individual NPDES permit as there is currently no general permit they can apply for that authorizes their discharges. Individual permits are costly to the permit applicant and require a longer timeframe for obtaining coverage. Individual permits also present greater uncertainty regarding the outcome of the public process and incur higher processing fees.

Any person adversely affected by this final determination may file a petition for judicial review. Petitions for judicial review of a final determination or permit decision subject to judicial review must be filed in accordance with §1-605 of the Environment Article no later than February 14, 2011 (30 days following publication by the Department of this notice of final determination in the Maryland Register), and must be filed in a circuit court in Maryland. Petitions for judicial review must conform to the applicable Maryland Rules of Civil Procedure.

Subcategory – Other Agencies, Regulations

- **Request coordination between MDE, DNR (clean marinas) and EPA (Clean Boating Act of 2008).**
- **Has MDE incorporated EPA Clean Boat Act requirements and does MDE have a copy of the changes the EPA is proposing?**
- **How does Maryland compare with other states requirements? If we are stricter then Maryland businesses will lose out.**
- **Why not make the Clean Marina mandatory?**
- **Acknowledge difference in commercial, large and small marinas, community facilities.**

Department's response to comments:

Unlike the legal requirement of the NPDES permit program, the [Clean Marinas Initiative](#) is a state-by-state voluntary program that DNR is responsible for leading in the state of Maryland. This permit does not have the authority to mandate a permittees' participation in a voluntary program.

The Department will continue to work with [DNR through the Clean Marina Initiative](#)¹ which, among other things, assists the marine community with understanding the requirements of many types of permits and regulations. The Department has discussed the [Clean Boating Act](#)², Section 402(o) of the Federal Water Pollution Control Act (33 U.S.C. 1342) with EPA on numerous occasions. A requirement of the Clean Boating Act is to develop management practices to control "...the discharge of any graywater, bilge water, cooling water, weather deck runoff, oil water separator effluent, or effluent from properly functioning marine engines, or any other discharge that is incidental to the normal operation of a vessel, if the discharge is from a recreational vessel." None of the requirements in this permit are related to discharges regulated under the Clean Boating Act. The Department has not received any proposals from the EPA of management practices that have been drafted in association with the Clean Boating Act. Throughout the permit review process, the Department has been working with DNR and EPA to ensure cohesion with any other permits impacting this community and correlating requirements of this permit to existing regulations and/or laws. Maryland agencies will continue to work together to develop training materials as well as provide constructive comments on regulations, laws and permits now and in the future.

A condition of this discharge permit is the protection of water quality requiring that any discharge regulated by this permit shall not cause or contribute to an exceedance of the water quality standards in [COMAR 26.08.02.03](#)³, including but not limited to the general water quality standards. If the discharge contributes to an exceedance, the Department is authorized to exercise its powers to modify, suspend or revoke the discharge authorization. This implies that if the Department were to hold off on requiring numerical limits to wash water discharges until the next permit cycle (or anywhere in-between), the limits may be more strict than those established by the draft permit.

Maryland and Maine are the only two states which currently provide a general NPDES permit for wastewater discharges from a marina to surface waters. The Department has discussed this permit with other states (New Jersey, Connecticut, California, Washington, Ohio, North Carolina, Florida, Texas, Massachusetts, Rhode Island, and New York), many of which prohibit the discharge of antifouling paint contaminated wash water to surface waters all together. While all states require facilities to obtain a storm water permit for their exposure of industrial activity (per U.S. EPA Regulations at [40 CFR §122.26\(b\)\(14\)\(viii\)](#)⁴: water transportation equipment maintenance), some states require facilities performing washing of vessels to either recycle their wash water or discharge to the public sewer system (with authorization). Other states require

¹ <http://www.dnr.maryland.gov/boating/cleanmarina/>

² <http://www.govtrack.us/congress/billtext.xpd?bill=s110-2766>

³ <http://www.dsd.state.md.us/comar/comarhtml/26/26.08.02.03.htm>

⁴ Pg. 208 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=26&TYPE=PDF>

individual NPDES permit for these discharges. Sector Q – Water Transportation of the [U.S. EPA's 2008 Multi-Sector General Permit](#)¹ (see page 110 of the EPA permit) specifically prohibits the following discharges from coverage by its industrial storm water general discharge permit: bilge and ballast water, sanitary wastes, pressure wash water, and cooling water originating from vessels. Sources discharging storm water associated with industrial activity within the states covered by permits authorized under U.S. EPA Regulations at [40 CFR §122.26\(b\)\(14\)](#)² must obtain a separate authorization before discharging these types of wastewater.

Subcategory – Effects, and Costs to Marinas

- **By requiring facilities to cease performing washing in 2015 if they are not meeting [effluent] limits, the State is decreasing the number of facilities able to perform this activity in the State.**
- **Some measures potentially drive boaters from marinas to non-regulated locations - ironic that boaters would no longer be within the marina where potential hazards and pollution can be best managed (fire or oil spills - spill kits and booms).**
- **The boating industry will suffer and boat owners will move their vessels out of State.**
- **Draft permit has many restrictions for washing boats and monitoring storm water runoff – the costs make it impossible to operate a yacht club.**
- **Potential closure of small marinas for compliance: put mom and pop marinas out of business.**
- **Requirements on page 41 are onerous, burdensome, costly and setting up small marina operators for failure.**
- **Provide flexibility for cost and procedure for compliance.**
- **Costs to comply with permit are not explained.**
- **We don't know what type of system will be needed in order to meet (effluent) limits.**
- **Provide outreach to assist in meeting WQ criteria - what is necessary and cost involved.**
- **Calibration is a cost and will be cost prohibitive for smaller marinas? Periodically?**
- **MTAM would like to see State grants for businesses that install systems that recycle the water. We would like to see some grants for the collecting and testing procedures being required by the permit. MDE provide assistance for testing - grant or cost sharing**
- **Request financial help like the State's Pump-out install program.**

Department's response to comments:

The Department is tasked to regulate point-source and non-point source discharges to protect and restore the quality of Maryland's air, water, and land resources, while fostering smart growth, economic development, healthy and safe communities, and quality environmental education for the benefit of the environment, public health, and

¹ Pg. 110 http://www.epa.gov/npdes/pubs/msgp2008_part8.pdf

² Pg. 207 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=26&TYPE=PDF>

future generations. If a facility is unable to modify their discharge to meet effluent limits or eliminate the discharge, they will be in violation of environmental regulations - this may ultimately decrease the number of facilities performing this activity or it may modify the manner in which the activity is performed.

This permit does not create or change existing federal rules applicable to point source discharges of pollutants. The permit does provide a mechanism for the boating industry in Maryland to comply with existing federal rules, which require a permit for such discharges that ensures no reasonable potential for toxicity in the wastewater and for protection of water quality standards. Moving to another State does not change the federal rules, nor the legal risks for not obtaining an adequate discharge permit. The Department has sought to minimize the impacts of the permit to the boating industry where possible while still fulfilling obligations to protect the waters of the State. As one example, the Department has incorporated into the permit the longest compliance schedule ever provided in a Maryland general permit (four years), a schedule that provides facilities considerable opportunity to comply with the boat bottom wash water metals limits.

Pursuant to U.S. EPA Regulations at [40 CFR §§122.44\(A\)\(2\)\(i\)](#)¹ and [122.48](#)², permittees are required to monitor pollutant mass (or other applicable unit of measure) and effluent volume and to provide other measurements (as appropriate) using the test methods established in [U.S. EPA Regulations at 40 CFR §136](#)³. The draft permit contained an Appendix C - General Information on Testing (comment about page 41), which provided a general explanation of the available testing methods. The final permit does not contain this information as it was guidance; this information related to the monitoring requirements associated with limits identified in this permit has been moved to a separate guidance document and can be found on the Department's website (www.mde.state.md.us). Many of the conditions within the permit are standard conditions required by federal and state regulations for all NPDES permits - wastewater and storm water ([40 CFR §122.41 Subpart C](#)⁴). With regard to monitoring equipment calibration, this is a standard condition for all NPDES permits. From a practical standpoint, most holders of this permit will not be doing their own wastewater quality analysis, so there will be nothing to calibrate. For those who perform analysis, calibration of equipment is on an as needed basis and best determined by the equipment manufacturer's recommendation.

The role of the Department is to establish measures necessary to control the amount of pollutants able to be discharged to any one water body to ensure environmental protection. This is achieved by requiring best management practices and monitoring criteria. The Department cannot be responsible for determining the method employed by a facility to meet the limits and provisions identified in this permit; it is the permittee's obligation to operate by methods which are feasible and actual for their individual site operations and financial ability. The options to achieve these limits varies from facility to facility and the cost to comply directly depends upon those choices. Compliance can

¹ Pg. 249 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=44&TYPE=PDF>

² Pg. 260 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=48&TYPE=PDF>

³ http://www.access.gpo.gov/nara/cfr/waisidx_10/40cfr136_10.html

⁴ Pg. 238 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=41&TYPE=PDF>

vary from exposures, permitted discharges, volume and frequency of discharge, number of outside contractors and do-it-yourselfers to facility staff (boatyards), etc.

The Department does not provide financial assistance to permittees for the requirements in this permit. Federal regulations require limits to be the most stringent of water quality based requirements or technology based requirements. The wash water metals limits in this permit are water quality based. While technology based limits allow for consideration of cost, water quality based limits do not.

As it is the permittees' discretion as to how they manipulate the discharge in order to meet the effluent limits, the Department cannot provide direction as to which treatment or discharge option is suitable on a case-by-case basis. Due to the flexibility in treatment, the permittee must identify which treatment system is most appropriate for them; however, upon notification of approved technologies used in Maine, the Department will furnish documentation as to the treatability of those systems (as provided) and will also work with DNR to ensure this information is available through the Clean Marina Program.

Subcategory – Fees

- **Why aren't local and state governments required to pay a fee, places additional operation costs to private businesses.**
- **If a facility is owned by the State but leased (i.e., Fort Washington Marina) will permittee required to pay fee.**
- **Why not one flat fee for all? Less confusion.**
- **Does proposed slip count consider T-head as one slip or is it based on the number of vessels that could occupy the space?**
- **Does fee count not include mooring ball "slips"?**

Department's response to comments:

In accordance with [COMAR 26.08.04.09-1\(A\)\(2\)](#)¹, no fees are required for discharges associated with the following dischargers: a) Publicly owned treatment works; b) Other treatment works which treat only sewage; and, c) Facilities or persons culturing or raising aquatic organisms in enclosed systems discharging less.

The permit fee is assessed to the operator; so whether or not a facility is required to pay it depends on who is the authorized permit holder. (See [COMAR 26.08.04.09 - 1](#))

Currently, the regulation associated with this permit identifies fee calculations per the following table and is dependent upon the number of slips available at the marina:

¹ <http://www.dsd.state.md.us/comar/comarhtml/26/26.08.04.09-1.htm>

Table 2: General Permit for Marinas Fee Table

<u>Number of Slips</u>	<u>Fee</u>
200 or more slips	\$500
100 or more and fewer than 200 slips	\$400
50 or more and fewer than 100 slips	\$300
10 or more and fewer than 50 slips	\$200
fewer than 10 slips	\$100

See [COMAR 26.08.04.09-1\(I\)](#)

The fees for this permit are established in regulation and are based on the number of moorings available to customers/facility; this equates to the number of slips to be counted. This also includes available slips in boatels/racks.

The variable fee structure was established during the first issuance of the marina permit (1997) and has remained unchanged.

B. Category: Banning Products

Concerns raised in public comments:

- **Adding restrictions to the current discharge for discharges from pressure washing operations in marinas does nothing to address the design leaching action of copper based anti-fouling paint which occurs while the boat is in the water, nor does it address discharges which may come from sources other than marina and boatyard maintenance facilities**
- **Eliminate the use of copper based paints would be the most effective means of preventing copper and antifouling coatings from entering the water.**
- **Doing away with antifouling paints could cost marine transportation market million in increased fuel costs.**
- **Do the limits effectively ban use of copper paints?**
- **Eliminate heavy metals in antifouling paints sold or used in Maryland**
- **Cuprous oxide paint - most bottom washing is being performed at end of boating season - active ingredients will mostly (if not all) leach out during this time and very little remains in paint by the fall.**
- **New restrictions dwell on ablative paint and cleaning of boat hauls - what is the difference with a boat painted with ablative paint underway? If it is a problem then why is it sold in marine stores?**
- **Switching from ablative to hard paint is costly and is more expensive then applying a new coat of ablative paint.**
- **Many problems in the permit can be resolved by phasing out copper paint and phasing out zinc anodes in favor of aluminum.**
- **Aluminum alloy contains only 5 % zinc content. Although requiring aluminum alloy anodes would not totally eliminate zinc contamination issues, their use would result in a reduction of nearly 95% of the amount of zinc placed into the water.**

Department's response to comments:

Phasing out copper and zinc present the same issues as phasing out lead or tin. Changing from one metal to another does not alleviate the potential for metal toxicity in aquatic species. Current products on the market which decrease the amount of copper in antifouling paints do not show decreases in heavy metals being discharged. For example, due to the anodic chemistry of zinc, the Department cannot sanction paints that have the potential to more freely radicalize due to their galvanic nature which causes a surge in the amount of free zinc in State waters, resulting in a greater potential of zinc toxicity.

The Department is tasked to regulate point-source and non-point source discharges in the state of Maryland. Currently, the Clean Boating Act requires the U.S. EPA to develop best management practices to control pollutant discharges associated with the incidental discharge from a recreational boat during normal operation, including leachate of antifouling paints. The intent of this permit is to control wastewater discharging to waters of the State and limit the potential to cause environmental degradation to these waters. As there is no current legislation enacted which bans the use of antifouling paints acting as an aquatic pesticide, this permit identifies environmental protection required during moments when the wastewater is being discharged (i.e., when paints are being applied and removed).

It is the permittees responsibility to ensure that discharges are in compliance with the permit effluent limits. Permittees must evaluate their discharges and make determinations of management practices to ensure they meet these limits. This may include a change to their current product applications or recommendations or the control of activities allowed on their facility. Soft (sloughing) and hard paints both ablate pesticides, but their release rates and method of ablation vary.

C. Category: Scientific Data and Research of Limits

Concerns raised during public comment:

- **How do the copper and zinc numerical limits compare with boatyards working on boats painted with copper based antifouling paints?**
- **If there were no toxic paints then there wouldn't be a requirement for testing toxic materials.**
- **How much zinc are we really putting out there?**
- **Has anybody ever measured how much zinc comes from a marina?**
- **Has anyone ever measured how much copper comes from a boat when ablative of paint wears the copper off the bottom?**
- **How were the numbers of page 13 of the [draft] permit for copper and zinc derived?**
- **I question whether the MDE has actual data to support the numerical limits that are being imposed in here and can justify it.**
- **MDE might have challenged a few of us, as a sample, to do that (check for lead, copper and zinc) before they concluded that this is what we need to be measuring for.**

- **Why is there a chance that lead is being put in the water from our wash waters? I was told that lead is being created from two different metals that are combining the wash water and/or the bottom paint.**
- **Department does not take in account large number of vessels which remain in water to be hauled and power washed in spring and early summer.**
- **An acceptable limit of 5 mg/L of substance...how in the world am I ever going to be able to tell whether I'm putting out 60 milligrams of dust or something**
- **When do limits need to be met?**

Department's response to comments:

Maryland discharge permits include limits based on both water quality standards and technology based limits (see U.S. EPA Regulations at [40 CFR §§130](#)¹, [131](#)², [122.44](#)³, [122.45](#)⁴, [125.3](#)⁵ and COMAR [26.08.02](#)⁶). A general permit applies to facilities in many parts of the State and must reflect the most stringent conditions necessary to protect the environment and waters of the State where the discharge occurs.

Water quality-based limits are derived from water quality criteria, which describe the physical and chemical conditions necessary to support water contact recreation, fishing, aquatic life, wildlife, use as public water supply, and consumption of fish and shellfish. As there are no established EPA promulgated effluent guidelines for this industry, the Department utilized best professional judgment and water quality standards to identify discharge limits in this permit. Therefore, this permit identifies metals: copper, lead and zinc limits per the State water quality criteria after applying a dilution factor of 10. Water quality criteria for copper in estuarine waters (acute) = 6.1 µg/L. Using a dilution factor of 10, the permit limits all waste discharges to a copper maximum of 61 µg/L. This limit means that any one sample cannot contain more than 61 µg/L of copper at the point of discharge or it would be a violation of the permit. This limit is rounded to 60 µg/L and converted to units of mg/L with a resulting limit of 0.06 mg/L.

Due to the nature and variety of facilities covered by this permit, it is impossible for the Department to identify each boat being washed, the type of paint(s) being removed and their current "strength". Based on the discussions the Department has had with the marine trade organizations and their members, only select facilities can identify the most current product and date of application on boats in their marina; however, no degree of certainty can be given regarding every boat they wash. This will vary from facility to facility as indicated in the first chart, below. Concentrations will vary for many reasons: the paint type, length of time boats were in the water, length of time from when boats were last painted, current and tidal fluctuation where boat was moored, how often the boat is washed or used, the distance and speed of a boat during its voyage, etc. In

¹ <http://frwebgate2.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=pzw60U/16/2/0&WAIAction=retrieve>

² <http://frwebgate1.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=MELIcz/32/2/0&WAIAction=retrieve>

³ Pg. 249 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=44&TYPE=PDF>

⁴ Pg. 256 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=45&TYPE=PDF>

⁵ Pg. 338 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=125&SECTION=3&TYPE=PDF>

⁶ <http://www.dsd.state.md.us/comar/comarhtml/26/26.08.02.01.htm>

the following table and figures are the characteristics of sampling performed in other states and the effluent limits established by this permit.

Table 3: Effluent Characteristics of Other States

Parameters: Copper (Cu) Zinc (Zn)	(Untreated) Wash Water Data (in mg/L)*							
	Washington		Maine		New York		Dillon's Creek**	
	AVG	MAX	AVG	MAX	AVG	MAX	AVG	MAX
Cu (Total)	55	190	49	170	10.5	82	24.2	59
Cu (Dissolved)	2.9	14	-	-	2.4	55	13.2	33
Zn (Total)	6.0	22	10	15	7.6	157	10.3	24.2
Zn (Dissolved)	1.0	3.2	-	-	1.7	21.6	8.4	19.5

*<http://www.njmssc.org/MIE/Workshop/NajarianAssociates.pdf>

**preliminary

Table 4: Effluent Limits in General Permit

Wastewater discharge limits for wash water* (in mg/L)	
Parameter	Concentration Maximum
Copper	0.06
Zinc	0.81

*see Part IV - Section B of draft permit

Chemet, one of the leading manufactures of antifouling paint metallic chemicals (cuprous, cupric and zinc oxides), informed the Department that scrap metals from around the country are used to develop its product. Scrap metal typically contains trace elements of other metals (aside from copper and zinc). This accounts for some of the metallic compounds found within the wash water discharge. Per the samples taken by Maine's Department of Environmental Protection (see [Maine General Permit¹](#), Fact Sheet page 4 of 15), antifouling paint residue has been shown to contain copper, lead, zinc, chromium and several other pesticide compounds. Additionally, EPA's 2008 Multi-Sector General Permit (MSGP) requires storm water benchmark sampling for Lead at Water Transportation Facilities (EPA's [MSGP²](#)), and after consideration, the Department determined that lead is a parameter of concern related to the wastewater discharge from facilities eligible for coverage under this permit.

In the reasonable potential analysis, the Department utilized a Maryland industry standard of boat bottom washing occurring primarily in autumn. Using this time frame as the basis for optimal sampling characteristics, the Department identified September to December as the required monitoring period: however, a sample taken at any time of the year must meet the effluent limits (once they are in effect). The industry standard was derived from the vast majority of marinas encountered during inspections, public

¹ http://www.maine.gov/dep/blwq/docstand/wd/antifouling_paint/general_permit.pdf

² Pg. 112 http://www.maine.gov/dep/blwq/docstand/wd/antifouling_paint/general_permit.pdf

and semi-public meetings with the impacted industry. Additional consideration was given to other State permits, fact sheets and DNR comments.

The effluent limits in the permit are associated with the discharge of wastewater (milligrams of “substance” per liter of wastewater). These limits are to be sampled per U.S. EPA Regulations at [40 CFR §136](#)¹. The vast majority of permit holders will need to contract a professional laboratory to retrieve (or advise how to retrieve) the samples and to analyze the wastewater. There are numerous laboratories within and near Maryland. While the Department cannot endorse any particular business, we provided an incomplete list of such (see Appendix C of the draft permit).

The permit will not require sampling until 18 months after the permit effective date to allow permittees time to determine how and where they will dedicate an area to perform maintenance and boat washing activities. This will also provide permittees time to explain any changes to their facility users, provide training to their employees, and make changes to contracts as necessary. See Table 5 below, for a timetable of monitoring requirements in this permit

By immediately limiting suspended solids, permittees will decrease the amount of sediments being discharged into the watershed - a statewide impairment for most State waters. Limiting oil & grease in the effluent ensures permittees are preventing prohibited discharges. Effluent limits for metals will not take effect (permittees are not required to meet these limits) until the end of the 4th year of the permit. In the draft permit, see Part IV - Section B.1 a through c for more information on monitoring requirements, effluent limits and compliance plans associated with wash water discharges. The Department has determined that postponing limits for metals in wash water will allow permittees time to determine what system they will use to meet the effluent limits and plan for changes on site accordingly (collection system, filtering systems, connection to sanitary sewer, settling basins, etc.).

Table 5: Monitoring Requirements for Waste and Storm Water in Permit

Monitoring Requirements				
Frequency	Sampling beginning on	What for?		Limits begin on
Monthly	March 1, 2011	Bilge water*	Flow	n/a
			Oil & Grease	March 1, 2011
Quarterly	March 1, 2011	Storm water	Visual Inspections	n/a
Monthly	Sept 1, 2012	Wash water	Flow	n/a
Quarterly	Sept 1, 2012	Wash water	Suspended Solids	March 1, 2013
			Oil & Grease	
2/season**	Sept 1, 2012	Wash water	Copper	March 1, 2015
			Zinc	
			Lead	

*only applicable if bilge water where bilge water is collected and treated

**season is from September through December

¹ <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=136&SECTION=1&TYPE=PDF>

D. Category: Types of Discharges and Permit Requirements

Concerns raised in public comments:

Subcategory – Conditions of Application for Coverage

- **Online could not find Notification of Intent**

Department's response to comments:

Applicants cannot submit their notice of intent for coverage under this permit until the permit has been approved; therefore the coordinated NOI form is unavailable until that time. Upon permit adoption the form will be available for download online at the Department's website (www.mde.state.md.us).

Subcategory – Definitions

- **“discharge” (pg 7) - eliminate part 2 of definition because of legal ramifications**

Department's response to comments:

This definition is taken directly from COMAR ¹[26.08.01.01.B-20](#).

- **“Impervious area” (pg 8) - not all vehicular storage areas are impervious consistent with MD Critical Area Commission and Clean Marina recommendations - delete “or used for vehicular storage or traffic”**

Department's response to comments:

The Department has revised the definition in an effort to reflect the same meaning provided by the Maryland Critical Area Commission in that human-made surfaces that are not vegetated will be considered impervious. Impervious surfaces include roofs, buildings, paved streets and parking areas and any concrete, asphalt, compacted dirt or compacted gravel surface.

- **“Wash Water” (pg 9) - not all boat bottoms are covered in antifouling paint - does wash water include hose not pressurized? Spray nozzles reduce “wastewater” - if non-pressurized is included, add “coated with copper-based” antifouling paints...**

Department's response to comments:

The Department has revised the definition and removed the term “bottoms” from the first sentence. Accordingly, restrictions related to discharges in this permit, including the washing of boats, have been clarified so that: (a) no discharge shall contain visible oil sheen, persistent foam or floating solids; (b) washing of boat bottoms painted with soft abrasive paints, or paints which create a visible plume shall not be performed in water; (c) removal of any paints while vessel is in water is prohibited; and (d) washing of boat bottoms painted with antifoulants must be performed in a dedicated area, with discharges restricted by effluent limits.

¹ <http://www.dsd.state.md.us/comar/comarhtml/26/26.08.01.01.htm>

As stated in the definition “wash water”, the pressure of water being used is not a factor in the designation of wastewater. While spray nozzles may reduce overall water “use”, they may also increase wastewater due to their velocity.

The Department does not agree to add “copper-based antifouling paint” at the end of the definition for wash water. The Department’s concern is related to all metal-based (toxic) antifouling paints, not just the copper-based.

Subcategory – Unauthorized or Prohibited Discharges

- **If not allowing boat maintenance still requires storm runoff plans and other misc items? They will not be able to wash boats or do minor maintenance yet individuals are able to do this on their property?**
- **We do not see “Effluent Limitation and Monitoring Requirements” spelled out in the permit itself. If there is a list of prohibited discharges make it clear and easily available.**
- **Has MDE considered the size of signage listing the number of “prohibited discharges”?**
- **Oil and grease. I’m amazed that’s even in here because the Coast Guard...we just don’t put oil or grease overboard anymore.**
- **Ballast water should not be an ineligible discharge as tugs and barges are not from foreign waters and do not expose MD water to invasive species.**
- **Is it the intention of this permit to ban soaps? Consider the need for a clean boat in a sales environment.**
- **Why is foam banned?**
- **Eliminate the word foam or define the length of persistence.**

Department’s response to comments:

Facilities identified in U.S. EPA Regulations at [40 CFR §122.26](#) are required to obtain this permit. If a facility does not perform or allow users to perform vessel cleaning or maintenance activities, they are not required to obtain this permit for storm water exposures nor are they required to submit a No Exposure Certification identified in [40 CFR §122.26 \(g\)](#). If facilities have vessel maintenance and/or equipment cleaning operations such as fueling, engine maintenance/repair, vessel maintenance/repair, pressure washing, sanding, blasting, welding, metal fabrication, or related liquid storage in tanks or other containers, then a discharge permit is required. However, the retail sale of fuel alone at marinas, without any other vessel maintenance or equipment cleaning operations, is not grounds for coverage under the storm water permit regulations.

Facilities that have their maintenance and boat bottom washing operations contained entirely indoors or otherwise not exposed to storm water may not need a permit if they certify that they have no exposure ([40 CFR §122.26\(g\)](#)). However, discharges of wash water from hull cleaning or maintenance operations to waters of the State requires a permit ([40 CFR §122.26\(g\)](#)¹) and are eligible for coverage under this permit.

¹ Pg. 222 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=26&TYPE=PDF>

This permit does identify prohibited discharges and effluent conditions in Part IV (Non-Storm Water Discharges) - Section A for prohibited discharges and Section B for Effluent Conditions. Limits and monitoring requirements can be found in Part IV - Section B. Additionally, Part I - Section C identifies discharges which are ineligible for coverage under this permit.

In consideration of the comment which asked whether the Department considered the size of the signage required under the draft permit Part I - Section K, the Department has modified the final permit to allow for one or more methods of notification of permit prohibitions and activity-specific requirements by either signage, providing educational materials and/or conditions in contracts. To assist permittees in providing a sign that includes this information, the following are identified as prohibited discharges and activities which may result in a discharge requiring specific controls at a permittees' facility (an example sign is available for print at the Department's website (www.mde.state.md.us)).

Prohibited from being discharged to waters of the State:

- Washing of boat bottoms painted with soft abrasive paints, or paints which create a visible plume shall not be performed in water. Removal of any paints while vessel is in water is prohibited.*
- Discharges that contain visible oil sheen, persistent foam or floating solids.*
- Wash water associated with cleaning of used brushes or rollers.*

Activities which require specific actions:

- Bilge waters shall not be discharged to waters of the State if solvents, detergents, emulsifying agents or dispersants have been added to the bilge (this includes soaps).*
- All paint mixing, solvent transfer, and equipment clean up operations must be contained, and shall not enter floor or storm drains or the environment.*
- Washing of boat bottoms painted with antifoulants must be performed in a dedicated area.*

To clarify, this permit is not regulating bilge from vessels, rather wastewater discharged from a marina/boatyard. Once the wastewater is taken ashore, it becomes the responsibility of the facility. Bilge water regulated under this permit (See draft permit: Part IV - Section B.2.) is bilge water pumped from a vessel to a container in order to prevent the discharge from entering into waters of the State. Once this wastewater has been collected, it must be treated PRIOR to discharge into ground or surface waters of the State. This activity would typically occur if a vessel had partially sunk due to some failure and the bilge began to collect oily water. While the Department has determined that this provision applies to a small fraction of facilities that performs this type of operation and were previously permitted, this requirement will remain a part of this permit.

Ballast water in Maryland is regulated under the Clean Water Act Section 312, Federal Ballast Water Regulations ([33 CFR §151 Subpart D](http://www.ecfr.gov/cgi-bin/get-cfr.cgi?TITLE=33&PART=151&SUBPART=D&TYPE=PDF)¹), US Coast Guard's Ballast Water Management Program and the National Invasive Species Act of 1996. Although ballast

¹ Pg. 255 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=33&PART=151&SUBPART=D&TYPE=PDF>

water discharges are not directly regulated under this permit, this type of discharge does not make a facility ineligible for coverage under this permit; marinas where this discharge occurs are still eligible to obtain coverage under this general permit, but shall report ballast water discharges per the aforementioned regulations.

Persistent foam is prohibited from being discharged under COMAR 26.08.02.03. Surfactants are known toxics to animals and ecosystems as they can increase the diffusion of other environmental contaminants. Vehicle (cars, boats, etc) washes or where washing occurs (other than at an individual home) are required to obtain a discharge permit as soaps should not freely enter into the environment. To address previous concerns of using “soap” the permit now refers to no “persistent foam” which is standard narrative permit criteria and is defined as foam that does not dissipate within one half-hour of point of discharge.

Subcategory – Responsibility of Permittee and Facility Users

- **Ensuring employees and users of the facility have knowledge of all the requirements [of the permit] will be difficult to accomplish.**
- **Relying on marinas and yards to police the slip holders is virtually impossible.**
- **Does MDE actually expect marinas to give all of our slip holders a copy of the permit, have them read it and really retain all the requirements of this permit?**
- **Recreational marinas have unprecedented amount of public access, [this] requirement is unreasonable - [MDE should] articulate different levels of education required for different types of site users: staff, contractors, tenants and guests.**

Department’s response to comments:

The Department established Part I – Section K, “Responsibility of Permittee with Regard to Facility Users” in this permit, at the request of the marine trades associations. The Department has attempted to reach a balance in an effort to help marina and yard operators maintain control of their facilities without establishing unnecessarily detailed operational requirements. A permittee is likely to be held responsible for activities on his or her property, with or without the permit, and persons gaining access to the facility must be cognizant of the need to protect the waters of the State. While the Department does not anticipate that permittees will be providing its facility users with a copy of the permit nor does the permit require that level of involvement by facility users, we do expect the permittee to be fully informed as to the contents of the permit and to find a method of communicating the basic prohibitions of the permit to facility users, similar to the communication of procedures involving safety and other marina operating procedures. The Department does not expect all facility users to read the permit. The permit requires permittees to choose from options listed in the permit. The objective of these options is to ensure persons performing maintenance activities at the facility (e.g. contractors, employees, slip owner/renters, day users, etc) acknowledge the environmental standards at that facility.

Subcategory – Enforcement of Violations

- **As commodore, a voluntary position, he will resign from subjecting himself from criminal and legal ramifications if the permit becomes law**
- **Which parts are requirements and which are suggestions - citizen lawsuits over compliance.**
- **Using the word “consider” is vague - to deem impractical what is the burden of proof to demonstrate considered using.**
- **Part IV – language is too vague and will lead to enforcement challenges - clarify.**
- **Will a permittee be in violation for negligence if a vessel owner does not follow recommendations or encouragements?**
- **Holding permittee accountable for negligence seems a bit harsh.**
- **How will the MDE directly address any violation?**
- **MDE officials could easily find some violation even if the marina were diligent in policing the facility.**
- **Would the absence of the sign identified in this section [Part I-Section K] be a violation of the requirements of the permit?**
- **How do penalty fees compare to dry cleaners or other small businesses?**

Department’s response to comments:

This is a permit administered under existing laws and statutes: Clean Water Act ([33 U.S.C. §1251](#)¹ et seq. (1972)), Code of Federal Regulations (40 - Protection of the Environment), and Code of Maryland Annotated Regulations (COMAR). Two of the requirements for all NPDES permits are the Duty to Comply and the Signatory Requirements (see §122.41 (a) [40 CFR §122.41 \(a\)](#)² and [\(k\)](#)³). The Department’s decision to hold a permittee accountable for compliance with this permit and applicable regulations is supported by U.S. EPA Regulations at 40 CFR §122.41 (a) which states:

“Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.” and (e) “Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit”.

¹ <http://epw.senate.gov/water.pdf>

² Pg. 238 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=41&TYPE=PDF>

³ Pg. 241 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=41&TYPE=PDF>

The federal requirement associated with signatories is to ensure that a corporation, partnership, proprietor, or public agency can be held accountable for the requirements of the permit and any associated law or regulation; the applicant must identify a person legally responsible for actions occurring at the facility when requesting coverage under the permit. An alternative would be to refrain from the activities which require obtaining coverage under this permit, although a submission of “no exposure” may still be required.

The words “encourage”, “suggest”, “consider” and “recommend” were used in the draft permit to illustrate plausible options for facilities; The Department will address these comments by revising the permit to address specific suggestions in guidance and reinforce the resource DNR provides through the Clean Marina Initiative. All parts of the permit will read as requirements unless specified as guidance, where applicable. Only requirements identified in the permit are subject enforcement. The Department’s inspectors determine violations. Failure to meet a permit requirement or applicable regulation is a violation and will be subject to enforcement. Permittees will be held accountable for the activities and discharges only under their direct control, including the responsibility to inform their users. The draft permit required signage listing the prohibited discharges and activity restrictions identified in the permit to be posted in a conspicuous location. The final permit has been clarified to allow for one or more methods of notification of permit prohibitions and activity specific requirements by either signage, providing educational materials, and/or conditions in contracts. Failure to satisfy this requirement is a violation and will be subject to enforcement.

The Department will address issues of non-compliance using the most direct approach. A permittee’s responsibility with regard to facility users has been identified within the permit. As stated in the permit, the Department may directly address a violation caused by a facility user, if the permittee has satisfied its notification obligation.

Pursuant to U.S. EPA Regulations at [40 CFR §122.36](#)¹, NPDES permits are federally enforceable and violators may be subject to the enforcement actions and penalties described in the Clean Water Act. The civil penalties that can be assessed for violations of this permit are defined by the applicable regulations.

Subcategory – Effluent Conditions

- **Is this [wash water discharges] really a problem?**
- **Why didn’t MDE sample the wash water before making the permit?**
- **Flow shall be estimated and reported on a monthly basis? There are many months, including the winter, where no activity occurs.**
- **No real scientific data (qualitative or quantitative) supports any evidence that there is a real problem caused to receiving waters around marina.**
- **How does MDE know these strict regulations will benefit measureable change?**
- **Land based activities are just washing off barnacles, suspended solids, paint chips and zincs...many facilities have filtering systems (hay bales,**

¹ Pg. 238 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=36&TYPE=PDF>

- filter cloths) to catch the barnacles. We're not washing them back into the water.
- **Industrial waste accounts for 98% of human made pollution in our waters, 100% compliance to the GP by marina/boatyards would have negligible impact on cleaning the waters.**
 - **Where are nutrient impaired waters subject to this permit?**

Department's response to comments:

Wash water is considered to be wastewater by the Clean Water Act. The Department performed a reasonable potential analysis on this type of wastewater discharge. Based on the data which was obtained, the types of constituents found in the discharge and the typical location of the discharge determined that this wastewater has an impact to the ambient water quality within the marina.

Many facilities may have some form of filtration for this wastewater currently at their facility; however, they are not controlling suspended solids and metals to ensure environmental protection unless the filtering method employed results in discharges that meet the effluent limits identified in the permit. Due to the location of some washing areas and the necessary maintenance associated with filtering products, sediments still may be discharged (i.e., hay bales and filter cloths do not capture suspended soluble metals). To ensure a facility is performing the necessary maintenance associated with their filtering system, the Department requires monitoring of this discharge. To determine the monthly flow volume being discharged to surface waters, permittees can estimate this amount as identified in the draft permit, Part VI - Section A.2 'Representative Sampling'. In accordance with the instructions at the end of the Discharge Monitoring Report (DMR), any month where "no discharge" occurs, enter "No Discharge" in the form in place of entry data.

Sediment limits reflect the state-wide initiative to decrease the loading of solids discharging into the tributaries of the Chesapeake Bay (currently impaired per the [303d list](#)¹ for sediments). Impaired waters are identified on the State 303d list as stated in the draft permit under Definitions and Appendix A. Pursuant to the Clean Water Act 402(o)(3), the Department cannot allow effluent limitations to violate water quality standards, regardless if the receiving water is impaired. On an application for coverage (notice of intent (NOI)) permittees must identify if their facility is discharging to impaired waters.

Another impact of the discharge is a resultant of the antifouling paint properties - aquatic pesticides. Untreated, the discharge will have metallic toxicity and sediment loadings. To ensure waters of the State do not receive discharges which have the potential to cause harm to the environment, the Department has assessed that this discharge requires effluent limits.

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<http://www.mde.state.md.us/programs/Water/TMDL/TMDLHome/Pages/programs/waterprograms/tmdl/maryland%20303%20dlist/index.aspx>

The Clean Water Act requires that each discharger is responsible for the quality of its discharge. There is no waiver based on the existence of other polluters, worse offenders, or other sources of ambient pollution. The Act requires all to remove pollutants to the best extent practicable and to the extent necessary to protect the receiving waters.

Subcategory – Maintenance Activities

- **Using “secure” what do we mean - people reside on boats, locking out of marinas is not an option.**
- **MDE doesn’t have jurisdiction to include requirements about spray painting and sanding**
- **Quantify how much sanding is a problem.**
- **Technology of ablative anti-fouling - while the paint is performing as designed is the vessel owner in violation under prohibited discharges?**
- **Consider how this [painting requirements] affects a boater painting their own boat at a marina, what is entering the environment? Define the intentions of the section.**
- **Any hard paints are formulated to release toxic materials; therefore boats sitting in a marina could generate toxic readings in excess of power washed boat discharges.**
- **How can in-water cleaning of boats, hard paint only, be okay without recognizing that whatever is removed from the boat bottom is 100% in the surface waters of the State?**
- **TBT was banned on the majority of recreation boats in 1988, is this really needed? Contact MTAM and see if they are still working with boats painted in TBT otherwise delete section.**
- **Removing anodes from hulls on steel and aluminum vessels is not practical (involves welding).**
- **Removing anodes prior to washing is not practical as the vessels they repair are steel hull and have dozens of anodes welded on.**
- **Sacrificial anodes - not always practical insert “where practical remove any...”**
- **Why is “oils” in this section [Part IV - Section D3b of the draft permit] it doesn’t belong? Finding a green soap is much easier said than done. How is a boater supposed to determine a soap’s toxicity - change or delete this section.**

Department’s response to comments:

Pursuant to the Clean Water Act, the Department’s intent of the permit is to limit the potential to cause environmental degradation to the waters of the State from storm and wastewater discharges. Maintenance activities such as sanding and spray painting result in airborne particulates that have the ability to enter the surface waters by commingling with storm water, thus entering the waters of the State. To address potential pollution from maintenance activities, the Department included conditions that intend to prevent or minimize the ability for pollutants to become entrained in storm water. During discussions and input provided by the Marine Trades Association of Maryland (MTAM), “secure” was a term chosen by their marina operators as an

understood practice. Work areas are secured when measures are taken to ensure that resuming work on the next day will not require much start-up time, but will provide protection overnight, minimizing the potential to discharge pollutants. Examples may include tarping an area and removing paint cans and brushes from exposure by placing them in an enclosed building, etc.

Preventative measures must be representative to the extent of the maintenance activity being performed. Examples of preventative measures in alignment with this requirement (See PART V-Section B.7) can range from encompassing an entire boat with shrouding when sandblasting the bottom of a boat to placement of a drop cloth under a rudder while grinding or filing. If a person wanted to use a scotch pad to touch up the brightwork, they will need to find a way to sand where the fiberglass particles won't get into the surface water. Persons must take appropriate measures prior to, during and after performing the identified maintenance activities in order to ensure the exposure to storm water is eliminated (or minimized).

Paint mixing, solvent transfers and equipment clean up are maintenance activities that are covered under this permit as possible sources of pollutants which have the ability to discharge to waters of the State via storm water or overspray. Methods used by a permittee to satisfy the containment requirement shall be identified in their SWPPP. Examples include: paint mixing can be performed in a plastic solid box to ensure it does not spill onto the ground, and/or solvent transfers can be performed within a non-corrosive solid box beneath the point of transfer to capture any drips or spills. Equipment cleaning operations depend on the type of equipment and activity being performed. Options are available to the permittee and it is the responsibility of the permittee to determine best management practices for their operations.

Antifouling paint manufacturers are required to identify hazardous components for each of their products on their respective material safety data sheet (MSDS); these components co-mingle in wash water discharges. The Clean Boating Act (CWA Sec. 312(o)) requires EPA to develop management practices to control pollutant discharges associated with the incidental discharge from a recreational boat during normal operation. The Clean Boating Act amended Sec. 402 of the CWA to specifically state that no permit shall be required if the discharge is incidental to the normal operation of a vessel if the discharge is from a recreational vessel.

As identified by the [EPA's Vessel General Permit](http://cfpub.epa.gov/npdes/vessels/vgpermit.cfm)¹ (VGP) [website](http://cfpub.epa.gov/npdes/home.cfm?program_id=350)², while a vessel (military & recreational) is in operation, antifoulant paints (and their leachate) are considered to be incidental discharges from the normal operation of a vessel. While it is possible that leachate may cause toxic discharges in excess of the ambient water quality standards, the EPA considers this to be an incidental discharge normal to the operation of a vessel. Additionally, Organotin Antifouling Paint Control Act (OAPCA) limits the release rates for antifouling paint coatings. However, if maintenance is being performed on the vessel - this is no longer considered to be an "incidental discharge from the normal operation;" therefore, the State regulates cleaning of a vessel bottom and similar discharges within this permit. In order to establish an achievable measure

¹ <http://cfpub.epa.gov/npdes/vessels/vgpermit.cfm>

² http://cfpub.epa.gov/npdes/home.cfm?program_id=350

that allows the Department's inspectors to evaluate pollutant exposure for in-water cleaning of vessels, this permit regulates washing of boat bottoms painted with soft abrasive paints or paints which create a visible plume, in that it prohibits this activity while the vessel is in water and prohibits the removal of any paints while the vessel is in the water.

Although TBT was banned from use in 1988, the potential for TBT to be in use at a marina eligible for coverage by this permit still exists. Additionally, as stated earlier in this document (see Category C [Scientific Data and Research of Limits](#)), not all marinas have the liberty of knowing the type of paint each boat has been painted with. As of December 2003 the registrations to manufacture the raw material were cancelled and in December 2005 the last registration to manufacture antifouling paint containing TBT was cancelled. The presence of antifouling paint containing TBT is a possibility. The use of TBT paints is prohibited (unless authorized by the Maryland Department of Agriculture), but the Department cannot assume the elimination of TBT-containing paint within the past five years; therefore, the permit includes conditions to protect the environment. (Also, see [Annotated Code of Maryland § 5-902](#)¹)

The use of a sacrificial anode is to provide galvanic protection of a metal part. This is achieved by using a less anodic metal than the one needing to be protected (managing the pitting of the dissimilar metal) and most suitable for the water environment (salt versus fresh). New Jersey Sea Grant states that "The amount of lead in the wastewater can be greatly reduced by removing the sacrificial anodes prior to pressure washing". This prompted the Department to add a statement in the draft permit acknowledging the removal of the anode would decrease the concentrations of lead in the discharge and require anode removal prior to washing; however, based on the comments received during the comment period, removing the anode is not always practical. In consideration of such, the final permit has been modified to require best management practices of proper disposal or recycling of anodes, if removed.

The Department had added a section in the draft permit entitled "Vessel washing other than boat bottoms painted with anti-fouling paints"; however, this section contained only recommendations and as discussed earlier in this document (Category D - [Subcategory Enforcement of Violations](#)), all suggestive language has been moved to a guidance document. Oils can be introduced to ground or surface water by persons cleaning off a boat and passing over an engine block. Non-toxic examples of cleaning agents can be found in the [Clean Marina Guidebook](#)². Although labeling for commercial products can be convoluted, the Department suggests use of products approved under [EPA's Design for the Environment Safer Product Labeling Program](#)³ or products clearly labeled as phosphate free.

Subcategory – Disposal

- Clarify how to properly dispose of solids from wash water? Costs?
- New waste stream is now created and small businesses do not have a compliance officer which knows BMPS or methods for disposing waste.

¹ <http://www.michie.com/maryland/lpExt.dll?f=templates&eMail=Y&fn=main-h.htm&cp=mdcode/dea9>

² <http://www.dnr.maryland.gov/boating/cleanmarina/guidebook/MDCleanMarinaGuidebook2008.pdf>

³ <http://www.epa.gov/dfc/pubs/projects/formulat/saferproductlabeling.htm>

- **If a marina allows boaters to do their own work, the marina now is responsible for inserting themselves into cradle-to-grave change of responsibility and incurring more disposal costs.**
- **Citizens and business operators don't understand RCRA, MDE land Mgmt and local ordinances.**
- **Do they have to bring paint chips to household hazardous waste day? If marinas put them in 55 gallon drums are they hazardous waste?**
- **Make more information available for "proper disposal".**

Department's response to comments:

The Department recognizes that individual municipalities and counties have different standards and requirements associated with disposal of solids. To ensure a permittee correctly satisfies the local jurisdiction's standards, the permit requires permit holders to contact their local authorities. As a general statement, proper disposal, at a minimum, does not mean: disposing back into the water; and/or moving to a location where it will not discharge back to the surface water via storm water. Because the byproduct may qualify as a hazardous waste, it is the permittee's responsibility to determine whether or not a hazard is present and dispose of such byproducts per RCRA requirements. Again, this permit addresses many facilities throughout the State and the Department cannot make statements on a case-by-case basis in this permit. The permittee must take individual ownership and responsibility for their facility and its contents accordingly.

While the Department can develop guidance with regard to best management practices for disposing of wash water, the permittee must take individual ownership and responsibility for handling wastewater created from washing boat bottoms and associated equipment. Each permittee is responsible for evaluating its operations and ensuring that discharges of storm water and wastewater are not negatively impacting the waters of the State. The disposal costs associated with wash water varies for each facility and is dependent upon the manner in which the facility chooses to comply with the effluent limits.

Due to the nature of owning property, legally, any facility would be responsible for any activity or material found at their site. This permit identifies that permittees are required to provide mechanisms to either collect and dispose of waste or provide notice to their facility users as to what options are available for them should the facility opt to not collect materials for disposal. The language within the permit was developed with the assistance and feedback provided to the Department by marine trade organizations. With regard to waste disposal of hazardous materials that could be generated, facilities covered by this permit are required to comply with applicable state and federal regulations, including Resource Conservation and Recovery Act (RCRA) and the Department's Land Management regulatory requirements.

As there are many wastes which can be generated by a boater performing their own maintenance (various petroleum products, polishes, lacquers, etc.), permittees should be mindful of these requirements and their facility users' activities. Placement of something in a 55 gallon drum does not necessarily remove its potential for pollutant discharge or exposure. Per EPA's No Exposure Certification NPDES Form 3510-11, "A

storm resistant shelter is not required for the following industrial materials and activities...drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak. "Sealed" means banded or otherwise secured and without operational taps or valves..." Additionally, mixing of materials may result in a greater waste stream than if a permittee developed appropriate procedures for specific products. If a permittee determines that they cannot or will not dispose of the waste generated at their facility, they are responsible for determining an alternate means or require users of their facility to perform this action appropriately. An example would be for signage posting or establishing a contract inclusion statement such as: for any persons applying antifouling paints, any used cans shall be either (a) taken to the maintenance shop for proper storage (under cover and in an controlled leak-proof pan) or (b) users must remove from this property, take to their residence and dispose at a household hazardous waste day.

Subcategory – Management Requirements: Gray water

- **A tiny percentage of recreational vessels have gray water storage, so is there data suggesting gray water is a problem in marinas? If so what are the particular areas of concern?**
- **[We] are not aware of any [gray water] removal facilities in Maryland; where are they [and] how can they be found?**
- **How can marinas document they have complied with these requirements?**
- **Gray water - Back [recommendations] with science or delete [them from the permit.**
- **Restrooms and showers 24 is great, why did we remove it?**

Department's response to comments:

In response to the comment which states "a tiny percentage of recreational vessels have gray water storage"; this permit has been written to address all facilities which provide boat and vessel maintenance, thus covering facilities that maintain vessels other than just recreational. Since this permit covers a range of facilities whose boat and vessel types vary, percentages do not dictate narrative requirements identified in the permit. Likewise, boats may also have gray & black water combined tanks which could discharge to a pump-out station (there are many [pump-out locations](#)¹ throughout the State and easily accessible). For information associated with gray water and its impact to surface waters, see the following report to congress: [Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less than 79 Feet](#)².

To clarify, Part IV - Section D.4(a) of the draft permit was a recommendation; the Department will address the comment by revising the final permit to reflect that gray water discharges are not directly regulated under this permit. The Department has decided to provide information related to gray water and its management in the guidance document.

¹ <http://www.dnr.state.md.us/boating/pumpout/locations.asp>

² <http://cfpub2.epa.gov/npdes/vessels/reportcongress.cfm>

Suggesting facilities maintain restrooms and showers 24/7 was omitted from the draft permit based upon discussions and input provided by the Marine Trades Association; the association expressed concerns regarding potential vandalism, sewage problems, etc. In consideration of such, the Department modified the requirement to read as a recommendation and moved the language to the guidance document (as discussed in Category D - [Subcategory Enforcement of Violations](#), all suggestive language has been moved to a guidance document).

Subcategory – Management Requirements

- **Regarding invasives, reword paragraph to acknowledge cleaning boats prior to launching MD waters and when they come out if they may travel elsewhere.**
- **If an owner dives on their own boat, will they have to certify themselves in writing?**
- **Will marina staff have to check the certification for each diver?**
- **Requiring voluntary practices bans the in-water cleaning and this practice will be allowed in open water and at private docks.**
- **Bottom paints - this is not necessarily practical for race boats - is “should” a requirement or a suggestion?**
- **Collection of material removed - does this mean zincs and barnacles and slime?**
- **What are soft materials? Its impractical to collect materials from a vessel.**

Department’s response to comments:

Regarding the comment about invasive species, laws and regulations that help protect Maryland’s native and naturalized species are as follows:

- *Natural Resources Article, [§4-205.1](#)¹, Annotated Code of Maryland*
- *Aquatic Nuisance Species Regulations, COMAR [08.02.19](#)²*
- *Non-tidal Importation of Fish, COMAR [08.02.11.04.K](#)³*
- *Aquaculture, COMAR [08.02.14.10](#)⁴*
- *Zebra Mussel-Free Certification, COMAR [08.02.11.11](#)⁵*

Requirements related to exotic and harmful species are the responsibility of DNR; this prohibition is related specifically to discharges which are regulated by the Department. The Department will add management recommendations to this permit’s associated guidance document which supports DNR’s request to remove any growth to ensure minimal transport of potential aquatic nuisances.

In regards to divers, this is a management requirement of the permittee; therefore, it is at the permittee’s discretion to allow for owners to dive at their facility - many facilities have insurance clauses which require liability waivers to be signed or no-swimming/wading in the marina, etc. Certification procedures for “clean divers” can be

¹ <http://www.michie.com/maryland/lpExt.dll?f=templates&eMail=Y&fn=main-h.htm&cp=mdcode/dea9>

² http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=08.02.19.*

³ <http://www.dsd.state.md.us/comar/comarhtml/08/08.02.11.04.htm>

⁴ <http://www.dsd.state.md.us/comar/comarhtml/08/08.02.14.10.htm>

⁵ <http://www.dsd.state.md.us/comar/comarhtml/08/08.02.11.11.htm>

found at the [DNR's Clean Marina Initiative](#)¹ website. Most permittees/facilities require contractors to sign-in upon entry for insurance purposes; showing proof of insurance and a document certifying they are "certified as a clean diver", which requires no additional time on behalf of the permittee.

The comment which refers to the necessity for in-water cleaning of race boats, infers that the Department should offer a waiver for certain types of vessels; the Department cannot offer such an exemption. As the release rates for metal-based antifoulants is highest upon initial application, the permittee should ensure that boat/vessel owners are cognizant of such. To better control pollutant discharges, the Department suggests that a permittee's best management practices include asking boat/vessel owners about the paint used and when the boat was last painted. This recommendation is included in the guidance document.

Soft materials require no quantification - as to the impracticality of collection, see both the Debris Act of 1887 and COMAR 26.08.02.03, "the waters of the State may not be polluted by any material, including floating debris, oil, grease, scum, sludge and other floating materials attributable to sewage, industrial waste, or other waste in amounts sufficient to...create a nuisance". If the amount of material being removed from a boat or vessel fills in a channel or shoreline (even over time), a problem would arise for both aquatic species and navigation: this includes, but is not limited to, sacrificial anodes, running gear, collectable natural materials being removed from the vessel, etc.

E. Category: Storm Water Management

Concerns raised during public comment:

- **Assumes a marina has the treatment system in place**
- **We have an MS4 drain into one of their slips - it needs to be addressed since it discharges trash, oil and soil.**
- **In most marinas, storm water running off the roads runs right into the marina.**
- **How is the marina going to manage what comes in externally from what the boat owners have created?**
- **How do you address severe weather like a hurricane or natural disaster? No consideration for natural events that occur.**

Department's response to comments:

In reference to the comment regarding an assumption that a marina has a treatment system already in place, "treatment system" refers to any form of control measures used to treat the boat bottom washing to meet the effluent limits. Where storm water comingles with wash water, the permittee must sample wash water prior to the comingling to ensure no dilution occurs and the sample remains indicative of the quality and quantity of the typical discharge [EPA's Multi-sector General Discharge Permit 2008](#)².

¹ <http://www.dnr.maryland.gov/boating/cleanmarina/>

² Pg. 110 http://www.epa.gov/npdes/pubs/msgp2008_part8.pdf

In relation to external sources of storm water, permittees are only held accountable for the activities and discharges under their direct control. Furthermore, if a facility has a storm water outfall discharging onto their property and it contains anything that may cause visible oil sheen, persistent foam, floating solids or a discoloration, they should notify/alert the owner of the discharging outfall. This may be a private owner or a county/locally owned municipal separate storm sewer system.

In considering a natural disaster, the permit includes the standard condition for all NPDES permits provided in U.S. EPA Regulations at [40 CFR §122.41](#)¹ and [122.42](#)². These regulations stipulate how a permittee can protect themselves and their discharge either via a bypass or upset. Facilities must satisfy the requirements established by 40 CFR 122.41 [\(m\) – bypass and \(n\) – upset](#)³.

Subcategory – Storm Water Pollution Prevention Plan (SWPPP)

- **MDE and DNR (clean marina) should work together to develop a SWPPP template to avoid duplication and/or unintentional omission. MDE should approve DNR's template.**
- **Provide education or examples of effective SWPPPs.**
- **The wording is vague and are recommendations.**
- **Training - Language is written for large facilities - small facilities will have a hard time meeting requirement and adequate training may cost money. How does a volunteer community marina without staff meet this requirement?**
- **How is one qualified? What qualifications are necessary?**
- **Absorbent pads [identified in the draft permit Appendix A] could potentially create a violation of the clean air act and disposal issues.**
- **Engine Maintenance and Repair Areas - suggest deleting???**
- **Erosion and Sediments – Clarify goal of control as this appears to create hardened/impervious surfaces**

Department's response to comments:

In promoting congruency of government, the Department has been working with DNR to avoid duplication of effort and contradictory expectations during the development of guidance related to the Storm Water Pollution Prevention Plan (SWPPP). The information provided in guidance should not be considered as all-inclusive or limiting by nature. The Department encourages permittees to evaluate their own operations and devise a plan that offers the best methods of compliance with applicable state and federal standards. This permit was written for all facility sizes; in the event that there is one person on staff, obviously they will be responsible for all actions of the permit and therefore can tailor their needs accordingly.

¹ Pg. 238 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=41&TYPE=PDF>

² Pg. 243 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=42&TYPE=PDF>

³ Pg. 242 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=41&TYPE=PDF>

The Department will provide educational information to permittees via the Department's website upon permit adoption. The information to be provided will include examples of successful and effective management practices, as well as, identify unacceptable measures. The Department provided Appendix A of the draft permit as a thorough guidance document for permittees to use for the identification of elements to be considered when developing a SWPPP, therefore the information shouldn't be viewed as permit requirements - this includes the use of absorbent pads. To alleviate any confusion of permit requirements, the Department has moved all recommendations or suggestions to a guidance document. The essential components (required areas) of the SWPPP are identified in Part V of the permit. The EPA has developed fact sheets which permittees can also utilize in developing their SWPPP.

In response to "what is a qualified person", this would be personnel assigned to complete the task of sampling the storm water. As a requirement of the permit, this task would be assigned by the Pollution Prevention Team and would typically be a person who knows how the facility operates and understands the site's BMPs and corresponding SWPPP so that forms associated with sampling are completed and include the appropriate information. DNR Clean Marina Initiative has excellent tools and templates available for use on their website as well as holds an annual. As each facility varies, so will their SWPPP; permittees must identify the specific practices necessary to effectively implement a successful SWPPP for their facility.

Training was a requirement of the previous permit, as well as, a required BMP for all industrial discharge permits. The permit allows a facility to decide how to train employees to uphold compliance with this permit and then communicate the chosen training program in its SWPPP. A volunteer community marina can denote persons to lead the pollution prevention team.

The Department recognizes facilities that have coverage under this permit for their exposure to maintenance activities, including engine maintenance repair, work on engines and other mechanical parts which contain oils and other petroleum products. This activity requires BMPs which shall be addressed in the SWPPP to ensure this pollutant exposure receives the adequate protection, as necessary.

The draft permit, PART V - Section B.7.h reads: "Erosion and Sediment Controls. Permittees must stabilize exposed areas and contain runoff using structural and/or non-structural control measures to minimize onsite erosion and sedimentation and the resulting discharge of pollutants." The Department does require a BMP to include hardened/impervious surfaces; rather, we interpret such as a requirement for facilities to reduce the amount of erosion on their site and control sediments from discharging to surface waters. Examples for a marina may include: ensure adequate stabilization of bulkheads, reduce sediment discharges for drive-able ramps, prevent conveyances of storm water via a pipe or ditch from scouring or eroding soils where discharge occurs, etc.

F. Category: Monitoring and Reporting

Concerns raised during public comment:

- **Provide education to marina operators on how to setup proper monitoring program.**
- **The permit seems very report heavy.**
- **15 minutes is impractical and unsafe within the first 15 minutes. Soften so not in the first 15 – it's an unrealistic time frame.**
- **Suggest add information on how to transfer ownership (record retention).**
- **How would a marina applying for coverage have records for 3 years prior to new requirements, if they change ownership/operators are they required to do this also? Request retention going forward but not retroactively.**
- **Why are we required to keep records? What could you possibly be looking for down the road/ Is that fining us for not being able to find five year old records?**
- **Inventory of Exposed Materials & Spills and Leaks - should read from the effective date of the permit, report to proper authorities any spills and maintain those files for three years.**

Department's response to comments:

The Department believes storm water sampling explained in Appendix C of the draft permit is self-explanatory. Most holders of this permit will not be doing their own wastewater quality analysis and will need to contract a professional laboratory to retrieve (or advise on how to retrieve) the samples and to analyze the wastewater. The Department will continue to work in conjunction with [DNR's Clean Marina Initiative](#)¹ to hold workshops addressing educational and informational matters. A virtual copy (video) of future workshops will be made available on the (DNR and/or MDE) website. Further guidance may be provided in the future, as needed.

The purpose of monitoring is to determine compliance with the permit conditions, as well as, establish a basis for enforcement actions. The permit includes both effluent monitoring and visual storm water monitoring. In response to the comment received regarding a grab sample, the Department has refined the definition of grab sample to read: "means an individual sample collected over a period of time not exceeding 15 minutes". The intent of the definition is to distinguish between a composite sample which is a collection of samples taken over period of time. The permit requires grab samples to ensure that at any one moment, the permittee can attest that they meet the effluent limits identified in the permit. The permit also requires that facilities sample at a time which is indicative to the quality and quantity of the discharge. Storm water sampling has been modified to align with the EPA's MSGP which requires a minimum of one sample to be collected within the first 30 minutes of a measurable storm event.

¹ <http://dnr.maryland.gov/boating/cleanmarina/>

Visual monitoring was included to align with the EPA's MSGP. The Department included a visual monitoring form (Appendix B of the draft permit) as an accountability measure for facilities to determine regular protection of the environment from pollutants discharging during precipitation events. The form provides Department inspectors a uniform method to ensure permittees are following through with permit requirements.

Parallel to the federal regulation, records retention is a standard condition for all NPDES permits: [40 CFR §122.42\(j\)](#)¹ states:

“Monitoring and records (2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by [40 CFR part 503](#)²), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.”

The Department has modified the final permit to establish the retention time of records to be at least 3 years. While the Department realizes establishing a historical record prior to the effective date of this general permit may be approximate in nature, a reasonable effort is expected for facilities that are obtaining initial coverage.

From the comment, the Department is inferring that the commenter is requesting that in order to receive a transfer of a permit, the initial permittee should have a transfer of ownership for records. Transfer of Authorization is covered under PART I - Section H of the permit, any additional items (i.e., records) for which a new permittee desires is at their own discretion. If a facility transfers authorization to a new owner, the “new” permittee would sign a transfer of authorization form and submit it to the Department for approval.

¹ Pg. 240 <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=122&SECTION=41&TYPE=PDF>

² <http://frwebgate3.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=xzWFAC/48/2/0&WAISaction=retrieve>