FINAL

Comment Response Document
Regarding the 2018 Revision to the Total Maximum Daily Load of Nitrogen and Phosphorus Point Source Technical Memorandum for the Baltimore Harbor in Anne Arundel, Baltimore, Carroll and Howard Counties and Baltimore City, Maryland

The Maryland Department of the Environment (MDE) has conducted a public review of the proposed revisions to the Nitrogen and Phosphorus TMDL for the Baltimore Harbor Watershed, specifically to the Point Source Technical Memorandum. The public comment period was open from April 5, 2018 through June 6, 2018. MDE received three sets of written comments.

Below is a list of the commenters, their affiliations, the date comments were submitted, and the number referenced to the comments. In the pages that follow, comments are summarized along with MDE's responses.

List of Commenters

Author	Affiliation	Date	Comment Number
Ms. Irene Shandruk	US Environmental Protection Agency	April 16, 2018	1
Ms. Holly Miller	Maryland Department of Transportation	June 6, 2018	2
Mr. Patrick DeArmey/Ms. Angela Haren*	Environmental Action Center/Blue Water Baltimore	June 6, 2018	3-20

* The commenters also provided comments on the tentative permit for the US Gypsum Facility. These comments are also addressed in this document.

Comments and Responses

1. The commenter references page 1, 4th paragraph: The following statement is made: "As a result of a permit request for the Envirotech facility, the WLA has been adjusted to allow for the discharge from the facility." This statement should be edited to indicate that the permit request for the Envirotech facility and subsequent WLA adjustments were made in 2015. A sentence should be added to indicate that the current WLA adjustment is the result of the United States Gypsum Company permit request. Please correct.

   Response: The sentence has been corrected and a sentence was added.

2. The commenter states the Phase II Watershed Implementation Plan (WIP) Wasteload allocations (WLAs) for the Cox Creek Dredged Material Containment Facility (DMCF) are 462,164 lb total nitrogen (TN)/year and 7,149 lb total phosphorus (TP)/year. This allocation has been reduced by 50% and split between the Cox Creek and Masonville DMCFs and any new Harbor facility as specified in the Harbor Overlay Permit (13-DP-3796). The technical memorandum proposes a reduction to the full Cox Creek DMCF TP annual load by 91 lb (from 7,240 lb to 7,149 lb) and the growing season load by 43 lb

(from 2,556 lb to 2,513 lb). The growing season load will changes from 1,278lb to 1256.5 lb. The commenter continues that MD Department of Transportation- Maryland Port Administration (MDOT-MPA) was already responsible for a 50% reduction in the WLA while other permitted facilities within the Baltimore Harbor watershed are responsible for a 15% load reduction by 2017 and a 33% reduction by 2025. Further reductions to the WLA will have significant impacts to facility operations. It would be MDOT-MPA's preference for the Cox Creek DMCF WLA to not be further reduced.

Response: In the Chesapeake Bay Phase II WIP, the MPA has an allocation for the DMCFs located in the Baltimore Harbor. This allocation was derived using the current Baltimore Harbor nutrients TMDL allocation that was transferred from Hart-Miller Island DMCF and is now shared between Masonville and Cox Creek DMCFs. As required in its discharge permit, the Masonville DMCF TN, TP and TSS loads (net) were required to become zero by 2015, therefore, the current allocation to the Harbor DMCFs were reduced by 50%. The Baltimore Harbor nutrient TMDL was not updated with this information. Therefore, the reallocation of TP from the Cox Creek facility is part of the reserve allocation generated in the Chesapeake Bay Phase II WIP. A footnote was added to the technical memorandum for clarification.

3. The commenter states that MDE has not provided adequate information to the public to allow for robust and informed public comment regarding the NPDES permit renewal and the Baltimore Harbor Nutrient TMDL waste load reallocation.

   Response: The Department's Wastewater Permits Program is always looking for better ways to communicate rationale for tentative or final determinations. Other responses to comments, addressed below, respond to specifics concerns about the information provided during the tentative determination comment period. In this "Response 1" the Department responds to the comment that "MDE has not provided adequate information to the public". The Department is required to abide by COMAR 26.08.04.01-2 when processing discharge permit applications. The regulation lays out specific documentation that the Department is to make available when a tentative determination is published. The Department complied with and/or exceeded all of the requirements of that regulation. One of the ways in which the requirements of the regulation were exceeded is that the regulation says that Department must prepare a fact sheet only for major facilities. This permit was not for a major facility yet we still prepared a fact sheet.

   40CFR130.7(6)(c)(ii) states that TMDLs must be subjected to public review as defined in the State's Continuing Planning Process for Water Quality Management (CPP). Within the CPP, the public participation process is to notify stakeholders and to provide the TMDL documentation for public review for a minimum of 30 days. In this case, the revised document, the Point Source Technical Memorandum, was made available on MDE's website along with previous documents. Stakeholders were notified of the public comment period and the public comment period was extended at the commenter's request.

4. The commenter states the information in the documents [Notice of Tentative Determination State Discharge Permit 17DDP0221, NPDES Permit MD0001457 Public Notice (4/5/18) – 'Public Notice', Revised Technical Memorandum for Significant Nutrient Sources in the Baltimore Harbor Watershed Document Version (3/5/18) – 'Technical Memo', Draft Fact Sheet Application Number 17-DP-0221 (Revised 1/17/18) – 'Fact Sheet', Tentative Determination Draft Permit NPDES Number MD0001457 (Revised 3/18/18) – 'Draft Permit', and Permit Renewal Application NPDES permit No. MD0001457] released for review does not support MDE's decision to "correct" the Waste Load Allocation (WLA) for US Gypsum and use a corrected flow rate of 17,000 gallons per day (GPD). As described further, the average flow from this facility is approximately 10,000 to 11,000 GPD. This flow rate should be used to calculate the WLAs for US Gypsum. MDE does not adequately explain why the 7,000 GPD volume that was initially used to calculate the WLA was an "error" and why 17,000 GPD is now deemed appropriate to formulate a "corrected" WLA for the facility. The information in the documents reviewed supports the use of a lower flow rate than 17,000 GPD and the commentor suggests that MDE recalculate the WLAs using a truly representative flow rate. In the Fact Sheet at Page 10 Table 1 Outfall Characteristics, the total flow is stated as 10,587. Similarly, in the Permit Application at Page 5 Part II the Permittee lists their Outfalls and their average flows in GPD, these flows add up to 9,440 gpd. The Permittee is also required to notify MDE if their average flows exceed 4,960 GPD for Outfalls 001 and 005 combined and 5,700 GPD for Outfall 002. This all suggests that a representative flow for the facility is around 9,000-11,000 GPD.

   Response: The information from the timeframe that the TMDL was established does support a correction of the WLA. The fact sheet refers to the previous fact sheets and to inspection records which demonstrate higher flow rates. Those documents are available as part of the permit record. Additionally the modification has been coordinated with the public process for the Revised Final Point Source Technical Memorandum. The notice for the Revised Final Point Source Technical Memorandum was issued on April 5, 2018, and the comment period was open initially from April 5, 2018 through May 7, 2018 and then extended as requested by the commenter through June 6, 2018. This change to the Revised Point Source Technical Memorandum acknowledges a change is necessary to correct the allocation with the facility flow rates. Our permit issuance notice cross referenced the wasteload allocation revision. The commenter acknowledges reading through both documents and then commented upon them. The Department finalized the change concurrently with the effective date of this permit. The conclusion is that the commenter can access the information that supports the decision to correct the WLA.

5. The commenter states MDE appears to be basing their WLA solely on what the Permittee is capable of complying with instead of basing the WLA on the assimilative capacity of the receiving waterbody and the representative flow from the facility. The Parties assert that the WLA should be determined by what will comply with the TMDL and not what will absolve a discharger of its previous noncompliance.

Response: The error becomes clear when evaluating the noncompliance. However, correcting the WLA at this time is based on the identification of an error, not based on absolution of a noncompliance.

6. The commenter states the Fact Sheet displays two instances in which MDE failed to take any enforcement or compliance action for violations of permit conditions. Both instances are discussed in the Fact Sheet, at Page 9 Part IV, in which MDE notes that the Permittee failed to monitor and report pollution discharged from Outfall 002 after the last permit renewal and that the Permittee did not monitor and report a year of daily pH data from 2013-2014. The second compliance issue is that the Facility has exceeded both its Annual and Growing Season total nitrogen loads for the last three years. There is no indication that MDE took any action regarding either compliance issue above. Both of these compliance issues impact the Nutrient TMDL because MDE did not have accurate data on the facility's nutrient discharges during the previous permit. However, despite this, MDE is nonetheless proposing to change the Facility's nutrient WLAs, essentially rewarding the noncompliance with less stringent effluent limits. The commentor asks MDE to consider some penalty action against the facility for its past noncompliance. This would signal to the rest of the industry that TMDL WLAs must be complied with and taken seriously.

   Response: The fact sheet and permit process are not intended to take enforcement action on a facility. They also do not document what an enforcement action was taken. It should be noted however, that these were not water quality exceedances due to the fact that the WLA assigned to the permit was an error and was not supported by the science used in the TMDL. No water quality exceedances occurred. As an organization whose interest is in the water quality of the watershed, that hopefully is good news to the commenter.

   The Department is hopeful that the commenter supports accurate science as the basis for imposing penalties to protect TMDLs. The permit process is intended to identify and set limits that are protective of Maryland's valuable water resources, not to be manipulated to serve as a reward or to set an example. The Department strives to ensure that issued permits are not arbitrary, and that they are science and fact based. United States Gypsum Company has provided reasonable signals to the industry of the importance of complying with permits which relate to improvements of the Harbor and Bay. The substantial upgrade related to the previous NPDES permit was the upgrade of their WWTP by installing a filtration system for approximately $430,000, which replaced their sand filters, in 2015/2016. This cartridge based system decreased the backwash and was chosen to reduce pollutants for compliance with their permit.

7. The commentr states the documents reviewed do not provide for adequate stormwater protections at the facility. The Fact Sheet notes at Page 5 that the 15MM general permit would have more specific stormwater requirements for the facility's operation. Again, on Page 11-12 of the Fact Sheet it is noted that the facility is eligible for SW12 or 15MM coverage but does not have it yet. The Fact Sheet also mentions the site's Stormwater Protection Plan but that Plan is not contained in the permit documents nor is there any statement in the fact sheet that this plan was reviewed and is adequate.

Response: During the site visit the permit writer toured the site and reviewed the industrial storm water pollution prevention plan (SWPPP). Site visits begin with a review of the map from the SWPPP, to familiarize the permit writer with the facility. During this time, a cursory review of the SWPPP takes place. Then the permit writer visually inspects those portions of the facility with stormwater controls. Department staff also went through all outdoor storage areas, all material transfer points, observed their ponds and established outfalls. Pages 5 through 8 of the fact sheet document that the SWPPP is adequate according to their previous permit. (NOTE: The site visit is conducted as an investigative matter to help determine the terms of the proposed permit. Thus when a visit is conducted we compare what we find against the current permit and not against a prospective future draft permit.) No specific deficiencies were noted, in the context of a permit writer visit, and based on the walk through, the SWPPP was sufficient.

8. The commenter states neither the Draft Permit, the Permit Application, nor the Fact Sheet contain any information regarding monitoring stormwater or what the effluent limits for the stormwater discharge are or will be. Additionally, the Draft Permit does not contain an effluent chart for stormwater Outfall 006, there are no parameters to be monitored or limits for any parameters for the stormwater discharges at Outfall 006.

   Response: The previous permit lacked any benchmarks, or visual monitoring, which would establish whether their controls are adequate. This is the benefit of the latest version of stormwater permits. Both the 12SW and 15MM are examples of industrial stormwater permits, which contain industry specific controls in addition to monitoring and verification. This permit requires that they apply for the 15MM which does have specific controls and monitoring that are available for the permittee and for the commenter to review and evaluate.

9. The commenter states MDE must ensure that this proposal and change to the WLAs of dischargers in the Baltimore Harbor Nutrient TMDL is also in compliance with the soon to be enacted Nutrient Trading Regulations that will be found at COMAR 26.08.11.01 et seq.

   Response: With the help of a stakeholder advisory group, MDE drafted and promulgated the regulation the commenter refers to. Any trade offered or sought by this operation would be required to be compliant with COMAR 26.08.11.01. Nothing in this permit is implementing a trade. Thus it is not subject to the trading regulation. There are a number of regulations that, if applicable, the permittee would have to deal with. It is unclear why the commenter brought up the trading regulation in particular, although admittedly the regulation does deal with complex subject matter. Perhaps this explains the commenter's first comment such that if a number of regulations were assumed to be applicable (but which in fact are not) it very well could appear that the Department's decision was lacking in providing information for the commenter to "make informed public comment."

The following comments are on the Tentative Determination Public Notice Comments – 'Public Notice'

10. The commentor states the Public Notice does not contain enough information regarding what changes are being made to the renewed US Gypsum Permit. The Public Notice does not state that the Annual and Growing Season Loads for total nitrogen and total phosphorus are increased and therefore less stringent than the corresponding loads in the previous permit. MDE must make it clear to the public that the facility is permitted to discharge more total nitrogen and total phosphorus than what was previously allowed. The Public Notice does not make it clear that the revised Waste Load Allocations (WLAs) will increase for US Gypsum and decrease for Millennium and Cox Creek.

    Response: The requirements for the Notice of Tentative Determination are in COMAR *26.08.04.01-2(B)*. This regulation spells out the information required in the Notice. The specific requirements are:

    (2) Publication of Notice of Tentative Determination.
    (b) The notice of tentative determination shall include:
    (i) The information in §B(1)(a) of this regulation;
    (i) The name of the applicant;
    (ii) A proposal to issue or not issue the permit;
    (iii) The type, volume, and location of the proposed discharge;
    (iv) Proposed permit limitations and conditions;
    (v) A brief explanation of the Department's tentative decision;
    (vi) If applicable, a proposed schedule of compliance;
    (vii) A brief summary, if appropriate, concerning the development of a site-specific criterion, use of a biological or chemical translator for derivation of permit limits, or a temporary permit modification; and
    (viii) Other information the Department considers necessary.

    Language from the Public Notice:

    For Outfall 002 - total residual chlorine (7.5 µg/l average, 13 µg/l maximum), dissolved oxygen (5 mg/l minimum), pH range (6.0 to 9.0), biochemical oxygen demand (7.0 lbs/day and 30 mg/l average, 10.5 lbs/day and 45 mg/l maximum), total suspended solids (7.0 lbs/day and 30 mg/l average, 10.5 lbs/day and 45 mg/l maximum), enterococci (35 MPN/100 ml maximum), total nitrogen (466 lbs/growing season, 933 lbs/year), and total phosphorus (73 lbs/growing season, 155 lbs/year). The permit includes requirements to obtain the 15-MM General Permit for industrial stormwater coverage.

    As a result of this permit renewal, an update to the Baltimore Harbor Nitrogen and Phosphorus TMDL Point Source Technical Memorandum is being made. The allocations to this facility are being revised. This revision would shift allocation among facilities within the WWTP-WLA. The revised point source technical memorandum is available for public comment on the Department's website at www.mde.maryland.gov/TMDL. The reallocation of the Wasteload allocations does not affect the nonpoint source load allocations (LAs) or the overall TMDL.

The TD Notice included the limits, the brief summary of the revision of the total nitrogen and total phosphorus loads, and indicated that the allocations are being revised, including shifting allocations from other facilities. The associated TMDL point source technical memorandum was also available for public review. The correction of the error and shift in allocations is consistent with both the local and Bay TMDLs and is not considered to be less protective. The information was provided in the notice. Also the Fact Sheet and Draft Permit are provided on the website or upon request, which further spell out the rationale. Nothing was hidden from the public. The clarity of the information presented is validated in the commenter's comment. It was clear to the commenter that an increased load from this facility was being proposed.

The following comments are on the Revised Technical Memorandum for Significant Nutrient Sources in the Baltimore Harbor Watershed Document Version 03/18/2018 ("Technical Memo"):

11. The commenter states in general, the Technical Memo is not instructive or informative to members of the public; it lists the potential new nitrogen and phosphorus allocations but does not list or compare these allocations to the previous allocations. There is nothing in the Technical Memo that makes it explicit what sources are having their loads reduced and what sources are having their loads increased. The charts on Pages 2 and 4 note that the allocations for US Gypsum were updated but do not note which allocations from which sources were also updated in a corresponding move to offset the increases at US Gypsum. The charts must contain more information that allows the public to see the actual changes in allocated loads -- without this information it is very hard determine exactly what MDE is proposing. It is impossible to quantify from reading that document what the actual changes in load allocations are.

    Response: In general, the Department tries to provide information to anyone reviewing the documents. A description of the allocation adjustments was provided in the tentative fact sheet and the original and revised point source technical memoranda were provided online. Based on this comment, a footnote has been added to the technical memorandum indicating that the allocations to the Cox Creek, Millenium and US Gypsum facilities were modified in 2018. Please note: the Millennium permit is no longer active and the overlay permit for the Baltimore Harbor DMCFs, which includes Cox Creek, was issued in 2014 allocating half of the load allocated to the Cox Creek facility in the 2008 Baltimore Harbor TMDL.

12. The commenter states the Technical Memo does not reference any of the NPDES Permits for US Gypsum, Millennium, and Cox Creek that are impacted by the WLA reallocation. The Technical Memo must cross reference to these NPDES Permits so the public is made aware that the permits will be impacted and to allow the public to review those documents to provide more robust and informed public comments. See also the Response to Comment #11.

Response: A footnote has been added to the technical memorandum indicating that the allocations to these facilities were modified in 2018. Please note: the Millennium permit is no longer active and the overlay permit for the Baltimore Harbor DMCFs, which includes Cox Creek, was issued in 2014 allocating half of the load allocated to the Cox Creek facility in the 2008 Baltimore Harbor TMDL.

13. The commenter states it is unclear what the Technical Memo is proposing without also consulting the Fact Sheet, the Draft Permit, and the Application. If the Technical Memo is to stand alone as a public notice document, it must contain more information that is presented in a clear and concise way that will allow the public to understand what is being proposed. As it stands now the Technical Memo is not appropriately informative to the public and does not satisfy the basic tenants of public notice.

    Response: Please see the Response to Comment 11. In addition, for TMDLs, the public notice is the document published in the newspaper announcing the availability of the TMDL documentation for public comment. The TMDL documentation is provided through the Department's website for public review for a minimum of 30 days.

The following comments are on the Draft Fact Sheet Permit Number 17-DP-0221 Revised 02/17/2018 ("Fact Sheet"):

14. The commentor states The Fact Sheet contains contradictory and incomplete information regarding the reallocation and the "corrected" flow rate of 17,000 and does not make it clear why this change is not considered Backsliding. The Fact Sheet states in multiple locations that the upgraded facility and new Permit will use less water. At Table 1 on page 10 the Outfall Characteristics are listed and the total flow from the facility is stated as 10,587 gpd. This total flow is considerably lower than the 17,000 gpd "corrected" flow that MDE is proposing to use to recalculate the WLAs for US Gypsum. MDE inadequately explains why the 7,000 gpd used originally to calculate the WLA was an error and why 17,000 gpd is now appropriate to formulate a "corrected" WLA for the facility. MDE must explain the error more clearly to allow the public to understand why this decision was made.

    Response: Relaxation of an effluent limitation that is based on state standards, such as water quality standards or treatment standards are not allowed and considered backsliding, unless the change is consistent with CWA section 303(d)(4). Section 303(d)(4) may be applied independently of Section 402(o).

    CWA Section 303(d)(4) has two parts: paragraph (A), which applies to nonattainment waters, and paragraph (B), which applies to attainment waters. These are considered nonattainment water. Thus CWA Section 303(d)(4)(A) allows the establishment of a less stringent effluent limitation when the receiving water has been identified as not meeting applicable water quality standards (i.e., a nonattainment water) if the permittee meets two conditions. First, the existing effluent limitation must have been based on a total maximum

daily load (TMDL) or other wasteload allocation (WLA) established under CWA section 303. Second, relaxation of the effluent limitation is only allowed if attainment of water quality standards will be ensured or the designated use not being attained is removed in accordance with the water quality standards regulations.

Thus changing the limitation based on the WLA is allowed.

15. The commentor references page 10 Part IV stating the following information is missing: 1. An explanation as to why MDE took no enforcement/compliance action against the facility for its failure to monitor or report new parameters after the last permit renewal and for its failure to monitor and report daily pH from 4/1/13 – 2/17/14; 2. The exact dates, time period, and parameters that were not monitored and reported by the facility during the last permit cycle; and 3. An explanation as to how MDE resolved these data gaps.

    Response: [See the response to comment #6] The fact sheet does not prescribe compliance actions, nor is it intended to track compliance actions or their appropriateness.

16. The commentor references page 18, stating the following information is missing: 1. The last paragraph has the Permit Number for Cox Creek but does not have the permit number for Millennium; 2. The last paragraph describes the load reductions at Cox Creek with exact numbers but does not do the same for the reductions at the Millennium facility. The Fact Sheet also fails to state whether the load reductions at Cox Creek are for the Annual Loads or the Growing Season loads; 3. The loading chart in the Fact Sheet is not the same as the loading chart in the Technical Memorandum, the Fact Sheet chart does not contain the loads for the EnviroTech facility. This facility was added in 2015 and thus should have been included in the Fact Sheet last updated in January of 2018; and 4. This section is missing an explicit explanation of how the loads are being reallocated, specifically which loads are increasing, and which loads are decreasing. MDE should have provided charts with the original and proposed WLAs to aid in comparing the changes and to further inform the public's understanding.

    Response: 1) The table below the paragraph provides the Millenium permit information. It has an NPDES permit number of MD0001279. 2) The identification of WLA sources is provided in the Fact Sheet as a basis for the reallocation. The actual reallocated loads are shown in the TMDL's proposed revised final Point-Source Technical Memorandum. Listed there are the point source loads, including allocations for the growing season. This technical memorandum identifies, in detail, the significant surface water discharges of TN and TP used as modeling input when computing the TMDLs. These are conceptual values that are within the TMDL thresholds. Whereas, actual effluent limits and related permit conditions will be established at the time of permit issuance or renewal through the permit process. The Department expressly reserves the right to allocate the loads among different sources using the above mentioned permit process in any manner that is reasonably calculated to achieve water quality standards. With this clarification, all of the documentation has been updated to be consistent. The footnote for the Cox Creek facility has been modified based on other comments received during the public comment period. 3)

The table in the Fact Sheet is from the TMDL documentation as posted on MDE's website. The technical memoranda contains updated information. The entire load for US Gypsum is less than 1% of the entire allocation. After reviewing the additional loading from the EnviroTech facility, no change in the Determination is required. The updated information is provided with the change to the TMDL documentation. 4) Thank you for the comment. MDE will *consider* that approach in the future for communicating reallocations. A chart would show how small this plant's allocation is, which represents less than 1% of the entire allocation.

17. The commenter states MDE missed an opportunity to provide a clear and concise summary at Page 24 Part II Changes from the Previous Permit. This section of the Fact Sheet is arguably the most important section of the Fact Sheet. This is often the section that many public commenters view first in order to get a broad overview of the proposed changes to be commented on. This section for this Fact Sheet does not contain adequate information, the exact reallocation of the loads should be explicitly stated here, MDE's statement that the "total nitrogen and total phosphorus loading limits are updated" is vague and not sufficient to inform the public as to whether they are reduced or increased. It is often difficult for the public to understand the changes between permits by just reviewing the Draft Permit and Fact Sheet, the Changes from Previous Permit section is very valuable to individuals with less expertise in water permitting issues and therefore this section must be robust and explicit to give the public a clear and concise summary of the exact changes proposed by the new permit. The Parties request that MDE consider requiring more information in this section for future permits.

    Response: The Department has recently changed the format to include this section within the first pages of the fact sheet, not on the last page. Feedback such as this is helpful in providing improved communications to the public. That said, the purpose of this section is NOT to explain the changes that are being proposed. Instead it is only to alert the reader that changes (from the current permit) ARE being proposed. Then if the reader is interested in the rationale for a particular change the reader needs to THEN review those sections of the fact sheet that give the facts behind and the reasoning for the change being made. The fact sheet is broken into clearly defined and titled sections to try to make understanding of the document easy a reader to either consume the whole thing or to just review certain parts. If the reader is still uncertain after their review of the document, he/she may then make comment during the comment period asking for clarification on any particular point. The Department would respond to that question in a document such as this (i.e. a response to comments document). Purpose of the fact sheet is to explain why the Department has proposed what exists in the draft permit. So if a reader is interested in "why" the draft permit is as it is, they will need to digest respective rationale in the fact sheet.

The following comments are on the Tentative Determination Draft Permit Revised 03/16/2018 ("Draft Permit"):

18. The commenter states the following information is missing from the Draft Permit: 1. The Flow Diagrams on pages 23-25 do not show where the monitoring points are for the Outfalls. The public should be made aware of where the monitoring occurs; and 2. On Page 11 MDE should require that the Permittee monitor actual flows and not merely estimate them. The actual flow from the facility is crucial to determining whether the WLAs are met and the TMDL is complied with. Failing to require monitoring of actual flows does not aid in the promulgation of a protective TMDL.

    Response: 1) The Department's standard practice is to provide this information for use by the permittee, inspectors or the public by providing the coordinates and locations along with each table in the permit. Specifically coordinates are provided on Page 2 and Page 4. Additionally those pages contain descriptive locations for the monitoring points (see the second paragraph on those pages). 2) The estimation methods specified in the permit are considered by the Department to be an acceptable engineering approach for determining compliance for this discharge. The description on the table is measured, which is the preferred approach; however, they may also provide a method of estimating the flow through the provided methods.

The following comments are on the NPDES Permit Application 03/30/2017 "Application":

19. The commenter states the Application information does not support MDE's determination that the "corrected" flow of 17,000 gpd be used to recalculate the WLAs for the facility. As stated above, the Application on Page 5 shows the average flows from the facility's outfalls add up to less than 10,000 gpd.

    Response: [See response to comment #4 and 20.] The application provides information based on the current operation of the facility at a reduced capacity or staffing level, and a new treatment plant. It wasn't meant to provide information to support how the TMDL as established.

20. The commenter states the Application also fails to include any information regarding the "error" flow of 7,000 gpd that was used originally to calculate the WLAs. This information would aid the public's understanding of how the error occurred and why it should be corrected. As it stands now there is no clear explanation as to why MDE and the Permittee believe it appropriate to change the flow rate. It seems on its face the flow is being corrected to absolve the Facility's noncompliance without MDE taking any enforcement or compliance action.

    Response: The previous fact sheet did provide background on the flow at the time the TMDL was established. Looking to the current application doesn't provide any insight into how an error may have occurred. The relevant section of the prior fact sheet is provided below. The Department is committed to transparency with the public and permit limits based on sound engineering and good science.

VII. Outfall Details

Outfall or Monitoring Point #	Where will the Discharge be Monitored	What are the Waste Streams that contribute to the Discharge	Average Flow (mgd)	Comments	Outfall Coordinates (in 1000 ft)	
					Northing	Easting
001	Outlet of the 48-inch pipe	Noncontact Cooling Water; Storm water	64,000	Chlorine treatment	504.0	927.0
002	Wastewater exiting the last weir in the sump	Treated sanitary wastewater	17,000	Anaerobic digestion, UV disinfection	504.0	927.0
005	Outlet of the 48-inch pipe	Noncontact Cooling Water; Storm water	3,200	Chlorine treatment	504.0	927.0
006	Outlet of the 48-inch pipe	Noncontact Cooling Water; Storm water	0	No flow	504.0	927.0
		Total	**84,200**			

VIII. Detailed Assessment of Liquid Waste – Outfalls 001, 005 and 006

Type of wastewater in Outfalls 001, 005 and 006: noncontact cooling water and storm water			
Treatment Unit:	dechlorination		
Discharge Type:	intermittent	Period:	intermittent
Potential Basis for	The testing for chlorine is sufficient to assure that the wastewater is nontoxic to the		