



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Soil and Water Conservation Board
Virginia Administrative Code (VAC) citation	4 VAC 50-60
Regulation title	Virginia Stormwater Management Program (VSMP) Permit Regulations
Action title	In accordance with the Administrative Process Act exemption requirements specified in §2.2-4006 A8, this action will amend, modify or delete provisions of the regulations related to the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities (4 VAC 50-60-1100 et seq.) [Part XIV] and to other necessary related sections, including but not limited to, Part I definitions necessary to maintain consistency in definitions as a result of changes to the General Permit, and the VSMP General Permit Registration Statement form, or the creation of new forms, which are incorporated by reference [FORMS].
Date this document prepared	May 1, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this regulatory action is to consider amendments to the applicable portions of Virginia Soil and Water Conservation Board's Virginia Stormwater Management Program (VSMP) Permit Regulations in order to reauthorize and amend the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities (4 VAC 50-60-1100 et seq.) [Part XIV] (Construction General Permit). Regulations

developed under the federal Clean Water Act (33 USC §1251 et seq.) and §10.1-603.1 et seq. of the Code of Virginia require that VSMP permits be effective for a fixed term not to exceed five years [§10.1-603.2:2 (B)]. The existing 5-year General Permit became effective on July 1, 2009; thus necessitating the regulatory promulgation of a new General Permit before the June 30, 2014 expiration date.

As authorized by the Virginia Soil and Water Conservation Board, changes may include, but are not be limited to, incorporating water quality requirements for impaired waters and Total Maximum Daily Loads (TMDLs) including monitoring requirements, consistency requirements with other regulations such as Erosion and Sediment Control, chemical application and handling requirements, and minimum prescriptive measures regarding public notification and reporting. Additionally, the permit will implement the federal Effluent Limitation Guidelines as found at 40 CFR Part 450. This permit will also coordinate implementation of the new stormwater management technical criteria for post development (including compliance with water quality and quantity standards set out in Part II of these regulations) authorized under state statute and regulations, as well as compliance with Part III local program technical criteria of these regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The General Permit for Discharges of Stormwater from Construction Activities is a permit issued through regulation by the Virginia Soil and Water Conservation Board pursuant to the federal Clean Water Act and the Virginia Stormwater Management Act.

The Virginia Soil and Water Conservation Board's state authority to promulgate regulations and to develop permits for the control of stormwater discharges from construction activities is found in the Virginia Stormwater Management Act in § 10.1-603.2:1 as follows:

§ 10.1-603.2:1. Powers and duties of the Virginia Soil and Water Conservation Board.

In addition to other powers and duties conferred upon the Board, it shall permit, regulate, and control stormwater runoff in the Commonwealth. **In accordance with the VSMP** [Virginia Stormwater Management Program], **the Board may issue**, deny, revoke, terminate, or **amend stormwater permits; adopt regulations**; approve and periodically review local stormwater management programs and management programs developed in conjunction with a municipal separate storm sewer permit; enforce the provisions of this article; **and otherwise act to ensure the general health, safety and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater**. The Board may:

1. **Issue, deny, amend, revoke, terminate, and enforce permits for the control of stormwater discharges from Municipal Separate Storm Sewer Systems and land disturbing activities.**

2. Delegate to the Department or to an approved locality any of the powers and duties vested in it by this article **except the adoption and promulgation of regulations.** Delegation shall not remove from the Board authority to enforce the provisions of this article.

6. **Adopt rules governing the procedure of the permit issuing authority with respect to: (i) hearings; (ii) the filing of reports; (iii) the issuance of permits and special orders; and (iv) all other matters relating to procedure; and to amend or cancel any rule adopted.** Public notice of every rule adopted under this section shall be by such means as the permit issuing authority may prescribe but must be consistent with the Administrative Process Act (§ 2.2-4000 et seq.).

Additionally, §10.1-603.2:2 (A) states that it shall be unlawful to cause a stormwater discharge from a land disturbing activity except in compliance with a permit.

§ 10.1-603.2:2. Permits.

A. **It shall be unlawful to cause a stormwater discharge from an MS4 or a land disturbing activity except in compliance with a permit issued by a permit issuing authority.**

Requirements set forth in the federal Clean Water Act (33 USC §1251 et seq.) and its attendant regulations set forth in 40 CFR Parts 122, 123, 124, 125 and 450 require states to establish a permitting program for the management of stormwater from construction activities.

Section 402 of the Clean Water Act (33 USC §1251 et seq.) allows the federal Environmental Protection Agency (EPA) to authorize states to administer the National Pollutant Discharge Elimination System (NPDES) permit program. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. The Virginia Soil and Water Conservation Board was delegated responsibility for administering the Construction General Permit program by Chapter 372 of the 2004 Virginia Acts of Assembly (HB 1177) with approval by the EPA effective January 29, 2005.

On September 8, 2011, in accordance with these state authorities and under the auspices of federal designated authorities to the state, the Board authorized the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to prepare and submit a NOIRA to consider changes and solicit recommendations; in accordance with the Administrative Process Act exemption requirements specified in §2.2-4006 A8 [see below], the Virginia Register Act and other applicable technical rule making protocols; related to the Part XIV of the Board's Virginia Stormwater Management Program Permit Regulations [titled General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities] and other necessary related sections, including but not limited to, compliance with water quality and quantity standards set out in Part II of these regulations, compliance with Part III local program technical criteria of these regulations,

compliance with the technical and administrative requirements set out in Technical Criteria and Permit Application Requirements for State Projects [Part IV], compliance with the general requirements set out in VSMP General Program Requirements Related to MS4s and Land-Disturbing Activities [Part VI], compliance with the requirements set out in VSMP Permit Applications [Part VII], compliance with the general permit conditions set out in VSMP Permit Conditions [Part VIII], Stormwater Pollution Prevention Plan requirements including water quality and quantity standards, consistency requirements with other regulations such as for erosion and sediment control, incorporating water quality requirements for impaired waters and TMDLs including the Chesapeake Bay, timing of effective date of permit coverage, registration statement requirements, timing of registration submittal and other registration processes, procedures for permit termination and transfer, operation and maintenance of construction site controls and procedures, natural resource protection considerations, and monitoring processes. The authorization extended to, but was not limited to, the drafting and filing of the NOIRA, the holding of public meetings, if deemed necessary, the development of the draft proposed regulation and other necessary documents and documentation, as well as, the coordination necessary to gain approvals from the Attorney General, the Virginia Registrar of Regulations, and the U.S. Environmental Protection Agency.

§ 2.2-4006. Exemptions from requirements of this article. [Chapter 40 - Administrative Process Act]

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, **(c) Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.) of Title 10.1,** and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission **(i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.**

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Regulations developed under the federal Clean Water Act (33 USC §1251 et seq.) and §10.1-603.1 et seq. of the Code of Virginia require that VSMP permits be effective for a fixed term not to exceed five years [§10.1-603.2:2 (B)]. The existing 5-year General Permit became effective on July 1, 2009; thus necessitating the regulatory promulgation of a new General Permit before the June 30, 2014 expiration date. This proposed regulatory action is needed to allow operators of construction activities to reapply for permit coverage by the regulatory deadline of April 2, 2014, which is 90 days prior to the expiration of the existing General Permit, unless permission for a later date is been granted by the Board (4VAC 50-60-1170, SECTION III (M)).

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The proposed action is a reauthorization of, and an amendment to, an existing General Permit regulation [General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities (4 VAC 50-60-1100 et seq.) (Part XIV)].

The General Permit will coordinate implementation of state authorized post development water quality and quantity design criteria as set out in Stormwater Management Program Technical Criteria (4 VAC 50-60-40 et seq.) [Part II], compliance with local program Technical Criteria (4 VAC 50-60-100 et seq.) [Part III], and compliance with the technical and administrative requirements set out in Technical Criteria and Permit Application Requirements for State Projects (4 VAC 50-60-160 through 4 VAC 50-60-200) [Part IV].

Other amendments to be considered include those that address compliance with the general requirements set out in VSMP General Program Requirements Related to MS4s and Land-Disturbing Activities (4 VAC 50-60-300 through 4 VAC 50-60-350) [Part VI], compliance with the requirements set out in VSMP Permit Applications (4 VAC 50-60-360 through 4 VAC 50-60-420) [Part VII], compliance with the general permit conditions set out in VSMP Permit Conditions (4 VAC 50-60-430 through 4 VAC 50-60-490) [Part VIII], consistency requirements with other regulations such as for Erosion and Sediment Control, incorporating water quality requirements for impaired waters and TMDLs, timing of effective date of permit coverage, registration statement requirements (including consideration of registration submittals being limited to sites 5 acres or greater), timing of registration submittal and other registration processes, procedures for permit termination and transfer, operation and maintenance of construction site controls and procedures, natural resource protection considerations, monitoring processes (including benchmark monitoring requirements), amendments to definitions contained in Part I of the Regulations (4 VAC 50-60-10), federal effluent limitation guidelines, stormwater pollution prevention plan content, inspections, and amendments to forms related to the General Permit for Stormwater Discharges from Construction Activities.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Federal and state requirements that permit stormwater discharges from construction activities provide only one alternative to the General Permit for compliance with the regulations and that is: DCR could issue each construction activity an individual VSMP permit to regulate stormwater discharges related to water quality and quantity. Due to the number of construction activities that are required to be permitted, it is not practical to issue individual permits to each construction activity; it is anticipated that individual permits will only be issued to those sites that do not qualify for coverage under the new General Permit. The substance, format, and procedures of these regulations will ultimately depend upon approval from the U.S. Environmental Protection Agency, which has national oversight of all Clean Water Act programs.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

Please also indicate, to the extent known, if standing or ad hoc advisory panels (also known as regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate whether 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The Agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail to the Regulatory Coordinator at: Virginia Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219. Comments may also be emailed to the Regulatory Coordinator at: record@dcr.virginia.gov. Comments may also be faxed to the Regulatory Coordinator at: (804) 786-6141. All written comments must include the name and address of the commenter (e-mail

addresses would also be appreciated). In order to be considered, comments must be received by midnight on the last day of the public comment period.

The Department will be utilizing a modified participatory approach in accordance with the Administrative Process Act exemption requirements specified in §2.2-4006 A8. The Department, as authorized by the Board, is forming a Regulatory Advisory Committee composed of relevant stakeholders to make recommendations to the Director and the Board on potential regulatory changes. Persons interested in participating on the advisory committee should provide their name, address, telephone number, email address, and the name of the organization they represent to the Agency contact person for consideration by no later than midnight on the last day of the public comment period.

Following publication of the proposed regulation in the Virginia Register of Regulations, the Department as authorized by the Board will hold a public hearing to provide opportunity for public comment. A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and other necessary locations. Both oral and written comments may be submitted at that time.

Promulgation of this permit regulation is also subject to additional federal NPDES public notification requirements relevant to the promulgation of general permits.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability. However, improvement of water quality does have positive public health and safety benefits that have an indirect impact on families.