

9 VAC 25-180-10 et seq. - GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT REGULATION FOR DISCHARGES OF STORM WATER FROM CONSTRUCTION ACTIVITIES**9 VAC 25-180-10. Definitions.**

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and 9 VAC 25-31-10 et seq. (VPDES Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this regulation:

"Control Measure" means any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to surface waters.

"Commencement of Construction" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

"Construction Activity" means any clearing, grading or excavation associated with industrial activity, or associated with small construction activity.

"Final Stabilization" means that either:

1. All soil disturbing activities at the site have been completed and a ~~uniform (i.e., evenly distributed, without large bare areas)~~ perennial vegetative cover equal to at least 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed. Establishing at least 70% of the natural cover of the native vegetation meets the vegetative cover criteria for final stabilization (e.g., if the native vegetation covers 50% of the ground, 70% of 50% would require 35% total cover for final stabilization; on a beach with no natural vegetation, no stabilization is required); permanent

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vegetative cover has been established on denuded areas not otherwise permanently stabilized.

Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive, and will inhibit erosion;

2. For individual lots in residential construction by either:
 - (a) The homebuilder completing final stabilization as specified above; or
 - (b) The homebuilder establishing temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization; or
3. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters, and area which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria 1 or 2 of this definition.

"Industrial Activity" means construction activity including clearing, grading and excavation, ~~activities~~ except: operations that result in the disturbance of less than five acres of total land area, ~~which are not part of a larger common plan of development or sale.~~ Industrial activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

"Municipal Separate Storm Sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association,

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or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the Clean Water Act (CWA) (33 USC 1251 et seq.) that discharges to surface waters of the State; (ii) designed or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW).

"Operator" means, in the context of storm water associated with construction activity, any person associated with a construction project that meets either of the following two criteria: (i) The person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or (ii) the person has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the storm water pollution prevention plan or comply with other permit conditions).

"Permittee" means any operator whose construction site is covered under this general permit.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

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"Runoff Coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Small Construction Activity" means construction activity including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm Water Discharge Associated with Industrial Activity" means a discharge of pollutants in storm water runoff from construction activities where soil disturbing activities (e.g., clearing, grading, or excavation), construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, fueling), or other industrial storm water discharges directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

9 VAC 25-180-20. Purpose.

This general permit regulation governs storm water discharges from construction activities. For the purposes of this regulation, these discharges are defined as storm water discharges associated with industrial activity, and storm water discharges associated with small construction activity. Storm water

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discharges associated with other types of industrial activity shall not have coverage under this general permit. This general permit covers only discharges through a point source to a surface water or through a municipal or non-municipal separate storm sewer system to surface waters. Storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization are not authorized by this permit.

9 VAC 25-180-30. Delegation of authority.

The Director, or an authorized representative, may perform any act of the Board provided under this regulation, except as limited by Section 62.1-44.14 of the Code of Virginia.

9 VAC 25-180-40. Effective date of the permit.

This general permit ~~will become~~ became effective on June 30, 1999. [~~This~~ The] general permit will expire [~~five years from the effective date~~ on June 30, 2004]. [~~This~~ The] general permit was modified [~~on~~ _____, effective December 4, 2002] to address amendments to the VPDES Permit Regulation, 9 VAC 25-31-10 et seq. [~~The effective date of the modification is _____.~~]

9 VAC 25-180-50. Authorization to discharge.

A. Any operator governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the operator files the Registration Statement of 9 VAC 25-180-60 and any fees required by 9 VAC 25-20-10 et seq., complies with the requirements of 9 VAC 25-180-70, and provided that:

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1. The operator shall not have been required to obtain an individual permit according to 9 VAC 25-31-170 B;
 2. The operator shall not be authorized by this general permit to discharge to state waters specifically named in other Board regulations or policies which prohibit such discharges;
 3. The operator shall obtain prior approval of an erosion and sediment control plan from the locality in which the construction activity is to occur or from another appropriate plan approving authority authorized under the Virginia Erosion and Sediment Control Regulation, 4 VAC 50-30-10 et seq., unless the operator is exempt from the requirement to submit an erosion and sediment control plan by 4 VAC 50-30-10 et seq.;
 4. Storm water discharges which the Director determines cause, may reasonably be expected to cause, or be contributing to a violation of water quality standards are not covered by this permit; and
 5. The storm water discharge authorized by this permit may be combined with other sources of storm water which are not required to be covered under a VPDES permit, so long as the combined discharge is in compliance with this permit. Any discharge authorized by a different VPDES permit may be commingled with discharges authorized by this permit.
- B. This permit may also be used to authorize storm water discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located onsite or offsite provided that:
1. The support activity is directly related to a construction site that is required to have VPDES permit coverage for discharges of storm water associated with construction activity;

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2. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and
3. Appropriate controls and measures are identified in a storm water pollution prevention plan covering the discharges from the support activity areas.

C. Support activities located offsite are not required to be covered under this general permit.

Discharges of storm water from offsite support activities may be authorized under another VPDES permit. Where storm water discharges from offsite support activities are not authorized under this general permit, the land area of the offsite support activity need not be included in determining the total land disturbance acreage of the construction activity seeking general permit coverage.

D. Receipt of this general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

E. The Board may waive the otherwise applicable requirements in this general permit regulation for a storm water discharge from small construction activity where storm water controls are not needed based on a "total maximum daily load" (TMDL) established by DEQ and approved by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDL's, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this section, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation)

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and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. In order to obtain this waiver, prior to the commencement of construction the operator must certify to the Board that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by a TMDL, or within the drainage area addressed by an equivalent analysis.

9 VAC 25-180-55. Qualifying State, Tribal and Local Programs.

For storm water discharges associated with industrial activity, and storm water discharges associated with small construction activity, qualifying state, tribal, or local erosion and sediment control program requirements may be incorporated by reference into the Storm Water Pollution Prevention Plan (SWPPP) required by Section 9 VAC 25-180-70 of this permit. Where a qualifying state, tribal, or local program does not include one or more of the elements in this section, then the permittee must include those elements as part of the SWPPP required by Section 9 VAC 25-180-70 of this permit. A qualifying state, tribal, or local erosion and sediment control program is one that includes:

A. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

B. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

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C. Requirements for construction site operators to develop and implement an SWPPP. (An SWPPP includes site descriptions, descriptions of appropriate control measures, copies of approved state, tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and

D. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

9 VAC 25-180-60. Registration Statement; Notice of Termination.**A. Deadlines for Submitting Registration Statement**

1. Except as provided in paragraph[s] A 3 [~~or A-4~~] of this section, operators must submit a [complete] Registration Statement in accordance with the requirements of this section at least two (2) days prior to the commencement of construction activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).

2. For storm water discharges from construction projects where the operator changes after a Registration Statement has been submitted, the new operator must submit a Registration Statement at least two (2) days before assuming operational control over site specifications or commencing work on-site.

~~[3. To avoid a lapse in permit coverage, operators of on-going construction projects as of June 30, 1999 which were authorized to discharge under the previous construction storm water general permit issued in 1994 must:~~

~~a. Submit a Registration Statement by June 30, 1999; and~~

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- ~~b. Update their storm water pollution prevention plan to comply with the requirements of this general permit within 30 days after the date of coverage under this permit.~~
- ~~4. Operators of on-going construction projects as of June 30, 1999 which did not receive authorization to discharge from these projects under the 1994 construction storm water general permit, who propose to be covered by this general permit must:~~
- ~~a. Submit a Registration Statement; and~~
- ~~b. Prepare and comply with a storm water pollution prevention plan in accordance with the requirements of this general permit within 30 days after the date of coverage under this general permit.]~~
- [3. Operators of on-going "small" construction activity projects as of December 4, 2002, who propose to be covered by this general permit must:
- a. Submit a complete Registration Statement by January 3, 2003; and
- b. Prepare and comply with a storm water pollution prevention plan in accordance with the requirements of this general permit within 30 days after the date of coverage under this general permit.]

B. Registration Statement.

The operator shall submit a Registration Statement which shall contain the following information:

1. Name, mailing address and telephone number of the construction activity operator;
2. Name and location of the construction activity and all offsite support activities to be covered under the permit. If a street address is unavailable, provide latitude and longitude;
3. Status of the activity: federal, state, public or private;

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4. Indicate if storm water runoff is discharged to a municipal separate storm sewer system (MS4);
5. Name of the water body receiving the discharge from the construction activity or MS4;
6. Project start date;
7. Estimated area to be disturbed by construction activity (acres);
8. Total land area of development, if area to be disturbed by the construction activity is part of a larger common plan of development or sale (acres);
9. Attach a topographic map or other map which clearly shows the location of the construction activity, the area to be disturbed, and the receiving stream(s) for the storm water discharge(s).
- ~~9~~ 10. Indicate if a storm water pollution prevention plan has been prepared in accordance with the requirements of the VPDES General Permit for Storm Water Discharges from Construction Activities;
- ~~10~~ 11. Indicate if an erosion and sediment control plan for the construction activity is required by the Virginia Erosion and Sediment Control Regulation, 4 VAC 50-30-10 et seq. If a plan is required, indicate if one has been approved by an appropriate state or local plan approving authority; and
- ~~11~~ 12. The following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

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The registration statement shall be signed in accordance with 9 VAC 25-31-110.

C. Notice of Termination

When a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated or where the operator of the construction site has changed, the operator of the facility shall submit a Notice of Termination within 30 days after final stabilization has been achieved or when he is no longer the operator. The operator shall submit a Notice of Termination which shall contain the following information:

1. Name, mailing address and telephone number of the construction activity operator;
2. Name and location of the construction activity. If a street address is unavailable, provide latitude and longitude;
3. The VPDES Storm Water General Permit Number;
4. Indicate which of these circumstances applies:
 - a. The operator of the site has changed; or
 - b. The construction site has undergone final stabilization and the storm water discharges from the construction activity have been terminated; and
5. The following certification: "I certify under penalty of law that all storm water discharges from the identified construction activity that are authorized by a VPDES general permit have been eliminated, or that I am no longer the operator of the construction activity. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water in accordance with the general permit, and that discharging pollutants in storm water to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand

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that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit."

The notice of termination shall be signed in accordance with 9 VAC 25-31-110.

9 VAC 25-180-70. General permit.

Any operator whose registration statement is accepted by the Director will receive the following permit and shall comply with the requirements therein and be subject to all requirements of the VPDES Permit Regulation, 9 VAC 25-31-10 et seq.

General Permit No.: [~~VAR4~~ VAR10]

Effective Date: [June 30, 1999]

Expiration Date: [June 30, 2004]

[Modification Date: December 4, 2002]

GENERAL PERMIT FOR STORM WATER DISCHARGES OF STORM WATER
FROM CONSTRUCTION ACTIVITIES

AUTHORIZATION TO DISCHARGE UNDER THE
VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM

AND

THE VIRGINIA STATE WATER CONTROL LAW

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In compliance with the provisions of the Clean Water Act, as amended and pursuant to the State Water Control Law and regulations adopted pursuant thereto, operators of construction activities (those sites or common plans of development or sale that will result in the disturbance of ~~five~~ one or more acres of total land area) with storm water discharges from these construction activities are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in Board regulation or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Discharge Authorization and Special Conditions, Part II - Storm Water Pollution Prevention Plan and Part III - Conditions Applicable To All VPDES Permits, as set forth herein.

PART I**DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS****A. Coverage Under This Permit.**

1. During the period beginning with the date of coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge storm water from construction activities.
2. This permit also authorizes storm water discharges from offsite support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided that:
 - a. The support activity is directly related to a construction site that is required to have VPDES permit coverage for discharges of storm water associated with construction activity;

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- b. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and
 - c. Appropriate controls and pollution prevention measures for the discharges from the support activity areas are identified in the storm water pollution prevention plan for the construction activity.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

B. Limitation on Coverage.

1. **Postconstruction Discharges.** This permit does not authorize storm water discharges that originate from the site after construction activities have been completed and the site, including any temporary support activity site, has undergone final stabilization. ~~Industrial postconstruction~~ Postconstruction industrial storm water discharges may need to be covered by a separate VPDES permit.
2. **Discharges Mixed With Nonstorm Water.** This permit does not authorize discharges that are mixed with sources of nonstorm water, other than those discharges which are identified in Part I D 2 (exceptions to prohibition on nonstorm water discharges) and are in compliance with Part II D 5 (nonstorm water discharges).
3. **Discharges Covered by Another Permit.** This permit does not authorize storm water discharges associated with construction activity that have been covered under an individual permit or required to obtain coverage under an alternative general permit in accordance with Part III X.

C. Commingled Discharges.

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Any discharge authorized by a different VPDES permit may be commingled with discharges authorized by this permit.

D. Prohibition of Nonstorm Water Discharges.

1. Except as provided in Parts I A 2, I C and I D 2, all discharges covered by this permit shall be composed entirely of storm water associated with construction activity.
2. The following nonstorm water discharges from active construction sites are authorized by this permit provided the nonstorm water component of the discharge is in compliance with Part II D 5 (nonstorm water discharges): discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles where detergents are not used; water used to control dust; potable water sources including waterline flushings; water used for hydrostatic testing of new pipeline construction; routine external building wash down which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; uncontaminated compressor condensate; uncontaminated ground water or spring water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

E. Releases of Hazardous Substances or Oil in Excess of Reportable Quantities.

The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR [Part] 110 (1998), 40 CFR [Part] 117 (1998) or 40 CFR [Part] 302 (1998) occurs during a 24 hour period, the permittee is required to notify

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the Department in accordance with the requirements of Part III G as soon as he or she has knowledge of the discharge. [Where a release enters a municipal separate storm sewer system (MS4), the permittee shall also notify the owner of the MS4.] In addition, the storm water pollution prevention plan required under Part II of this permit must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate. This permit does not relieve the permittee of the reporting requirements of 40 CFR [Part] 110 (1998), 40 CFR [Part] 117 (1998) and 40 CFR [Part] 302 (1998) or Section 62.1-44.34:19 of the Code of Virginia.

F. Spills.

This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

G. Notice of Termination.

1. Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated, the permittee of the facility shall submit a Notice of Termination that is signed in accordance with Part III K.
2. The terms and conditions of this permit shall remain in effect until a completed Notice of Termination is submitted. Coverage under the permit will be deemed terminated two days after the operator submits the Notice of Termination to the Department.

PART II**STORM WATER POLLUTION PREVENTION PLANS**

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A storm water pollution prevention plan shall be developed for the construction activity covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges at the construction site and to assure compliance with the terms and conditions of this permit. Permittees must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

The storm water pollution prevention plan requirements of this general permit may be fulfilled by incorporating by reference other state, tribal or local plans such as an erosion and sediment control plan, a spill prevention control and countermeasure (SPCC) plans developed for the [facility site] under Section 311 of the Clean Water Act, or best management practices (BMP) programs otherwise required for the facility, provided that the incorporated plan meets or exceeds the storm water pollution prevention plan requirements of Part II D. If an erosion and sediment control plan for the construction activity is being incorporated by reference, ~~[it shall have been~~ the referenced plan must be] approved by the locality in which the construction activity is to occur or by another appropriate plan approving authority authorized under the Virginia Erosion and Sediment Control Regulation 4 VAC 50-30-10 et seq.[, prior to the commencement of construction.] All plans incorporated by reference into the storm water pollution prevention plan become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the storm water pollution prevention plan of Part II D, the permittee must develop the missing elements and include them in the required storm water pollution prevention plan.

A. Deadlines for Plan Preparation and Compliance.

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1. For ["small"] construction activities that have begun on or before [~~June 30, 1999~~ December 4, 2002], the storm water pollution prevention plan shall be prepared and provide for compliance with the terms and schedule of the plan beginning within 30 days after the date of coverage under this permit.
2. For ["industrial activity"] construction activities that have begun after June 30, 1999, [~~and "small" construction activities that have begun after December 4, 2002,~~] the plan shall be prepared prior to submittal of the Registration Statement and provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.
3. For ongoing construction activity involving a change of operator, the new operator shall accept and maintain the existing storm water pollution prevention plan or prepare and implement a new storm water pollution prevention plan prior to taking over operations at the site.

B. Signature and Plan Review.

1. The plan shall be signed in accordance with Part III K, and be retained with a copy of this permit onsite at the facility which generates the storm water discharge in accordance with Part III B of this permit.
2. The permittee shall make plans available upon request to the Department; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge which discharges through a municipal separate storm sewer system to the operator of the municipal system from the date of project initiation to the date of final stabilization. Permittees with day-to-day operational control over plan implementation shall have a copy of the plan available at a central location onsite for the use of all operators and those identified as having responsibilities under the plan whenever they are on the construction

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site. The copy of the plan that is required to be kept onsite must be made available to the Department for review at the time of an onsite inspection.

3. The Director may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this Part. Such notification shall identify those provisions of the permit which are not being met by the plan and identify which provisions require modifications in order to meet the minimum requirements of this permit. Within 7 days of such notification the permittee shall make the required changes and shall submit to the Department a written certification that the requested changes have been made. The Director may take appropriate enforcement action for the period of time the permittee was operating under a plan that did not meet the minimum requirements of this permit.

C. Keeping Plans Current.

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters and which has not otherwise been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part II D 1. of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges from construction activities. The plan shall be amended in accordance with Part II E. to identify any new contractor that will implement a measure of the plan.

D. Contents of Plan.

The storm water pollution prevention plan shall include the following items:

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1. Site Description. Each plan shall provide a description of pollutant sources and other information as indicated:

- a. A description of the nature of the construction activity;
- b. A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g. grubbing, excavation, grading, utilities and infrastructure installation);
- c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities including offsite borrow and fill areas covered by the plan;
- d. An estimate of the runoff coefficient of the site prior to construction and after construction activities are completed and existing data describing the soil or the quality of any discharge from the site;
- e. A description of existing vegetation at the site;
- f. A description of any other potential pollution sources, such as vehicle fueling, storage of fertilizers or chemicals, sanitary waste facilities, etc.;
- g. The name of the receiving water(s) and the ultimate receiving water(s), and areal extent of wetland acreage at the site;
- h. A site map indicating:
 - (1) drainage patterns and approximate slopes or contours anticipated after major grading activities;
 - (2) areas of soil disturbance and areas of the site which will not be disturbed;
 - (3) the location of major structural and nonstructural controls identified in the plan;
 - (4) the location of areas where stabilization practices are expected to occur including the types of vegetative cover;

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- (5) surface waters (including wetlands);
- (6) locations where storm water is discharged to a surface water with an outline of the drainage area for each discharge point;
- (7) existing and planned paved areas and buildings;
- (8) locations of permanent storm water management practices to be used to control pollutants in storm water after construction activities have been completed;
- (9) locations of offsite material, waste, borrow or equipment storage areas covered by the plan; and
- (10) locations of other potential pollution sources as described in f. above; and
 - i. The location and description of any discharge associated with industrial activity other than construction, including storm water discharges from dedicated asphalt plants and dedicated concrete plants, which is covered by this permit.

Two site maps may be developed, one indicating pre-construction site conditions and the second indicating final site conditions. The two maps should be on the same scale.

2. Controls. Each plan shall include a description of appropriate controls and measures that will be implemented to control pollutants in storm water discharges at the construction site. The plan will clearly describe for each major activity identified in the site plan appropriate control measures and the timing during the construction process that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls will be removed after final stabilization). The description and implementation of controls shall address the following minimum components:

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a. Erosion and Sediment Controls.

(1) Short and Long Term Goals and Criteria.

(a) The construction-phase erosion and sediment controls shall be designed to retain sediment on site to the maximum extent practicable.

(b) All control measures must be properly selected, installed, and maintained in accordance with the manufacturers specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for site situations.

(c) If sediment escapes the construction site, offsite accumulations of sediment must be removed at a frequency sufficient to minimize offsite impacts (e.g., fugitive sediment in street could be washed into storm sewers by the next rain and/or pose a safety hazard to users of public streets).

(d) Sediment must be removed from sediment traps or sedimentation ponds when design capacity has been reduced by 50%.

(e) Litter, construction debris, and construction chemicals exposed to storm water shall be prevented from becoming a pollutant source for storm water discharges (e.g., screening outfalls, picked up daily).

(f) Offsite material storage areas (also including overburden and stockpiles of dirt, borrow areas, etc.) where storm water discharges are authorized by this permit are considered a part of the project and shall be addressed in the plan.

(2) Stabilization Practices. The storm water pollution prevention plan shall include a description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing

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vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include, but are not limited to: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, riprap, gabions, facines, biologs and other appropriate measures. Use of impervious surfaces for stabilization should be avoided.

A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated shall be maintained and included in the plan.

Except as provided in Part II D 2 a (2)(a), and (b), stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 7 days after the construction activity in that portion of the site has temporarily or permanently ceased.

(a) Where the initiation of stabilization measures by the 7th day after construction activity temporary or permanently cease is precluded by snow cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable.

(b) Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within 30 days, temporary stabilization measures do not have to be initiated on that portion of site.

(3) Structural Practices. The plan shall include a description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. Such practices may include, but are not limited to: silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet

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protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be placed on upland soils, to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA.

(a) For common drainage locations that serve an area with 3 or more acres at one time, a temporary (or permanent) sediment basin providing 3,618 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,618 cubic feet of storage area per acre drained does not apply to flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. In determining whether installing a sediment basin is attainable, the permittee may consider factors such as site soils, slope, available area on site, etc. In any event, the permittee must consider public safety, especially as it relates to children, as a design factor for the sediment basin and alternative sediment controls shall be used where site limitations would preclude a safe design. For drainage locations which serve three (3) or more acres at one time and where a temporary sediment basin or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. Where neither the sediment basin nor equivalent controls are attainable due to site limitations, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries of the construction area and for those side slope boundaries deemed appropriate as dictated by individual site conditions. The Department encourages the use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal.

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(b) For drainage locations serving less than 3 acres, smaller sediment basins or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips or equivalent sediment controls are required for all downslope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction area unless a sediment basin providing storage for 3,618 cubic feet of storage per acre drained is provided. The Department encourages the use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal.

b. Storm Water Management. A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed must be included in the storm water pollution prevention plan. Structural measures should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA. This permit only addresses the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges from construction activities have been eliminated from the site. Postconstruction storm water BMPs that discharge pollutants from point sources once construction is completed, may in themselves, need authorization under a separate VPDES permit.

(1) Such practices may include, but are not limited to: storm water detention structures (including dry ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; storm water

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wetlands; sand filters; bioretention systems; water quality structures; and sequential systems (which combine several practices). The pollution prevention plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

(2) Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a nonerosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

c. Other Controls.

(1) No solid materials, including building materials, garbage, and debris shall be discharged to surface waters of the State, except as authorized by a CWA Section 404 permit.

(2) Where construction vehicle access routes intersect paved public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a public road surface, the road shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner.

(3) The plan shall ensure and demonstrate compliance with applicable State or local waste disposal, sanitary sewer or septic system regulations.

(4) The plan shall include a description of construction and waste materials expected to be stored onsite with updates as appropriate. The plan shall also include a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to storm water, and spill prevention and response.

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(5) The plan shall include a description of pollutant sources from areas other than the permitted construction activity (including storm water discharges from dedicated asphalt plants and dedicated concrete plants) that contribute to the permitted discharge.

d. Approved State or Local Plans.

(1) Permittees which discharge storm water associated with construction activities must ensure their storm water pollution prevention plan is consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by state, or local officials.

(2) Storm water pollution prevention plans must be updated as necessary to remain consistent with any changes applicable to protecting surface water resources in sediment erosion site plans or site permits, or storm water management site plans or site permits approved by state, or local officials for which the permittee receives written notice.

3. Maintenance. The storm water pollution prevention plan must include a description and schedule of procedures to maintain in good and effective operating conditions vegetation, erosion and sediment control measures and other protective measures during construction identified in the site plan. If site inspections required by Part II D 4. identify BMPs that are not operating effectively, maintenance shall be performed before the next anticipated storm event, or as necessary to maintain the continued effectiveness of storm water controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable.

4. Inspections. Facility personnel who are familiar with the construction activity, the BMPs and the storm water pollution prevention plan shall inspect disturbed areas of the construction site that have not been finally stabilized, and areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site.

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These inspections shall be conducted at least once every fourteen calendar days and within 48 hours of the end of a storm event that is 0.5 inches or greater. Where areas have been finally or temporarily stabilized or runoff is unlikely due to winter conditions (e.g., site is covered with snow, ice, or frozen ground exists) such inspections shall be conducted at least once every month.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the site description identified in the plan in accordance with Part II D 1 of this permit and pollution prevention measures identified in the plan in accordance with Part II D 2 of this permit shall be revised as appropriate~~[-but in no case later than~~ within] 7 calendar days following the inspection. If existing BMPs need to be modified or if additional BMPs are necessary, implementation shall be completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, they shall be implemented as soon as practicable.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with Part II D 4 b of the permit shall be made and retained as part of the storm

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water pollution prevention plan in accordance with Part III B of this permit. Major observations should include: the location(s) of discharges of sediment or other pollutants from the site; location(s) of BMPs that need to be maintained; location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location; and location(s) where additional BMPs are needed that did not exist at the time of inspection. Such reports shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part III K of this permit.

5. Nonstorm Water Discharges. Except for flows from fire fighting activities, sources of nonstorm water listed in Part I D 2 of this permit that are combined with storm water discharges from the construction site must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the nonstorm water component(s) of the discharge.

E. Contractors.

1. The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement in Part II E 2 of this permit in accordance with Part III K of this permit. All certifications must be included in the storm water pollution prevention plan.

2. All contractors and subcontractors identified in a storm water pollution prevention plan in accordance with Part II E 1 of this permit shall sign a copy of the following certification

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statement before conducting any professional service at the site identified in the storm water pollution prevention plan:

"I certify under penalty of law that I understand the terms and conditions of this Virginia Pollutant Discharge Elimination System (VPDES) general permit that authorizes the storm water discharges from the construction activity identified as part of this certification."

The certification must include the name and title of the person providing the signature in accordance with Part III K of this permit; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

PART III**CONDITIONS APPLICABLE TO ALL VPDES PERMITS****A. Monitoring.**

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under Title 40 Code of Federal Regulations Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:

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- a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) and time(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
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, 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 registration statement for this permit, for a period of at least 3 years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the Board.
- C. Reporting Monitoring Results.
1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the Department's regional office.
 2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the Department.

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3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under Title 40 of the Code of Federal Regulations Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the Department.
4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to Provide Information.

The permittee shall furnish to the Department, within a reasonable time, any information which the Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The Board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

E. Compliance Schedule Reports.

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

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F. Unauthorized Discharges.

Except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of Unauthorized Discharges.

Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and

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8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the Department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of Unusual or Extraordinary Discharges.

If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the Department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the Department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of Noncompliance

The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

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1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:

- a. Any unanticipated bypass; and
- b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within 5 days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The Board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Parts III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.

NOTE: The immediate (within 24 hours) reports required in Parts III G, H and I may be made to the Department's Regional Office. Reports may be made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24 hour telephone service at 1-800-468-8892.

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J. Notice of Planned Changes.

1. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under Section 306 of Clean Water Act which are applicable to such source; or

(2) After proposal of standards of performance in accordance with Section 306 of Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

K. Signatory Requirements.

1. Registration Statement. All registration statements shall be signed as follows:

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- a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities ~~employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if~~ , provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
- c. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
2. Reports, etc. All reports required by permits, and other information requested by the Board shall be signed by a person described in Part III K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

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- a. The authorization is made in writing by a person described in Part III K 1;
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and
 - c. The written authorization is submitted to the Department.
3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the Department prior to or together with any reports, or information to be signed by an authorized representative.
4. Certification. Any person signing a document under Parts III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to Comply.

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The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to Reapply.

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Board. The Board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a Permit.

This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

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O. State Law.

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by Section 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U), and "upset" (Part III V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and Hazardous Substance Liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Sections 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. 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 effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges.

9 VAC 25-180-10 et seq. - GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT REGULATION FOR DISCHARGES OF STORM WATER FROM CONSTRUCTION ACTIVITIES

Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to Mitigate.

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to Halt or Reduce Activity not a Defense.

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III U 2 and U 3.

2. Notice

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least ten days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I.

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3. Prohibition of bypass.
 - a. Bypass is prohibited, and the Board may take enforcement action against a permittee for bypass, unless:
 - (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (3) The permittee submitted notices as required under Part III U 2.
 - b. The Board may approve an anticipated bypass, after considering its adverse effects, if the Board determines that it will meet the three conditions listed above in Part III U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.
2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An upset occurred and that the permittee can identify the cause(s) of the upset;

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- b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required in Part III I; and
 - d. The permittee complied with any remedial measures required under Part III S.
3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and Entry.

The permittee shall allow the Director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit Actions.

9 VAC 25-180-10 et seq. - GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT REGULATION FOR DISCHARGES OF STORM WATER FROM CONSTRUCTION ACTIVITIES

Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the Department. Except as provided in Part III Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.
2. As an alternative to transfers under Part III Y 1, this permit may be automatically transferred to a new permittee if:
 - a. The current permittee notifies the Department at least 2 days in advance of the proposed transfer of the title to the facility or property;
 - b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
 - c. The Board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

Z. Severability.

9 VAC 25-180-10 et seq. - GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT REGULATION FOR DISCHARGES OF STORM WATER FROM CONSTRUCTION ACTIVITIES

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

FORMS

Department of Environmental Quality Water Division Permit Application Fee.

~~Local Government Ordinance Form, Form SW-001 (eff. 7/93).~~

Virginia Pollutant Discharge Elimination System (VPDES) General Permit Registration Statement for Storm Water Discharges from Construction Sites Activities, ~~Permit Number~~ ([VAR4 VAR10]), SWGP-94 99-004-REG (eff. 4/94 [~~6/99~~ 12/02]).

Virginia Pollutant Discharge Elimination System (VPDES) General Permit Notice of Termination for Storm Water Discharges from Construction Sites Activities, ~~Permit Number~~ ([VAR4 VAR10]), SWGP-94 99-004-NOT (eff. 4/94 [~~6/99~~ 12/02]).

~~[DOCUMENTS INCORPORATED BY REFERENCE]~~

~~SIC Manual, OMB, 1987.~~

Certified True and Accurate: _____

Robert G. Burnley, Director, DEQ

Date: _____