



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Soil and Water Conservation Board
<b>Virginia Administrative Code (VAC) citation</b>	40VAC50-60
<b>Regulation title</b>	Virginia Stormwater Management Program (VSMP) Permit Regulations
<b>Action title</b>	In accordance with the Administrative Process Act exemption requirements specified in §2.2-4006 A8, amend, modify or delete provisions of the regulations related to the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (4VAC50-60-1200 et seq.) [Part XV], and to amend the definitions in the Virginia Stormwater Management Regulations (Part I) necessary to maintain consistency in definitions as a result of changes to the General Permit.
<b>Final agency action date</b>	March 27, 2013
<b>Document preparation date</b>	April 2, 2013

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The regulatory action amends the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems

(small MS4s). This action is authorized under the federal Clean Water Act (33 USC § 1251 et seq.) and the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.). It is necessary to update and reissue the General Permit, as the current permit expires on July 8, 2013.

On March 27, 2013, the Virginia Soil and Water Conservation Board approved, authorized, and directed the filing of these final regulations related to the General Permit for Discharges of Stormwater from Small MS4 Systems of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60) as an exempt action. That authorization was related to those changes that are exempt from the Administrative Process Act pursuant to § 2.2-4006(A)(8)(c) of the Code of Virginia.

This final regulatory action sets forth guidelines for the permitting of discharges of stormwater runoff from small municipal separate storm sewer systems (small MS4's) in urbanized areas. Small MS4's include systems owned or operated by municipalities, federal facilities, state facilities (including the Virginian Department of Transportation [VDOT]), and universities. The final General Permit establishes standard language for control of Small MS4 stormwater discharges through the development, implementation, and enforcement of an MS4 program to reduce the impacts of the stormwater discharges on the receiving streams to the maximum extent practicable. The MS4 Program will require the operator to identify best management practices (BMP's) to control stormwater discharges as well as to implement measurable goals for each identified BMP for each of the following control measures: (1) public education and outreach on stormwater impacts; (2) public involvement/participation; (3) illicit discharge detection and elimination; (4) construction site stormwater runoff control; (5) post-construction stormwater management in new development and development on prior developed lands; and (6) pollution prevention/good housekeeping for municipal operations. The final General Permit requires the operator to evaluate program compliance, the appropriateness of identified BMP's, progress towards achieving the identified measurable goals, and to submit annual reports. The action also requires that the operator address Total Maximum Daily Load (TMDL) Wasteload Allocations, including those associated with the Chesapeake Bay TMDL, assigned to the operator and contains other conditions governing the development, implementation, and reporting requirements of an MS4 Program.

### Regulation Summary

Global changes in this permit include:

- 1) Changes were made in terminology used throughout the permit such as "regulated small MS4s" becoming "small MS4s" for brevity.
- 2) Amendments clarified that the MS4 General Permit governs discharges to surface waters and not state waters as is the case for federal National Pollutant Discharge Elimination System (NPDES) permits.
- 3) Amendments require operators to identify surface waters listed in the current Virginia 305(b)/303(d) Water Quality Integrated Report. This report is issued by the Virginia Department of Environmental Quality (DEQ) once approved by the EPA.

The key elements of the permit amendments are as follows:

- **Section 10 (Definitions):** Updated definitions for “Best management practice”, “Hydrologic Unit Code”, “Illicit discharge”, “Minimize”, and “Stormwater Pollution Prevention Plan” and adding a new definition for “Total maximum daily load Action Plan”. Updated TMDL language that currently refers to “a State Water Control Board established and EPA approved” TMDL to “an approved” TMDL. The definition of “TMDL Action Plan” was amended to state that such plans may be implemented in multiple phases over more than one permit cycle.
- **Section 1200 (Definitions Specific to the General Permit):** Updated the definition for “Physically connected” and added a new definition for “Operator”.
- **Section 1210 (Purpose; Delegation of Authority; Effective Date of the State Permit):** It was determined that much of the language contained in this section was duplicative of language contained in 4VAC50-60-400 (Small municipal separate storm sewer systems). Therefore, the language was removed for clarity.
- **Section 1220 (Authorization to Discharge):** The amendments clarified the processes for operators to receive authorization through the filing and acceptance of a registration statement and the payment of permit fees. This section also contains specific language regarding the continuation of permit coverage for operators covered under the 2008 permit.
- **Section 1230 (State Permit Application [Registration Statement]):** The regulations clarified registration statement requirements for operators that previously held coverage under the 2008 permit and operators applying for initial coverage. Of note is the updated hyperlink listing to any TMDL wasteloads allocated to the Small MS4.
- **Section 1240 (General Permit) –** This section of the regulations contains three parts, which are: 1) Section I – Discharge Authorization and Special Conditions; 2) Section II – Municipal Separate Storm Sewer System Management Program; and 3) Section III – Conditions Applicable to All State Permits.
  - a. MS4 Program Plan Update: Table 1 has been inserted into the regulation that outlines in chronological order the timing for various required elements of Program Plan updates and helps to differentiate the staged timing for operators that previously held a VSMP General Permit. It also clarified that all approved TMDLs addressed in the General Permit must be in existence at the time the permit is put in place. TMDLs created after the finalization of these regulations must be addressed in subsequent permit cycles.

### **Section I – Discharge Authorization and Special Conditions**

- b. Special Conditions for Approved Total Maximum Daily Loads (TMDL) Other than the Chesapeake Bay TMDL: The final regulations stipulated detailed strategies and

processes to address approved TMDLs other than the Chesapeake Bay TMDL. TMDL Action Plans that identify the best management practices and other steps to be implemented are required to be developed for all TMDLs. Language was added to state that pollutant discharges must be in “a manner consistent with the assumptions and requirements of the specific TMDL wasteload...” This special condition also referenced interim milestones related to best management practices and language was added to specify that TMDL Actions Plans become effective and enforceable 90 days after the date received by the Department. Further, language was added specifying that facilities of concern and TMDL Action Plans must demonstrate “representative and adequate” water quality monitoring. Language was also added stating that operators need to provide information regarding an estimated end date for achieving wasteload allocations (for planning purposes) as part of a reapplication package.

- c. Special Condition for the Chesapeake Bay TMDL: The regulations were amended to include detailed strategies and processes for addressing the Chesapeake Bay TMDL in order to account for implementation of the required reductions. This includes the addition of calculation sheets for estimating existing source loads for pollutants of concern in each of the major river basins in the Chesapeake Bay Watershed of Virginia (Tables 2a-d) and then estimating the total reduction required during this permit cycle (Tables 3a-d). TMDL Action Plans that identify the best management practices and other steps to be implemented are required to be developed for all TMDLs. Additionally, language was added to address Virginia’s commitment to the Phase I and Phase II Chesapeake Bay Watershed Implementation Plans (WIPs), “affording MS4 operators up to three full five-year permit cycles to implement necessary reductions.” The regulations also stipulate that the Department must “review and accept” an approvable Chesapeake Bay TMDL Action Plan from an operator and language has been added to specify that TMDL Actions Plans become effective and enforceable 90 days after the date received by the Department.

## **Section II – Municipal Separate Storm Sewer System Management Program**

- d. Minimum Control Measures (MCMs): The regulatory action clarified and expanded the minimum criteria within the General Permit associated with the six MCMs. The minimum control measures now contain much more specific, and where possible, quantitative strategies that must be addressed in the operator’s MS4 Program Plan and progress to be reported in their annual reports.
  - i. MCM 1 – Public Education and Outreach: The strategies within the Program Plan now need to be designed with consideration of three key goals:
    - Increasing target audience knowledge about the steps that can be taken to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;
    - Increasing target audience knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications; and

- Implementing a diverse program with strategies that are targeted towards audiences most likely to have significant stormwater impacts.
- i. MCM 2 – Public Involvement/Participation: The language requires the operator to provide public access to the MS4 Program Plan and annual reports on the operator’s webpage, provide public notice and public comment opportunities on the proposed MS4 Program Plan, and to provide a minimum of four local activities annually that the public may participate in aimed at reducing stormwater pollutant loads and improving water quality. The regulations also provide examples of local public participation activities.
  - ii. MCM 3 – Illicit Discharge Detection and Elimination: The language requires the operator to maintain an accurate and complete storm sewer system map and information table; effectively prohibit nonstormwater discharges into the storm sewer system; develop and implement written procedures to detect, identify, and address nonstormwater discharges including developing field screening methodologies and prioritized schedules; and conduct public reporting of illicit discharges into or from the MS4s.
  - iii. MCM 4 - Construction Site Stormwater Runoff Control: The language requires a MS4 to use its powers to address discharges entering the MS4 from specified land-disturbing activities and requires program compliance with the Erosion and Sediment Control Law and attendant regulations including implementation of appropriate compliance and enforcement strategies.
  - iv. MCM 5 - Post-construction Stormwater Management in New Development and Development on Prior Developed Lands: The language requires a MS4 to use its powers to address post-construction stormwater runoff that enters the MS4 from specified land-disturbing activities and requires program compliance with the Virginia Stormwater Management Act and attendant regulations including implementation of water quality and quantity design criteria; inspection, operation, and maintenance verification strategies for stormwater management facilities; and stormwater management facility tracking and reporting mechanisms.
  - v. MCM 6 - Pollution Prevention/Good Housekeeping for Municipal Operations: The language requires the operator to develop and implement written procedures designed to minimize or prevent pollutant discharge from: 1) daily operations such as road, street, and parking lot maintenance; 2) equipment maintenance; and 3) the application, storage, transport, and disposal of pesticides, herbicides, and fertilizers. It also requires the operator to identify all municipal high-priority facilities and to develop and implement specific stormwater pollution prevention plans for all high-priority facilities identified as having a high potential for the discharge of chemicals and other materials in stormwater. Additionally, the operator shall identify all applicable lands where nutrients are applied to a contiguous area of more than one acre and

within 60 months of state permit coverage, the operator shall implement nutrient management plans on all lands where nutrients are applied to a contiguous area of more than one acre. It also requires the operator to develop an annual written training plan including a schedule of training events that ensures implementation of the specified training requirements. Specific criteria related to the identification of municipal high-priority facilities was also included. Finally, the regulations now state that SWPPPs must include information regarding: 1) the date of incidents; 2) materials discharged, released, or spilled; and 3) quantity discharged, released, or spilled.

- e. Program Plan Modifications: The regulation amendments added clarity on what is not considered an MS4 Program modification that would require a permit modification as well as a discussion of how modifications may be requested by the Department.

**Section III – Conditions Applicable to All State Permits:** The regulations contained only minor edits for clarity or to update hyperlinks to pollution response program information.

- **Forms:** The forms previously incorporated by reference have been removed from the regulation and required information has been included in the regulations. This reduces administrative burden.
- **Documents Incorporated by Reference.** The regulations strike three antiquated documents previously referenced in the MS4 regulations.

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

The Virginia Soil and Water Conservation Board adopted this final regulation, which amends the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems; Part XV and supporting definitions in Part I of the Virginia Stormwater Management Program (VSMP) Permit Regulations (4 VAC50-60), at its March 27, 2013 meeting.

**Family impact**

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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 health and safety benefits that have an indirect impact on families.