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Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-880
Regulation title(s)	General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities (VAR10)
Action title	Amend and reissue the Construction General Permit
Final agency action date	April 15, 2019
Date this document prepared	March 18, 2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This rulemaking is proposed in order to amend and reissue the existing general VPDES permit for discharges of stormwater from construction activities, which expires on June 30, 2019. The proposed general permit regulates stormwater discharges from construction activities. The term “construction activity” is defined in Section 10 of the Virginia Stormwater Management Program regulation (9VAC25-870-10) as “...any clearing, grading or excavation associated with large construction activity or associated with small construction activity.” This general permit authorizes discharges of stormwater from regulated construction activities to surface waters within the boundaries of the Commonwealth of Virginia and includes enhanced criteria for impaired and exceptional waters. Construction activities that disturb one acre or greater or less than one acre but part of a common plan of development equal to or greater than one acre are required to obtain coverage under this general permit prior to commencing land-disturbing activities.

In addition to the new permit term, substantive changes to the existing regulation include:

- Updating Water Quality Assessment Integrated Report date;

- Revising the authorization for the discharge of potable water as an authorized nonstormwater discharge only when managed in a manner to avoid an instream impact;
- Requiring the submittal of site map with the registration to identify the area where land disturbance is occurring or is proposed during the term of the permit;
- Requiring additional information with the registration regarding projects being conducted under a department approved annual standards and specification program;
- Requiring with the registration the erosion and sediment control (ESC) plan approval date to ensure requirements to obtain ESC plan approval prior to general permit coverage have been met;
- Requiring with the registration the date land-disturbing activities commenced, if applicable;
- Requiring with the registration a letter of availability of nutrient credits if the project will meet post-development stormwater requirements through the use of the nonpoint source nutrient trading program;
- Updated language to clarify that a notice of termination is not required for single-family residential structures that are not required to submit a registration statement.
- Clarifying that stormwater management maintenance agreements must be recorded within local land records prior to termination for best management practices used to meet post-development water quality and/or water quantity technical criteria and requiring proof of recordation;
- Requiring construction record drawings be submitted with notice of termination in accordance with requirements of the Virginia Stormwater Management Program regulation (9VAC25-870-55);
- Adding a requirement that for individual lots in residential construction only, operators are to provide homeowners with written information about the importance of final stabilization and require signed documentation from the permittee that the homeowner has been notified as part of the SWPPP documents that must be maintained for 3 years after the completion of the project.
- Including Stormwater Pollution Prevention Plan (SWPPP) requirements for discharges to waters impaired for Polychlorinated biphenyl (PCB) where the construction activity includes the demolition of a building with an area of 10,000 square feet or greater and that was originally constructed or renovated prior to January 1, 1980;
- Including requirements that waste containers be covered or similar actions taken to minimize the exposure of waste materials to precipitation;
- Revising frequency in which an operator must conduct a SWPPP inspection from 48 hours after a measurable storm event to 24 hours after a measurable storm event in addition to once every 10 days, or once every 5 days if the site discharges to an impaired surface water;
- Including a provision that allows an operator to delay a SWPPP inspection during adverse weather conditions if it is unsafe to conduct the inspection;
- Including a requirement that SWPPP inspection reports be included with the SWPPP no later than 4 days following the inspection; and
- Where appropriate, changing language to match other VPDES general permits for consistency.

Numerous clarifications and corrections have been made throughout the regulation since publication of the proposal. Substantive changes to the proposal include moving the requirement to submit a maintenance agreement to the permit termination section and added in 9VAC25-880-60 a requirement for operators to provide a construction record drawing for stormwater management facilities when seeking permit termination.

Acronyms and definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

APA: Administrative Process Act
BMP: Best Management Practices
CFR: Code of Federal Regulations

CGP: General VPDES Permit for Discharges of Stormwater from Construction Activities, or Construction General Permit

Department: Department of Environmental Quality or "DEQ"

EPA (U.S. EPA): United States Environmental Protection Agency

ESC: Erosion and Sediment Control

NPDES: National Pollutant Discharge Elimination System

PCB: Polychlorinated biphenyls

TMDL: Total Maximum Daily Load

USC: United States Code

VAC: Virginia Administrative Code

VPDES: Virginia Pollutant Discharge Elimination System

VSMP: Virginia Stormwater Management Program

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.

On April 15, 2019, the State Water Control Board adopted amendments to 9VAC25-880, General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities (VAR10).

Family impact

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

This regulation will have no direct impact on the institution of the family or family stability.

Periodic review/small business impact review report of findings

Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by §2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

There were no comments received following the publication of the Notice of Periodic Review. Protecting water quality in the Commonwealth's surface waters is necessary to protect the health, safety and welfare of citizens. The proposed regulatory action is needed in order to establish appropriate and necessary permitting requirements for discharges of stormwater to surface waters from construction activities. These discharges are considered to be point sources of pollutants and thus are subject to regulation under the VPDES permit program. The primary issue that needs to be addressed is that the existing general permit

expires on June 30, 2019 and must be reissued in order to continue authorizing discharges from these activities after that date.

The complexity of the regulation and ideas to make it clearer were discussed in the technical advisory committee and appropriate changes were made. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation as the State Water Control Board is the delegated authority to regulate point source discharges to surface waters.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
1	-	Revised definition of final stabilization as follows: The homebuilder establishing temporary soil stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner, and <u>informing providing written notification to the homeowner of the need for, and benefits of, final stabilization. The homebuilder shall maintain a copy of the written notification and a signed statement certifying that the information was provided to the homeowner in accordance with the stormwater pollution prevention plan recordkeeping requirements as specified in Part II G 5</u>	The general permit allows that in the case of construction for residential lots, homebuilders may transfer the property to a new homeowner when temporary stabilization has been established. While the 2014 permit required the builder to provide notice to the new homeowner of the importance of final stabilization, the condition was not practically enforceable. With this change, the builder, in cases in which temporary stabilization is established, must provide written notification to the owner and certify that it was provided, and keep record of the notification and certification with other SWPPP records.
30 A.4.b	Approved stormwater management plan included in SWPPP prior to qualifying for permit coverage	Added reference to 9VAC25-880-70 Part II A.3.b for exception to requirement.	Revised for consistency with 9VAC25-880-70 Part II A.3.b that states an approved stormwater management plan is not required for existing construction activities that meet the requirements of 9VAC25-870-47 B, but that a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed prior to the completion of the construction process to control pollutants in stormwater discharges after construction operations have been completed.

Section number	Requirement at proposed stage	What has changed	Rationale for change
45	Language to clarify applicable post development stormwater technical criteria.	Section 45 has been removed.	The language originally proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870 for projects obtaining general permit coverage. After receiving numerous comments during the comment period, the department has determined that the language has caused more confusion than clarification. Information regarding applicable technical criteria has been added to the fact sheet.
50 B.3	Registration statement requirement to provide a site map in a format specified by the VSMP.	Language has been added to require the format of the site map to be an 8.5 x 11 inch document.	The department received several comments during the public comment period requesting clarification and specificity of the site map requirement. Staff believes by specifying that the site map must be submitted as 8.5 x 11 inch document, operators applying for permit coverage are given more certainty as to the registration statement requirement.
50 B.8 and 13	Registration statement requirement to provide the date of ESC plan approval and the estimated area of land disturbance.	Language has been added to clarify that the estimated area to be disturbed reported by the operator must be equal to the area of land for which an ESC plan has been approved.	The department received several comments during the comment period indicating that operators seeking permit coverage were confused as to the registration statement requirement to provide the area of estimated land disturbance. During the public comment period, commenters raised concerns that later sections of phased projects had not yet received ESC plan approval and that it was not practical to do so. Staff learned that permittees were completing this portion of the registration statement to indicate amounts equal to the total area of land disturbance and not for which an ESC plan had been approved. Staff is including clarifying language that the estimated area to be disturbed is the area for which an approved ESC plan has been obtained and for which permit coverage is being granted.
50 B.15	Registration statement requirement to provide information regarding demolition activities.	Requirement has been deleted.	The department originally proposed this requirement regarding demolition of structures to for consistency with requirements in EPA's 2017 Construction General Permit. Upon further review, staff have determined that this information is not necessary in the registration statement and is better suited to be documented in the SWPPP.
50 B.16	Registration statement requirement to provide a maintenance agreement for stormwater management facilities	Requirement has been moved to the Termination of Permit Coverage requirements in section 60.	The department received several comments during the comment period indicating concerns about providing unexecuted maintenance agreements with the registration statement since designs may change during the course of construction. Staff agrees with this concern and has moved the requirement for a maintenance agreement to be provided prior to permit termination.

Section number	Requirement at proposed stage	What has changed	Rationale for change
50 B.17	Registration statement requirement to provide affidavit of sale documenting that nonpoint source nutrient credits are purchased.	Requirement has been moved to the Termination of Permit Coverage requirements in section 60.	The department received several comments during the comment period indicating concerns about providing affidavits of sale as a condition of permit since site designs may change during the course of construction resulting in changes to how compliance with the post development stormwater management technical criteria is demonstrated. Staff agrees with this concern and has moved the requirement for an affidavit of sale to be provided prior to permit termination.
60.A	Submit a notice of termination when one of the termination criteria is met.	Updated language to clarify that a notice of termination is not required for single-family residential structures that are not required to submit a registration statement.	For the construction of single-family residential structures, operators are not required to submit a registration statement as specified in 9VAC25-880-50 A 1 c and A 2 b. Language was added to clarify that if a registration statement is not required to be submitted to the VSMP authority, a notice of termination is not required to be submitted.
60 A.1	Submit a notice of termination when one of the termination criteria is met.	Added requirement for operators to provide a construction record drawing for stormwater management facilities when seeking permit termination.	This change is necessary to make the Notice of Termination requirements in 9VAC25-880-60 consistent with the Notice of Termination requirements in 9VAC25-880-70 Part I F.1.a.
60 C.7	Providing affidavit of sale for the purchase of nutrient credits prior to obtaining permit coverage.	Moved requirement for operators using non-point source nutrient credits to demonstrate compliance with the post development stormwater management technical criteria to provide an affidavit of sale as proof that credits were purchased with the notice of termination instead of prior to permit coverage.	The department received several comments during the comment period indicating concerns about providing affidavits of sale as a condition of permit coverage since site designs may change during the course of construction resulting in changes to how compliance with the post development stormwater management technical criteria is demonstrated. Staff agrees with this concern and has moved the requirement for an affidavit of sale to be provided prior to permit termination. This change reinstates the requirement that existed in the 2014 CGP.
60 C.9	Notice of termination requirement to include stormwater management facility maintenance agreement.	Language has been added to clarify that the maintenance agreement be recorded prior to permit termination and proof of recordation with the local land records be provided.	9VAC25-870-112 A requires long-term responsibility and maintenance for stormwater management facilities be recorded with local land records prior to permit termination. The department and VSMP authorities often receive maintenance agreements at the time of termination that have not been recorded. Staff believes this change is necessary to fully implement the maintenance agreement requirements of the VSMP regulation.

Section number	Requirement at proposed stage	What has changed	Rationale for change
60 C.10	Notice of termination requirements for residential construction if temporary stabilization is applied to the site, operator must notify new homeowner of importance of final stabilization.	New requirement for builders, when initiating temporary stabilization only, to notify new homeowners about the importance of final stabilization in writing and maintain documentation and certification that notice was given.	The general permit allows that in the case of construction for residential lots, homebuilders may transfer the property to a new homeowner when temporary stabilization has been established. While the 2014 permit required the builder to provide notice to the new homeowner of the importance of final stabilization, the condition was not practically enforceable. With this change the builder, in cases in which temporary stabilization is established, must provide written notification to the owner and certify that it was provided, and keep record of the notification and certification with other SWPPP records.
70 Part I F.1	Submit a notice of termination when one of the termination criteria is met.	Updated language to clarify that a notice of termination is not required for single-family residential structures that are not required to submit a registration statement.	For the construction of single-family residential structures, operators are not required to submit a registration statement as specified in 9VAC25-880-50 A 1 c and A 2 b. Language was added to clarify that if a registration statement is not required to be submitted to the VSMP authority, a notice of termination is not required to be submitted.
70 Part I F.1.d	Notice of termination requirements for residential construction if temporary stabilization is applied to the site, operator must notify new homeowner of importance of final stabilization.	New requirement for builders, when initiating temporary stabilization only, to notify new homeowners about the importance of final stabilization in writing and maintain documentation and certification that notice was given.	The general permit allows that in the case of construction for residential lots, homebuilders may transfer the property to a new homeowner when temporary stabilization has been established. While the 2014 permit required the builder to provide notice to the new homeowner of the importance of final stabilization, the condition was not practically enforceable. With this change the builder, in cases in which temporary stabilization is established, must provide written notification to the owner and certify that it was provided, and keep record of the notification and certification with other SWPPP records
70 Part II B.4.e(7)	General Permit SWPPP Pollution Prevention requirements	Changed “excess concrete” to “waste concrete”	In this permit condition, the “excess concrete” was changed to “waste concrete” in reference to prohibited discharges. This was the result of a comment received and staff agree that the revision clarifies the intent of the requirement.

Section number	Requirement at proposed stage	What has changed	Rationale for change
70 Part II B.6.b(1)	General Permit SWPPP requirements for discharges to surface waters impaired for PCB	Deleted language "Implementation of controls to minimize the exposure of PCB-containing building materials, including paint, caulk, and pre-1980 fluorescent lighting fixtures, to precipitation and to stormwater such as separating work areas from nonwork areas and selecting appropriate personal protective equipment and tools, constructing a containment area so that all dust or debris generated by the work remains within the protected area, using tools that minimize dust and heat (<212°F)" and added requirement to implement an approved erosion and sediment control plan in accordance with Part II B 2.	A condition was included in the proposed permit requiring the minimization of exposure of building materials containing PCB to stormwater. The language mirrored language in EPA's 2017 CGP for consistency. The department received several comments requesting clarification on the required controls to minimize the exposure of PCB to stormwater. Upon further review, the department has determined that since PCB affixes to sediment, the proper implementation and maintenance of erosion and sediment control as well as proper waste management, both already required by the permit, provide the necessary minimization and control of PCB to protect surface waters. Therefore, the condition is not necessary. Conditions will be retained in the permit that require increased SWPPP inspections for those sites that discharge to surface waters that have a PCB impairment.
ALL			Permit condition numbering and associated references were reviewed and updated throughout the permit to ensure accuracy. Additionally, typos and wording have been updated for clarity.

Public Comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Topic	Comment	Department Response
Jimmy Edmonds (Loudoun County)	Authorization to Discharge	9VAC25-880-30. A.4.b This section explains that an approved SWM plan must be obtained by the Operator prior in order to obtain authorization to discharge. Later in the regulation, 9VAC25-880-70 PART II.A.3.b states that projects that have commenced or are authorized to discharge under the 2009 or 2014 CGP do not require an approved SWM Plan. We understand how the 2009 CGP fits; however, the 2014 permit required an approved SWM plan for every regulated LDA. Please provide a clarification.	The department has revised the regulation language for consistency.

Commenter	Topic	Comment	Department Response
Home Builders Association of Virginia	Authorized non-stormwater discharges	<p>9VAC25-880-30 F.5 and 9VAC25-880-70 Part I.E.5 of Proposed Chapter 880 states: <i>“Potable water source, including uncontaminated waterline flushings managed in a manner to avoid an instream impact.”</i></p> <p>Comment: DEQ does not clearly define the term “instream impact” in the Proposed Chapter 880, 9VAC25-840 (Erosion and Sediment Control Regulations), or 9VAC25-870 (Virginia Stormwater Management Program Regulation). Therefore, to avoid confusion and misinterpretation throughout the construction industry, it is recommended that DEQ add a definition of the term “instream impact” to the Proposed Chapter 880 definition section (9VAC25-880-1).</p>	The department has included information on the fact sheet regarding this provision of the permit.

Commenter	Topic	Comment	Department Response
<p>Barbara Brumbaugh (City of Chesapeake)</p>	<p>Offsite Support Activities</p>	<p>Section 9VAC25-880-30.D should be revised to clarify how it applies to state projects. If a state agency is the operator of the construction activity seeking general permit coverage, they should be required to include off-site support activities on the registration statement. The Department of Environmental Quality (“DEQ”) should be the VSMP Authority for state projects and their associated off-site support activities, regardless of where they are located. However, the Virginia Department of Transportation (“VDOT”) is interpreting this section differently. VDOT’s policy requires contractors working on an off-site support activity outside of a VDOT right-of-way to obtain Construction GP coverage from the local VSMP Authority. It is not the local VSMP Authority’s responsibility to regulate a state project, which is noted in 9VAC25-870-104(C): “Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state or federal project, unless authorized by separate statute.”</p> <p>The suggested revision is to include this sentence in the section: “Where a state agency is the operator of the construction activity seeking general permit coverage, the land area of the off-site support activity shall be included in determining the total land disturbance acreage of the construction activity.” This would require the off-site support activity to be permitted with the construction activity. In some instances, VDOT contractors have not applied for Construction GP coverage when it was required. When contractors do not apply for permit coverage, the local VSMP Authority is unaware of the off-site support activity. The contractor then operates the site without oversight from the state or the locality. VSMP authorities should never be held responsible for regulation and oversight of off-site support activities for state projects. The City strongly recommends that DEQ support a change to VDOT’s policy that would require VDOT to include off-site support activities are covered under a Construction GP.</p>	<p>The proposed general permit retains language as specified in 9VAC25-880-30 D stating that off-site facilities are not required to be covered by the general permit for the primary construction activity. Information has been added to the fact sheet regarding permit coverage for off-site support activities. No changes to the permit are proposed in response to this comment.</p>

Committer	Topic	Comment	Department Response
Hampton Roads Planning District Commission	Offsite Support Activities	<p>Section 9VAC25-880-30.D should be revised to clarify how it applies to state projects. If a state agency is the operator of the construction activity seeking general permit coverage, they should be required to include off-site support activities on the registration statement. The Department of Environmental Quality (“DEQ”) should be the VSMP Authority for state projects and their associated off-site support activities, regardless of where they are located. However, the Virginia Department of Transportation (“VDOT”) is interpreting this section differently. VDOT’s policy requires contractors working on an off-site support activity outside of a VDOT right-of-way to obtain Construction GP coverage from the local VSMP Authority. It is not the local VSMP Authority’s responsibility to regulate a state project, which is noted in 9VAC25-870-104(C): “Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state or federal project, unless authorized by separate statute.”The suggested revision is to include this sentence in the section: “Where a state agency is the operator of the construction activity seeking general permit coverage, the land area of the off-site support activity shall be included in determining the total land disturbance acreage of the construction activity.” This would require the off-site support activity to be permitted with the construction activity. In some instances, VDOT contractors have not applied for Construction GP coverage when it was required. When contractors do not apply for permit coverage, the local VSMP Authority is unaware of the off-site support activity. The contractor then operates the site without oversight from the state or the locality. Rather than having local VSMP Authorities responsible for finding and permitting off-site support activities for state projects, DEQ should support a change to VDOT’s policy that would include off-site support activities with the Construction GP for the roadway project and minimize the likelihood of off-site support activities operating without permit coverage.</p>	<p>The proposed general permit retains language as specified in 9VAC25-880-30 D stating that off-site facilities are not required to be covered by the general permit for the primary construction activity. Information has been added to the fact sheet regarding permit coverage for off-site support activities. No changes to the permit are proposed in response to this comment.</p>

Commenter	Topic	Comment	Department Response
<p>Mark Williams (Koontz Bryant Johnson Williams)</p>	<p>Administrative Continuance of Permit Coverage</p>	<p>Section 9VAC25-880-30 (Authorization to Discharge); Item H (Continuation of General Permit Coverage) states: "coverages are automatically continued if the owner has submitted a complete registration statement...". What is meant by the term "automatically"? Does this mean that, under the same conditions of renewal approval in 2014, permits will be renewed for the 2019-2024 cycle... such that the concern with Question 1 above is not an issue?.. or would the requirement for a "complete" registration mean that all items required for a registration statement listed in section 50 be included (to include a SWPPP, which requires ESC plans)? Why was the term "automatically" added here, as that implies that only those items required for the registration statement under the current 2014-2019 permit would be required... that said, the confusion referenced in question #1 would still apply for the current permit, particularly given the requirement to have an approved ESC plan within 60 days after the date of coverage of the 2014 permit.</p>	<p>Item H in section 30 of 9VAC25-880 allows that in the circumstance that the general permit expires and the permittee has submitted a complete registration statement in accordance with the requirements of 9VAC25-880-50, the permittee may continue to operate under the 2014 permit until such time that the department approves coverage under the new general permit. This "administrative continuance" is authorized under the Clean Water Act, federal National Pollutant Discharge Elimination System regulations, and the Virginia Stormwater Management Program regulation. This proposed updated language provides consistency with other VPDES general permit regulations. No changes to the permit are proposed in response to this comment.</p>

Commenter	Topic	Comment	Department Response
Home Builders Association of Virginia	Administrative Continuance of Permit Coverage	<p>9VAC25-880-30 H1 and 9VAC25-880-50 A.2.a(1) of Proposed Chapter 880 states: <i>“Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if the owner has submitted a complete registration statement at least 60 days prior to the expiration date of the permit, or a later submittal date established by the board...”</i>Comment: The timeframe for permit renewal levied onto existing permittees of “at least 60 days prior to the expiration date of the permit” is burdensome and unnecessary. When a new permittee is applying for new coverage under the new permit [Proposed Chapter 880-50 1.a], their only deadline is that the Registration Statement is submitted “...to the VSMP authority prior to the commencement of land disturbing.” If the permittee is extending their permit coverage without any major modifications to the originally approved erosion and sediment control plan, and the stormwater management plan why does DEQ need 60 days to approve a renewal Registration Statement? Therefore, DEQ should change the timeframe deadline for submitting a renewal Registration Statement from 60 days to “...prior to the expiration date of the permit.”</p>	<p>There are more than 5,000 active construction general permits across the Commonwealth, and the department will have to review and process coverage for all registration statements received, including those received by local VSMP authorities. Receipt of registration statements 60 days prior to expiration is the minimum amount of time needed to ensure all permits are reissued prior to expiration and is consistent with other VPDES general permits. No changes to the permit are proposed in response to this comment.</p>
Tyler Emery (American Electric Power)	Registration Statement	<p>Section B.3. currently states: <i>A site map in a format specified by the VSMP authority showing the location of the existing or proposed land-disturbing activities, the limits of land disturbance, construction entrances, and all water bodies receiving stormwater discharges from the site.</i></p> <p>Please further clarify or specify in what formats these site maps are required for a complete registration statement.</p>	<p>The purpose of the site map is to document the extent of the construction activities proposed for coverage as part of the registration statement since there are instances in which erosion and sediment control and stormwater management plans are not required to be submitted (such as with an annual standards and specifications holder or for Part II C projects eligible under 9VAC25-870-47). A street map, topographic map, or aerial map provided in an 8.5 x 11 inch format as part of the registration statement will satisfy the requirement. Please note that the site map should not be submitted as a plan-sized sheet. Additionally, a VSMP authority may allow a vicinity map included with the stormwater management plan to satisfy this requirement. The registration statement requirements have been updated for clarity.</p>

Commenter	Topic	Comment	Department Response
Tyler Emery (American Electric Power)	Registration Statement	<p>Section B.17. currently states: <i>If nutrient credits are to be used to demonstrate compliance with the water quality technical criteria as allowed in 9VAC25-870-65 F, a letter of availability from an appropriate nutrient bank that nonpoint source nutrient credits are available. Prior to issuance of state permit coverage, an affidavit of sale documenting that nonpoint source nutrient credits have been obtained shall be submitted.</i> We feel that purchase of credits prior to a permit being issued is an unnecessary change to the application and request that it be removed. As written, the permit does not take into account the potential for changes in scope during the life of a project that could affect the final amount of nutrient credits ultimately required. Therefore, proof of purchase of these credits should be a function of the permit termination and not the permit issuance. Enforcement mechanisms are currently in place through the regulations to require compliance by permittees with the final accounting of credits. AEP proposes additional options for consideration if there is a documented need:</p> <ul style="list-style-type: none"> · Require an affidavit of sale be provided prior to the commencement of construction rather than the permit issuance. This would add an additional step to the permitting process and could potentially cause delays; however, it would provide permittees with some flexibility to purchase the credits on a slightly longer timeline. · If the concern is of a lack of available credits, AEP suggests the creation of a system where a permit holder could reserve rights to mitigation credits for a project without committing project funds in the design stage. If construction of a project gets delayed or canceled for any number of reasons, those credits would not have already been purchased and could be returned to the bank. 	<p>After further consideration, the department concurs that it is appropriate for operators to provide proof of nutrient purchase at the time of permit termination. The registration statement requirements have been revised to remove the requirement for the affidavit of sale to be provided prior to issuance of permit coverage.</p>

Commenter	Topic	Comment	Department Response
Melanie Mason (City of Alexandria)	Registration Statement	9VAC25-880-50(B)(17): Comment: The requirement to purchase nutrient credits prior to the issuance of state coverage may cause delays in releasing plans for construction. Complete SWPPPs (including approved stormwater management plans) are often approved by the locality early in the site plan process. Permit processing can take several weeks and nutrient credits are typically not purchased until the entire site plan has achieved approval from the locality and just before the plan is released for construction. Final plan approval/release or land disturbance permits should be sufficient to make sure credits are purchased.	After further consideration, the department concurs that it is appropriate for operators to provide proof of nutrient purchase at the time of permit termination. The registration statement requirements have been revised to remove the requirement for the affidavit of sale to be provided prior to issuance of permit coverage.
Barbara Brumbaugh (City of Chesapeake)	Registration Statement	The City strongly recommends that DEQ allow electronic submissions of Registration Statements and Notices of Terminations in order to expedite the permitting process. Permit coverage is currently issued electronically by DEQ, and allowing electronic submissions of Registrations Statements would provide consistency in processes.	At this time, electronic acceptance of registration statements and notice of terminations from operators is not available through the SWCGP database. Prior to the next permit term and in response to EPA's E-reporting rule, the department will be exploring the viability of accepting these types of documents electronically. Please note, however, that VSMP authorities may accept scanned registration statements and notice of terminations electronically if the scanned document includes a wet signature. No changes to the permit are proposed in response to this comment.
Barbara Brumbaugh (City of Chesapeake)	Registration Statement	The draft Construction GP regulations Section 9VAC25-880-50 B.3. requests that "a site map in a format specified by the VSMP Authority showing the location of the existing or proposed land disturbance activities, the limits of land disturbance, construction entrances, and all water bodies receiving stormwater discharges from the site" to be submitted with the Registration Statement. The City already receives this information through the site or subdivision plan review process (prior to submission of the Registration Statement to DEQ) and this information is also required to be included in the SWPPP. To avoid redundancy, the City recommends that this requirement be removed or limited to only projects where DEQ is the VSMP Authority.	The purpose of the site map is to document the extent of the construction activities as part of the registration statement since there are instances in which erosion and sediment control and stormwater management plans are not required to be submitted (such as with an annual standard and specification holder or for Part II C projects eligible under 9VAC25-870-47). A street map, topographic map, or aerial map provided in an 8.5 x 11 inch format as part of the registration statement will satisfy the requirement. Please note that the site map should not be submitted as a plan-sized sheet. Additionally, a VSMP authority may allow a vicinity map included with the stormwater management plan to satisfy this requirement. The registration statement requirements have been updated for clarity.

Commenter	Topic	Comment	Department Response
Home Builders Association of Virginia	Registration Statement	<p>9VAC25-880-50 B.7 There are 9VAC25-880-50 B.7 of Proposed Chapter 880 states: <i>“A copy of the annual standard and specification entity form shall be submitted with the registration statement.”</i></p> <p>Comment: Section 9VAC25-880-50 B.7 is new text added to the Proposed Chapter 880, and it is unclear what documentation DEQ is referring to when stating <i>“A copy of the annual standard and specification entity form...”</i> Therefore, it is strongly recommended that DEQ either add a definition of the annual standard and specification entity form, or remove this text from 9VAC25-880-50 of the Proposed Chapter 880.</p>	<p>Those operators applying for permit coverage for projects covered under an approved under a department annual standard and specification program are required to provide certification to the department that the erosion and sediment control and stormwater management plans have been reviewed in accordance with the annual standard and specification program. This form is available on DEQ’s Construction Stormwater website. The registration statement includes instructions as to when this form is required. No changes to the permit are proposed in response to this comment.</p>
John Woodburn (Goochland County)	Registration Statement	<p>9VAC25-880-50.A.5 - What does this mean in regard to “authorization to discharge will not be retroactive”?</p>	<p>This phrase indicates that permit coverage begins only on the date that coverage is approved if after the effective date of the general permit regulation. For example, if an operator applies for permit coverage after beginning land-disturbing activities, the permit coverage would not apply for the period of time before the permit coverage is approved. No changes to the permit are proposed in response to this comment.</p>
John Woodburn (Goochland County)	Registration Statement	<p>9VAC25-880-50.B.15 – need to define “prior developed lands” in this document, or reference where the term is defined.</p>	<p>“Prior developed lands” is defined in Section 10 of the Virginia Stormwater Management Program regulation (9VAC25-870-10). As stated in 9VAC25-880-1 of this general permit regulation, “words and terms used in this chapter shall have the meanings defined in the Virginia Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia), this chapter, and 9VAC25-870 unless the context clearly indicates otherwise.” No changes to the permit are proposed in response to this comment.</p>

Committer	Topic	Comment	Department Response
Mark Williams (Koontz Bryant Johnson Williams)	Registration Statement	Section 9VAC25-880-50, Item B (Draft); sub-item 3 requires a site map that shows the limits of disturbance as well as construction entrances. What would be shown for a phased project, required to have permit coverage for the initial phase (prior to plan approval for that initial phase), however, does not have an approved ESC plans for future phases? What information is to be shown on the site map for future sections not yet designed? If sub-item 13 (regarding projects that are part of a larger common plan of development) is checked, would the requirement of sub-item 3 need to show construction entrances and limits of disturbance for the entire common plan of development area or just for the initial section. The initial phase, being the only portion fully designed, would be the only area in which this information could be accurately reflected on a site map.	Registration statement requirements for a site map were added at the recommendation of the technical advisory committee. The map is meant to demonstrate the land-disturbing activity for the proposed project that includes the estimated area to be disturbed under the permit coverage being sought as well as denote and distinguish future phases of land disturbance. Detailed information for future phases is not necessary until such time that the operator registers for permit coverage for the future phase, but the map should outline the estimated limits of disturbance for future phases. The permit condition has been revised to provide further clarification.
Mark Williams (Koontz Bryant Johnson Williams)	Registration Statement	Section 9VAC25-880-50, Item B (Draft); sub-item 15... Please clarify the first part of the sentence which states "Where applicable..." When would a SWM agreement not be required for a site with a BMP?	A BMP maintenance agreement is only required if the operator is proposing a stormwater management facility to demonstrate compliance with water quality or quantity requirements. No changes to the permit are proposed in response to this comment.

Committer	Topic	Comment	Department Response
<p>Mark Williams (Koontz Bryant Johnson Williams)</p>	<p>Registration Statement</p>	<p>Section 9VAC25-880-50, Item B (Draft); sub-item 15. This section lists a requirement to have an approved SWM agreement in place, prior to issuance of a permit (as this section lists information that must be contained within the registration statement submitted by the Operator). Sub-item 15 references 9VAC25-870-112A, which states that the agreement must be recorded "... prior to state permit termination or earlier as required by the VSMP authority..." Many localities will approve a site plan without a SWM agreement in place, knowing that they can hold up C of O if required. If a recorded SWM agreement is required with the registration statement, it would directly conflict with the referenced section 9VAC25-870-112A, which gives the reviewing authority the ability to approve a plan without requiring a SWM agreement. Please clarify if only a draft (nonexecuted copy) of a SWM agreement is required with the registration statement. Otherwise, since a complete registration statement is required prior to authorization to discharge (per 9VAC25-880-30-A1), the authority would no longer have the flexibility of approving a plan, as previously afforded to them in 9VAC25-870-112A, without evidence of an agreement. Could this requirement simply be deleted? Section 9VAC25-880-60 (Termination of general permit coverage), Item B, number 8 already requires evidence that a SWM Maintenance Agreement has been recorded. Requiring, evidence of a recorded SWM Maintenance Agreement within the termination requirements (Section 60) is the appropriate place. (A SWM Maintenance Agreement is further required under Part 1 of VAR-10, Item F, sub-item 1a)</p>	<p>Upon further review, the department has moved the requirement for the maintenance agreement to be submitted with the registration statement and added as part of the notice of termination and is required to be fully executed and recorded at the time of termination. Please note, however, that 9VAC25-870-112 A.1 requires a draft BMP maintenance agreement be submitted with the stormwater management plans.</p>
<p>Kristin Carter (University of Virginia)</p>	<p>Registration Statement</p>	<p>9VAC25-880-50 – For paragraph A.4 – should the paragraph be titled "Late registration statements" rather than "Late notifications"?</p>	<p>The titles are correct. "Late notifications" applies to those operators who begin land disturbing activities prior to submittal of the registration statement and obtaining permit coverage. "Late registration statements" applies to existing permittees who submit a registration statement for permit coverage after the due date established in the general permit regulation. No changes to the permit are proposed in response to this comment.</p>

Committer	Topic	Comment	Department Response
Kristin Carter (University of Virginia)	Registration Statement	9VAC25-880-50 – For paragraph A.5 - would it be more appropriate to move this text under paragraph A.2 – perhaps renumber A.2.a.(3)?	Thank you for your comment; however, the department believes the current location of the language is appropriate.
Kristin Carter (University of Virginia)	Registration Statement	9VAC25-880-50 – For paragraph B.17 – I recommend documenting purchase of nutrient credits be due at the same time record drawings/stormwater maintenance agreements are recorded (NOT phase) in case there are slight changes to the post-development land cover that impact the required credit purchase. Accordingly, this language should move to 9VAC25-880-60 sec on C.	After further consideration, the department concurs that it is appropriate for operators to provide proof of nutrient purchase at the time of permit termination. The proposed permit has been revised to require the affidavit of sale at the time of permit termination. The proposed general permit has been revised accordingly.
Logan Kendle (Superintendent Commercial Contractor)	Registration Statement	I support the requirement of documentation of nutrient credits.	Thank you for your comment.
Richard Street (Spotsylvania County)	Registration Statement	<p>Page 767 under 9VAC25-880-50 item A-3 “Transfer”. We should probably state the three basic options that we use Basically there are 3 options in this scenario:</p> <ol style="list-style-type: none"> 1. New operator of the sub-section obtains their own permit - New issuance fee 2. Original operator transfers entire permit to new operator - Transfer fee 3. Original operator identifies new operator as a contractor working under them in the SWPPP - No fee <p>I’m not certain if we should just have a handout at the local level or if DEQ needs a fact sheet or if it needs to be placed in the permit update to just tell everyone. I’ll leave that up to you and your staff. I will however create a simple sheet that explains the options (unless you have one already) to give to our VAEPO members.</p>	"Transfer" as used in the general permit occurs when an existing operator transfers permit coverage to a new operator. The circumstances in which an operator identifies a sub-contractor in the SWPPP or a new contractor obtains their own permit coverage is not considered a transfer of permit coverage. No changes to the permit are proposed in response to this comment.
Richard Street (Spotsylvania County)	Registration Statement	Page 768 under the same section above [9VAC25-880-50] item B-2 the address is almost always not available at the time we need to submit the VSMP. We generally get a road name but we have been relying on the Long/Lat until an address is assigned. I think maybe keeping the “if available” but place it behind the word address example “address (if available)”.	The registration statement language as written in the proposed regulation requires the physical address of the construction activity when it is available as well as the coordinates of the project. No changes to the permit are proposed in response to this comment.

Commenter	Topic	Comment	Department Response
<p>Jody Greene (Wetland Studies and Solutions, Inc.)</p>	<p>Registration Statement</p>	<p>Associated plan sets and supporting information requirements. The following three recommendations regarding associated plan sets are necessary to avoid requiring redundant effort when the requested documentation is already provided in the plan submission process. When VSMP authorities link the plans directly to the Registration Statement there should be no need to suggest the information contained in the plans has to be submitted again. However, the recommended change would not prohibit any VSMP authority from requested a specific format that differs from the plan set. Also note, that VSMP Authorities that choose to use the plans instead of separate submittals will reduce the chances for conflicting information as site plans change and are updated. 9VAC25-880-50 B.3 Currently Proposed: 3. A site map in a format specified by the VSMP authority showing the location of the existing or proposed land disturbing activities, the limits of land disturbance, construction entrances, and all water bodies receiving stormwater discharges from the site; Recommend Change: 3. Unless provided in the associated plan set, a site map in a format specified by the VSMP authority showing the location of the existing or proposed land disturbing activities, the limits of land disturbance, construction entrances, and all water bodies receiving stormwater discharges from the site;</p>	<p>The purpose of the site map is to document the extent of the construction activities as part of the registration statement since there are instances in which erosion and sediment control and stormwater management plans are not required to be submitted (such as with an annual standard and specification holder or for Part II C projects eligible under 9VAC25-870-47). A street map, topographic map, or aerial map provided in an 8.5 x 11 inch format as part of the registration statement will satisfy the requirement. Please note that the site map should not be submitted as a plan-sized sheet. Additionally, a VSMP authority may allow a vicinity map included with the stormwater management plan to satisfy this requirement. The registration statement requirements have been updated for clarity.</p>

Commenter	Topic	Comment	Department Response
<p>Jody Greene (Wetland Studies and Solutions, Inc.)</p>	<p>Registration Statement</p>	<p>9VAC25-880-50 B.17 Currently Proposed 16. If nutrient credits are to be used to demonstrate compliance with the water quality technical criteria as allowed in 9VAC25-870-65 F, a letter of availability from an appropriate nutrient bank that nonpoint source nutrient credits are available. Prior to issuance of state permit coverage, an affidavit of sale documenting that nonpoint source nutrient credits have been obtained shall be submitted; Recommended Change 16. If nutrient credits are to be used to demonstrate compliance with the water quality technical criteria as allowed in 9VAC25-870-65 F, a letter of availability from an appropriate nutrient bank that nonpoint source nutrient credits are available. Prior to issuance of state permit coverage, an affidavit of sale documenting that nonpoint source nutrient credits have been obtained shall be submitted, unless provided in the associated plan set;</p>	<p>After further consideration, the department concurs that it is appropriate for operators to provide proof of nutrient purchase at the time of permit termination. The proposed permit has been revised to require an affidavit of sale at the time of permit termination. The proposed general permit has been revised accordingly.</p>
<p>Jimmy Edmonds (Loudoun County)</p>	<p>Registration Statement</p>	<p>9VAC25-880-50.A.2.a(1) This section requires that an updated (amended) Registration Statement be submitted by the Operator at least 60 days prior to the expiration of the existing permit. We desire to provide the amended Registration Statement to our clients in order for them to have plenty of time to meet the deadline. Will DEQ be able to provide this document in a timely fashion or will the current Registration Statement need to suffice in order to meet these time constraints?</p>	<p>A draft registration statement was provided on DEQ's website on February 14, 2019 and sent to local VSMP authorities on February 20, 2019. The department believes that due to the minimal changes on the registration statement, existing permittees will have sufficient time to complete the document and provide it to the VSMP authority by the due date. VSMP authorities may accept draft registration statements to fulfill the re-application requirements under the general permit. A final registration statement will be made available after approval of the proposed regulation by the State Water Control Board. No changes to the permit are proposed in response to this comment.</p>

Commenter	Topic	Comment	Department Response
Jimmy Edmonds (Loudoun County)	Registration Statement	<p>9VAC25-880-50.B.15 This section mandates that the stormwater management maintenance agreement be submitted with the Registration Statement. We believe that it is important that all parties realize that this agreement will be in “draft” (unexecuted) form at the time the Registration Statement is submitted. The processing of a maintenance agreement requires careful review by both engineering and legal teams in our locality and is subject to change as a result of the SWM plan review process.</p> <p>We recommend that the following highlighted word be added to this section for clarification as follows: “9VAC-880-50.B.15...an unexecuted stormwater management agreement in accordance with 9VAC25-870-112A. “</p>	<p>Upon further review, the department has removed the requirement for the maintenance agreement to be submitted with the registration statement and added as part of the notice of termination and is required to be fully executed and recorded at the time of termination. Please note, however, that 9VAC25-870-112 A.1 requires a draft BMP maintenance agreement be submitted with the stormwater management plans.</p>
Jimmy Edmonds (Loudoun County)	Registration Statement	<p>9VAC25-880-50.B.16 This section mandates that the “letter of availability” for nutrient credit purchase be submitted with the Registration Statement. It also requires that an “affidavit of sale” be provided prior to the issuance of the CGP.</p> <p>We believe that it is premature to require the letter of availability with the Registration Statement as the credit requirement could change as part of the local SWM plan review or it could be eliminated by a change in BMP selection. We support requiring the letter prior to the approval of the SWM Plan.</p> <p>Regarding the actual purchase of nutrient credits, we believe that the affidavit should be required prior to the issuance of the grading permit. The use of this later deadline again allows for unforeseen amendments to the SWM plan and provides flexibility for the Operator should the project start be delayed.</p> <p>We recommend that this entire section be removed from 9VAC25-880-50.B.</p>	<p>After further consideration of several comments received, the department believes that it is appropriate for operators to provide proof of nutrient purchase at the time of permit termination. However, the department contends that it is appropriate for operators that intend to use credits to demonstrate compliance with the stormwater quantity requirements to provide documentation to the VSMP that the credits are available. Therefore, the registration statement requirements have been revised to remove the requirement for the affidavit of sale prior to permit coverage, but has retained the requirement to provide "Letter of availability" from an appropriate nutrient bank at the time of registration statement submittal. The proposed general permit has been revised accordingly.</p>

Commenter	Topic	Comment	Department Response
Jimmy Edmonds (Loudoun County)	Registration Statement	9VAC25-880-50.A.1.c This section states that no state permit is required for the construction single-family detached dwellings; however, it is our understanding (from the VSMP regulations & our local program procedures) that the need for a permit comes into play if the land-disturbance associated with single-family residence construction reaches 5 acres or more. Is our understanding correct?	In accordance with Section 62.1-44.15:28 A.8 of the Stormwater Management Act and 9VAC25-870-59 of the VSMP regulation, registration statements for construction activities involving a single-family detached residential structures are not required regardless of the area of land disturbance. However, a VSMP authority permit may be required by the local government. No changes to the permit are proposed in response to this comment.
John Woodburn (Goochland County)	Permit Modifications	Suggest that a section be added regarding modifications of permits that reflects the content of 9VAC25-870-630. – in particular item A.1 of that section. I am interested in having the permit require the permittee to apply for a permit modification when information on his registration statement is to be changed (in particular – the owner, operator or the total area of development and estimated area to be disturbed), and that he will be subject to a fee for such modification of transfer. (Note that Part II Section C of the permit – SWPPP Amendments – really does not address that issues raised in Section 630)	The general permit specifies in 9VAC25-880-70 (prior to Part I), that "The authorized discharge shall be in accordance with the registration statement filed with the Department of Environmental Quality..." Operators are required to submit a complete and accurate registration statement in order to obtain permit coverage. In the circumstance that the information on the registration statement is no longer valid, such as a change in operator or the area of estimated land disturbance, the operator is required to submit a revised registration statement or transfer of ownership form. The department also requires a new registration statement if modified stormwater management plan is submitted for review. In the case of an operator increasing the area of estimated land disturbance, land disturbance outside of the original approval is not authorized until revised permit coverage is approved. No changes to the permit are proposed in response to this comment.

Committer	Topic	Comment	Department Response
<p>Peggy Sanner (Chesapeake Bay Foundation) and Bill Street (James River Association)</p>	<p>Transfer of Permit Coverage</p>	<p>The Draft Permit includes a new requirement that the permittee submit a signed statement indicating that a new owner of a recently constructed residential site has been notified of final site stabilization requirements. While we understand the operator cannot control the actions of a new residential owner, taking appropriate steps to ensure that the new owner recognizes the importance of site stabilization is critical for water quality. We urge the Board, therefore, to amend the Draft Permit to require the permittee to secure written acknowledgement of site stabilization requirements by the new owner (whether residential or commercial).</p>	<p>The general permit Technical Advisory Committee discussed stabilization requirements for transferred property extensively to determine how best to ensure final stabilization is achieved resulting in the proposed changes to the general permit in a practical matter in situations of individual lots in new residential construction. As discussed in the Technical Advisory Committee meetings, the Board does not have the authority require the signature of a 3rd party/new owner as suggested that is not regulated by the department. The department has revised the proposed language to require written notification by the builder to the new homeowner, maintain documentation of that notification, and sign a certification statement that they have provided the appropriate information on stabilization to the new owners. The department believes that this is an improvement from previous versions of the permit and results in a practically enforceable condition. No changes to the permit are proposed in response to this comment.</p>
<p>Tyler Emery (American Electric Power)</p>	<p>Termination of General Permit Coverage</p>	<p>Section B. 2. currently states: <i>Termination of authorizations to discharge for the conditions set forth in subdivision A 1 of this section shall become effective upon notification from the department that the provisions of subdivision A 1 of this section have been met or 60 days after submittal of a complete and accurate notice of termination, whichever occurs first.</i></p> <p>In order to provide the permit holder with assurance that the notice of termination has been reviewed timely to consider it "complete and accurate," AEP requests inclusion of a timeframe to receive notice that the notice of termination is not complete, similar to plan review timeframes. That would then document the start of the 60-day clock if no request for additional information is received.</p>	<p>While the department understands the concerns regarding timely notification from the agency on termination packages, inclusion of a time frame regulating the agency's actions in the general permit regulation is not appropriate. The department notifies operators of incomplete packages typically within 2 weeks of receipt of the termination package. No changes to the permit are proposed in response to this comment.</p>
<p>Melanie Mason (City of Alexandria)</p>	<p>Termination of General Permit Coverage</p>	<p>9VAC25-880-60 (B)(7) and 9VAC25-880-70 PART II D: Under the proposed language, projects will have to maintain signage until as-builts are submitted. Often projects are completely closed with residents inside the buildings before as-builts are received and construction signage has been removed. Please allow for construction signage to be removed once final stabilization has been achieved.</p>	<p>SWPPP requirements are effective until such time that permit coverage is terminated. In order to meet the public notification requirements, signage must stay in place until permit termination has occurred.</p>

Commenter	Topic	Comment	Department Response
Melanie Mason (City of Alexandria)	Termination of General Permit Coverage	9VAC25-880-70 PART II F: Projects will have to implement all aspects of the SWPPP including inspections until as-builts are submitted. Often projects are completely closed with residents inside the buildings for months or years before as-builts are received. Requiring inspections until as-builts are submitted even though final stabilization has been achieved is overly burdensome for both the developer and the locality. Please allow for inspections to cease once final stabilization has been achieved.	In accordance with Part II B 4 c of the existing permit (Part II C 4 c of the proposed permit), those areas of a site that have reached final stabilization no longer require SWPPP inspections. No changes to the permit are proposed in response to this comment.
Barbara Brumbaugh (City of Chesapeake)	Termination of General Permit Coverage	The City recommends that a checklist of permanent stormwater control measures be added to Section 5. of the Notice of Termination form. The owners/operators frequently have a difficulty completing this section and often misname the practices or includes practices such as “seeding” or “final stabilization” which do not belong in this section. Receiving incomplete or incorrect Notices of Termination adds a great deal of additional work for the VSMP Authority. Adding a checklist would ensure consistent classification of the permanent measure which would improve state data collection for permanent stormwater control measures.	The department will review the Notice of Termination form to ensure it meets the proposed general permit requirements and to determine if there are areas in which clarification can be provided as suggested.
Barbara Brumbaugh (City of Chesapeake)	Termination of General Permit Coverage	Section 9VAC25-880-60 C.9. states the complete Notice of Termination shall include the following information: “For individual lots in residential construction only, a signed statement from the permittee that the new owner, if not the same as the permittee, has been notified of the final stabilization requirements...” Individual lots within subdivisions received automatic permit coverage and therefore do not require submission of a Notice of Termination. Individual lots with single family homes generally transfer from the builder directly to the homeowner, therefore, the VSMP Authority will be unable to enforce this provision. If this is not DEQ’s intent, then the City recommends that the language be modified to provide clarification.	The department has revised the definition of final stabilization in 9VAC25-880-1 and language in 9VAC25-880-60 and Part I F of the general permit to require that for individual lots in residential construction only, operators are to provide homeowners with written information about the importance of final stabilization and require signed documentation from the permittee that the homeowner has been notified as part of the SWPPP documents that must be maintained for 3 years. This requirement applies to those projects for which permit coverage is issued as well as those covered under automatic coverage.

Commenter	Topic	Comment	Department Response
Dale Chestnut (James Madison University)	Termination of General Permit Coverage	With updates to the Notice of Termination form, would it be possible to add a section to record situations in redevelopment where a pre-existing BMP will be removed or retrofitted? The goal is to ensure removed BMPs are also taken out of the model and retrofits are accurately portrayed in the model.	While the department understands the concern to ensure the BMP information provided for use in the Chesapeake Bay watershed model reflects accurate information, this comment is out of the scope of the general permit regulatory action. Retrofit and other BMP information should be reported with information uploaded to the BMP Warehouse. No changes to the permit are proposed in response to this comment.

<p>Home Builders Association of Virginia</p>	<p>Termination of General Permit Coverage</p>	<p>9VAC25-880-60 C.9 9VAC25-880-60 C.9 of Proposed Chapter 880 states: "For individual lots in residential construction only, a signed statement from the permittee that the new owner, if not the same as the permittee, has been notified of the final stabilization requirements."</p> <p>Comment: The requirement to include a signed statement that the new owner (if not the same as the permittee) has been notified of the final stabilization requirements by the permittee does not always occur and therefore may not be applicable for some permittees. In 9VAC25-880-1 of Proposed Chapter 880, Final Stabilization is defined as: <i>"Final stabilization" means that one of the following situations has occurred: 1. All soil disturbing activities at the site have been completed and a permanent 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 (e.g., evenly distributed), mature enough to survive, and will inhibit erosion. 2. For individual lots in residential construction, final stabilization can occur by either: a. The homebuilder completing final stabilization as specified in subdivision 1 of this definition; or, b. The homebuilder establishing temporary soil 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.</i></p> <p>In residential construction, many times the permittee installs permanent sod stabilization to the individual lot prior to completion which would satisfy subdivision 1 of the Final Stabilization definition. In these instances, there is no need for the permittee to inform the homeowner (new owner) of final stabilization requirements. Therefore, the requirement to include a signed statement [on the Notice of Termination] that the new owner, if not the same as the permittee, has been notified of the final stabilization requirements by the permittee should either be removed from Proposed Chapter 880, or be updated to make its inclusion in the notice of termination optional only if temporary stabilization</p>	<p>The department has revised the definition of final stabilization in 9VAC25-880-1 and language in 9VAC25-880-60 and Part I F of the general permit to require that for individual lots in residential construction only, operators are to provide homeowners with written information about the importance of final stabilization and require signed documentation from the permittee that the homeowner has been notified as part of the SWPPP documents that must be maintained for 3 years.</p>
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Commenter	Topic	Comment	Department Response
		measures were installed on the individual lots when transferred to a new owner that is not the same as the permittee.	
Home Builders Association of Virginia	Termination of General Permit Coverage	<p>9VAC25-880-70 Part I.F.1.a In regards to the requirements to terminate permit coverage, Part I.F.1.a of 9VAC25-880-70 of the Proposed Chapter 880 states: <i>“Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator has operational control. When applicable, long term responsibility and maintenance requirements for permanent control measures shall be recorded in the local land records prior to the submission of a complete and accurate notice of termination, and the construction record drawing prepared;”</i> However, 9VAC25-880-60 A.1 states: <i>“Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator has operational control. When applicable, long-term responsibility and maintenance requirements for permanent control measures shall be recorded in the local land records prior to the submission of a complete and accurate notice of termination;”</i>Comment: Part I.F.1.a of 9VAC25-880-70 of the Proposed Chapter 880 adds the requirement to add the construction record drawing. It is recommended that DEQ either add the text “and the construction record drawing prepared” to 9VAC25-880-60 A.1 or remove it from Part I.F.1.d of 9VAC25-880-70 of the Proposed Chapter 880.</p>	The department has revised the language in 9VAC25-880-60 A.1 to be consistent with the proposed language in 9VAC25-880-70 F.1.a.

Commenter	Topic	Comment	Department Response
John Woodburn (Goochland County)	Termination of General Permit Coverage	Suggest a restatement of Section 9VAC25-870.650.A – Termination of State Permits - in the general permit, as this section of the regulations explores the subject of early termination of a permit for non-compliance or for other reasons (such as the plan not being protective of the environment) - items that are not really discussed in the current version of the permit. I do not feel that the Duty to Comply Section (Section L of Part III) adequately addresses this issue. It just says that failure to comply with the permit is a reason for terminating the permit. Where is non-compliance with the permit spelled out in the current permit in as good a way as in Section 9VAC25-870.650?	The termination requirements as listed in the proposed general permit regulation address those situations in which the permittee may terminate permit coverage. Section 650 of the VSMP regulation, 9VAC25-870, contemplates situations in which the department and the VSMP authority may terminate permit coverage for situations of non-compliance. Therefore, it is not appropriate to include the items in 9VAC25-870-650 A in the general permit. No changes to the permit are proposed in response to this comment.
John Woodburn (Goochland County)	Termination of General Permit Coverage	The permit does not address the obligations of the permittee to address the site if his permit has been terminated early for non-compliance, failure to pay a fee, failure to renew a permit for an ongoing project, etc. What happens if a permit expires or is terminated and the required stormwater construction has not been completed? Should there be a statement in the permit to the effect that a permittee cannot simply walk away from a site because his permit has terminated before completion of the project, but must complete the stormwater management in a manner acceptable the VDEQ or stormwater local authority?	Depending on the circumstance, non-compliance may be addressed through local ordinances, the Erosion and Sediment Control regulations and/or the Virginia Stormwater Management Program regulations even if permit coverage has been terminated. No changes to the permit are proposed in response to this comment.
Mark Williams (Koontz Bryant Johnson Williams)	Termination of General Permit Coverage	Section 9VAC25-880-60, Item C – Notice of Termination (Draft); sub-item 7 requires record drawings for SWM facilities. What would need to be included with the N.O.T. application submittal? Would the As-Built documents need to be submitted along with the N.O.T. application on projects where the DEQ is the authority? Please clarify the required format and level of detail/survey required for construction record drawings when the DEQ is the authority. (Construction Record Drawings are further required under Part 1 of VAR-10, Item F, sub-item 1a). Please either be specific with the permitted tolerance for design vs. actual conditions or provide further guidance for engineers to determine what is acceptable. What one engineer deems to be “close enough” may not be the same as other engineers for inspections to cease once final stabilization has been achieved.	As specified in 9VAC 25-870-55 D of the VSMP regulation, the construction records drawing must include the as-built plans of the actual permanent stormwater management facilities constructed and the seal and signature of a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. The construction record drawings would be submitted to the appropriate VSMP authority with the notice of termination package. No changes to the permit are proposed in response to this comment.

Commenter	Topic	Comment	Department Response
Kristin Carter (University of Virginia)	Termination of General Permit Coverage	9VAC25-880-60 – For paragraph C.7, should reference to entities with annual standards and specifications be included in addition to VSMP authorities	9VAC 25-870-55 D of the VSMP regulation requires construction record drawings be submitted to the VSMP authority. Any requirement by an operator to submit the construction record drawing to an annual standard and specification holder should be included in the contract or other mechanism between those two parties. No changes to the permit are proposed in response to this comment.
Jody Greene (Wetland Studies and Solutions, Inc.)	Termination of General Permit Coverage	9VAC25-880-60:C.7 Currently Proposed 7. A construction record drawing in a format as specified by the VSMP authority for permanent stormwater management facilities in accordance with 9VAC25-870-55 D appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan; Recommended Change 7. A construction record drawing in a format as specified by the VSMP authority for permanent stormwater management facilities in accordance with 9VAC25-870-55 D appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan, <u>unless already provided in the associated plan set</u> ;	Section 55 D of the VSMP regulation, 9VAC 25-870, requires construction record drawings be submitted to the VSMP authority. The VSMP regulation does not provide authorization for the suggested revision. If the stormwater management facility is not constructed as designed in an approved plan, then the operator will need to submit modified stormwater management plans to demonstrate compliance with the stormwater management technical criteria.
Jimmy Edmonds (Loudoun County)	Termination of General Permit Coverage	9VAC25-880-60.C.7 Based upon our recommendation to remove 9VAC25-880-50.B.16 , we recommend that the information on nutrient credit availability and purchase remain in the Notice of Termination. Including the information in this document will ensure that there is an accurate accounting of nutrient credits purchased should there have been amendments to the SWM plan during the construction process which impacted the number of credits required.	After further consideration, the department concurs that it is appropriate for operators to provide proof of nutrient purchase at the time of permit termination. The registration statement requirements have been revised to require a "Letter of availability" from an appropriate nutrient bank at the time of registration statement submittal, and the affidavit of sale at the time of permit termination. The proposed general permit has been revised accordingly.

Commenter	Topic	Comment	Department Response
Katlyn Schmitt (Waterkeepers Chesapeake) & Phillip Musegaas (Potomac Riverkeeper Network)	General Permit Conditions 9VAC25-880-70	Part II, bullet B.1.c – a copy of the permit is not currently provided by DEQ. The coverage letter gives a web link to the CGP. I recommend updating the proposed language since “upon receipt” doesn’t apply, perhaps changing it to read “A copy of the general VPDES permit for discharges of stormwater from construction activities, obtained from the DEQ website...” Give the link if it won’t change for 5 years.	While the sentiment of this comment is understood, permittees, VSMP authorities, and other stakeholders understand that "Upon receipt" applies to the permit coverage letter with the link to the general permit regulation. No changes to the permit are proposed in response to this comment.
Tyler Emery (American Electric Power)	ESC Requirements	<p>Sections G.3.a.(5)(a)&(b) refer to sites that <i>will remain dormant for 14 days needing to be stabilized immediately or within seven days of reaching grade or stopping work.</i></p> <p>AEP requests flexibility from the VSMP authority regarding unforeseen weather events causing work to not resume within 14 days. The USEPA General Permit's intent is to initiate stabilization as soon as the permittee knows that construction work on the portion of the site is temporarily ceased and will not resume for 14 days. If rain causes work on the site to be stopped, this is unpredictable and something that was not part of the construction schedule. Therefore, the 14-day dormant period requirement would not be exceeded due to unforeseeable circumstances such as this.</p>	Thank you for your comment, however, the proposed revision is inconsistent with Minimum Standard #1 of the Erosion and Sediment Control Regulation, 9VAC25-840. No changes to the permit are proposed in response to this comment.
Katlyn Schmitt (Waterkeepers Chesapeake) & Phillip Musegaas (Potomac Riverkeeper Network)	ESC Requirements	<p>Stabilization measures should be clearly spelled out in the permit. Construction sites generate the greatest amount of turbidity, by far, compared to other land use activities in the Chesapeake Bay region. The muddiness leaving construction areas is mostly caused by clay particles from exposed soil. Some pollution control measures, like the silt fence, fiber rolls, and ponds do not trap clay and dissolved pollutants very well. These perimeter controls are a poor means to control sediment and do not prevent erosion. Straw mulch and grass, on the other hand, reduce pollution by 90% to 99%, making them far more effective than silt fences, ponds or other perimeter sediment controls. For this reason, the permit should be amended to remove “perimeter controls” as an effective way to achieve final stabilization and, instead, should require straw mulch and grass.</p>	When properly installed and maintained, perimeter controls are crucial to preventing the discharge of sediment via stormwater runoff. Additionally, this comment is out of the scope of this regulatory action. No changes to the permit are proposed in response to this comment.

Commenter	Topic	Comment	Department Response
<p>Katlyn Schmitt (Waterkeepers Chesapeake) & Phillip Musegaas (Potomac Riverkeeper Network)</p>	<p>ESC Requirements</p>	<p>Likewise, many construction sites do not use the appropriate level of stabilization. In a review of construction sites from one county in the Chesapeake Bay region, approximately two-thirds of construction sites had too much disturbed soil exposed to be properly stabilized. For proper sediment and erosion control, vegetative cover (i.e. grasses) under the permit should be defined as requiring at least 95 percent groundcover. For straw mulch, the permit should require it to be blanketed uniformly across the disturbed area at a depth of 1 to 2 inches. More broadly, this means that the soil surface is not exposed because more exposure means more polluted runoff. Failure to meet these standards translates into greater erosion and unnecessary pollution of local waterways. By not addressing this in the permit, Virginia will continue to allow vast quantities of nutrients and turbidity pollution to needlessly foul our waters. Virginia's permit could be strengthened to add a temporal element to site stabilization. The EPA recommends that sites are stabilized as soon as possible to help minimize erosion and sediment problems. The permit, as drafted, only requires the "initiation of stabilization activities" when construction activities have "permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days..." This language allows too much time before stabilization - meaning more time for erosion and sedimentation, especially during rainy seasons. Erosion-prone areas (i.e. slopes and drainage ways) or areas with bare soil need to be stabilized as soon as possible, even if temporarily, to minimize runoff. The permit should be amended to remove the 14 day provision and incorporate language requiring construction operators to stabilize areas that are prone to erosion as soon as possible.</p>	<p>As written, the proposed permit is consistent with the stabilization requirements in the Virginia Erosion and Sediment Control regulations and EPA's Construction General Permit. No changes to the permit are proposed in response to this comment.</p>

Committer	Topic	Comment	Department Response
Katlyn Schmitt (Waterkeepers Chesapeake) & Phillip Musegaas (Potomac Riverkeeper Network)	ESC Requirements	The permit should require construction phasing or include language tailored to minimize the duration of exposed soils. This means that construction operators will only clear land that will be under construction in the near future. This practice can reduce off-site sediment loads by 36 percent for a typical construction projects and erosion “dramatically.” Without incorporating these practices, the state will need to include language requiring vegetative cover on as much of the site as possible for erosion and sediment control. Similarly, stronger language could be built into the permit around reducing impervious surfaces and promoting infiltration. Both of these are important for reducing the amount of stormwater runoff leaving any construction site.	The proposed permit retains a requirement that stabilization be initiated immediately on disturbed areas when land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days. No changes to the permit are proposed in response to this comment.
Katlyn Schmitt (Waterkeepers Chesapeake) & Phillip Musegaas (Potomac Riverkeeper Network)	ESC Requirements	Perimeter controls must be secured around the site and remain in place until the site has been finally stabilized. While we recommend that the state remove perimeter controls from the permit (and replace them with controls that prevent both sediment and erosion), if perimeter controls are going to be included there should be basic parameters in place for their use. This also means incorporating the possible diversion of stormwater that comes on to the site (‘run-on’) and ensuring that it is conveyed safely around the site to minimize additional polluted runoff. To promote vegetation, the permit should also incorporate language to divert runoff from rooftops and other impervious surfaces to vegetated areas, if possible.	The proposed permit retains requirements for operators of land-disturbing activities to design and implement erosion and sediment control measures that meet the Minimum Standards of the Virginia Erosion and Sediment Control regulations (9VAC25-840). No changes to the permit are proposed in response to this comment.

Committer	Topic	Comment	Department Response
Katlyn Schmitt (Waterkeepers Chesapeake) & Phillip Musegaas (Potomac Riverkeeper Network)	ESC Requirements	While the permit, as written, requires SWPPPS to “minimize the disturbance of steep slopes,” it should require the conveyance of stormwater runoff around the top of any steep slope and the stabilization of the slope as soon as possible. Conveyance of stormwater can be easily achieved with pipe slope drains or earthen berms.	The proposed permit retains requirements for operators of land-disturbing activities to design and implement erosion and sediment control measures that meet the Minimum Standards as required in the Virginia Erosion and Sediment Control regulations (9VAC25-840) including requirements for stabilization to be initiated where land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days. Additionally, permanent or temporary soil stabilization must be applied to denuded areas within seven days after final grade is reached on any portion of the site. No changes to the permit are proposed in response to this comment.
Ryan Terry (Lane Construction)	Waste Disposal	PART II, STORMWATER POLLUTION PREVENTION PLAN, B. Contents., 4. Pollution prevention plan., e. (7), “Prevent the discharge of...excess concrete,...” creates issues on construction projects. Discharge in this instance needs to be more clearly defined. Consultants performing inspections for owners interpret this as any hardened concrete cannot touch the ground and must be removed from the site immediately. This becomes costly and difficult to manage. Since hardened concrete that is stored on a site that has bmp’s installed and maintained has no significant environmental risk, there is no benefit to enforcing the permit in this way. Paragraph (5) in the same section addresses concrete and concrete waste water. Adding “excess concrete” to paragraph (7) creates confusion on the enforcement of the permit and should be removed.	As defined in 9VAC25-870-10, <i>discharge or discharge of a pollutant</i> includes “Any addition of any pollutant or combination of pollutants to state waters from any point source.” Additionally, pollutant is defined in 9VAC25-870-10 to include “...dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials...discharged into water.” Please also note that the department has replaced the word “excess” with “waste” for clarification in response to other comments received. No change to the permit is proposed in response to this comment.
Katlyn Schmitt (Waterkeepers Chesapeake) & Phillip Musegaas (Potomac Riverkeeper Network)	Waste Disposal	The SWPPP should also require the proper disposal of garbage and waste at sites, with special attention to hazardous materials and chemicals. In order to protect Virginia’s surface waters, it is vital that these pollutants stay on site and do not runoff due to stormwater.	The proposed permit retains requirements for waste to be properly managed on site in accordance with local, state, and federal requirements. No changes to the permit are proposed in response to this comment.

Committer	Topic	Comment	Department Response
Townhall Comment- No Name Provided	Waste Disposal	<p>Part II.B.4.e.(9), proposes that waste containers be closed during precipitation events and at the end of the business day, or implementation of similarly effective practices... While this is an excellent pollution prevention concept and we do not intend to oppose it, it fails, in practice, when we try to implement such practices for large, roll-off dumpsters (e.g., 20- or 30-yard dumpsters), as the waste management industry does not, currently, have the ability to supply covers for these waste containers. In the past, when we have attempted similar measures, such as tarps, we've found that following a precipitation event of multiple-inches of rain or heavy, wet snow, the tarps fall into the roll-offs and are unretrievable without dispensing the stormwater within the dumpsters. In order to meet this requirement, the construction industry will need explicit guidance on how to meet the second half of this proposed requirement: "...or implementing other similarly effective practices. Minimization of exposure is not required in cases where the exposure to precipitation will not result in a discharge of pollutants...". In such a case, and simply as an example, would roll-off dumpsters positioned, without cover, in a sloped area that has containment berms along its lower three sides (the upper side utilized for access by the vendor) be sufficient to meet the "cases where the exposure to precipitation will not result in a discharge of pollutants", particularly in those cases of dumpster sizes that are unable to be supplied with covers?</p>	<p>Thank you for your comment, however, the requirement to cover waste containers at the end of the day and during precipitation events provides consistency with EPA's 2017 Construction General Permit and 40 CFR 450 (d)(2) to minimize the exposure of construction waste to precipitation. Alternative measures that prevent the discharge of stormwater exposed to waste materials such as the installation of berms, is an acceptable alternative covering a waste container. No changes to the permit are proposed in response to this comment.</p>

Committer	Topic	Comment	Department Response
Tyler Emery (American Electric Power)	Impaired, TMDL, and Exceptional Waters	<p>Section B.4. b. currently states: <i>Polychlorinated biphenyl (PCB) impaired waters. Discharges of stormwater from construction activities that include the demolition of any structure with at least 10,000 square feet of floor space built or renovated before January 1, 1980, to surface waters identified as impaired in the 2016 § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit for PCB are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a SWPPP in accordance with Part II B 6 of this permit that minimizes the pollutants of concern and, when applicable, is consistent with the assumptions and requirements of the approved TMDL wasteload allocations, and implements an inspection frequency consistent with Part II G 2 a.</i></p> <p>AEP interprets these impaired surface waters being discharged to as the listed water bodies themselves, and not the entire upstream watershed of tributaries.</p>	The requirements for discharges to PCB impaired waters applies to the specific receiving water segment to which the site discharges. No changes to the permit are proposed as a result of this comment.
Peggy Sanner (Chesapeake Bay Foundation) & Bill Street (James River Association)	Impaired, TMDL, and Exceptional Waters	In view of the more frequent and more destructive storms that Virginia is experiencing, the Draft Permit should require the operator of sites discharging to these sensitive waters to achieve temporary or permanent soil stabilization within 3 (not 7) days after final grade is reached on any portion of the site. This timeframe should also apply if construction has temporarily ceased and the site is inactive for longer than 10 days.	This requirement is consistent with federal Construction and Development Effluent Limitation Guidelines and Standards (40 CFR 450.21 b). No changes to the permit are proposed as a result of this comment.
Peggy Sanner (Chesapeake Bay Foundation) & Bill Street (James River Association)	Impaired, TMDL, and Exceptional Waters	The Draft Permit should set a maximum of 3 (not 7) days within which to take corrective action on control measures discovered during inspections not be operating properly.	The proposed permit retains requirements for corrective actions to be implemented as soon as practicable, but no later than 7 days after discovery. This requirement is consistent with EPA's 2017 Construction General Permit. No changes to the permit are proposed as a result of this comment.

Committer	Topic	Comment	Department Response
Peggy Sanner (Chesapeake Bay Foundation) & Bill Street (James River Association)	Impaired, TMDL, and Exceptional Waters	The Draft Permit should require the operator to notify DEQ of instances of accumulated sediment deposits discovered on required inspections. Such notification will ensure DEQ can require appropriate, environmentally sensitive corrective steps.	Part III G and I of the permit requires the operator to provide notification to the department in the case of unauthorized discharges and provide reports of non-compliance. Deposition of sediment to a receiving water is not an authorized discharge under the general permit and therefore would require notification under the Part III provisions. No changes to the permit are proposed to the permit condition as a result of this comment.

<p>Peggy Sanner (Chesapeake Bay Foundation) & Bill Street (James River Association)</p>	<p>Impaired, TMDL, and Exceptional Waters</p>	<p>The Draft Permit should require the operator to adopt specific, identified measures (e.g., Level 3 active sediment management) to protect these sensitive waters from risky turbidity levels. To assist operators in this effort, we recently requested that DEQ develop numeric turbidity standards for use across the Commonwealth. (e.g., the Maryland standard of 150 NTUs at any time or 50 NTUs as a monthly average). At a minimum, however, this permit should require appropriately heightened numeric levels of protection for these sensitive waters.</p>	<p>The proposed general permit is consistent with the requirements for protection of water quality contained in EPA’s 2017 construction general permit effective February 16, 2017.</p> <p>EPA established effluent limitation guidelines (ELGs) and new source performance standards (NSPS) to control the discharge of pollutants from construction activities in 40 CFR Part 450 referred to as the “Construction and Development Rule” or “C&D Rule”. These requirements were published in the Federal Register on December 1, 2009 (74 FR 62996) and became effective on February 1, 2010 and contained a numeric limitation on the allowable level of turbidity in discharges from certain construction sites. On November 5, 2010, EPA finalized a stay (75 FR 68215), effective January 4, 2011, for 40 CFR Parts 450.22 (a) and (b) that contained the numeric turbidity limitations as the result of a petition. EPA published amendments to the C&D Rule (79 FR 12661) on March 6, 2014 and May 4, 2014 (80 FR 25235) with an effective date of May 5, 2014. The amendments lifted the indefinite stay, withdrew the numeric discharge standards. As a result, numeric turbidity limitation and monitoring requirements are not required to be incorporated into NPDES permits.</p> <p>As currently written, the general permit requires construction activity operators to implement erosion and sediment controls and pollution prevention practices to address the narrative technology-based effluent limitations contained in 40 CFR Part 450. In addition, the general permit requires operators to select, install, implement, and maintain control measures at the construction site that minimize (i.e., reduce or eliminate) pollutants in the discharge as necessary to ensure that the operator’s discharge does not cause or contribute to an excursion above any applicable water quality standard. Also, 9VAC25-870-460.1 of the Virginia Stormwater Management Program regulation allows for the use of best management practices to control or abate the discharge of pollutants from stormwater discharges and when numeric effluent limitations are infeasible. The department believes that the proposed general permit</p>
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Commenter	Topic	Comment	Department Response
			establishes the requirements necessary to protect water quality standards. No changes to the permit are proposed in response to this comment.

<p>Barbara Brumbaugh (City of Chesapeake)</p>	<p>Impaired, TMDL, and Exceptional Waters</p>	<p>If the site discharges to PCB-impaired waters, Part II(B)(6) requires that a permittee who will demolish a structure with at least 10,000 square feet of floor space that was built or renovated prior to January 1, 1980 develop a Stormwater Pollution Prevention Plan (“SWPPP”) to minimize the exposure of PCB-containing building materials to stormwater. The section goes on to provide examples of controls, including “...separating work areas from non-work areas and selecting appropriate personal protective equipment and tools, constructing a containment area so that all dust or debris generated by the work remains within the protected area, using tools that minimize dust and heat (<212°F).”The Construction GP is not the appropriate place to regulate demolition. An operator would not need to obtain a Construction GP if their activities are limited to demolition and do not include land disturbance greater than one acre. Demolition is covered by the Virginia Uniform Statewide Building Code, which may be a better place to include these requirements. While it is reasonable to require controls to minimize the exposure of PCB-containing materials to stormwater, it is unclear why personal protective equipment or recommended tools would be included in a SWPPP. In accordance with the definitions listed in 9VAC25 870-10, a SWPPP is “a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges.” Safety protocols and tool selection are beyond the scope of a SWPPP. Additionally, SWPPP inspections are required to be conducted by qualified personnel. In accordance with the definitions listed in 9VAC25-870-10, qualified personnel refers to “a person ... who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity.” VSMP inspectors are not qualified to evaluate safety conditions for the operator and</p>	<p>The requirement for operators discharging to waters impaired for polychlorinated biphenyl (PCB) to implement controls to minimize the exposure of building materials containing PCB was added to the proposed permit in order to ensure that discharges meet water quality standards by preventing releases of PCB into receiving waters. The provisions only apply for demolition of a structure greater than 10,000 square feet built prior to January 1, 1980, and that require construction general permit coverage. The proposed condition mirrors language in EPA’s 2017 CGP. It is not the department’s intention to regulate the demolition of buildings or require VSMP inspectors to evaluate safety conditions on a site, but to ensure adequate protection of state waters. Upon further review, the department has determined that since PCB affixes to sediment, the proper implementation and maintenance of erosion and sediment control as well as proper waste management, both already required by the permit, provide the necessary minimization and control of PCB to protect surface waters. Therefore, the condition is not necessary. Conditions will be retained in the permit that require increased SWPPP inspections for those sites that discharge to surface waters that have a PCB impairment.</p>
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Commenter	Topic	Comment	Department Response
		<p>their employees. The suggested revision is to omit Part II(B)(6) and instead include PCB-containing building materials in the existing language in Part II(B)(4)(e)(6). This section requires SWPPPs to include pollution prevention practices that “minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes including (i) building products such as asphalt sealants, copper flashing, roofing materials, adhesives, and concrete admixtures; (ii) pesticides, herbicides, insecticides, fertilizers, and landscape materials; (iii) construction and domestic wastes such as packing materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, Styrofoam, concrete, and other trash or building materials.” This revision will be protective of water quality by requiring the implementation of controls to minimize the exposure of PCB-containing building materials to stormwater.</p>	

<p>Hampton Roads Planning District Commission</p>	<p>Impaired, TMDL, and Exceptional Waters</p>	<p>If the site discharges to PCB-impaired waters, Part II(B)(6) requires that a permittee who will demolish a structure with at least 10,000 square feet of floor space that was built or renovated prior to January 1, 1980 develop a Stormwater Pollution Prevention Plan (“SWPPP”) to minimize the exposure of PCB-containing building materials to stormwater. The section goes on to provide examples of controls, including “...separating work areas from non-work areas and selecting appropriate personal protective equipment and tools, constructing a containment area so that all dust or debris generated by the work remains within the protected area, using tools that minimize dust and heat (<212°F).”The Construction GP is not the appropriate place to regulate demolition. An operator would not need to obtain a Construction GP if their activities are limited to demolition and do not include land disturbance greater than one acre. Demolition is covered by the Virginia Uniform Statewide Building Code, which may be a better place to include these requirements. While it is reasonable to require controls to minimize the exposure of PCB-containing materials to stormwater, it is unclear why personal protective equipment or recommended tools would be included in a SWPPP. In accordance with the definitions listed in 9VAC25 870-10, a SWPPP is “a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges.” Safety protocols and tool selection are beyond the scope of a SWPPP. SWPPP inspections are required to be conducted by qualified personnel. In accordance with the definitions listed in 9VAC25-870-10, qualified personnel refers to “a person ... who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity.” VSMP inspectors are not qualified to evaluate safety conditions for the operator and their employees. The suggested</p>	<p>The requirement for operators discharging to waters impaired for polychlorinated biphenyl (PCB) to implement controls to minimize the exposure of building materials containing PCB was added to the proposed permit in order to ensure that discharges meet water quality standards by preventing releases of PCB into receiving waters. The provisions only apply for demolition of a structure greater than 10,000 square feet built prior to January 1, 1980, and that require construction general permit coverage. The proposed condition mirrors language in EPA’s 2017 CGP. It is not the department’s intention to regulate the demolition of buildings or require VSMP inspectors to evaluate safety conditions on a site, but to ensure adequate protection of state waters. Upon further review, the department has determined that since PCB affixes to sediment, the proper implementation and maintenance of erosion and sediment control as well as proper waste management, both already required by the permit, provide the necessary minimization and control of PCB to protect surface waters. Therefore, the condition is not necessary. Conditions will be retained in the permit that require increased SWPPP inspections for those sites that discharge to surface waters that have a PCB impairment.</p>
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Commenter	Topic	Comment	Department Response
		<p>revision is to omit Part II(B)(6) and instead include PCB-containing building materials in the existing language in Part II(B)(4)(e)(6). This section requires SWPPPs to include pollution prevention practices that “minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes including (i) building products such as asphalt sealants, copper flashing, roofing materials, adhesives, and concrete admixtures; (ii) pesticides, herbicides, insecticides, fertilizers, and landscape materials; (iii) construction and domestic wastes such as packing materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, Styrofoam, concrete, and other trash or building materials.” This revision will be protective of water quality by requiring the implementation of controls to minimize the exposure of PCB-containing building materials to stormwater.</p>	

Commenter	Topic	Comment	Department Response
<p>Kristin Carter (University of Virginia)</p>	<p>Impaired, TMDL, and Exceptional Waters</p>	<p>c. Part II, bullet B.6.b – For consistency with bullets B.5.b and B.7.b, should this state “Provide clear direction in the SWPPP that:”? I think the PCB-specific procedures should be replaced with the same ones for sites subject to sediment and nutrient TMDLs since PCBs can attach to sediments and be washed off site. The proposed PCB-specific procedures seem to be inappropriate for stormwater and E&SC inspectors to enforce and are more applicable to building and/or VOSH inspectors. Building demolition does not always equate to land disturbance so much of the PCB abatement activity could occur before SWM/E&SC inspectors are called in.</p>	<p>The requirement for operators discharging to waters impaired for polychlorinated biphenyl (PCB) to implement controls to minimize the exposure of building materials containing PCB was added to the proposed permit in order to ensure that discharges meet water quality standards by preventing releases of PCB into receiving waters. The provisions only apply for demolition of a structure greater than 10,000 square feet built prior to January 1, 1980, and that require construction general permit coverage. The proposed condition mirrors language in EPA’s 2017 CGP. It is not the department’s intention to regulate the demolition of buildings or require VSMP inspectors to evaluate safety conditions on a site, but to ensure adequate protection of state waters. Upon further review, the department has determined that since PCB affixes to sediment, the proper implementation and maintenance of erosion and sediment control as well as proper waste management, both already required by the permit, provide the necessary minimization and control of PCB to protect surface waters. Therefore, the condition is not necessary. Conditions will be retained in the permit that require increased SWPPP inspections for those sites that discharge to surface waters that have a PCB impairment.</p>

<p>Lisa Ochsenhirt (VAMSA)</p>	<p>Impaired, TMDL, and Exceptional Waters</p>	<p>Part II(B)(6) of the Proposed CGP (9VAC25-880-70) requires that a permittee who will demolish a structure with at least 10,000 square feet of floor space built or renovated before January 1, 1980 include specific management controls in its stormwater pollution prevention plan (SWPPP) if the site will discharge to PCB impaired or TMDL waters. Controls are meant to minimize exposure of building materials that may contain PCBs to stormwater. Controls listed in the Proposed CGP include separating work and nonwork areas, using appropriate protective equipment and tools, containing dust within a protected area, and using tools that minimize dust and heat. VAMSA requests that DEQ not adopt specific PCB requirements at this time, including the requirements in Part II(B)(6). DEQ should instead address PCB requirements more generically, and without specific reference to the management controls that are explicitly delineated in Part II(B)(6) of the Proposed CGP. If DEQ wishes to consider more detailed future requirements, it should coordinate enforcement responsibility with other state and local agencies. VAMSA's request is based on two significant concerns. First, VAMSA is concerned that the Proposed CGP, as it is currently drafted, will be out of sync with existing local building codes relating to building demolition. Demolition is covered by the Virginia Uniform Statewide Building Code (USBC), and is largely the responsibility of local building inspectors. Respectfully, if DEQ has not already reached out, it should, at a minimum, specifically request feedback from the Virginia Department of Housing and Community Development (DHCD), the Virginia Board of Housing and Community Development (the Board, the citizen board responsible for adopting and amending the USBC), and local building inspectors before adding requirements that impact the demolition of buildings or structures. The USBC includes numerous requirements for buildings that may contain asbestos; it may be more appropriate to add requirements relating to PCBs to the USBC (and not the CGP) in a similar manner. VAMSA would look to the experts, including the DHCD, the Board, and local inspectors for advice about the most efficient way</p>	<p>The requirement for operators discharging to waters impaired for polychlorinated biphenyl (PCB) to implement controls to minimize the exposure of building materials containing PCB was added to the proposed permit in order to ensure that discharges meet water quality standards by preventing releases of PCB into receiving waters. The provisions only apply for demolition of a structure greater than 10,000 square feet built prior to January 1, 1980, and that require construction general permit coverage. The proposed condition mirrors language in EPA's 2017 CGP. It is not the department's intention to regulate the demolition of buildings or require VSMP inspectors to evaluate safety conditions on a site, but to ensure adequate protection of state waters. Upon further review, the department has determined that since PCB affixes to sediment, the proper implementation and maintenance of erosion and sediment control as well as proper waste management, both already required by the permit, provide the necessary minimization and control of PCB to protect surface waters. Therefore, the condition is not necessary. Conditions will be retained in the permit that require increased SWPPP inspections for those sites that discharge to surface waters that have a PCB impairment.</p>
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	<p>to work together to tackle this environmental issue. As an aside, it is possible that if a developer is demolishing a building on an existing site, but is not conducting any land-disturbance, the developer may be allowed to move forward without obtaining a land-disturbance permit. In these cases, VAMSA Members responsible for erosion and sediment (E&S) control and stormwater review would not be contacted about the project. If the Commonwealth's goal is to reduce stormwater discharges that may contain PCBs, we should apply rules consistently on all demolition across the State (permitted and non-permitted). Again, the USBC may be the more appropriate place to include these rules. Second, VAMSA is concerned that local employees are not trained to manage these requirements. Localities regularly send VSMP employees (working with public works, public utilities, or a planning department) to regulated sites to inspect for compliance with E&S control plans, stormwater management plans, SWPPPs, pollution prevention plans, and the CGP. Most employees are certified to conduct these inspections, and receive regular training to keep their skills up-to-date with current legal and regulatory requirements. These employees are not trained on how to review a SWPPP or inspect a permitted site that has specialized requirements for PCBs. For example, these employees are not familiar with the following: (1) the types of housing materials that may contain PCBs and how to identify them; (2) the appropriate protective gear that must be worn if there are PCB-containing materials on-site; or (3) the right tools to reduce dust and heat from materials that may contain PCBs. Moreover, appropriate protective gear presumably raises questions relating to worker safety. Local environmental inspectors are not trained to determine whether a SWPPP will protect construction workers during demolition or whether the SWPPP is being implementing in a way that is fully protective. VAMSA supports clean water goals, and our Members with MS4 permits are working steadfastly to implement best management practices to reduce applicable TMDL pollutants to the maximum extent practicable. VAMSA also acknowledges that DEQ has</p>	
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Commenter	Topic	Comment	Department Response
		<p>proposed these new measures because EPA included similar requirements in the 2017 CGP. However, as explained above, VAMSA opposes including specific PCB requirements in the Proposed CGP given the complex and significant issues above—i.e., the CGP and how it relates to the USBC, etc.</p>	
<p>Tyler Emery (American Electric Power)</p>	<p>SWPPP</p>	<p>In Section G.2.b.(2) the inspection requirements changed from no later than 48 hours following a measurable storm event to no later than 24 hours following a measurable storm event.</p> <p>AEP's service territory covers large portions of the mountainous region of southwest Virginia. Travel time in difficult terrain on large linear projects is problematic and this is compounded in adverse weather conditions. AEP inspects multiple projects in these difficult areas and a 48-hour timeframe allows for mobilization of inspectors and completion of reviews of major project sites. Our recommendation is to change the language to "as soon as practical, but no later than 48 hours following a measurable storm event."</p>	<p>The proposed general permit change is a result of discussions of the general permit Technical Advisory Committee that determined SWPPP inspections immediately following storm events are essential to ensure the protection of water quality from the potential discharge of stormwater from construction sites. The requirement to inspect sites 24 hours after a storm event only applies when an operator chooses to inspect at a frequency of every 10 business days (or 5 business days if the site discharges to an impaired, TMDL approved, or exceptional water). Operators may choose an alternative SWPPP inspection frequency of once every 5 business days (or every 4 business days if the site discharges to an impaired or exceptional water) in which case the 24 hour requirement would not apply. No changes to the permit are proposed to the permit condition.</p>
<p>Tyler Emery (American Electric Power)</p>	<p>SWPPP</p>	<p>Section G.2.3. states that If adverse weather causes the safety of the inspection personnel to be in jeopardy, the inspection may be delayed until the next business day on which it is safe to perform the inspection. Any time inspections are delayed due to adverse weather conditions, evidence of the adverse weather conditions shall be included in the SWPPP with the dates of occurrence. AEP is very grateful for this addition to the General Permit. Safety is a critical part of our culture and we are very appreciative of VDEQ's considerations for safety as well. We recommend that documentation of the delay be kept in a log, on the inspection form, or similar document, kept in accordance with the SWPPP rather than literally a part of the SWPPP</p>	<p>Thank you for the comment. The department believes that it is appropriate for the operator to include documentation of adverse conditions as part of the SWPPP to explain why a SWPPP inspection may not meet the inspection frequency specified in the permit. Additionally, the permit requires inspection reports to be included as part of the SWPPP. No changes to the permit are proposed to the permit condition as a result of this comment.</p>

Commenter	Topic	Comment	Department Response
Charlie White	SWPPP	<p>I have been blessed after a lifetime of hard work and saving to get to move to and live on Beautiful Smith Mountain Lake for my retirement years. For approximately the last year and a half, I have witnessed large amounts of sediment from a nearby development, Kennedy Shores, flow into Smith Mountain Lake during rain events. I personally witnessed on the deck of my home a massive sea of yellow mud flowing into Smith Mountain Lake from Kennedy Shores on February 11, 2108. The rain occurred on the night of February 10th and morning of February 11th. These dates were a Saturday and a Sunday. The development was not being monitored by the developer or any state or local agency during this major rain event. Since the February 2018 event, I have taken pictures after many other large rain events when the site continued to let silt flow into SML. I reported the initial event to the developer, DEQ, Franklin County, and AEP. The only agency that showed me any significant concern was the DEQ but I learned after viewing this event that the primary enforcer was supposed to be Franklin County.</p> <p>As a follow up to my story above, I believe that sediment run-off should be the holy grail of concern under the Storm Water Permitting process. I also believe that the inspection process during and immediately after storm events needs to be beefed up substantially. With the Kennedy Shores property, I as a private citizen was often the only one inspecting the run off into the lake after storms. I believe that a self inspection process by the developer should be mandatory and it should be a process that would include pictures and scientific evidence that could be easily verified by the responsible inspection agency.</p>	<p>Proposed changes to the general permit revised the requirement for construction site operators to conduct inspections every 10 business days and 48 hours after a measureable storm event to every 10 business days (or 5 business days if the site discharges to an impaired, TMDL approved, or exceptional water) and 24 hours after a measurable storm event. Alternatively, construction site operators may conduct inspections once every 5-business days (or in the case of impaired, TMDL approved, or exceptional waters, every 4-business days). Additionally, the permit does not prohibit operators from including photographs as part of an inspection report. No additional changes to the permit condition are proposed as a result of this comment.</p>

Commenter	Topic	Comment	Department Response
<p>Peggy Sanner (Chesapeake Bay Foundation) & Bill Street (James River Association)</p>	<p>SWPPP</p>	<p>The Draft Permit would unwisely allow operators of linear projects to meet the SWPPP inspection requirements through representative inspections. Required site inspections serve many functions; these include determination of whether control measures have been installed in accordance with approved plans, whether the control measures have been incorrectly used, the effectiveness of the control measures in minimizing sediment discharges, and similar issues that are fundamental to ensuring the site does not discharge sediment and other pollutants into waterways. Experience with the large natural gas pipeline projects has shown that regular on the ground inspections of the entire length of the construction site's disturbed areas is essential. The Board should delete the provision in the Draft Permit that would allow "representative inspections" for pipeline or other linear activities.</p>	<p>The use of representative inspections is only authorized for those areas for which temporary or permanent stabilization has occurred in order to prevent disturbing these areas, where accessing the site may interfere with site stabilization. The concept of minimizing inspections of stabilized sites is consistent with EPA's 2017 Construction General Permit. No changes to the permit are proposed to this permit condition as a result of this comment.</p>

<p>Home Builders Association of Virginia</p>	<p>SWPPP</p>	<p>9VAC25-880-70 Part II.F.5 9VAC25-880-70 Part II.F.5 of Proposed Chapter 880 states: "The inspection report shall be included into the SWPPP no later than 4 business days after the inspection is complete." Comment: DEQ's requirement that a [hard copy] inspection report shall be included into the SWPPP no later than 4 business days after the inspection is complete is burdensome to the construction industry and in conflict with the Proposed Chapter 880. The Proposed Chapter 880, as does the existing permit, affords the permittee seven (7) days to implement the corrective action(s) identified in the inspection report. Many permittees utilize either proprietary or third party inspection software to generate and retain all inspection reports created to comply with the Permit. It is very likely that since the permittee is allowed seven (7) days to complete an action item identified on an inspection report, the permittee will not document an action item as complete on the electronic inspection report until the seventh day. Therefore, it is very likely that the permittee will only print out a completed hardcopy inspection report which may be on the seventh day. If the requirement to have the hardcopy report in the SWPPP in 4 business days remains and the permittee places an incomplete hardcopy inspection report into the SWPPP, then upon completion of the action items completed on days five, six and seven, the permittee would have to document the completion of the action item in their inspection software and on the hardcopy report in the SWPPP. This is duplicative and does not provides any tangible water quality benefit. Additionally, the requirement to have the hardcopy report in the SWPPP in 4 business days is in conflict with the intent of EPA's paperwork reduction policies. Therefore, it is strongly recommended that DEQ remove the language in 9VAC25-880-70 Part II.F.5 of Proposed Chapter 880 requiring the inspection reports be included in the SWPPP no later than 4 business days. Also, it is strongly recommended that DEQ add language to the Proposed Chapter 880 that affords the permittee the ability to use inspection software programs, and allows the permittee the ability to provide access to the electronic reports in a timely manner:</p>	<p>Implementation and updates of SWPPPs are vital to ensuring that the protection of state water from construction sites. The department does not believe that the proposed revisions to the general permit requiring inspection reports to be included in the SWPPP within 4 days is burdensome to operators or creates circumstances that prohibit operators from implementing corrective measures within 7 days. No changes to the permit are proposed to this permit condition as a result of this comment.</p>
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Commenter	Topic	Comment	Department Response
		<p>“The permittee shall furnish in a timely manner, upon request, to DEQ or the VSMP authority copies of reports required to be kept by this permit.”</p>	
<p>John Woodburn (Goochland County)</p>	<p>SWPPP</p>	<p>9VAC25-880-70, Part II, G.2.a(2) Define “representative inspections” in this document, or reference where the term is discussed.</p>	<p>The proposed permit retains provisions for representative inspections as an option for operators to inspect control measures above and below an area of the site where stabilization has been initiated and where accessing the area may cause additional disturbance that increases the potential for erosion. The department believes that the condition as retained in the proposed permit provides adequate information regarding representative inspection requirements. No changes to the permit are proposed to this permit condition as a result of this comment.</p>

Commenter	Topic	Comment	Department Response
Patricia VonOhlen	SWPPP	<p>I am most concerned about sediment pollution that flows in the urban storm drains when I ride past road or near by road construction projects. I would like to see the permit strengthened to ensure more numerous and rigorous inspections. Along with firm inspection schedules, it will help to specify a specific the time frame construction permit holders need to correct any deficiencies. The protections (to prevent polluted storm water runoff) should be reflect the need for more stringent standards due to increased number of storms and intensity we are now experiencing. Inspectors should visit during rain events. So often, I ride by a site that has a coir log which seems to be intended to cover the storm drain. Yet, more often than not, this 'log' has been moved so that storm water (full of dirt/sediment from the construction) is allowed to flow freely down the storm drain. I'm assuming water would build up if not allowed to run-off. So possibly permits might require some other measures to hold exposed dirt in place so it will not end up in run-off. Maybe this would require construction supervisors to avoid digging and exposing excessive amounts of uncovered dirt for long periods of time between between activity. I have observed land disturbances that are left with no activity for long periods of time before work resumes. It seems that this problem could be addressed during permitting and inspecting. Thank you for considering my comments. I appreciate your work helping keep Virginia's waterways clean.</p>	<p>The proposed permit includes a requirement for operators to inspect sites 24 hours after a storm event at a frequency of every 10 business days (or 5 business days if the site discharges to an impaired, TMDL approved, or exceptional water). Operators may choose an alternative SWPPP inspection frequency of once every 5 business days (or every 4 business days if the site discharges to an impaired, TMDL approved, or exceptional water) which is equivalent to the frequency of measurable rainfall events in Virginia. Additionally, the proposed permit retains the requirement that corrective measures be implemented as soon as possible but no later than 7 days of after discovery unless the overseeing stormwater authority approves otherwise. The proposed permit also retains requirements for stabilization to be initiated immediately but no later than 7 days after final grade is reached on any portion of a site or temporarily ceased and will not resume for a period of greater than 14 days. "Immediately" is defined in the general permit regulation as "soon as practicable, but no later than the end of the next business day when the land disturbing activities have temporarily or permanently ceased." This requirement is consistent with requirements contained within EPA's 2017 Construction General Permit. No changes to the permit are proposed to this permit condition as a result of this comment.</p>
Rogard Ross	SWPPP	<p>The Inspection Schedule - the current requirement for development by impaired waterways is for every 4 days OR every 5 days and within 1 day of a storm event; except if it happens over a long weekend when the next business day may be 4 or 5 days away. If there is a storm event, we really should require inspection with 24 hours; yes that may mean doing an inspection on a non-business day, but we really don't want damaged mitigation systems to go unfixed, especially if more rain is forecast. Let's tighten this up! .</p>	<p>The SWPPP inspection frequency in the proposed permit is consistent with the inspection requirements in EPA's 2017 Construction General Permit. The proposed permit also retains requirements for more frequency SWPPP inspections for those construction sites that discharge to impaired, TMDL approved, or exceptional waters. No changes to the permit are proposed to this permit condition as a result of this comment.</p>

Commenter	Topic	Comment	Department Response
<p>Jody Greene (Wetland Studies and Solutions, Inc.)</p>	<p>SWPPP</p>	<p>Inspecting following adverse weather and Inspection report inclusion in the SWPPP The CGP provides various inspection frequency options. Adding next “scheduled” inspection to both the requirements for inspecting following adverse weather conditions and for report inclusion in the SWPPP provides the ability to resume inspections and file reports at the inspection the frequency that meets the requirements of the permit (4 days, 5 days, 10 days, rain events and monthly etc.). Additionally, unsafe conditions that delay inspections for multiple days, like a blizzard, would create a log jam problem for third party inspectors where all delayed inspections would be required on the next safe day. The recommendations below address these concerns.9VAC25-880-70: Part II G.2e Currently Proposede. If adverse weather causes the safety of the inspection personnel to be in jeopardy, the inspection may be delayed until the next business day on which it is safe to perform the inspection. Any time inspections are delayed due to adverse weather conditions, evidence of the adverse weather conditions shall be included in the SWPPP with the date(s) of occurrence.Recommended Change e. If adverse weather causes the safety of the inspection personnel to be in jeopardy, the inspection may be delayed until the next scheduled business day on which it is safe to perform the inspection. Any time inspections are delayed due to adverse weather conditions, evidence of the adverse weather conditions shall be included in the SWPPP with the date(s) of occurrence.9VAC25-880-70: Part II G.5 Currently Proposed5. The inspection report shall be included into the SWPPP no later than 4 business days after the inspection is complete.Recommended Change:5. The inspection report shall be included into the SWPPP no later than the next regularly scheduled inspection. 4 business days after the inspection is complete.</p>	<p>The new language in the proposed permit was included to address safety concerns of performing inspections during adverse weather conditions. The suggested language would ultimately decrease the number of SWPPP inspections and potentially lead to circumstances of permit non-compliance and adverse impacts to water quality. No changes to the permit are proposed to this permit condition as a result of this comment.</p>

Committer	Topic	Comment	Department Response
Jimmy Edmonds (Loudoun County)	SWPPP	<p>9VAC25-880-70 PART II.A.4.e.7 This section, located under 9VAC25-880-70 PART II.A.4 "Pollution Prevention Plan," lists several types of discharges that are prohibited. We recommend a wording change for clarity and for consistency with DEQ technical standards for concrete washout water. Replace the highlighted word with "waste."</p> <p>9VAC25-880-70 PART II.A.4.e.7... "Prevent the discharge of fuels, oils, and other petroleum products, hazardous or toxic wastes, excess concrete, and sanitary wastes, and..."</p>	Thank you for your comment. The condition has been revised as suggested.
Katlyn Schmitt (Waterkeepers Chesapeake) & Phillip Musegaas (Potomac Riverkeeper Network)	SWPPP	The SWPPP should include language around protecting receiving waters adjacent to the construction site covered under the permit and stronger general pollution prevention measures. While erosion and sediment controls are recommended as BMPs throughout the construction site under the draft permit, construction operators should also be required to place additional controls in adjacent areas with receiving waters (or environmentally sensitive area).	In general, traditional erosion and sediment controls are employed to minimize the discharge of pollutants from construction activities. However, more frequent inspection requirements enhances an operator's ability to find and correct problems before a discharge of pollutants to impaired waters occurs. No changes to the permit are proposed to this permit condition as a result of this comment.
Townhall Comment- No Name Provided	SWPPP	Per Part II.B.1.a, a signed copy of the registration statement is required to be available with the SWPPP. Often times, permitting is completed by an owner/developer or their representative and, subsequently, a Transfer Agreement is completed to assign the permit to a contractor. With the transfer agreement process, it is uncommon that a contractor acquires the original, signed copy of the registration statement. Would it be possible to update this section to indicate that a signed copy of the registration statement, OR a signed copy of the transfer agreement be required to be available with the SWPPP, since the DEQ would have copies of both of these documents on file for both entities anyway?	Thank you for your comment, however, it is the responsibility of the new owner to ensure they obtain the necessary information from the previous owner. In the event that the new owner is unable to obtain the previous SWPPP documents, the new owner can contact the VSMP authority to obtain a copy of the registration statement and permit coverage letter. No changes to the permit are proposed in response to this comment.
Jimmy Edmonds (Loudoun County)	SWPPP	VAC25-880-70 PART II.A.1 In this section, there is a reference to a SWPPP Template for land disturbing activities that disturb less than one (1) acre but are within a Common Plan of Development. Is DEQ planning to update all SWPPP templates based upon these amended regulations and when will they be available to local programs so that they we can alert our clients in a timely fashion?	The department will revise the SWPPP template and post the updated copy on the DEQ Construction Stormwater website prior to the registration due date.

<p>Catherine Lukaszewicz</p>	<p>Monitoring</p>	<p>There are several more improvements needed that have become apparent as a result of Virginia’s experience with pipeline construction (while not governed by the CGP the same challenges apply). Please further improve the CGP by including the following: Require use of filtering or settling of sediment laden or turbid flows of stormwater to remove sediment prior to discharge as well as require turbidity monitoring according to clear protocol (e.g., ambient conditions and at the me of discharge conditions) for projects discharging to waters impaired for sediment.</p>	<p>The proposed general permit is consistent with the requirements for protection of water quality contained in EPA’s 2017 Construction General permit effective February 16, 2017.</p> <p>EPA established effluent limitation guidelines (ELGs) and new source performance standards (NSPS) to control the discharge of pollutants from construction activities in 40 CFR Part 450 referred to as the “Construction and Development Rule” or “C&D Rule”. These requirements were published in the Federal Register on December 1, 2009 (74 FR 62996) and became effective on February 1, 2010 and contained numeric limitation on the allowable level of turbidity in discharges from certain construction sites. On November 5, 2010, EPA finalized a stay (75 FR 68215), effective January 4, 2011, for 40 CFR Parts 450.22 (a) and (b) that contained the numeric turbidity limitations as the result of a petition. EPA published amendments to the C&D Rule (79 FR 12661) on March 6, 2014 and May 4, 2014 (80 FR 25235) with an effective date of May 5, 2014. The amendments lifted the indefinite stay, withdrew the numeric discharge standards. As a result, numeric turbidity limitation and monitoring requirements are not required to be incorporated in to NPDES permits.</p> <p>The general permit requires construction activity operators to develop an erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Program regulations, which require filtering and infiltration practices. The permit also incorporates the narrative technology-based effluent limitations contained in 40 CFR Part 450. In addition, the general permit requires operators to select, install, implement, and maintain control measures at the construction site that minimize (i.e., reduce or eliminate) pollutants in the discharge as necessary to ensure that the operator’s discharge does not cause or contribute to an excursion above any applicable water quality standard. Also, 9VAC25-870-460.I of the Virginia Stormwater Management Program regulation allows for the use of best management practices to control or abate the discharge of pollutants from stormwater</p>
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Commenter	Topic	Comment	Department Response
			<p>discharges and when numeric effluent limitations are infeasible. The department believes that the proposed general permit establishes the requirements necessary to protect water quality standards. No changes to the permit are proposed in response to this comment.</p>

<p>Peggy Sanner (Chesapeake Bay Foundation) and Bill Street (James River Association)</p>	<p>Monitoring</p>	<p>Virginia’s recent experience with major natural gas pipeline projects which the CGP program governs indirectly through DEQ-approved Standards and Specifications has amply demonstrated that discharges from land disturbing activities can cause significant and risky turbidity and sedimentation in receiving waterways. Yet, discharges leading to turbidity and sedimentation in receiving waters are inconsistent with Virginia’s water quality standards (WQS) general criteria: State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life. Specific substances to be controlled include, but are not limited to: floating debris, oil, scum, and other floating materials; toxic substances (including those which bioaccumulate); substances that produce color, tastes, turbidity, odors, or settle to form sludge deposits; and substances which nourish undesirable or nuisance aquatic plant life. Turbidity and sedimentation have a variety of harmful effects on aquatic life. As CBF detailed to DEQ in connection with its triennial review of water quality standards, sediment loads can degrade aquatic life by sedimentation, which smothers stream bottoms with a layer of fine material that eliminates habitat. Sediment also increases the turbidity of the water through suspended solids, preventing sunlight from reaching underwater grasses and plants. In this way, turbidity can eliminate habitat, reduce food resources and degrade aquatic plants that form part of the food web for many species. Turbidity can also reduce fish hatching success, affect the ability to acquire food, damage gill tissue, and even induce direct mortality. The Draft Permit duly prohibits discharges that cause, may reasonably be expected to cause, or contribute to a violation of water quality standards, and it requires permittees to ensure that discharges from construction sites do not cause or contribute to an excursion above any applicable water quality standard. Courts have held that permit conditions requiring adherence to narrative WQS</p>	<p>The proposed general permit is consistent with the requirements for protection of water quality contained in EPA’s 2017 construction general permit effective February 16, 2017. EPA established effluent limitation guidelines (ELGs) and new source performance standards (NSPS) to control the discharge of pollutants from construction activities in 40 CFR Part 450 referred to as the “Construction and Development Rule” or “C&D Rule”. These requirements were published in the Federal Register on December 1, 2009 (74 FR 62996) and became effective on February 1, 2010 and contained numeric limitation on the allowable level of turbidity in discharges from certain construction sites. On November 5, 2010, EPA finalized a stay (75 FR 68215), effective January 4, 2011, for 40 CFR Parts 450.22 (a) and (b) that contained the numeric turbidity limitations as the result of a petition. EPA published amendments to the C&D Rule (79 FR 12661) on March 6, 2014 and May 4, 2014 (80 FR 25235) with an effective date of May 5, 2014. The amendments lifted the indefinite stay, withdrew the numeric discharge standards. As a result, numeric turbidity limitation and monitoring requirements are not required to be incorporated in to NPDES permits.</p> <p>As currently written, the general permit requires construction activity operators to implement erosion and sediment controls and pollution prevention practices to address the narrative technology-based effluent limitations contained in 40 CFR Part 450. In addition, the general permit requires operators to select, install, implement, and maintain control measures at the construction site that minimize (i.e., reduce or eliminate) pollutants in the discharge as necessary to ensure that the operator’s discharge does not cause or contribute to an excursion above any applicable water quality standard. Also, 9VAC25-870-460.1 of the Virginia Stormwater Management Program regulation allows for the use of best management practices to control or abate the discharge of pollutants from stormwater discharges and when numeric effluent limitations are infeasible. The department believes that the proposed general permit establishes the requirements</p>
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Commenter	Topic	Comment	Department Response
		<p>are enforceable, and indeed, DEQ and the Attorney General are currently engaged in enforcement activities relating in part to stormwater runoff and sedimentation from pipeline construction activities. Nonetheless, as DEQ has publically stated it is unsure how to enforce Virginia's narrative turbidity WQS, we are not confident of the level or regularity of enforcement action regarding this standard at other, less prominent sites. To ensure protection of water quality from turbidity and sedimentation in the manner intended by the longstanding turbidity WQS, the reissued CGP should require appropriate monitoring for sediment-caused turbidity downstream of construction sites. At a minimum, monitoring according to an appropriate protocol would give the site operator the ability to discern whether its onsite controls are working effectively and to modify them where needed. Effective monitoring and reporting of results would also allow the operator and DEQ to understand the duration of any turbid discharges and, therefore, its likely effects on aquatic life. DEQ, which conducts real-time continuous turbidity monitoring before, during and after specific construction activities for the natural gas pipeline projects, is certainly capable of devising and implementing an appropriate turbidity monitoring protocol. To the extent additional guidance is considered helpful, DEQ could consult with neighboring states, including Maryland, which also have and implement WQS for turbidity. Larger than most other land disturbing projects, the natural gas pipeline projects starkly illustrate the turbidity and sedimentation risks that smaller land disturbing projects can pose to local and downstream waterways. Virginia should learn from these examples and take the important step of requiring turbidity monitoring downstream of covered construction sites. That step will help protect water quality by warning of inadequate controls due to unanticipated weather events, inappropriate BMP installation, lax maintenance or other problems.</p>	<p>necessary to protect water quality standards.</p> <p>In accordance with section 402(l)(2) of the Clean Water Act (CWA) discharges of stormwater runoff from the construction of oil and gas transmission pipelines are exempt from National Pollutant Discharge Elimination System (NPDES) and Virginia Pollutant Discharge Elimination System (VPDES) permitting. Therefore, Virginia's Construction General Permit is not applicable to the natural gas transmission pipeline projects. No changes to the permit are proposed in response to this comment. Please note, however, that Virginia regulates construction activities from pipelines through the annual standards and specifications program in accordance with the Virginia Erosion and Sediment Control Law and the Virginia Stormwater Management Act.</p>

<p>Logan Kendle (Superintendent Commercial Contractor)</p>	<p>Monitoring</p>	<p>I recommend the addition of required settling or filtering of sediment laden or Turbid stormwater prior to discharge. & Monitoring of said settling or filtering prior to discharge. I recommend the addition of public posting of those results in a log attached to the electronically available SWPPP permit.</p>	<p>The proposed general permit is consistent with the requirements for protection of water quality contained in EPA’s 2017 Construction General permit effective February 16, 2017. EPA established effluent limitation guidelines (ELGs) and new source performance standards (NSPS) to control the discharge of pollutants from construction activities in 40 CFR Part 450 referred to as the “Construction and Development Rule” or “C&D Rule”. These requirements were published in the Federal Register on December 1, 2009 (74 FR 62996) and became effective on February 1, 2010 and contained numeric limitation on the allowable level of turbidity in discharges from certain construction sites. On November 5, 2010, EPA finalized a stay (75 FR 68215), effective January 4, 2011, for 40 CFR Parts 450.22 (a) and (b) that contained the numeric turbidity limitations as the result of a petition. EPA published amendments to the C&D Rule (79 FR 12661) on March 6, 2014 and May 4, 2014 (80 FR 25235) with an effective date of May 5, 2014. The amendments lifted the indefinite stay, withdrew the numeric discharge standards. As a result, numeric turbidity limitation and monitoring requirements are not required to be incorporated in to NPDES permits.</p> <p>The general permit requires construction activity operators to develop an erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Program regulations which requires filtering and infiltration practices. The permit also incorporates the narrative technology-based effluent limitations contained in 40 CFR Part 450. In addition, the general permit requires operators to select, install, implement, and maintain control measures at the construction site that minimize (i.e., reduce or eliminate) pollutants in the discharge as necessary to ensure that the operator’s discharge does not cause or contribute to an excursion above any applicable water quality standard. Also, 9VAC25-870-460.1 of the Virginia Stormwater Management Program regulation allows for the use of best management practices to control or abate the discharge of pollutants from stormwater discharges and when numeric effluent</p>
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Commenter	Topic	Comment	Department Response
			limitations are infeasible. The department believes that the proposed general permit establishes the requirements necessary to protect water quality standards. No changes to the permit are proposed in response to this comment.

<p>Rogard Ross</p>	<p>Monitoring</p>	<p>Sediment runoff is a major concern. I do not think it would be unreasonable to require the site operator to monitor turbidity in the runoff from the construction sites and take proactive steps to eliminate sediment runoff in alignment with their SWPPP</p>	<p>The proposed general permit is consistent with the requirements for protection of water quality contained in EPA's 2017 Construction General permit effective February 16, 2017. EPA established effluent limitation guidelines (ELGs) and new source performance standards (NSPS) to control the discharge of pollutants from construction activities in 40 CFR Part 450 referred to as the "Construction and Development Rule" or "C&D Rule". These requirements were published in the Federal Register on December 1, 2009 (74 FR 62996) and became effective on February 1, 2010 and contained numeric limitation on the allowable level of turbidity in discharges from certain construction sites. On November 5, 2010, EPA finalized a stay (75 FR 68215), effective January 4, 2011, for 40 CFR Parts 450.22 (a) and (b) that contained the numeric turbidity limitations as the result of a petition. EPA published amendments to the C&D Rule (79 FR 12661) on March 6, 2014 and May 4, 2014 (80 FR 25235) with an effective date of May 5, 2014. The amendments lifted the indefinite stay, withdrew the numeric discharge standards. As a result, numeric turbidity limitation and monitoring requirements are not required to be incorporated in to NPDES permits.</p> <p>The general permit requires construction activity operators to develop an erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Program regulations, which require filtering and infiltration practices. The permit also incorporates the narrative technology-based effluent limitations contained in 40 CFR Part 450. In addition, the general permit requires operators to select, install, implement, and maintain control measures at the construction site that minimize (i.e., reduce or eliminate) pollutants in the discharge as necessary to ensure that the operator's discharge does not cause or contribute to an excursion above any applicable water quality standard. Also, 9VAC25-870-460.1 of the Virginia Stormwater Management Program regulation allows for the use of best management practices to control or abate the discharge of pollutants from stormwater discharges and when numeric effluent</p>
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Commenter	Topic	Comment	Department Response
			<p>limitations are infeasible. The department believes that the proposed general permit establishes the requirements necessary to protect water quality standards. No changes to the permit are proposed in response to this comment.</p>
Denise Mosca	Monitoring	<p>After experiencing more frequent, intense storms currently, please reconsider the use of historical storm record guidelines underlying the recommendations and requirements for this permit. For example, please revisit inspection schedules and shortening timeframes to make corrections after inspections so that the occurrence of more severe storms do not result in consistently more severe impacts. In addition, some form of settling prior to discharge should be a requirement, as well as the elimination of representative inspections for linear activities. For projects with discharge to waters impaired due to sediment, background and discharging turbidity monitoring should be required.</p>	<p>Thank you for your comment, however revisions to the storm event used for erosion and sediment control measure sizing is outside the scope of this regulatory action. Additionally, the proposed general permit is consistent with the requirements for protection of water quality contained in the EPA 2017 Construction General permit effective February 16, 2017. EPA established effluent limitation guidelines (ELGs) and new source performance standards (NSPS) to control the discharge of pollutants from construction activities in 40 CFR Part 450 referred to as the "Construction and Development Rule" or "C&D Rule". These requirements were published in the Federal Register on December 1, 2009 (74 FR 62996) and became effective on February 1, 2010 and contained numeric limitation on the allowable level of turbidity in discharges from certain construction sites. On November 5, 2010, EPA finalized a stay (75 FR 68215), effective January 4, 2011, for 40 CFR Parts 450.22 (a) and (b) that contained the numeric turbidity limitations as the result of a petition. EPA published amendments to the C&D Rule (79 FR 12661) on March 6, 2014 and May 4, 2014 (80 FR 25235) with an effective date of May 5, 2014. The amendments lifted the indefinite stay, withdrew the numeric discharge standards. As a result, numeric turbidity limitation and monitoring requirements are not required to be incorporated in to NPDES permits.</p> <p>The general permit requires construction activity operators to develop an erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Program regulations, which require filtering and infiltration practices. The permit also incorporates the narrative technology-based effluent limitations contained in 40 CFR Part 450. No revisions to the permit are proposed as a result of this comment.</p>

Committer	Topic	Comment	Department Response
Melanie Mason (City of Alexandria)	"Portions of a project not under construction"	9VAC25-880-45 2(b)(3)(d)(1): Please clarify that this definition means that construction has begun on any portion of the project included on the stormwater management plan, including regional stormwater facilities.	The language proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, the department has determined that the language has caused more confusion than clarification. Therefore, the language proposed in 9VAC25-880-45 is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.
Hampton Roads Planning District Commission	"Portions of a project not under construction"	The definition of "portions of a project not under construction" included in Section 9VAC25-880-45.2.d (1) is subject to various interpretations and should be clarified. It is our understanding that DEQ's intent is to have Part IIC (9VAC25-870-93 et seq.) continue to apply to the portions of a project that are addressed in the approved stormwater management plan, and where land disturbance has begun by either June 30, 2024 for time limits on applicability projects or June 30, 2019 for grandfathered projects. The suggested revision is to add the following language to Section 9VAC25-880-45.2.d (1) of the permit: "All portions of the project covered by the approved stormwater management plan that were developed in accordance with Part IIC shall remain subject to Part IIC so long as land disturbance has commenced by either June 30, 2024 for projects meeting subdivision 2a or June 30, 2019 for projects meeting subdivision 2b of this section."	The language proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, the department has determined that the language has caused more confusion than clarification. Therefore, the language proposed in 9VAC25-880-45 is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.
Hampton Roads Planning District Commission	"Portions of a project not under construction"	Another suggestion that will help permittees determine which projects remain under Part IIC is to include the examples that were provided to the TAC in May 2018 in the Fact Sheet for the permit. The project examples, including a road widening project, a utility readjustment, and a phased subdivision, were particularly helpful to the TAC discussions and would also be helpful to permittees.	The language proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, the department has determined that the language has caused more confusion than clarification. Therefore, the language proposed in 9VAC25-880-45 is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.

<p>Mark Williams (Koontz Bryant Johnson Williams)</p>	<p>"Portions of a project not under construction"</p>	<p>Section 9VAC25-880-45, item B (draft) states "...Portions of the project not under construction as of June 30, 2024 shall no longer be eligible to use the technical design criteria in Part II C of the VSMP regulation." Items to note:</p> <p>a. Section 9VAC25-870-47 (under the general "Part II" of the Chapter 870 VSMP Regulations NOT the Chapter 880 General Permit Regulations), section B states similar language (i.e. - "After such time, portions of the project not under construction shall be subject to any new technical criteria adopted by the board"). It is my understanding that changes to Chapter 870 have NOT been authorized; Therefore, only the interpretation of the term "portions of a project not under construction" can be addressed. Unfortunately, this wording doesn't account for items outside the control of the engineer or developer.</p> <p>b. Section 9VAC25-880-45, item B4 (draft) defines "...Portions of the project not under construction" Based on the current wording of the regulations (related to "portions of a project not under construction"), a locality could approve a site plan (which may have taken 8 months or more to get approved) in late June of 2024. In many localities, the actual issuance of a land disturbance permit is not done until the pre-construction meeting, which needs to be scheduled with the authority. If the locality, as the authority, approved a plan in late June of 2024, they could find themselves setting up a pre-construction meeting in July, knowing the plans at that time will not be in compliance with the regulations (as the project may not be under construction prior to June 30, 2019, depending on the DEQ's definition of "under construction"). Could this section be modified to require "Plan Approval" by June 30, 2019 for grandfathered projects and "Plan Approval" by June 30, 2024 for projects with previous permit coverage and which are renewed. Since Chapter 870 uses the same language, and changes to Chapter 870 have not been authorized, can the suggested change noted above be made (by superseding Chapter 870 via changes within Chapter 880)?</p> <p>A preferred addition to the definition of</p>	<p>The language proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, the department has determined that the language has caused more confusion than clarification. Therefore, the language proposed in 9VAC25-880-45 is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.</p> <p>Additionally, suggested changes to the provisions of Section 47 and 48 of the Virginia Stormwater Management Program regulation, 9VAC25-870, are not authorized under the regulatory action to amend the general permit. Also, please note that the provisions of 9VAC25-870-47 and 48 that allow certain projects to use the post development stormwater technical criteria in effect prior to July 1, 2014 criteria apply specifically to stormwater management associated with land-disturbing activities. The vesting requirements set out in the Code of Virginia in § 15.2-2209.1 have no relationship to the stormwater provisions and the technical criteria that are applicable to a given project as stated in the VSMP regulatory development documents from 2011.</p>
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Commenter	Topic	Comment	Department Response
		<p>“portions of a project not under construction” would be a statement that any project or portions of projects meeting the vesting requirements of Virginia Code § 15.2-2307, paragraph A would be deemed to be a project under construction. This would allow ongoing residential projects with approved zoning and tentative plans to continue moving toward completion of the overall project under the same criteria that was known to them when the project started. Arbitrary dates should not be defined for developers who have and continue to invest substantial sums of money actively pursuing completion of their multi-phased projects. Will the DEQ be willing to include language within the definition for “portions of a project not under construction” that includes any project or portions of projects meeting the vesting requirements of Virginia Code § 15.2-2307, paragraph A?</p>	
<p>John Woodburn (Goochland County)</p>	<p>"Portions of a project not under construction "</p>	<p>9VAC25-880-45.2.b(1). Grandfathering – If grandfathered, how does the ‘portions of project not under construction’ part get implemented?</p>	<p>The department has included information regarding applicable post development stormwater technical criteria in the fact sheet. No changes to permit are proposed in response to this comment.</p>
<p>Kristin Carter (University of Virginia)</p>	<p>"Portions of a project not under construction "</p>	<p>9VAC25-880-45 – For paragraph 2.d.2, why do locality, state and federal projects have until 12/31/2020 to issue a contract and consider that equivalent to initiating construction on by 06/30/19? A year and a half seems like an excessive grace period beyond what was originally intended for grandfathered projects.</p>	<p>Thank you for comment. Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language originally proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, it is clear to the department that the language did not provide clarification and introduced confusion. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.</p>

Commenter	Topic	Comment	Department Response
Jimmy Edmonds (Loudoun County)	"Portions of a project not under construction"	9VAC25-880-45.B.4(a) The definition for "portions of a project not under construction" is provided. Does the first part of the definition, "any construction activity permitted as described in 9VAC-25-880-45 B 1 or 2 and included on an approved stormwater management plan for which land disturbance has not commenced for any activities on the approved stormwater management plan..." infer that this includes any proposed land disturbance on a site for which the stormwater plan/measures are proposed (e.g., Phase 1 ESC measure installation on a project that has an approved SWM Plan)? In other words, please verify that the definition does not limit the land disturbance to that involved in the construction of SWM facilities (which typically takes place very late in project construction).	Thank you for comment. Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language originally proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, it is clear to the department that the language did not provide clarification and introduced confusion. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.
Jimmy Edmonds (Loudoun County)	"Portions of a project not under construction"	9VAC25-880-45.B.4(a) Detailed guidance from DEQ on the interpretation of the definition of "portions of a project not under construction" is requested. Please provide recommendations and guidance related to procedures for a local VSMP program to follow in determining this project status and in revoking the "grandfathered" status of a project and enforcing the new criteria should it be determined that construction has not begun. This process has the potential to be resource demanding for local VSMPs.	Thank you for comment. Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language originally proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, it is clear to the department that the language did not provide clarification and introduced confusion. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.

Commenter	Topic	Comment	Department Response
Melanie Mason (City of Alexandria)	Part II C Technical Criteria	9VAC25-880-45 2(b)(1): Per DEQ guidance memo 14-2014 issued August 25, 2014, land-disturbing activities that obtain first-time coverage under the 2014 general permit, with the exception of “grandfathered” projects or projects served by an existing stormwater management facility, are subject to the new Part II B technical criteria for two (2) additional general permit cycles. Any land-disturbing activities served by an existing on-site or off-site stormwater management facility, including a regional (watershed wide) stormwater management facility, designed and implemented in accordance with the old Part II C technical criteria remain subject to the old Part II C technical criteria for two (2) additional general permit cycles. The use of grandfathered existing on site or offsite facilities, including regional facilities designed to meet the Part IIC criteria is not reflected in the language in the proposed permit. This will affect projects that have been permitted to use a regional facility designed to the Part IIC criteria, but have not yet begun construction or still have portions of the project that are not under construction. Please include language consistent with the guidance.	Thank you for comment. Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language originally proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, it is clear to the department that the language did not provide clarification and introduced confusion. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.

Commenter	Topic	Comment	Department Response
Barbara Brumbaugh (City of Chesapeake)	Part II C Technical Criteria	<p>Section 9VAC25-880-45.2.b (2) of the proposed Construction GP includes the requirements for locality, state, and federal projects to be eligible to conduct land disturbance in accordance with Part II C (9VAC25-870-93 et seq.). The provision specifically states that the project has to meet the grandfathering requirements of 9VAC25-870-48 B, which includes an obligation of funding prior to July 1, 2012. There are situations in which a local government project has approved plans; however, funding was obligated after July 1, 2012. It is expected that most local government projects that are grandfathered would have secured funding by July 1, 2012 and met the requirements of 9VAC25-870-48 B; however, local government budgets are impacted by any number of factors beyond a locality’s control, such as extreme weather events. Local governments need flexibility in terms of funding schedules to allow them to manage their limited resources in the most cost effective manner. Extending the applicability of Part IIC to projects grandfathered under Parts A and B of 9VAC25-870-48 will provide flexibility to local governments. The suggested revision is to add a reference to Part A of 9VAC25-870-48 to the following sentence in Section 9VAC25-880-45.2.b(2) of the Construction GP: “For locality, state, and federal projects, any operator that obtained initial permit authorization to discharge under the general permit effective July 1, 2014, for projects meeting the requirements of 9VAC25-870-48 A or B, has maintained continuous permit coverage since initial permit coverage was approved, and obtains coverage under the general permit effective July 1, 2019, shall conduct land disturbance in accordance with Part II C (9VAC25-870-93 et seq.) of the VSMP Regulation or more stringent standards at the operator’s discretion.”</p>	<p>Thank you for comment. Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language originally proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, it is clear to the department that the language did not provide clarification and introduced confusion. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet. Additionally, the proposed changes to 9VAC25-870 are outside of the scope of this regulatory action.</p>

Commenter	Topic	Comment	Department Response
Barbara Brumbaugh (City of Chesapeake)	Part II C Technical Criteria	§15.2-2209.1. of the Code of Virginia, which was promulgated to address the housing crisis, extends the approval of any subdivision recorded plat or final site plan that was outstanding as of January 1, 2017 to July 1, 2020. This requirement is inconsistent with the grandfathering provisions in Section 9VAC25-880-45.b that specify an expiration date of June 30, 2019 for the stormwater management plans of grandfathered projects. The City recommends that DEQ review the legislation and the proposed Construction GP to ensure that the expiration dates are consistent and do not present conflicting information to the development community.	The provisions of 9VAC25-870-47 and 48 that allow certain projects to use the post development stormwater technical criteria in effect prior to July 1, 2014 criteria apply specifically to stormwater management associated with land-disturbing activities. The vesting requirements set out in the Code of Virginia in § 15.2-2209.1 have no relationship to the stormwater provisions and the technical criteria that are applicable to a given project as stated in the VSMP regulatory development documents from 2011. No changes to the permit are proposed in response to this comment.

Committer	Topic	Comment	Department Response
Hampton Roads Planning District Commission	Part II C Technical Criteria	<p>Section 9VAC25-880-45.2.b (2) of the proposed Construction GP includes the requirements for locality, state, and federal projects to be eligible to conduct land disturbance in accordance with Part II C (9VAC25-870-93 et seq.). The provision specifically states that the project has to meet the grandfathering requirements of 9VAC25-870-48 B, which includes an obligation of funding prior to July 1, 2012. There are situations in which a local government project has approved plans; however, funding was obligated after July 1, 2012. It is expected that most local government projects that are grandfathered would have secured funding by July 1, 2012 and met the requirements of 9VAC25-870-48 B; however, local government budgets are impacted by any number of factors beyond a locality's control, such as extreme weather events. Local governments need flexibility in terms of funding schedules to allow them to manage their limited resources in the most cost effective manner. Extending the applicability of Part IIC to projects grandfathered under Parts A and B of 9VAC25-870-48 will provide flexibility to local governments. The suggested revision is to add a reference to Part A of 9VAC25-870-48 to the following sentence in Section 9VAC25-880-45.2.b(2) of the Construction GP: "For locality, state, and federal projects, any operator that obtained initial permit authorization to discharge under the general permit effective July 1, 2014, for projects meeting the requirements of 9VAC25-870-48 A or B, has maintained continuous permit coverage since initial permit coverage was approved, and obtains coverage under the general permit effective July 1, 2019, shall conduct land disturbance in accordance with Part II C (9VAC25-870-93 et seq.) of the VSMP Regulation or more stringent standards at the operator's discretion."</p>	<p>Thank you for comment. Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language originally proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, it is clear to the department that the language did not provide clarification and introduced confusion. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet. Additionally, the proposed changes to 9VAC25-870 are outside of the scope of this regulatory action.</p>

Committer	Topic	Comment	Department Response
Hampton Roads Planning District Commission	Part II C Technical Criteria	§15.2-2209.1. of the Code of Virginia, which was promulgated to address the housing crisis, extends the approval of any subdivision recorded plat or final site plan that was outstanding as of January 1, 2017 to July 1, 2020. This requirement is inconsistent with the grandfathering provisions in Section 9VAC25-880-45.b that specify an expiration date of June 30, 2019 for the stormwater management plans of grandfathered projects. The suggestion is for the DEQ to review the legislation and the proposed Construction GP to address the inconsistent expiration dates and to provide guidance to permittees.	The provisions of 9VAC25-870-47 and 48 that allow certain projects to use the post development stormwater technical criteria in effect prior to July 1, 2014 criteria apply specifically to stormwater management associated with land-disturbing activities. The vesting requirements set out in the Code of Virginia in § 15.2-2209.1 have no relationship to the stormwater provisions and the technical criteria that are applicable to a given project as stated in the VSMP regulatory development documents from 2011. No changes to the permit are proposed in response to this comment.
Jimmy Edmonds (Loudoun County)	Part II C Technical Criteria	9VAC25-880-45.B.1 This section describes “time limits of applicability.” We recommend the following sentence be amended for clarity: 9VAC25-880-45.B.1 “...project not under construction as of June 30, 2024 shall no longer be eligible to use the technical design criteria in Part II C of the VSMP regulation.” Amend highlighted language to read, “subject to the technical design criteria in Part IIC of the VSMP Regulations, and shall become subject to and shall be conducted in accordance with the technical criteria in Part II B.”	Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language originally proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, it is clear to the department that the language did not provide clarification and introduced confusion. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.

Commenter	Topic	Comment	Department Response
Jon Tibbs (McAirlaid's Inc)	Part II C Technical Criteria	<p>McAirlaid's, Inc. submitted a master plan (copy attached) to DEQ in May 2007. This master plan reflected all phase of development for the site. McAirlaid's, Inc. renewed our General Permit in 2014 and received approval from DEQ on 19 Sept 14 (copy attached). This renewal process also included a master plan (copy attached) that demonstrated all phases of the project. The reason to renew and not close this permit was to allow us to construct the final phase of our approved site (Phase V) as business allows under the erosion and sediment control laws and regulations at the time the General Permit was issued and not be subject to any changes that may develop to the laws since that time (grandfather). We continue to maintain the maintenance fee with Franklin County. Will McAirlaid's, Inc. be allowed to construct Phase V under the laws that govern the 2014 permit if we continue to update the General Permit with no changes to the master plan?</p> <p>McAirlaid's, Inc. wishes to understand more clearly the definition of "under construction". With our SWPPP, our continued renewals of the General Permit, and paying the yearly maintenance fee, we consider our site still "under construction". Will the "substantial changes to the existing regulation" that are predicted by DEQ allow McAirlaid's, Inc. to continue along our existing path and allow us to construct our Phase V addition under laws and regulations governing the 2014 general permit?</p> <p>To simplify, McAirlaid's, Inc. feels that we were very forward thinking during the design of the master plan in 2007; therefore submitting this plan to DEQ and subsequently receiving approval in 2007. We have maintained our General Permit with no changes to the master plan with the understanding that we will, as business opportunities allow, build out this site in accordance with this master plan. Our fear, due to a lack of clear understanding, is that we will either end up with a detention pond on our site (currently shared by the park), or we will not be allowed to complete the master plan at all.</p>	<p>Thank you for comment. The language proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, the department has determined that the language has caused more confusion than clarification. The department has included information in the fact sheet regarding applicability of the post development stormwater technical criteria.</p> <p>As authorized in 9VAC25-870-47 of the Virginia Stormwater Management regulation, "land-disturbing activities that obtain an initial state permit or commence land disturbance prior to July 1, 2014, shall be conducted in accordance with the Part II C (9VAC25-870-93 et seq.) technical criteria of this chapter." These projects remain subject to the Part II C criteria until July 1, 2024, at which time those portions of the project not under construction shall become subject to any new technical criteria.</p> <p>Additionally, as clarified in Guidance Memo 14-2014 issued by the department on August 25, 2014, any land-disturbing activities served by an existing on-site or off-site stormwater management facility, including a regional (watershed-wide) stormwater management facility, designed and implemented in accordance with the old Part II C technical criteria remain subject to the old Part II C technical criteria until July 1, 2024 as long as the land-use assumptions upon which the stormwater management facility was designed and implemented have not changed (e.g., an unanticipated increase in impervious cover).</p>

Commenter	Topic	Comment	Department Response
<p>Monte Lewis (ED Lewis and Assoc)</p>	<p>Part II C Technical Criteria</p>	<p>We still have a few projects under the IIC requirements where the overall storm water plan has been worked out but the last sections or phases have not been started. If the IIB requirements are applied to the rest of the project it would be disastrous. Layouts of the site have been approved in zoning and tentative approvals. Storm water management systems have been planned and some have been installed based on 2C requirements for the entire project. Our clients have spent an enormous amount of capital outlay for these projects based on the IIC requirements. When we renewed our permits in 2014 we were told that we would have 2 permit cycles under these regulations. I think if we have a permit and the registration statement stated the overall project area was let's say 100 acres then we should be allowed to renew for the entire 100 acres under the requirements at that time. Let the IIC permits play out with the development of the project like it was intended. That is only fair and equitable. For instance, If we change a bmp location on a tentative plan in Chesterfield they will void that tentative and we have to meet all of their current regulations relative to setbacks, buffers , etc. which has nothing to do with renewing a permit that we already have in hand.</p>	<p>Thank you for comment. Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language originally proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, it is clear to the department that the language did not provide clarification and introduced confusion. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.</p> <p>As authorized in 9VAC25-870-47 of the Virginia Stormwater Management regulation, "land-disturbing activities that obtain an initial state permit or commence land disturbance prior to July 1, 2014, shall be conducted in accordance with the Part II C (9VAC25-870-93 et seq.) technical criteria of this chapter." These projects remain subject to the Part II C criteria until July 1, 2024, at which time those portions of the project not under construction shall become subject to any new technical criteria.</p> <p>Additionally, as clarified in Guidance Memo 14-2014 issued by the department on August 25, 2014, any land-disturbing activities served by an existing on-site or off-site stormwater management facility, including a regional (watershed-wide) stormwater management facility, designed and implemented in accordance with the old Part II C technical criteria remain subject to the old Part II C technical criteria until July 1, 2024 as long as the land-use assumptions upon which the stormwater management facility was designed and implemented have not changed (e.g., an unanticipated increase in impervious cover).</p>

Commenter	Topic	Comment	Department Response
Jimmy Edmonds (Loudoun County)	Part II C Technical Criteria	9VAC25-880-45.B.4(b) Based upon the language in this section, we believe that local, state, & federal projects which fall under “time limits on applicability” and which have a contract award issued by December 31, 2020 will remain grandfathered to the II C Technical Criteria in perpetuity. Was this the intent of this section?	Thank you for comment. Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, the department has determined that the language has caused more confusion than clarification. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.

<p>Alvin Mistr (Midview Management Corporation)</p>	<p>Part II C Technical Criteria</p>	<p>There are specific concerns to interpretations of the sections of the Regulations regarding grandfathered status and previously permitted status. These interpretations of the Regulations will potentially have severe implications to the ability of numerous landowners to re-develop the Innsbrook Office Park. The Innsbrook Owners Association (operator) obtained Coverage under the 2009 VPDES on June 6, 2014 (VAR10E112). Subsequently, the IOA obtained Coverage under the 2014 VPDES General Construction Permit (VAR10E112) on August 22, 2014. Henrico County, as the VSMP Authority, deemed, via a letter from Keith White dated July 20, 2011, that the Innsbrook Comprehensive Stormwater Management Plan (ICSMP) was consistent with the stormwater management plan being administered by Henrico County. In doing so, the County agreed that the ICSMP was a "document equivalent thereto" to a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan, or zoning with a plan of development. This was in accordance with the "Guidance Document on the implementation of the Virginia Stormwater Management Regulations Grandfathering Provision" dated May 15, 2012, and signed by DCR Director David E. Johnson. By virtue of VAR10E112, the entire Innsbrook Office Park was previously permitted for two permit cycles, and the Innsbrook Owners Association relied on this status to move forward with plans to re-develop all of the office park under UMU zoning standards. The County had already designated Innsbrook, as well as some of the surrounding area, as an Urban Development Area (UDA), which is a prerequisite to requesting UMU zoning. All of the calculations in the ICSMP were in accordance with the technical criteria of Part II C of the Regulations. These calculations of phosphorus reductions by the Innsbrook Lakes have been utilized in the preparation of Plans of Development since the time the ICSMP was deemed to be consistent with the Stormwater Regulations. Changes to the method of calculating water quality requirements with the 2019 permit cycle will have potentially dire</p>	<p>Thank you for comment. Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, the department has determined that the language has caused more confusion than clarification. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.</p> <p>As authorized in 9VAC25-870-47 of the Virginia Stormwater Management regulation, "land-disturbing activities that obtain an initial state permit or commence land disturbance prior to July 1, 2014, shall be conducted in accordance with the Part II C (9VAC25-870-93 et seq.) technical criteria of this chapter." These projects remain subject to the Part II C criteria until July 1, 2024, at which time those portions of the project not under construction shall become subject to any new technical criteria. Additionally, as clarified in Guidance Memo 14-2014 issued by the department on August 25, 2014, any land-disturbing activities served by an existing on-site or off-site stormwater management facility, including a regional (watershed-wide) stormwater management facility, designed and implemented in accordance with the old Part II C technical criteria remain subject to the old Part II C technical criteria until July 1, 2024 as long as the land-use assumptions upon which the stormwater management facility was designed and implemented have not changed (e.g., an unanticipated increase in impervious cover).</p> <p>Please note that the 2014 Construction General Permit required operators to update the required Stormwater Pollution Prevention Plan within 60 days of receiving permit coverage. A component of the SWPPP is an approved erosion and sediment control plan for the amount of land disturbance for which permit coverage was</p>
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	<p>consequences for the re-development of Innsbrook. The intentions of the owners, at this time, are to re-develop Innsbrook as an Innovation District. This will allow the owners within Innsbrook to initiate innovative methods of treating stormwater runoff and utilizing new technological advances for reducing nutrient loads, which have not yet been approved by the Virginia BMP Clearinghouse. Henrico County has the legal authority to designate areas of the County as Technology Zones. Designating Innsbrook as a Technology Zone would allow the County flexibility in making waivers to regulations and their implementation. With that in mind, the IOA proposes to treat all of Innsbrook as a single complete project with numerous phases to be developed over the next couple of decades. As each of the 110± parcels within Innsbrook is re-developed and exceeds the impervious area allotment as determined by the ICSMP, that parcel must provide additional on-site treatment (pollutant reduction) or purchase nutrient offset credits from an authorized Nutrient Trading Bank. While purchasing nutrient offset credits meets the legal requirements of the Regulations, a purchase of offsite credits does nothing to enhance the water quality of the lakes. The Innsbrook Lakes currently have BMP removal efficiencies between 50% and 60%. Sampling of the outfall of Lake Rooty (Lake #5) indicates that the lakes are actually removing more phosphorus than has been calculated. In order to verify the water quality benefits of the Lakes, Innsbrook proposes to monitor each of the five lakes to determine whether that lake is exceeding the nutrient removal efficiency as currently allowed by the BMP Clearinghouse. When the removal efficiency exceeds that allowed by current guidelines for a specified length of time, Innsbrook would get credit for the additional nutrient removal. These lakes have served as a Regional BMP for the Innsbrook Office Park since its inception. It is in the best interest of Innsbrook, Henrico County and the DEQ for these lakes to be allowed to continue to function as a Regional BMP. The Innsbrook Owners Association wants assurances, either from Henrico County, DEQ, or through clarifications for Chapter 880 of the Virginia Stormwater Regulations, that</p>	<p>authorized. The proposed permit retains the same requirement for the SWPPP to contain an approved erosion and sediment control.</p> <p>It should also be noted that applicability of the Part II C technical criteria in accordance with 9VAC 25-870-47 of the Virginia Stormwater Management Program regulation applies only to new land disturbing activities. Re-development of parcels ("development on prior developed lands" as defined in 9VAC25-870-10 of the Virginia Stormwater Management Program regulation) require a decrease in phosphorus load from the site as set forth in 9VAC25-870-63 A.2. Lastly, compliance with the stormwater technical criteria of Part II B or Part II C can only be achieved through the implementation of best management practices approved for use on Virginia BMP Clearinghouse list in 9VAC25-870-65 or as allowed under the Off-Site Compliance Options listed in 9VAC25-870-69.</p>
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Commenter	Topic	Comment	Department Response
		<p>the re-development of Innsbrook can continue based on the technical criteria in Part II C. The VSMP, which is currently valid, must be extended and remain in effect. If there are requirements that must be met, such as, E&S plans for individual sites, we need to discuss that immediately so that we have sufficient time for the preparation of said requirements.</p>	

<p>Paul Kreckman (Innsbrook Owners Association)</p>	<p>Part II C Technical Criteria</p>	<p>Representatives of the Innsbrook Owners Association have been reviewing the draft changes to Chapter 880 of the Virginia Stormwater Regulations. I represent the Innsbrook Owners Association which obtained General Permit coverage (VAR10E112) for the entire 630 acres of the Innsbrook Office Park. The Innsbrook Owners Association (operator) obtained Coverage under the 2009 VPDES on June 6, 2014 (VAR10E112). Subsequently, the IOA obtained Coverage under the 2014 VPDES General Construction Permit (VAR10E112) on August 22, 2014. Henrico County, as the VSMP Authority, deemed, via a letter from Keith White dated July 20, 2011, that the Innsbrook Comprehensive Stormwater Management Plan (ICSMP) was consistent with the stormwater management plan operated by Henrico County. In doing so, the County agreed that the ICSMP was a "document equivalent thereto" to a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan, or zoning with a plan of development. This was in accordance with the "Guidance Document on the implementation of the Virginia Stormwater Management Regulations Grandfathering Provision" dated May 15, 2012, and signed DCR Director, David E. Johnson. The IOA obtained coverage under both the 2009 and 2014 Regulations to provide a level of certainty to developers desiring to have operations in Innsbrook as well as current owners who will redevelop their sites at some point in the future. By virtue of those permits, Innsbrook had previously permitted status, with the assurance that Innsbrook could redevelop under those regulations for two permit cycles until June 30, 2024. A substantial amount of planning and capital has been expended with the understanding that Innsbrook could be redeveloped using the Technical Criteria of Part II C of the stormwater regulations. Redevelopment of individual parcels within Innsbrook have been developed under the General Permit (VAR10E112). The calculations in the ICSMP were utilized for this development and were in accordance with the technical criteria of Part II C of the Regulations. These calculations of phosphorus reductions</p>	<p>Thank you for comment. Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, the department has determined that the language has caused more confusion than clarification. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.</p> <p>As authorized in 9VAC25-870-47 of the Virginia Stormwater Management regulation, "land-disturbing activities that obtain an initial state permit or commence land disturbance prior to July 1, 2014, shall be conducted in accordance with the Part II C (9VAC25-870-93 et seq.) technical criteria of this chapter." These projects remain subject to the Part II C criteria until July 1, 2024, at which time those portions of the project not under construction shall become subject to any new technical criteria. Additionally, as clarified in Guidance Memo 14-2014 issued by the department on August 25, 2014, any land-disturbing activities served by an existing on-site or off-site stormwater management facility, including a regional (watershed-wide) stormwater management facility, designed and implemented in accordance with the old Part II C technical criteria remain subject to the old Part II C technical criteria until July 1, 2024 as long as the land-use assumptions upon which the stormwater management facility was designed and implemented have not changed (e.g., an unanticipated increase in impervious cover).</p> <p>Also, the 2014 Construction General Permit required operators to update the required Stormwater Pollution Prevention Plan within 60 days of receiving permit coverage. A component of the SWPPP is an approved erosion and sediment control plan for the amount of land disturbance for which permit coverage was</p>
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		<p>by the Innsbrook Lakes have been utilized in the preparation of Plans of Development since the time the ICSMP was deemed to be consistent with the Stormwater Regulations. Changes to the method of calculating water quality requirements with the 2019 permit cycle will have potentially dire consequences for the re-development of Innsbrook.</p> <p>Innsbrook did not have an overall Erosion & Sediment Control plan for the entire office park. Instead E&S plans were submitted for each parcel as it was redeveloped. This has been accepted and approved by the VSMP Authority for the last several years. In addition, no overall SWPPP was required by the VSMP Authority and none was prepared. Individual SWPPP's were prepared for each site as it was developed. This has been the case with several projects and has been accepted by the VSMP Authority. It is our hope that this interpretation of the Regulations will continue. Our intentions, at this time, are to re-develop Innsbrook into a high level mixed use community by virtue of Urban Mixed Use (UMU) zoning standards. Henrico County officials are on board with us to create an Innovation District that will include cutting edge methods of urban design and will include innovative methods of treating stormwater runoff and utilizing new advanced technologies for reducing nutrient loads as they enter our Lakes. Some of these methods may not have been approved by the BMP Clearinghouse. We will work with the appropriate agencies in developing sampling protocols that can be used for assessing the efficiency of the Lakes in removing phosphorus and ultimately obtaining approval of the advanced technologies. The IOA proposes to continue to treat all of Innsbrook as a single complete project with numerous phases to be developed over the next couple of decades. As each of the 110± parcels within Innsbrook is re-developed and exceeds the impervious area allotment as determined by the ICSMP, that parcel must provide additional on-site treatment (pollutant reduction) or purchase nutrient offset credits from an authorized Nutrient Trading Bank. Innsbrook proposes to monitor each of the five lakes to determine whether that lake is</p>	<p>authorized. The proposed permit retains the same requirement for the SWPPP to contain an approved erosion and sediment control.</p> <p>Additionally, it should be noted that applicability of the Part II C technical criteria in accordance with 9VAC 25-870-47 of the Virginia Stormwater Management Program regulation applies only to new land disturbing activities. Re-development of parcels ("development on prior developed lands" as defined in 9VAC25-870-10 of the Virginia Stormwater Management Program regulation) require a decrease in phosphorus load from the site as set forth in 9VAC25-870-63 A.2. Lastly, compliance with the stormwater technical criteria of Part II B or Part II C can only be achieved through the implementation of best management practices approved for use on Virginia BMP Clearinghouse list in 9VAC25-870-65 or as allowed under the Off-Site Compliance Options listed in 9VAC25-870-69.</p>
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Commenter	Topic	Comment	Department Response
		<p>exceeding the nutrient removal efficiency as currently allowed by the BMP Clearinghouse. When the removal efficiency exceeds that allowed by current guidelines for a specified length of time, Innsbrook would get credit for the additional nutrient removal. The Innsbrook Owners Association wants assurances, either from Henrico County, DEQ, or through clarifications for Chapter 880 of the Virginia Stormwater Regulations, that the re-development of Innsbrook can continue based on the technical criteria in Part II C. The VSMP, which is currently valid, must be extended and remain in effect. If there are requirements that must be met, such as, E&S plans for individual sites, we need to discuss that immediately so that we have sufficient time for the preparation of said requirements.</p>	

<p>Bruce Kay (President, Innsbrook Owners Association)</p>	<p>Part II C Technical Criteria</p>	<p>Representatives of the Innsbrook Owners Association have been reviewing the draft changes to Chapter 880 of the Virginia Stormwater Regulations. I represent the Innsbrook Owners Association which obtained General Permit coverage (VAR10E112) for the entire 630 acres of the Innsbrook Office Park. The Innsbrook Owners Association (operator) obtained Coverage under the 2009 VPDES on June 6, 2014 (VAR10E112). Subsequently, the IOA obtained Coverage under the 2014 VPDES General Construction Permit (VAR10E112) on August 22, 2014. Henrico County, as the VSMP Authority, deemed, via a letter from Keith White dated July 20, 2011, that the Innsbrook Comprehensive Stormwater Management Plan (ICSMP) was consistent with the stormwater management plan operated by Henrico County. In doing so, the County agreed that the ICSMP was a "document equivalent thereto" to a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan, or zoning with a plan of development. This was in accordance with the "Guidance Document on the implementation of the Virginia Stormwater Management Regulations Grandfathering Provision" dated May 15, 2012, and signed DCR Director, David E. Johnson. The IOA obtained coverage under both the 2009 and 2014 Regulations to provide a level of certainty to developers desiring to have operations in Innsbrook as well as current owners who will redevelop their sites at some point in the future. By virtue of those permits, Innsbrook had previously permitted status, with the assurance that Innsbrook could redevelop under those regulations for two permit cycles until June 30, 2024. A substantial amount of planning and capital has been expended with the understanding that Innsbrook could be redeveloped using the Technical Criteria of Part II C of the stormwater regulations. Redevelopment of individual parcels within Innsbrook have been developed under the General Permit (VAR10E112). The calculations in the ICSMP were utilized for this development and were in accordance with the technical criteria of Part II C of the Regulations. These calculations of phosphorus reductions</p>	<p>Thank you for comment. Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, the department has determined that the language has caused more confusion than clarification. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.</p> <p>As authorized in 9VAC25-870-47 of the Virginia Stormwater Management regulation, "land-disturbing activities that obtain an initial state permit or commence land disturbance prior to July 1, 2014, shall be conducted in accordance with the Part II C (9VAC25-870-93 et seq.) technical criteria of this chapter." These projects remain subject to the Part II C criteria until July 1, 2024, at which time those portions of the project not under construction shall become subject to any new technical criteria.</p> <p>Additionally, as clarified in Guidance Memo 14-2014 issued by the department on August 25, 2014, any land-disturbing activities served by an existing on-site or off-site stormwater management facility, including a regional (watershed-wide) stormwater management facility, designed and implemented in accordance with the old Part II C technical criteria remain subject to the old Part II C technical criteria until July 1, 2024 as long as the land-use assumptions upon which the stormwater management facility was designed and implemented have not changed (e.g., an unanticipated increase in impervious cover).</p> <p>Also, the 2014 Construction General Permit required operators to update the required Stormwater Pollution Prevention Plan within 60 days of receiving permit coverage. A component of the SWPPP is an approved erosion and sediment control</p>
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	<p>by the Innsbrook Lakes have been utilized in the preparation of Plans of Development since the time the ICSMP was deemed to be consistent with the Stormwater Regulations. Changes to the method of calculating water quality requirements with the 2019 permit cycle will have potentially dire consequences for the re-development of Innsbrook.</p> <p>Innsbrook did not have an overall Erosion & Sediment Control plan for the entire office park. Instead E&S plans were submitted for each parcel as it was redeveloped. This has been accepted and approved by the VSMP Authority for the last several years. In addition, no overall SWPPP was required by the VSMP Authority and none was prepared. Individual SWPPP's were prepared for each site as it was developed. This has been the case with several projects and has been accepted by the VSMP Authority. It is our hope that this interpretation of the Regulations will continue. Our intentions, at this time, are to re-develop Innsbrook into a high level mixed use community by virtue of Urban Mixed Use (UMU) zoning standards. Henrico County officials are on board with us to create an Innovation District that will include cutting edge methods of urban design and will include innovative methods of treating stormwater runoff and utilizing new advanced technologies for reducing nutrient loads as they enter our Lakes. Some of these methods may not have been approved by the BMP Clearinghouse. We will work with the appropriate agencies in developing sampling protocols that can be used for assessing the efficiency of the Lakes in removing phosphorus and ultimately obtaining approval of the advanced technologies. The IOA proposes to continue to treat all of Innsbrook as a single complete project with numerous phases to be developed over the next couple of decades. As each of the 110+ parcels within Innsbrook is re-developed and exceeds the impervious area allotment as determined by the ICSMP, that parcel must provide additional on-site treatment (pollutant reduction) or purchase nutrient offset credits from an authorized Nutrient Trading Bank. Innsbrook proposes to monitor each of the five lakes to determine whether that lake is</p>	<p>plan for the amount of land disturbance for which permit coverage was authorized. The proposed permit retains the same requirement for the SWPPP to contain an approved erosion and sediment control.</p> <p>It should be noted that applicability of the Part II C technical criteria in accordance with 9VAC 25-870-47 of the Virginia Stormwater Management Program regulation applies only to new land disturbing activities. Re-development of parcels ("development on prior developed lands" as defined in 9VAC25-870-10 of the Virginia Stormwater Management Program regulation) require a decrease in phosphorus load from the site as set forth in 9VAC25-870-63 A.2. Lastly, compliance with the stormwater technical criteria of Part II B or Part II C can only be achieved through the implementation of best management practices approved for use on Virginia BMP Clearinghouse list in 9VAC25-870-65 or as allowed under the Off-Site Compliance Options listed in 9VAC25-870-69.</p>
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		<p>exceeding the nutrient removal efficiency as currently allowed by the BMP Clearinghouse. When the removal efficiency exceeds that allowed by current guidelines for a specified length of time, Innsbrook would get credit for the additional nutrient removal. The Innsbrook Owners Association wants assurances, either from Henrico County, DEQ, or through clarifications for Chapter 880 of the Virginia Stormwater Regulations, that the re-development of Innsbrook can continue based on the technical criteria in Part II C. The VSMP, which is currently valid, must be extended and remain in effect. If there are requirements that must be met, such as, E&S plans for individual sites, we need to discuss that immediately so that we have sufficient time for the preparation of said requirements.</p>	

<p>Sidney Gunst (Innsbrook Corporation)</p>	<p>Part II C Technical Criteria</p>	<p>Representatives of the Innsbrook Owners Association have been reviewing the draft changes to Chapter 880 of the Virginia Stormwater Regulations. As the owner of the Shoppes at Innsbrook, which are covered under the overall permit (VAR10E112). The Shoppes also obtained separate coverage for the 10.5 acres of the Shoppes (VAR10). I am specifically concerned that new interpretations to my previously permitted status for the Shoppes may impede my ability to re-develop the Shoppes into a state-of-the-art UMU development that both the Commonwealth of Virginia and Henrico County could use as an economic development tool in attracting new businesses to Virginia. The Innsbrook Owners Association (operator) obtained Coverage under the 2009 VPDES on June 6, 2014 (VAR10E112). Subsequently, the IOA obtained Coverage under the 2014 VPDES General Construction Permit (VAR10E112) on August 22, 2014. Henrico County, as the VSMP Authority, deemed, via a letter from Keith White dated July 20, 2011, that the Innsbrook Comprehensive Stormwater Management Plan (ICSMP) was consistent with the stormwater management plan being administered by Henrico County. In doing so, the County agreed that the ICSMP was a "document equivalent thereto" to a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan, or zoning with a plan of development. This was in accordance with the "Guidance Document on the implementation of the Virginia Stormwater Management Regulations Grandfathering Provision" dated May 15, 2012, and signed by DCR Director, David E. Johnson. By virtue of VAR10E112, the entire Innsbrook Office Park (including the Shoppes) was previously permitted for two permit cycles. I have relied on this status to move forward with plans to re-develop the Shoppes under UMU zoning standards. Henrico County is excited about the possibility of turning this Urban Development Area (UDA) into a magnet for development with UMU zoning. It is my intention to redevelop the Shoppes into a high level mixed-use community by virtue of UMU zoning. My development will be</p>	<p>Thank you for comment. Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, the department has determined that the language has caused more confusion than clarification. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.</p> <p>As authorized in 9VAC25-870-47 of the Virginia Stormwater Management regulation, "land-disturbing activities that obtain an initial state permit or commence land disturbance prior to July 1, 2014, shall be conducted in accordance with the Part II C (9VAC25-870-93 et seq.) technical criteria of this chapter." These projects remain subject to the Part II C criteria until July 1, 2024, at which time those portions of the project not under construction shall become subject to any new technical criteria.</p> <p>Additionally, as clarified in Guidance Memo 14-2014 issued by the department on August 25, 2014, any land-disturbing activities served by an existing on-site or off-site stormwater management facility, including a regional (watershed-wide) stormwater management facility, designed and implemented in accordance with the old Part II C technical criteria remain subject to the old Part II C technical criteria until July 1, 2024 as long as the land-use assumptions upon which the stormwater management facility was designed and implemented have not changed (e.g., an unanticipated increase in impervious cover).</p> <p>Also, the 2014 Construction General Permit required operators to update the required Stormwater Pollution Prevention Plan within 60 days of receiving permit coverage. A component of the SWPPP is an approved erosion and sediment control</p>
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Commenter	Topic	Comment	Department Response
		<p>consistent with the intent of the Owners Association to create an Innovation District that will include cutting edge methods of urban design and will include innovative methods of treating stormwater runoff and utilizing new technological advances for reducing nutrient loads, which have not yet been approved by the Virginia BMP Clearinghouse. It is critical for the development of the Urban Mixed Use community for all parcels to utilize the Lakes of Innsbrook, which provide a Regional BMP, as the stormwater management system as approved in the Innsbrook Comprehensive Stormwater Management Plan. I desire assurances, either from Henrico County, DEQ, or through clarifications for Chapter 880 of the Virginia Stormwater Regulations, that the Shoppes can be re-developed using the technical criteria in Part II C. The VSMP, which is currently valid, must be extended and remain in effect. If there are requirements that must be met, such as, E&S plans for individual sites, we need to discuss that immediately so that we have sufficient time for the preparation of said requirements.</p>	<p>plan for the amount of land disturbance for which permit coverage was authorized. The proposed permit retains the same requirement for the SWPPP to contain an approved erosion and sediment control.</p> <p>It should be noted that applicability of the Part II C technical criteria in accordance with 9VAC 25-870-47 of the Virginia Stormwater Management Program regulation applies only to new land disturbing activities. Re-development of parcels ("development on prior developed lands" as defined in 9VAC25-870-10 of the Virginia Stormwater Management Program regulation) require a decrease in phosphorus load from the site as set forth in 9VAC25-870-63 A.2.</p> <p>Lastly, compliance with the stormwater technical criteria of Part II B or Part II C can only be achieved through the implementation of best management practices approved for use on Virginia BMP Clearinghouse list in 9VAC25-870-65 or as allowed under the Off-Site Compliance Options listed in 9VAC25-870-69.</p>

<p>Jane DuFrane (Highwoods Properties)</p>	<p>Part II C Technical Criteria</p>	<p>Representatives of the Innsbrook Owners Association have been reviewing the draft changes to Chapter 880 of the Virginia Stormwater Regulations. Highwoods Markel is the developer of the Innsbrook Central Business District in Innsbrook. This project was covered under the Innsbrook overall permit (VAR10E112). The ICBD also obtained separate coverage for the 39.5 acre project (VAR10). I am specifically concerned that new interpretations to the previously permitted status for the ICBD may impede our ability to re-develop this land into a state of the art UMU development that both the Commonwealth of Virginia and Henrico County could use as an economic development tool in attracting new businesses to Virginia. The Innsbrook Owners Association (operator) obtained Coverage under the 2009 VPDES on June 6, 2014 (VAR10E112). Subsequently, the IOA obtained Coverage under the 2014 VPDES General Construction Permit (VAR10E112) on August 22, 2014. Henrico County, as the VSMP Authority, deemed, via a letter from Keith White dated July 20, 2011, that the Innsbrook Comprehensive Stormwater Management Plan (ICSMP) was consistent with the stormwater management plan being administered by Henrico County. In doing so, the County agreed that the ICSMP was a "document equivalent thereto" to a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan, or zoning with a plan of development. This was in accordance with the "Guidance Document on the implementation of the Virginia Stormwater Management Regulations Grandfathering Provision" dated May 15, 2012, and signed by DCR Director, David E. Johnson. By virtue of VAR 10E112, the entire Innsbrook Office Park (including the Innsbrook Central Business District) was previously permitted for two permit cycles. We have relied on this status to move forward with plans to re-develop the ICBD under UMU zoning standards. Henrico County is excited about the possibilities for this parcel. It is our intention to redevelop the ICBD into a high level mixed use community by virtue of UMU zoning. The development will be consistent with the</p>	<p>Thank you for comment. Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, the department has determined that the language has caused more confusion than clarification. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.</p> <p>As authorized in 9VAC25-870-47 of the Virginia Stormwater Management regulation, "land-disturbing activities that obtain an initial state permit or commence land disturbance prior to July 1, 2014, shall be conducted in accordance with the Part II C (9VAC25-870-93 et seq.) technical criteria of this chapter." These projects remain subject to the Part II C criteria until July 1, 2024, at which time those portions of the project not under construction shall become subject to any new technical criteria.</p> <p>Additionally, as clarified in Guidance Memo 14-2014 issued by the department on August 25, 2014, any land-disturbing activities served by an existing on-site or off-site stormwater management facility, including a regional (watershed-wide) stormwater management facility, designed and implemented in accordance with the old Part II C technical criteria remain subject to the old Part II C technical criteria until July 1, 2024 as long as the land-use assumptions upon which the stormwater management facility was designed and implemented have not changed (e.g., an unanticipated increase in impervious cover).</p> <p>Also, the 2014 Construction General Permit required operators to update the required Stormwater Pollution Prevention Plan within 60 days of receiving permit coverage. A component of the SWPPP is an approved erosion and sediment control</p>
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Commenter	Topic	Comment	Department Response
		<p>intent of the Owners Association to create an Innovation District that will include cutting edge methods of urban design and will include innovative methods of treating stormwater runoff and utilizing new technological advances for reducing nutrient loads, which have not yet been approved by the Virginia BMP Clearinghouse. It is critical for the development of the Urban Mixed Use community for all parcels to utilize the lakes of Innsbrook as the stormwater management system as approved in the Innsbrook Comprehensive Stormwater Management Plan. We desire assurances, either from Henrico County, DEQ, or through clarifications for Chapter 880 of the Virginia Stormwater Regulations, that the ICBD can be re-developed using the technical criteria in Part II C. The VSMP, which is currently valid, must be extended and remain in effect. If there are requirements that must be met, such as, E&S plans for individual sites, we need to discuss that immediately so that we have sufficient time for the preparation of said requirements.</p>	<p>plan for the amount of land disturbance for which permit coverage was authorized. The proposed permit retains the same requirement for the SWPPP to contain an approved erosion and sediment control.</p> <p>Additionally, it should be noted that applicability of the Part II C technical criteria in accordance with 9VAC 25-870-47 of the Virginia Stormwater Management Program regulation applies only to new land disturbing activities. Re-development of parcels ("development on prior developed lands" as defined in 9VAC25-870-10 of the Virginia Stormwater Management Program regulation) require a decrease in phosphorus load from the site as set forth in 9VAC25-870-63 A.2.</p> <p>Lastly, compliance with the stormwater technical criteria of Part II B or Part II C can only be achieved through the implementation of best management practices approved for use on Virginia BMP Clearinghouse list in 9VAC25-870-65 or as allowed under the Off-Site Compliance Options listed in 9VAC25-870-69.</p>

<p>Jane DuFrane (Highwoods Markel)</p>	<p>Part II C Technical Criteria</p>	<p>Representatives of the Innsbrook Owners Association have been reviewing the draft changes to Chapter 880 of the Virginia Stormwater Regulations. Highwoods Properties is the developer of the Innsbrook North project in the Innsbrook Office Park. This project was covered under the Innsbrook overall permit (VAR10E112). Highwoods obtained separate coverage for the project (VAR10). I am specifically concerned that new interpretations to the previously permitted status for Innsbrook North may impede our ability to complete the development of this project. The Innsbrook Owners Association (operator) obtained Coverage under the 2009 VPDES on June 6, 2014 (VAR10E112). Subsequently, the IOA obtained Coverage under the 2014 VPDES General Construction Permit (VAR10E112) on August 22, 2014. Henrico County, as the VSMP Authority, deemed, via a letter from Keith White dated July 20, 2011, that the Innsbrook Comprehensive Stormwater Management Plan (ICSMP) was consistent with the stormwater management plan being administered by Henrico County. In doing so, the County agreed that the ICSMP was a "document equivalent thereto" to a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan, or zoning with a plan of development. This was in accordance with the "Guidance Document on the implementation of the Virginia Stormwater Management Regulations Grandfathering Provision" dated May 15, 2012, and signed by DCR Director, David E. Johnson. By virtue of VAR10E112, the entire Innsbrook Office Park (including the Innsbrook Central Business District) was previously permitted for two permit cycles. We have relied on this status to move forward with plans to re-develop the ICBP under UMU zoning standards. Henrico County has approved two buildings on this parcel. It is imperative that the County, as the VSMP Authority, can approve additional buildings on this site under the same interpretations of the Regulations that have been used for the initial phases of this development. It is the intention of Highwoods Properties to complete the development of Innsbrook North. The</p>	<p>Thank you for comment. Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during after the comment period, the department has determined that the language has caused more confusion than clarification. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.</p> <p>As authorized in 9VAC25-870-47 of the Virginia Stormwater Management regulation, "land-disturbing activities that obtain an initial state permit or commence land disturbance prior to July 1, 2014, shall be conducted in accordance with the Part II C (9VAC25-870-93 et seq.) technical criteria of this chapter." These projects remain subject to the Part II C criteria until July 1, 2024, at which time those portions of the project not under construction shall become subject to any new technical criteria.</p> <p>Additionally, as clarified in Guidance Memo 14-2014 issued by the department on August 25, 2014, any land-disturbing activities served by an existing on-site or off-site stormwater management facility, including a regional (watershed-wide) stormwater management facility, designed and implemented in accordance with the old Part II C technical criteria remain subject to the old Part II C technical criteria until July 1, 2024 as long as the land-use assumptions upon which the stormwater management facility was designed and implemented have not changed (e.g., an unanticipated increase in impervious cover).</p> <p>Also, the 2014 Construction General Permit required operators to update the required Stormwater Pollution Prevention Plan within 60 days of receiving permit coverage. A component of the SWPPP is an approved erosion and sediment control</p>
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Commenter	Topic	Comment	Department Response
		<p>development will be consistent with the intent of the Owners Association to create an Innovation District that will include cutting edge methods of urban design and will include innovative methods of treating stormwater runoff and utilizing new technological advances for reducing nutrient loads, which have not yet been approved by the Virginia BMP Clearinghouse. It is critical for the development of the Urban Mixed Use community for all parcels to utilize the lakes of Innsbrook as the stormwater management system as approved in the Innsbrook Comprehensive Stormwater Management Plan. We desire assurances, either from Henrico County, DEQ, or through clarifications for Chapter 880 of the Virginia Stormwater Regulations, that the ICBD can be re-developed using the technical criteria in Part II C. The VSMP, which is currently valid, must be extended and remain in effect. If there are requirements that must be met, such as, E&S plans for individual sites, we need to discuss that immediately so that we have sufficient time for the preparation of said requirements</p>	<p>plan for the amount of land disturbance for which permit coverage was authorized. The proposed permit retains the same requirement for the SWPPP to contain an approved erosion and sediment control.</p> <p>Additionally, it should be noted that applicability of the Part II C technical criteria in accordance with 9VAC 25-870-47 of the Virginia Stormwater Management Program regulation applies only to new land disturbing activities. Re-development of parcels ("development on prior developed lands" as defined in 9VAC25-870-10 of the Virginia Stormwater Management Program regulation) require a decrease in phosphorus load from the site as set forth in 9VAC25-870-63 A.2.</p> <p>Lastly, compliance with the stormwater technical criteria of Part II B or Part II C can only be achieved through the implementation of best management practices approved for use on Virginia BMP Clearinghouse list in 9VAC25-870-65 or as allowed under the Off-Site Compliance Options listed in 9VAC25-870-69.</p>

<p>Mark Williams (Koontz Bryant Johnson Williams)</p>	<p>Part II C Technical Criteria</p>	<p>Based on conversations with various VSMP authorities, there is uncertainty whether phased projects, which were covered under the 2009 general permit and which continued permit coverage in 2014, will be renewed under the general permit effective July 1, 2019 for projects which have approval of ESC plans on initial phases, however, do not have ESC plan approval on all phases of a project. This uncertainty applies for projects that have coverage for a total land area of development which encompasses all phases of a project. In reviewing this issue, the following items were noted: a. The upcoming general permit, effective July 2019, will be the first permit cycle in which localities (as the authority) are responsible for reviewing renewal applications and determining if all requirements of the regulations have been met for renewing coverage; b. 9VAC25-880-30, Item A1 (Draft) requires that the Operator submits a complete and accurate registration statement prior to being given "Authorization to Discharge"; c. 9VAC25-880-30, Item A4, sub-items a and b (Draft) requires that the Operator obtain approval of an ESC plan (per Chapter 840) and a SWM (per Chapter 870) prior to being given "Authorization to Discharge"; d. 9VAC25-880-45, Item B (Draft) states that operators having permit coverage under the 2009 and 2014 cycles, who obtain renewed coverage under the 2019 cycle can conduct land disturbance in accordance with Part IIC of the VSMP regulations (Chapter 870); e. 9VAC25-880-50, Item B, sub-items 1-18 (Draft) lists required items for a registration statement. Sub-item number 7 states "If the construction activity was previously authorized to discharge under the general permit effective July 1, 2014, the dates of ESC plan approval". The plural word "dates" would imply that multiple plans could be involved (i.e.- individual phases, with separately approved ESC plans for each section, within a larger common plan of development); f. Guidance Memo No. 14-2002 states: "For reissuance under the 2014 general permit erosion and sediment control plan approval is not required prior to submitting a registration statement for existing construction activities." This guidance document further noted that ESC plan approval was, however, required within 60 days after the date of coverage. It</p>	<p>As you have stated, both the 2014 and proposed 2019 general permits require an approved erosion and sediment control plans as part of Stormwater Pollution Prevention Plan prior to permit coverage being issued. Both permits also require as part of the registration requirements that the operator indicate both the estimated area to be disturbed and the total development area. These areas may be the same or, in the case of a large planned development, the areas may be different. Regardless, authorization for land disturbance applies to the estimated area of disturbance for which an erosion and sediment control has been approved. It is not the department's intention to require approved erosion and sediment control plans for the entire development, unless the operator is applying for coverage to initiate land disturbance on all phases of the development. Therefore, an erosion and sediment control plan must only be developed for the estimated area of disturbance for which the operator is requesting coverage. Prior to land disturbance in each additional phase, an erosion and sediment control for that phase must be approved by the local Virginia Erosion and Sediment Control Program authority, and a request to modify permit coverage through a revised Construction General Permit registration statement must be submitted to the appropriate VSMP authority. Alternatively, if the operator indicates on the Construction General Permit registration statement that the estimated area to be disturbed is equal to the total development area, then an approved erosion and sediment control plan for the entire development must be obtained prior to permit coverage being issued. Demonstration of compliance with the Part II C technical criteria must be documented for the entire project through a stormwater management plan or by way of a description of, and necessary calculations supporting, all post-construction stormwater management measures that will be installed prior to the completion of the construction process.</p> <p>Additionally, as clarified in Guidance Memo 14-2014 issued by the department on August 25, 2014, any land-disturbing activities served by an existing on-site or off-site stormwater management facility, including a</p>
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		<p>did not specify if the ESC plan had to include the entire larger common plan of development or if only an ESC plan for the first phase to be constructed was required. Further clarification discussing requirements for ongoing projects, in which ESC plans were already prepared for previous phases, was not included within the guidance memo; g. VAR 10, Part II, Item B, sub-item 2 outlines ESC plan requirements and sub-item 3 outlines SWM requirements to be included within the SWPPP. The regulations require that the SWPPP be prepared prior to submitting a registration statement; Therefore, the requirement of an ESC and SWM plan are required for permit coverage. That said, no mention is made regarding sections of a phased project that are part of a larger common area of development and which are not yet designed at the time the registration statement is submitted.</p> <p>As noted within item “a” above, this is the first general permit cycle in which localities are the acting authority responsible for renewing permits (the DEQ approved renewals for the 2014 cycle). As such, multiple independent entities will now be responsible for reviewing permit renewal applications and each entity could have different interpretations on whether a given project meets the requirements for renewal. For that reason, it would seem prudent for the DEQ to issue a Guidance Document to clarify, for phased projects having permit coverage for a larger area of development, whether: i. Approved ESC and SWM plans, addressing all phases of a project, which comprise the total coverage area listed on a 2009 permit and which renewed coverage in 2014, is required for renewal of coverage under the general permit effective July 1, 2019.; OR ii. An approved ESC plan for at least one phase of a multi-phase project, having coverage for a larger development area under the 2009 permit and which renewed coverage in 2014, is required for renewal of coverage under the general permit effective July 1, 2019. An approved SWM plan, addressing all phases of a project, which comprise the total coverage area listed on a 2009 permit and which renewed coverage in 2014, is required for renewal of coverage under the general permit effective July</p>	<p>regional (watershed-wide) stormwater management facility, designed and implemented in accordance with the old Part II C technical criteria remain subject to the old Part II C technical criteria until July 1, 2024 as long as the land-use assumptions upon which the stormwater management facility was designed and implemented have not changed (e.g., an unanticipated increase in impervious cover).</p> <p>Information regarding applicable post-development stormwater technical criteria has been added to the fact sheet.</p>
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		<p>1, 2019. OR- (Preferred) iii. Projects shall remain subject to Part IIC requirements of chapter 870 so long as the vested conditions outlined in Virginia Code section § 15.2-2307, paragraph A are met for those projects subject to Part IIC requirements of chapter 870 prior to permit renewal for the 2018-2024 CGP cycle. Notes: In option ii, it would seem reasonable that a SWM plan should be in place for the overall project area. However, the same does not seem reasonable for ESC plans. It is our opinion that a requirement to have an ESC covering the entire overall area of development has unintended negative consequences.</p> <p>The attached "Example A" sketch was prepared to better address related concerns to question #1 above. Using this "Example A" document, what SWM design criteria (i.e.- Part IIB or IIC) would be required if sections 4, 5 and 6 were not yet designed and if the reviewing authority did not renew coverage under the 2019-2024 permit cycle? In this scenario, assume the SWM pond as well as sections 1, 2, and 3 were designed using Part IIC criteria, had been approved by the authority, and had already been constructed during the 2014-2019 permit cycle under an active general permit. Further assume that all storm related infrastructure within sections 1,2, and 3 as well as the downstream pond was designed/ sized, using Part IIC criteria, to accommodate future sections 4, 5, and 6 (under the assumption that the active permit would be renewed and sections 4, 5, and 6 would be completed or under construction during the 2019-2024 permit cycle). To reiterate, in this scenario, the pond shown on "Exhibit A" was built to accommodate the entire subdivision (i.e.- all 6 proposed sections) using Part IIC criteria. Also, assume there is only an approved ESC plan for sections 1, 2 and 3 and that all three non-approved sections (sections 4, 5 and 6) were included in the total site acreage covered by the general permit, however, do not have approved ESC plans. Only the SWM plan (i.e.- not an ESC plan) exists that addresses the entire site area covered by the permit. Note: I'm not aware of any documentation provided by either the DEQ or by a locality (i.e.- the current</p>	
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		<p>reviewing authority) which indicates that, for phased projects, an approved ESC plan is required for sections not yet designed. The guidance document referenced in item “f” of question #1 above states that ESC plan approval is required within 60 days of coverage renewal (so enforcement of this requirement would have been AFTER July 1, 2014 and was the responsibility of those localities that were VSMP reviewing authorities). I am not aware of any notices or violations being issued by a locality for projects prepared by our office which did not have ESC plan approval for “future” phases of a project within the required 60 days; Therefore, it stands to reason that the “intent” was to ensure an approved ESC plan was in place for ONLY the phase of a project to initially be constructed and not the entire area covered by the general permit. As required, and pursuant to VAR-10, Part II, Section B, the SWPPP would be amended/ modified/updated as future sections were approved (i.e.- as approval of a future section would constitute a “change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP” as noted in subsection 1). In the scenario noted within this question (question 3), future plans would be extremely difficult for localities to review. How would upstream sections be designed to Part IIB criteria that flow to sections that were designed under Part IIC criteria? The only practical way to do this would be to isolate the upstream sections, treating them as a separate project with separate SWM controls. Doing so would result in the existing basin (previously designed under Part IIC) to be over designed. Further, independently meeting SWM requirements for the upstream sections would have extreme impacts to those sections. For residential projects, numerous lots would be lost in order to accommodate entirely new SWM basins, which would result in substantial changes to the layout, which would require amendments to the previously approved tentative... which would be required to go back through the governmental approval process. This would seem to conflict with State vesting laws. The number of</p>	
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Commenter	Topic	Comment	Department Response
		<p>projects that are currently being designed under Part IIC design criteria is finite and continues to dwindle over time. It is unclear why the regulations need to include excessive amounts information to account for what is a relatively small and finite quantity of projects. The ability for developers to finish multi-phased projects (having investing millions of dollars in some cases) under the same laws they were required to abide by at the time the projects started should be afforded to them (similar to state vesting laws).</p>	
<p>John Woodburn (Goochland County)</p>	<p>Conditions Applicable to All VPDES Permits</p>	<p>9VAC25-880-70 – Part III.L – Duty to comply – Suggest that language should be added indicated the permit compliance requires compliance with Code of Virginia Chapter 3.1 – State Water Control Law and implementing regulations, as well as local ordinances adopted pursuant to the state code. Violations will be subject to enforcement and penalties as stated in these laws, regulations and ordinances.</p>	<p>The department believes the language as included in the proposed general permit provides operators with the appropriate notice regarding compliance with other applicable requirements. Additionally, the permit contains language as suggested. 9VAC 25-880-30 G states that "approval for coverage under 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." No changes to the permit are proposed in response to this comment.</p>
<p>John Woodburn (Goochland County)</p>	<p>Conditions Applicable to All VPDES Permits</p>	<p>9VAC25-880-70, Part III, V.Upset – This section is written as to be used for discharge from a wastewater plant. Can this be rewritten to be more applicable to construction activity sites?</p>	<p>The conditions in Part III Conditions Applicable to All VPDES Permits reflect the regulatory requirements from 9VAC25-870-430 that apply to all state permits. Typically, an upset is associated with a wastewater treatment plant; however, this language must be retained as contained in the VSMP regulation. No changes to the permit are proposed in response to this comment.</p>

Commenter	Topic	Comment	Department Response
John Woodburn (Goochland County)	Permit Suspension	There is no mention in the permit or 9VAC25880 about a permit being suspended for noncompliance (including failure to pay required fees). Is it possible to do so and would you consider such language in the permit.? (Note that there is language in 9VAC25-870-750 – Due dates for State permits under B. that states “No state permit will be reissued or automatically continued without payment of the required fee.” What is the meaning of automatically continued – is a permit that is not automatically continued suspended? Terminated?)	The VSMP regulation serves as the basis for the Construction General Permit regulation. As you point out, 9VAC25-870-750 authorizes VSMP authorities to withhold reissuance of permit coverage or automatic permit continuance until such time that annual permit maintenance fees are paid. Automatic continuance of permit coverage is authorized in situations in which the permit expires at no fault of the permittee such as if the department fails to issue permit coverage by the expiration because of the number of coverage requests being processed. Under automatic continuance, the permittee is authorized to continue operating under the expiring permit until the new permit coverage is processed. In order to qualify for automatic continuance a permittee must submit the registration statement for reissuance by the required due date and be current on any annual maintenance fees. The VSMP regulation does not authorize the department or local VSMPs to terminate permit coverage if annual maintenance fees are not paid. No changes to the permit are proposed in response to this comment.
John Woodburn (Goochland County)	Revoke and Reissuance of Permit Coverage	What is the purpose to revoking and reissuing a permit, and why would you do this rather than terminate a permit for non-compliance?	Permit coverage under the general permit can be revoked and reissued under an individual permit if the department determines that general permit coverage is not appropriate. No changes to the permit are proposed in response to this comment.

Commenter	Topic	Comment	Department Response
Charlie White	Enforcement	I also think that the enforcement process as it exists now is extremely broken. There is somewhat of a conflict of interest with the county that is welcoming development which will be providing them with a new tax base and monitoring the developer to make them comply with the regulations. You would think that the county would only want quality development in their county that would result in long term quality developments for a long term quality tax base. That is not what has seemed to be the case with what I have witnessed in the last year and a half in Franklin County. I have been reporting the obvious violations via pictures to DEQ, Franklin County, and AEP. I have asked in my emails for a response to what was going to be done to correct the violations. I received many responses from the DEQ, only once from Franklin County, and none from AEP. I believe that the DEQ should use their authority to step in and take over situations like I have witnessed where the local authority is either incapable or unwilling to use the authority that they have to force the developer to comply with the environmental regulations and laws.	Thank you for your comment, however, it is outside of the scope of this regulatory action. The Virginia Erosion and Sediment Control Law and the Virginia Stormwater Management Act, and associated regulations, establish the requirements for administration of the programs by local governments including enforcement of the programs. The department oversees these local programs and has the authority to take enforcement actions and exercises that authority as necessary. No changes to the permit are proposed in response to this comment.
Rogard Ross	Miscellaneous	I wish to commend the agencies for several positive aspects of the new permit including the continued requirement for the developer to meet all applicable water quality standards, continuing to require the SWPPP to be available for public review, and required the use of pollution credits to be well documented.	Thank you for your comment.
Scott Thomas	Miscellaneous	I am writing in support of reissuance of the proposed regulation for general permit for stormwater associated with construction activities, including requirements for a stormwater pollution prevention plan.	Thank you for your comment.
Jimmy Edmonds (Loudoun County)	Miscellaneous	Does DEQ plan to provide guidance regarding the processing of renewals in the State CGP system? For example, will permit numbers remain the same and will data need to be reentered (based upon amended Registration Statement) or will existing data simply be brought forward.	Thank you for your question. The department has been and will continue to communicate regularly with VSMP authorities to provide guidance for the permit coverage reissuances through emails, webinars, and individually. No changes to the permit are proposed in response to this comment.
Jimmy Edmonds (Loudoun County)	Miscellaneous	Does DEQ plan to provide guidance on how payment of the annual VSMP maintenance fees could affect the July 1, 2019 permit reissuance (e.g., should an Operator fail to make the 2018 payment)?	Thank you for your question. Please note that as stated in 9VAC25-870-50 B, "no state permit will be reissued or automatically continued without payment of the required [maintenance] fee." No changes to the permit are proposed as a result of this comment.

<p>Dean Hawkins (Landscape Architects & Land Development Planners)</p>	<p>Miscellaneous</p>	<p>I am writing to express my opinion on your department's upcoming public hearing on the above referenced matter. Specifically this will involve consideration by the Commonwealth of Virginia regarding the reissuance and continuation of the regulation and permitting program contained therein. The current program is set to expire on June 30, 2019. If the program is continued it will be, as I undersatnd, for another four year permitting cycle until the same date in 2023.</p> <p>In my almost forty years now as a practicing Landscape Architect, I do not think that I have ever seen a regulation which is more redundant and unnecessary as this particular one. The plans which I prepare have increased in complexity over the years in many ways. I do think that the environment is better served and protected than when I started my career, but the VPDES permit from my perspective has had no beneficial effect. I say this because the locality in which I practice to the greatest degree, Chesterfield County, is one of the most intensely developed in the state and has a very good track record of ensuring protections to the environment. Why then must this additional layer of regulation be imposed in the form of another permit from the Commonwealth?</p> <p>From the Public Notice- Environmental Regulation, listed changes include items which could be reviewed and addressed, as they are now, by local reviewers and inspectors. I find that this is the most reasonable and efficient approach. The end result would be the same. All of this regulation is accompanied by a fee for the 4-year permit term. What if the life of the project straddles the permit start/termination date...another separate permit fee is required. This is costly and unnecessary. I had a project which was approved and inspected locally by the County of Chesterfield, but was then audited by your department. I was required to submit over 200 pages of plans and reports with no exceptions taken. This occupied almost a day of time with no compensation and to no avail. I say that the current VPDES regulations be reduced, or better yet eliminated, rather than expanded as proposed.</p>	<p>Discharges from land disturbing activities that disturb one or more acres, and discharges from smaller sites that are part of a larger common plan of development or sale require permitting under EPA's National Pollutant Discharge Elimination System (NPDES) program. Virginia has been delegated the authority from EPA to implement the NPDES program through the Virginia Pollutant Discharge Elimination System (VPDES) program. In accordance with the Virginia Stormwater Management Act and Virginia Stormwater Management Program regulation, certain local governments, such as Chesterfield County, are required to administer the state's stormwater program. However, the department oversees the local governments' administration of the program and retains authority to inspect permitted sites and implement enforcement actions as necessary. Also for clarification, the term of the permit is 5 years and proposed permit is set to expire on June 30, 2024. No changes to the permit are proposed as a result of this comment.</p>
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Commenter	Topic	Comment	Department Response
Catherine Lukaszewicz	Miscellaneous	I also fully support the new requirements of documentation on nutrient credits, list of water quality BMPs & waterways impacted by discharges, & maintenance agreement as well the requirement for professional certifications that stormwater management facilities have been constructed in accordance with approved plan. Documentation and public availability of such documents is vital for public accountability.	Thank you for your comment.
Katlyn Schmitt (Waterkeepers Chesapeake) & Phillip Musegaas (Potomac Riverkeeper Network)	Miscellaneous	The permit should also include specific language around avoiding any disturbance to natural channels or vegetation along natural channels.	The proposed permit retains requirements for operators of land-disturbing activities to design and implement erosion and sediment control measures that meet the Minimum Standards of the Virginia Erosion and Sediment Control Program regulations (9VAC25-840). Additionally, the permit retains requirements for natural buffers to be maintained around surface waters. No changes to the permit are proposed in response to this comment.
Logan Kendle (Superintendent Commercial Contractor)	Miscellaneous	I like that the permits will be electronically available on the web.	The general VPDES permit for discharges of stormwater from construction activities is a general permit regulation that is available at: https://law.lis.virginia.gov/admincode/title9/agency25/ . A list of construction activities covered under the permit is available on DEQ's Construction Stormwater website at: https://www.deq.virginia.gov/Programs/Water/StormwaterManagement/VSMPPermits/ConstructionGeneralPermit.aspx . Permit coverage letters for each construction activity are not available online. Request for copies may be made to the department in accordance with the Virginia Freedom of Information Act. No revisions to the permit are proposed as a result of this comment.
Logan Kendle (Superintendent Commercial Contractor)	Miscellaneous	I hope that the discharged water body is prominently displayed and shown preferably on the display board at the front of job sites.	Information regarding water bodies to which a regulated construction site discharges is available in the Stormwater Pollution Prevention Plan. Operators are required to make the SWPPP available for review by interested parties in accordance with Part II E of the permit. No revisions to the permit are proposed as a result of this comment.
Logan Kendle (Superintendent Commercial Contractor)	Miscellaneous	I support the prohibition of discharges that will knowingly violate local water quality standards.	Thank you for your comment.

Committer	Topic	Comment	Department Response
Logan Kendle (Superintendent Commercial Contractor)	Miscellaneous	I support requirement of list of permanent water quality BMP's AND list of waterways receiving discharges.	Information regarding permanent water quality BMPs and receiving waters are available in the Stormwater Pollution Prevention Plan. Operators are required to make the SWPPP available for review by interested parties in accordance with Part II E of the permit. No revisions to the permit are proposed as a result of this comment.
Logan Kendle (Superintendent Commercial Contractor)	Miscellaneous	I support the requirement of professional certification and maintenance plans of permanent stormwater management facilities.	Thank you for your comment.
Randy Abbott	Pipelines	I met you at the Roanoke meeting last month and have decided to submit my main concern about the MVP project. Here in the valley and ridge region there are complicated relationships between the water and the land, like for instance when the pipeline workers dig into the water table, a new spring is created and the springs at a higher level may dry up, along with the branches fed by those springs. Those branches are the home for minnows, salamanders, box turtles, and other delicate creatures. I have many other concerns about the pipelines, but that is my main concern. I think running a pipeline through this region is a very poorly thought out scheme that should be aborted.	In accordance with section 402(1)(2) of the Clean Water Act (CWA) discharges of stormwater runoff from the construction of oil and gas transmission pipelines are exempt from National Pollutant Discharge Elimination System (NPDES) permitting and Virginia Pollutant Discharge Elimination System (VPDES) permitting. Therefore, Virginia's Construction General Permit is not applicable to the natural gas transmission pipeline projects. No changes to the permit are proposed in response to this comment. Please note, however, that Virginia regulates pipeline construction activities through the annual standards and specifications program in accordance with the Virginia Erosion and Sediment Control Law and the Virginia Stormwater Management Act.

Committer	Topic	Comment	Department Response
<p>Katlyn Schmitt (Waterkeepers Chesapeake) & Phillip Musegaas (Potomac Riverkeeper Network)</p>	<p>Pipelines</p>	<p>Pipeline construction covered under the permit should require additional protective measures. Echoing the recommendations from the Choose Clean Water Coalition, we urge DEQ to build in specific requirements for the construction of pipelines. With inspectors finding more than 300 erosion and stormwater control violations in Virginia for the Mountain Valley Pipeline over a 6-month span earlier this year, it's even more imperative that the state address the runoff pollution associated with this type of activity. More specifically, the state should require the use of filtering or settling of sediment laden or turbid flows of stormwater to remove sediment prior to discharge, turbidity monitoring according to clear protocol (e.g., ambient conditions and at the time of discharge conditions) for projects discharging to waters impaired for sediment, and delete the current provision allowing "representative inspections" for pipeline or other linear activities.</p>	<p>In accordance with section 402(l)(2) of the Clean Water Act (CWA) discharges of stormwater runoff from the construction of oil and gas transmission pipelines are exempt from National Pollutant Discharge Elimination System (NPDES) permitting and Virginia Pollutant Discharge Elimination System (VPDES) permitting. Therefore, Virginia's Construction General Permit is not applicable to the natural gas transmission pipeline projects. No changes to the permit are proposed in response to this comment. Please note, however, that Virginia regulates pipeline construction activities through the annual standards and specifications program in accordance with the Virginia Erosion and Sediment Control Law and the Virginia Stormwater Management Act.</p>
<p>David and Betty Werner</p>	<p>Pipelines</p>	<p>As the following pictures show, we don't believe that our current stormwater protections are adequate to stop sedimentation runoff into our streams. Our farm is bordered by two protected streams (Teels Creek and Little Creek) and Mountain Valley Pipeline is building their pipeline on our pasture between these two creeks (eventually to cross them if/when they receive permits to do so). Either MVP's BMP's are insufficient, or they are violating the state's statutes, or the state's statute is insufficient to stop this erosion. (Pictures from MVP were submitted)</p>	<p>In accordance with section 402(l)(2) of the Clean Water Act (CWA) discharges of stormwater runoff from the construction of oil and gas transmission pipelines are exempt from National Pollutant Discharge Elimination System (NPDES) permitting and Virginia Pollutant Discharge Elimination System (VPDES) permitting. Therefore, Virginia's Construction General Permit is not applicable to the natural gas transmission pipeline projects. No changes to the permit are proposed in response to this comment. Please note, however, that Virginia regulates pipeline construction activities through the annual standards and specifications program in accordance with the Virginia Erosion and Sediment Control Law and the Virginia Stormwater Management Act. The documentation that was provided with this comment has been passed on to the department's stormwater compliance inspection staff. No changes to the permit are proposed in response to this comment.</p>

Commenter	Topic	Comment	Department Response
Sandy Collins (Friends of Accotink)	Pipelines	Given the recent demonstrated failure of pipeline construction contractors to meet the requirements of the SWPPPs and other components of the Construction Stormwater General Permit, and the potential for these failures to affect numerous watersheds over their length, we request that pipeline and other linear facility construction activities be required to: implement best management practices to remove suspended sediment from stormwater prior to discharge to the receiving water; be required to monitor for turbidity (ambient conditions in receiving water and in discharge) when discharging to a water impaired for sediment; and be required to conduct regular inspections in accordance with other construction activities covered under the General Permit and not be allowed to conduct "representative inspections.	In accordance with section 402(l)(2) of the Clean Water Act (CWA) discharges of stormwater runoff from the construction of oil and gas transmission pipelines are exempt from National Pollutant Discharge Elimination System (NPDES) permitting and Virginia Pollutant Discharge Elimination System (VPDES) permitting. Therefore, Virginia's Construction General Permit is not applicable to the natural gas transmission pipeline projects. No changes to the permit are proposed in response to this comment. Please note, however, that Virginia regulates pipeline construction activities through the annual standards and specifications program in accordance with the Virginia Erosion and Sediment Control Law and the Virginia Stormwater Management Act.
Barbara Brumbaugh (City of Chesapeake)	Typographical Error	Section 9VAC25-880-70 Part II.B.3.a appears to reference itself in the first sentence. The suggested revision is to delete "and 3 a" in the first sentence.	Thank you for your comment. The error in numbering has been corrected.
Home Builders Association of Virginia	Typographical Error	9VAC25-880-60 Subparts C and D at the end of this Section should be numbered D and E (a new subpart C was added earlier)	Thank you for your comment. The error in numbering has been corrected.
Home Builders Association of Virginia	Typographical Error	9VAC25-880-70 Part II, B (SWPPP amendments) should be numbered C (a new subpart B – SWPPP Contents, was added earlier). This will require renumbering all subparts B-G in this Part.	Thank you for your comment. The error in numbering has been corrected.
Home Builders Association of Virginia	Typographical Error	Part II.F.2.c – I believe the reference here – "the inspection frequency as described in subdivision b and c" should actually be "subdivision a and b".	Thank you for your comment. The error in numbering has been corrected.
Home Builders Association of Virginia	Typographical Error	Part II.F.2.c – the subpart that begins "Except as prohibited in Part II.F.2.a.(2)" should actually be "d" instead of "c"	Thank you for your comment. The error in numbering has been corrected.
Home Builders Association of Virginia	Typographical Error	Several other references will also need to be renumbered. A thorough check is needed.	Thank you for your comment. The error in numbering has been corrected.

Commenter	Topic	Comment	Department Response
Home Builders Association of Virginia	Typographical Error	<p>9VAC25-880-50 B.7 There are two item No. 7 in section 9VAC25-880-50 B. of Proposed Chapter 880:</p> <p>“7. If stormwater management plans for the construction activity have been approved by an entity with department approved annual standards and specifications, the name of the entity with the department approved annual standards and specifications. A copy of the annual standard and specification entity form shall be submitted with the registration statement.” “7. If the construction activity was previously authorized to discharge under the general permit effective July 1, 2014, the dates of erosion and sediment control plan approval;”</p> <p>Comment: It is recommended that DEQ renumber the remaining items in 9VAC25-880-50 B. of Proposed Chapter 880 after the first item No. 7.</p>	Thank you for your comment. The error in numbering has been corrected.
Hampton Roads Planning District Commission	Typographical Error	Section 9VAC25-880-70 Part II.B.3.a appears to reference itself in the first sentence. The suggested revision is to delete “and 3 a” in the first sentence.	Thank you for your comment. The error in numbering has been corrected.
Kristin Carter (University of Virginia)	Typographical Error	b. Part II, bullet B.3.a – There were extra words in the marked up copy posted in the Virginia Register that should be deleted: “Except for those projects identified in Part II B 3 b and 3, a stormwater management plan...”	Thank you for your comment. The error in numbering has been corrected.
Jimmy Edmonds (Loudoun County)	Typographical Error	9VAC25-880-50.B.7 The numbering for this section is inadvertently repeated in the subsequent section. Amend the repeated section to read 9VAC-880-50.B.8 and similarly amend the subsequent 11 subsections (resulting in a total of 19 subsections under 9VAC-880-50.B vs. 18)	Thank you for your comment. The error in numbering has been corrected.
Mark Williams (Koontz Bryant Johnson Williams)	Typographical Error	Section 9VAC25-880-50, Item B (Draft); sub-item 7... there are two #7's listed, which should be corrected. Doing so will increase subsequent numbers by a value of 1. For the purpose of this document, the numbers currently shown within the draft regulations will be referenced.	Thank you for your comment. The error in numbering has been corrected.
Kristin Carter (University of Virginia)	Typographical error	d. Part II, bullet G.2.a – For consistency, should this bullet read “For construction activities that discharge to a surface water identified in Part II B 5 and B 6 as impaired or having an approved TMDL or Part II B 5 II B 7 as exceptional...”?	Thank you for your comment. The error in this reference has been corrected

Please note that the department received two individuals provided comments outside of the public comment period that have not been included in the table above.

Public Comments Received At Public Hearings

Commenter	Topic	Comment	Department Response
Keith Oster (Sullivan Donahoe, Ingalls)	Part II C Technical Criteria	Expressed concerns regarding inconsistencies with Virginia Code 15.2 that grandfathers certain development plans due to the housing crisis.	The provisions of 9VAC25-870-47 and 48 that allow certain projects to use the post development stormwater technical criteria in effect prior to July 1, 2014 criteria apply specifically to stormwater management associated with land-disturbing activities. The vesting requirements set out in the Code of Virginia in § 15.2-2209.1 have no relationship to the stormwater provisions and the technical criteria that are applicable to a given project as stated in the VSMP regulatory development documents from 2011. No changes to the permit are proposed in response to this comment.
Keith Oster (Sullivan Donahoe, Ingalls)	Part II C Technical Criteria	Expressed concerns regarding applicable technical criteria and relationship to having an approved erosion and sediment control plan.	The 2014 Construction General Permit required operators to update the required Stormwater Pollution Prevention Plan within 60 days of receiving permit coverage. A component of the SWPPP is an approved erosion and sediment control plan for the amount of land disturbance for which permit coverage was authorized. The proposed permit retains the same requirement for the SWPPP to contain an approved erosion and sediment control. No changes to the permit are proposed in response to this comment.
Keith Oster (Sullivan Donahoe, Ingalls)	9VAC25-880-45 "Portions of a project not under construction"	Expressed question on what is considered a project and a portion of a project.	Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language originally proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, it is clear to the department that the language did not provide clarification and introduced confusion. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.

Commenter	Topic	Comment	Department Response
Keith Oster (Sullivan Donahoe, Ingalls)	Part II C Technical Criteria	Expressed concerns regarding new registration statement requirement to provide date of approved erosion and sediment control plan. Registration statement includes two items: area of development and area of disturbance. Is area of development the project area. If you don't have ESC plans, it does not to qualify under VPDES.	The 2014 Construction General Permit required operators to update the required Stormwater Pollution Prevention Plan within 60 days of receiving permit coverage. A component of the SWPPP is an approved erosion and sediment control plan for the amount of land disturbance for which permit coverage was authorized. The proposed permit retains the same requirement for the SWPPP to contain an approved erosion and sediment control.
Mark Williams (Koontz Bryant Johnson Williams)	Part II C Technical Criteria	Express concerns about being able to renew permits for phased projects based on the proposed permit language where there are master stormwater plans, but do not have approved ESC plans.	The 2014 Construction General Permit required operators to update the required Stormwater Pollution Prevention Plan within 60 days of receiving permit coverage. A component of the SWPPP is an approved erosion and sediment control plan for the amount of land disturbance for which permit coverage was authorized. The proposed permit retains the same requirement for the SWPPP to contain an approved erosion and sediment control.
Mark Williams (Koontz Bryant Johnson Williams)	Section 30: Authorizatio n to Discharge	Asked what does that it mean for coverages to be automatically continued for operators who submit complete registration statement?	Item H in section 30 of 9VAC25-880 allows that in the circumstance that the general permit expires and the permittee has submitted a complete registration statement in accordance with the requirements of 9VAC25-880-50, the permittee may continue to operate under the 2014 permit until such time that the department approves coverage under the new general permit. This "administrative continuance" is authorized under the Clean Water Act, federal National Pollutant Discharge Elimination System regulations, and the Virginia Pollutant Discharge Elimination System regulations. This proposed updated language provides consistency with other VPDES general permit regulations. No changes to the permit are proposed in response to this comment.

Commenter	Topic	Comment	Department Response
Mark Williams (Koontz Bryant Johnson Williams)	"Portions of a project not under construction"	Asked what is the definition of a portion of a project not under construction? <i>Note: written comments also submitted.</i>	The language originally proposed in 9VAC 25-880-45 was added to provide further clarification as it pertains to "portions of a project not under construction" regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, it is clear to the department that the language did not provide clarification and introduced confusion. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.
Mark Williams (Koontz Bryant Johnson Williams)	Registration Statement	Asked question about new requirement for site map to be submitted with the registration statement and include LOD. Is that the LOD for the entire project or a phase of the project? Expressed concerns with practicality of showing construction entrance on site map. .	Registration statement requirements for a site map were added at the recommendation of the technical advisory committee. The map is meant to demonstrate the land disturbing activity for the proposed project that includes the estimated area to be disturbed under the permit coverage being sought as well as denote and distinguish future phases of land disturbance. Detailed information for future phases is not necessary until such time that the operator registers for permit coverage for the future phase, but the map should outline the estimated limits of disturbance for future phases. The permit condition has been revised to provide further clarification.
Mark Williams (Koontz Bryant Johnson Williams)	Registration Statement	Asked when a BMP maintenance agreement would not be required.	A BMP (or stormwater management facility) maintenance agreement is only required if the operator is proposing stormwater management facilities in order to demonstrate compliance with the post-development water quality and/or quantity technical criteria. There are occasions that stormwater management facilities are not required to demonstrate and therefore no maintenance agreement would be required. No changes to the permit are proposed in response to this comment.

Commenter	Topic	Comment	Department Response
Mark Williams (Koontz Bryant Johnson Williams)	Notice of Termination	Requested more clarity to the level of details are necessary on the as-builts (construction record drawings). Specifically asked what are the level of tolerances and stated that the required engineering certification doesn't allow for tolerances.	As specified in 9VAC 25-870-55 D of the VSMP regulation, the construction records drawing must include the as-built plans of the actual permanent stormwater management facilities constructed and the seal and signature of a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. No changes to the permit are proposed in response to this comment.
Mark Williams (Koontz Bryant Johnson Williams)	Registration Statement	Requested clarity on the required information for estimated area of land disturbance and total development. Experienced a situation for small retail development that had associated road improvements. Listed area that for retail development as well as the offsite road improvements in the area of estimated disturbance area, but the registration statement was returned because area of disturbance was greater than total development.	The estimated area to be disturbed as reported by the operator on the registration statement is the area for which the operator is applying for coverage. It should not include areas of offsite land disturbance if the operator does not have operational control of those activities. No charges to the permit are proposed in response to this comment. Additional information regarding registration statement requirements is available on the registration statement instructions.
Richard Street (Spotsylvania County)	Part II C Technical Criteria	Expressed concerns regarding inconsistencies with Virginia Code 15.2 that grandfathers certain development plans due to the housing crisis.	The provisions of 9VAC25-870-47 and 48 that allow certain projects to use the post-development stormwater technical criteria in effect prior to July 1, 2014 criteria apply specifically to stormwater management associated with land-disturbing activities. The vesting requirements set out in the Code of Virginia in § 15.2-2209.1 have no relationship to the stormwater provisions and the technical criteria that are applicable to a given project as stated in the VSMP regulatory development documents from 2011. No changes to the permit are proposed in response to this comment.
Richard Street (Spotsylvania County)	SWPPP Inspections	Requested clarification regarding SWPPP inspection frequency. Is the requirement calendar days or business days?	As stated in the 2014 general permit and retained in the 2019 proposed permit, SWPPP inspection frequencies are based on business days. No changes to the permit are proposed in response to this comment.
Richard Street (Spotsylvania County)	Notice of Termination	Expressed question if as-builts (construction record drawings) are required for all stormwater structures or BMPs.	As specified in 9VAC 25-870-55 D of the VSMP regulation, the construction records drawing are required to be submitted to the VSMP authority for any permanent stormwater management facility. No changes to the permit are proposed in response to this comment.

Commenter	Topic	Comment	Department Response
Spud Mistr (representing Innsbrook)	Part II C Technical Criteria	Permits under 2009 and 2014 cycle are eligible for Part IIC technical criteria. Locality could determine it was a plan or approved or equal to lieu of a plan. Plan accepted. ESC and 2014 regulations. You have to have approved ESC under 2014 permit or AILP. Doesn't say you have to submit a plan, just accept the requirements of the state. Lakes that are the BMP designed and calculated under Part IIC. Requested clarification on the previously permitted status.	The 2014 Construction General Permit required operators to update the required Stormwater Pollution Prevention Plan within 60 days of receiving permit coverage. A component of the SWPPP is an approved erosion and sediment control plan for the amount of land disturbance for which permit coverage was authorized. The proposed permit retains the same requirement for the SWPPP to contain an approved erosion and sediment control. Information regarding the post-development technical criteria and requirements for an approved erosion and sediment control plan have been included in the fact sheet.
Elizabeth Wright (citizen, City of Alexandria)	Miscellaneous	Expressed concerns efficiency and communication of VSMP authorities regarding citizen complaints. Would like to see online database to document citizen complaints and agency responses.	This comment is outside of the scope of this regulatory action.
Logan Kendell	Miscellaneous	Expressed support the requirement of documentation of nutrient credits.	Thank you for your comment.
Logan Kendell	Monitoring	Recommended the addition of required settling or filtering of sediment laden or Turbid stormwater prior to discharge. & Monitoring of said settling or filtering prior to discharge. I recommend the addition of public posting of those results in a log attached to the electronically available SWPPP permit.	<p>The proposed general permit is consistent with the requirements for protection of water quality contained in EPA's 2017 Construction General permit effective February 16, 2017.</p> <p>EPA established effluent limitation guidelines (ELGs) and new source performance standards (NSPS) to control the discharge of pollutants from construction activities in 40 CFR Part 450 referred to as the "Construction and Development Rule" or "C&D Rule". These requirements were published in the Federal Register on December 1, 2009 (74 FR 62996) and became effective on February 1, 2010 and contained numeric limitation on the allowable level of turbidity in discharges from certain construction sites. On November 5, 2010, EPA finalized a stay (75 FR 68215), effective January 4, 2011, for 40 CFR Parts 450.22 (a) and (b) that contained the numeric turbidity limitations as the result of a petition. EPA published amendments to the C&D Rule (79 FR 12661) on March 6, 2014 and May 4, 2014 (80 FR 25235) with an effective date of May 5, 2014. The amendments lifted the indefinite stay, withdrew the numeric discharge standards. As a result, numeric turbidity limitation and monitoring</p>

Commenter	Topic	Comment	Department Response
			<p>requirements are not required to be incorporated in to NPDES permits.</p> <p>The general permit requires construction activity operators to develop an erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Program regulations, which require filtering and infiltration practices. The permit also incorporates the narrative technology-based effluent limitations contained in 40 CFR Part 450. In addition, the general permit requires operators to select, install, implement, and maintain control measures at the construction site that minimize (i.e., reduce or eliminate) pollutants in the discharge as necessary to ensure that the operator's discharge does not cause or contribute to an excursion above any applicable water quality standard. Also, 9VAC25-870-460.1 of the Virginia Stormwater Management Program regulation allows for the use of best management practices to control or abate the discharge of pollutants from stormwater discharges and when numeric effluent limitations are infeasible. The department believes that the proposed general permit establishes the requirements necessary to protect water quality standards. No changes to the permit are proposed in response to this comment.</p>
Logan Kendall	Miscellaneous	I like that the permits will be electronically available on the web.	<p>The general VPDES permit for the discharge of stormwater from construction activities is a general permit regulation that is available at: https://law.lis.virginia.gov/admincode/title9/agency25/. A list of construction activities covered under the permit is available on DEQ's Construction Stormwater website at: https://www.deq.virginia.gov/Programs/Water/StormwaterManagement/VSMPP/permits/ConstructionGeneralPermit.aspx. Permit coverage letters for each construction activity are not available online. Request for copies may be made to the department in accordance with the Virginia Freedom of Information Act. No revision to the permit is proposed as a result of this comment.</p>

Commenter	Topic	Comment	Department Response
Logan Kendall	Miscellaneous	I hope that the discharged water body is prominently displayed and shown preferably on the display board at the front of job sites.	Information regarding water bodies to which a regulated construction site discharge is available in the Stormwater Pollution Prevention Plan. Operators are required to make the SWPPP available for review by interested parties in accordance with Part II E of the permit. No revision to the permit is proposed as a result of this comment.
Logan Kendall	Miscellaneous	I support the prohibition of discharges that will knowingly violate local water quality standards.	No revision to the permit is proposed as a result of this comment.
Logan Kendall	Miscellaneous	I support requirement of list of permanent water quality BMP's AND list of waterways receiving discharges.	Information regarding permanent water quality BMPs and receiving waters are available in the Stormwater Pollution Prevention Plan. Operators are required to make the SWPPP available for review by interested parties in accordance with Part II E of the permit. No revision to the permit is proposed as a result of this comment.
Logan Kendall	Miscellaneous	I support the requirement of professional certification and maintenance plans of permanent stormwater management facilities.	No revision to the permit is proposed as a result of this comment.
Keith Oster (Sullivan, Donahoe, Ingalls)	Part II C Technical Criteria	Requested more clarity for post development stormwater technical criteria to prevent different interpretations by the Department and local VSMPs, specifically as it pertains to project that have commenced land disturbance related to the approved ESC plan requirements.	Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language originally proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, it is clear to the department that the language did not provide clarification and introduced confusion. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.

Commenter	Topic	Comment	Department Response
Greg Koontz (Koontz, Bryant, Johnson, Williams)	Part II C Technical Criteria	<p>Reiterated comments from other commenters on post development stormwater technical criteria. Expressed concern with how regulators look at portions of projects differently than engineers. Stakeholders believe grandfathering under 15.2 of the Virginia Code to address the housing crisis need to align with grandfathering under the stormwater requirements. Stated that erosion and sediment plans are not developed for an entire permitted are and further clarity is needed to recognize the construction sequencing of phased projects.</p>	<p>Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language originally proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, it is clear to the department that the language did not provide clarification and introduced confusion. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.</p> <p>Additionally, the provisions of 9VAC25-870-47 and 48 that allow certain projects to use the post development stormwater technical criteria in effect prior to July 1, 2014 criteria apply specifically to stormwater management associated with land-disturbing activities. The vesting requirements set out in the Code of Virginia in § 15.2-2209.1 have no relationship to the stormwater provisions and the technical criteria that are applicable to a given project as stated in the VSMP regulatory development documents from 2011.</p>
Kay Cabe (3E Consultants)	Registration Statement	<p>Expressed concerns regarding triggers that could require the redesign of plans. Stated that for erosion and sediment control plans and stormwater management plans, the implications of requiring revisions are more far reaching than just redesigning plans. Could result in changes to conditional use, zoning, and other local approvals because requirements for previous approvals may have changed.</p>	<p>Language in the proposed permit was not intended to change applicability of the Part II C criteria as authorized under 9VAC25-870-47 or 48 of the Virginia Stormwater Management regulation. The language originally proposed in 9VAC 25-880-45 was added to provide further clarification regarding the applicability of the stormwater technical criteria contained in the Virginia Stormwater Management Program regulation, 9VAC25-870. After receiving numerous comments during the comment period, it is clear to the department that the language did not provide clarification and introduced confusion. Therefore, the language is being removed from the proposed permit and a discussion of applicable technical criteria has been included in the fact sheet.</p>

Commenter	Topic	Comment	Department Response
Monte Lewis (ED Lewis and Associates)	Miscellaneous	Stated that the proposed permit is not clear enough and requirements need clarification.	Revisions to the proposed permit and fact sheet have been introduced to provide clarity regarding permit requirements.
Monte Lewis (ED Lewis and Associates)	Registration Statement	Expressed concerns on why registration statement requires reporting of estimated disturbed area and total development in 100th of an acre.	This requirement is retained from the 2014 general permit. This level of specificity for purposes of post-development stormwater calculations.
Chris Workman (Chesterfield County)	Registration Statement	Expressed concerns on why registration statement requires reporting of estimated disturbed area and total development in 100th of an acre.	This requirement is retained from the 2014 general permit. This level of specificity for purposes of post-development stormwater calculations.
Chris Workman (Chesterfield County)	SWPPP Inspections	Stated that SWPPP inspection frequency for impaired waters should be revised to once every 5 days instead of once every 4 days for consistency in inspections from week to week.	During the 2014 general permit development, an analysis was performed regarding frequency of rainfall events. The results indicated that inspections conducted at a frequency of every 4 days results in approximately the same number of inspections as if they were conducted every 5 days and 24 hours after a rainfall event. The option to conduct inspections at a frequency of every 4 days was provided to operators as an alternative to tracking measurable precipitation events. No changes are proposed in response to this comment.
Dave Levy (Citizen, City of Alexandria)	Technical Criteria	Expressed that BMPs should be applied based on phased construction planning.	This comment is outside of the scope of this regulatory action.
Ruth Sherman (Citizen)	MVP Pipeline	Expressed opposition to MVP Pipeline	In accordance with section 402(l)(2) of the Clean Water Act (CWA) discharges of stormwater runoff from the construction of oil and gas transmission pipelines are exempt from National Pollutant Discharge Elimination System (NPDES) permitting and Virginia Pollutant Discharge Elimination System (VPDES) permitting. Therefore, Virginia's Construction General Permit is not applicable to the natural gas transmission pipeline projects. No changes to the permit are proposed in response to this comment. Please note, however, that Virginia regulates pipeline construction activities through the annual standards and specifications program in accordance with the Virginia Erosion and Sediment Control Law and the Virginia Stormwater Management Act.
Betty Werner (Citizen)	MVP Pipeline	Expressed opposition to MVP Pipeline	
David Werner (Citizen)	MVP Pipeline	Expressed opposition to MVP Pipeline	
Lynda Majors (Citizen)	MVP Pipeline	Expressed opposition to MVP Pipeline	
Tina Badger (Citizen)	MVP Pipeline	Expressed opposition to MVP Pipeline	
Freedra Carhcat (Citizen)	MVP Pipeline	Expressed opposition to MVP Pipeline	
Mara Robbins (Citizen)	MVP Pipeline	Expressed opposition to MVP Pipeline	
Christy Renee (Citizen)	MVP Pipeline	Expressed opposition to MVP Pipeline	
Elizabeth Conners (Citizen)	MVP Pipeline	Expressed opposition to MVP Pipeline	

Commenter	Topic	Comment	Department Response
Anne Lusby Denham (Citizen)	MVP Pipeline	Expressed opposition to MVP Pipeline	
David Denham (Citizen)	MVP Pipeline	Expressed opposition to MVP Pipeline	
Crystal Mello (Citizen)	MVP Pipeline	Expressed opposition to MVP Pipeline	
Fred Donaher (Citizen)	MVP Pipeline	Expressed opposition to MVP Pipeline	
Joshua ? (Citizen)	MVP Pipeline	Expressed opposition to MVP Pipeline	
Dennis Royer (Citizen)	MVP Pipeline	Expressed opposition to MVP Pipeline	
Tammy Belinsky	MVP Pipeline	Expressed opposition to MVP Pipeline	
Nadean Carson (Parker Design Group)	Registration Statement	Site Map: What is the format? Will there be more definitions of what is to be provided?	A street map, topographic map, or aerial map provided in an 8.5 x 11 inch format as part of the registration statement will satisfy the requirement. Please note that the site map should not be submitted as a plan-sized sheet. Additionally, a VSMP authority may allow a vicinity map included with the stormwater management plan to satisfy this requirement. The registration statement requirements will be updated for clarity.
Nadean Carson (Parker Design Group)	SWPPP	– Pollution Prevention Plan – prevention of “excess concrete” is that concrete or concrete washout	This requirement applies to the discharge of waste concrete that is excess to the needs of the project. Please note that the permit language has been revised from “excess concrete” to “waste concrete” for clarity.
Nadean Carson (Parker Design Group)	SWPPP	SWPPP needs to identify if discharge is to PCB impaired waters. Is there a way for SWPPP preparers to identify that information ahead of RS submittal?	The department will be identifying discharges to waters impaired for PCB or for which a TMDL has been approved. Operators will be notified of additional requirements through permit coverage letters like was done for nutrient and sediment impairments and TMDLs. Additionally, prior to receiving the permit coverage letter, interested parties can use the Virginia Environmental GIS on DEQ’s website (https://www.deq.virginia.gov/ConnectWithDEQ/VEGIS.aspx) to identify surface water impairments and other information.

All changes made in this regulatory action

Please detail all changes that are being made and the consequences of the changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
1	-	Definition of "impaired waters"	Revised to reflect most current Water Quality Assessment Integrated Report.
1	-	Definition of "final stabilization"	Revised for individual lots in residential construction to require as part of temporary stabilization for operators to provide homeowners with written information about the importance of final stabilization and require documentation and signed certification from the permittee that the homeowner has been notified as part of the SWPPP documents that must be maintained for 3 years.
15	-	Applicability of incorporated references based on the dates that they became effective	Revised to reflect the most current document.
20	-	Effective date of general permit	Revised to update new effective and expiration dates.
30 A 1 and 2	-	Authorization to discharge	Several revisions to language to clarify requirements.
30 A 4 a	-	Authorization to discharge	Remove last sentence because it is not necessary. The definition of VESCP authority in 9VAC25-840 includes the department.
30 A 4 b	-	Authorization to discharge	Remove last sentence because it is not necessary. The definition of VSMP authority in 9VAC25-870 includes the department. Also added reference to 9VAC25-880-70 Part II B.2.b for consistency of requirements.
30 F 5	-	Authorized nonstormwater discharges	Added language to clarify that discharges of potable water is only authorized as nonstormwater discharge when it is managed in a manner to avoid an instream impact.
30 H	-	Continuation of general permit coverage.	Revised for consistency with other general VPDES permit regulations.
50 A 2	-	General permit application (registration statement)	Revised for consistency with other general VPDES permit regulations.
50 A 3	-	General permit application (registration statement)	Added language to allow the VSMP authority to request additional documentation for processing of permit coverage transfers of ownership.
50 A 5	-	General permit application (registration statement)	Added for consistency with other general VPDES permit regulations.
50 B	-	General permit application (registration statement)	Revised several registration statement requirements for clarity and added new requirements to ensure the department and VSMP authority receive the necessary information to process general permit coverage request including site map, offsite support activity information, date of ESC plan approval, and date construction activities began, if applicable.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
60	-	Termination of general permit coverage	Several revisions to clarify notice of termination requirements and reorganize existing language for clarity. Included requirement that construction record drawings required in 9VAC25-870-55 be submitted with the notice of termination requests. Added requirement for proof that BMP maintenance agreement has been fully executed including recorded with local land records. Added a requirement for operators are to provide homeowners with written information about the importance of final stabilization and require documentation and signed certification from the permittee that the homeowner has been notified as part of the SWPPP documents that must be maintained for 3 years. Updated language to clarify that a notice of termination is not required for single-family residential structures that are not required to submit a registration statement.
70 Permit Cover Page	-	Effective and Expiration Dates	Updated to reflect new permit term.
70 Part I B 4	-	Limitations on Coverage – Impaired Waters	<p>Added language regarding discharges to receiving waters impaired for PCBs for consistency with EPA's 2017 Construction General Permit.</p> <p>Deleted SWPPP requirements for discharges to impaired and exceptional receiving waters and moved to Part II F 2.</p>
70 Part I B 5	-	Limitations on Coverage – Exceptional Waters	Deleted SWPPP requirements for discharges to impaired and exceptional receiving waters and moved to Part II F 2.
70 Part I E 5	-	Authorized nonstormwater discharges	Added language to clarify that discharges of potable water is only authorized as nonstormwater discharge when it is managed in a manner to avoid an instream impact.
70 Part I F	-	Termination of general permit coverage	Several revisions to clarify notice of termination requirements and reorganize existing language for clarity. Included requirement that construction record drawings required in 9VAC25-870-55 be submitted with the notice of termination requests. Added a requirement for operators are to provide homeowners with written information about the importance of final stabilization and require documentation and signed certification from the permittee that the homeowner has been notified as part of the SWPPP documents that must be maintained for 3 years. Updated language to clarify that a notice of termination is not required for single-family residential structures that are not required to submit a registration statement.
70 Part II	70 Part II A 3	Stormwater Pollution Prevention Plan	Updated date language to explain expectations that existing 2014 permittees revise SWPPP within 60 days in accordance with any new or revised requirements.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
70 Part II A 2	70 Part II B 2	Erosion and Sediment Control Plan	Revised language for clarity. Removed last sentence because it is not necessary. The definition of VSMP authority in 9VAC25-870 includes the department.
70 Part II A 3	70 Part II B 3	Stormwater Management Plan	Revised language for clarity. Removed last sentence because it is not necessary. The definition of VSMP authority in 9VAC25-870 includes the department.
70 Part II A 4 e (7)	70 Part II B 4 e (7)	Pollution Prevention Plan	Added "waste concrete" to list of discharges that are to be prevented by the operator.
70 Part II A 4 e (9)	70 Part II B 4 e (9)	Pollution Prevention Plan	Added language requiring the covering of waste receptacles for consistency with EPA's 2017 Construction General Permit and 40 CFR 450 (d)(2) to minimize the exposure of construction waste to precipitation.
70 Part II A 5	70 Part II B 5	SWPPP requirements for discharges to impaired waters	Added language deleted from Part I B 4 regarding SWPPP requirements for discharges to waters impaired for nutrients or sediment.
70 Part II A 6	70 Part II B 6	SWPPP requirements for discharges to impaired waters	Added language for SWPPP requirements for discharges to waters impaired for PCBs or for which a TMDL has been approved.
70 Part II A 7	70 Part II B 7	SWPPP requirements for discharges to exceptional waters	Added language deleted from Part I B 5 regarding SWPPP requirements for discharges to exceptional waters.
70 Part II F 2 a	70 Part II G 2 a	SWPPP Inspections	Added language for inspection requirements for discharges to impaired or exceptional receiving waters previously located in Part I B 4 and 5. Also added language to provide instruction in case of inclement or adverse weather.
70 Part II F 2 d	70 Part II G 2 d	SWPPP Inspections	Added language clarifying that projects discharging to impaired or exceptional waters are not authorized to use representative inspections.
70 Part II F 3	70 Part II G 3	Inspection Requirements	Revised language to clarify or add inspection requirements to ensure construction stormwater is being properly maintained on site to minimize the discharge of pollutants.
70 Part II F 4	70 Part II G 4	Inspection Report	Added language to clarify when reports need to be added to SWPPP.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The reissuance of the general VPDES permit accomplishes the objectives of applicable law and minimizes the costs to a small business owner and simplifies the application process. Without the general permit, a small business owner would be required to obtain an individual permit, which would increase the complexity of a permit application and permit costs.