



Exempt Action Proposed Regulation Agency Background Document

Agency name	Virginia Soil and Water Conservation Board
Virginia Administrative Code (VAC) citation	4VAC50-60
Regulation title	Virginia Stormwater Management Program (VSMP) Permit Regulations
Action title	In accordance with the Administrative Process Act exemption requirements specified in §2.2-4006 A8, amend, modify or delete provisions of the regulations related: to the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (4 VAC 50-60-1200 et seq.) [Part XV], to the definitions in the Virginia Stormwater Management Regulations [Part I] necessary to maintain consistency in definitions as a result of changes to the General Permit, to the associated form(s) [FORMS], and to the documents incorporated by reference [DOCUMENTS INCORPORATED BY REFERENCE].
Document preparation date	October 16, 2012

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

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

Summary

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

This regulatory action amends and reissues the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (small MS4s). This action to update and

reissue the General Permit is authorized under the federal Clean Water Act (33 USC § 1251 et seq.) and the Virginia Stormwater Management Act (§10.1-603.2 et seq.) which require that state permits be effective for a fixed term not to exceed five years. The existing 5-year General Permit became effective on July 9, 2008; thus necessitating the regulatory promulgation of a new General Permit before the July 8, 2013 expiration date.

On September 28, 2012, the Virginia Soil and Water Conservation Board approved, authorized, and directed the filing of proposed regulations related to Part XV (General Permit for Discharges of Stormwater from Small MS4 Systems) of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60) and other related sections as an exempt action. That authorization was related to those changes that are exempt from the Administrative Process Act pursuant to § 2.2-4006(A)(8)(c) of the Code of Virginia. The Board's authorization extended to, but was not limited to, the posting of the approved action to the Virginia Regulatory Town Hall and the filing of the proposed regulations and incorporated forms with the Virginia Registrar's Office and the U.S. Environmental Protection Agency, the holding of at least one public hearing, as well as the coordination necessary to gain approvals from the Office of the Attorney General, the Virginia Registrar of Regulations, and the U.S. Environmental Protection Agency.

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

The key changes to this permit include:

- 1) Updating definitions for "Best management practice", "Hydrologic Unit Code", "Illicit discharge", and "Stormwater Pollution Prevention Plan" and adding a new definition for "Total maximum daily load Action Plan" in PART I [Section 10] and updating the definition for "Physically connected" and adding new definitions for "Municipality",

“Operator”, and “Public” in PART XV [Section 1200]. This also includes global changes in terminology used throughout the General Permit such as “regulated small MS4s” becoming “small MS4s” for brevity.

- 2) Updating TMDL language that currently refers to “a State Water Control Board established and EPA approved” TMDL to “an approved” TMDL in PART I [Section 10] and in PART XV [Section 1210].
- 3) Clarifying that the General Permit governs discharges to surface waters and not state waters as is the case for federal National Pollutant Discharge Elimination System (NPDES) permits for MS4’s. PART XV [Section 1220].
- 4) Insertion of a Table 1 into the regulation that clarifies the timing for various required elements of Program Plan updates and helps to differentiate the staged timing for operators that previously held a General Permit from those operators that are applying for initial coverage. PART XV [Section 1220] and [Section 1240].
- 5) Rewriting the Special Conditions in Section I of the General Permit to stipulate detailed strategies and processes to address approved TMDLs other than the Chesapeake Bay TMDL and for the Chesapeake Bay TMDL to account for implementation of the required reductions. This revision also includes the addition of calculation sheets for estimating existing source loads for pollutants of concern in each of the major river basins in the Chesapeake Bay Watershed of Virginia (Tables 2a-d) and then estimating the total reduction required during this permit cycle (Tables 3a-d). TMDL action plans that identify the best management practices and other steps to be implemented are required to be developed for all TMDLs. PART XV [Section 1240].
- 6) Clarifying and expanding minimum criteria within the General Permit associated with the six minimum control measures which are in PART XV [Section 1240, SECTION II B]). This has resulted in complete rewrites of each of the minimum control measures that now contain much more specific, and where possible, quantitative strategies that must be addressed in the operator’s MS4 Program Plan and progress to be reported in their annual reports:
 - a. Public education and outreach on stormwater impacts;
 - The strategies within the Program Plan now need to be designed with consideration of three key goals:
 1. Increasing target audience knowledge about the steps that can be taken to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;
 2. Increasing target audience knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications; and
 3. Implementing a diverse program with strategies that are targeted towards audiences most likely to have significant stormwater impacts.

- b. Public involvement;
 - Requires the operator to provide public access to the MS4 Program Plan and annual reports on the operator's webpage, provide public notice and public comment opportunities on the proposed MS4 Program Plan, and to provide a minimum of four local activities annually that the public may participate in aimed at reducing stormwater pollutant loads and improving water quality.
- c. Illicit discharge detection and elimination;
 - Requires the operator to maintain an accurate and complete storm sewer system map and information table; effectively prohibit nonstormwater discharges into the storm sewer system; develop and implement written procedures to detect, identify, and address nonstormwater discharges including developing field screening methodologies and prioritized schedules; and conducting public reporting of illicit discharges into or from the MS4s.
- d. Construction site stormwater runoff control;
 - Requires a MS4 to use its powers to address discharges entering the MS4 from specified land-disturbing activities and requires program compliance with the Erosion and Sediment Control Law and attendant regulations including implementation of appropriate compliance and enforcement strategies.
- e. Post-construction stormwater management in new development and development on prior developed lands; and
 - Requires a MS4 to use its powers to address post-construction stormwater runoff that enters the MS4 from specified land-disturbing activities and requires program compliance with the Virginia Stormwater Management Act and attendant regulations including implementation of water quality and quantity design criteria; inspection, operation and maintenance verification strategies for stormwater management facilities; and stormwater management facility tracking and reporting mechanisms.
- f. Pollution prevention/ good housekeeping for municipal operations.
 - Requires the operator to develop and implement written procedures designed to minimize or prevent pollutant discharge from: (i) daily operations such as road, street, and parking lot maintenance; (ii) equipment maintenance; and (iii) the application, storage, transport, and disposal of pesticides, herbicides, and fertilizers.
 - It further requires the operator to identify all municipal high-priority facilities and to develop and implement specific stormwater pollution prevention plans for all high-priority facilities identified as having a high potential for the discharge of chemicals and other materials in stormwater.
 - Additionally, the operator shall identify all applicable lands where nutrients are applied to a contiguous area of more than one acre and within 60 months of state permit coverage, the operator shall implement

- nutrient management plans on all lands where nutrients are applied to a contiguous area of more than one acre.
- Also, the operator shall develop an annual written training plan including a schedule of training events that ensures implementation of the specified training requirements.
- 7) Providing additional clarity on what is not considered an MS4 Program modification that would require a permit modification, as well as a discussion of how MS4 Program modifications may be requested by the Department. PART XV [Section 1240, SECTION II F].
 - 8) Updating in FORMS the incorporated General Permit Registration Statement Form to track the amended regulation as well as advancing a revised Department of Conservation and Recreation MS4 Operator Permit Fee Form that has been split from the Construction Operator fees that have been moved to a new form.
 - 9) Striking in the DOCUMENTS INCORPORATED BY REFERENCE section three documents previously referenced in the MS4 regulations.

Family impact

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

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability. However, the improvement of water quality through the implementation of MS4 programs and best management practices to achieve it, does have positive public health and safety benefits that have an indirect impact on families.