



townhall.virginia.gov

## Exempt Action Proposed Regulation Agency Background Document

|   |   |
|---|---|
| <b>Agency name</b>                                    | State Water Control Board   |
| <b>Virginia Administrative Code (VAC) citation(s)</b> | 9 VAC25-890   |
| <b>Regulation title(s)</b>                            | General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (VAR04) |
| <b>Action title</b>                                   | Amend and Reissue the Small MS4 General Permit  |
| <b>Date this document prepared</b>                    | October 30, 2017  |

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is still 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 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This rulemaking is proposed in order to amend and reissue the existing VPDES general permit which expires on June 30, 2018. The general permit governs local governments and state and federal agencies that discharge stormwater from "small" municipally owned separate storm sewer systems located within the Census Urbanized Area as determined by the U.S. Census Bureau.

In addition, a periodic review/small business impact review was conducted as part of this regulatory action. Please see the periodic review/small business impact review result section for additional information.

## 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
- DEQ: Department of Environmental Quality
- EPA (U.S. EPA): United States Environmental Protection Agency
- MS4: Municipal Separate Storm Sewer System
- NPDES: National Pollutant Discharge Elimination System
- TAC: Technical Advisory Committee
- TMDL: Total Maximum Daily Load
- USC: United States Code
- VAC: Virginia Administrative Code
- VPDES: Virginia Pollutant Discharge Elimination System

## Legal basis

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

The basis of this regulation is §62.1-44.15:25 of the Code of Virginia which authorizes the State Water Control Board under the Virginia Stormwater Management Act to issue, deny, revoke, terminate or amend stormwater permits and adopt regulations for the control of stormwater discharges from Municipal Separate Storm Systems to surface waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The proposed regulatory action protects water quality in the Commonwealth of Virginia which is essential to the health, safety and welfare of Virginia’s citizens. This proposed regulatory action is needed in order to establish appropriate and necessary permitting requirements for discharges from small municipal separate stormwater systems located within the Census Urbanized Areas to discharge stormwater to waters of the state. The general permit establishes the minimum control measures to reduce the potential

discharge of pollutants in municipal stormwater as well as requirements for demonstration of compliance with TMDL wasteload allocations for local watersheds and the Chesapeake Bay. The primary issue that needs to be addressed is that the existing general permit expires on June 30, 2018 and must be reissued to authorize small MS4s to continue to discharge after that date.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.*

Changes to the existing general permit include changing the permit effective dates of the general permit to July 1, 2018 through June 30, 2023, revisions to clarify to permit requirements and correct typographical errors. Substantive changes are as follows:

- (1) Revising the permit in accordance with EPA’s small MS4 federal regulations (Small MS4 Remand Rule) promulgated on January 9, 2017 to ensure conditions are clear, specific, and measurable. Substantive changes include:
  - a. Revising registration statement requirements to eliminate submittal of the permittee’s MS4 Program Plan;
  - b. Including more specific BMPs and strategies for implementation as part of the permit; and
  - c. Removing requirement for DEQ to approve MS4 Program Plans and TMDL Action Plans.
- (2) Requiring permittees to provide MS4 maps in a GIS shapefile format.
- (3) Stream lining Construction Site Stormwater Runoff Control and Post Construction Stormwater Management for New Development and Development on Prior Developed Lands by incorporating existing Erosion and Sediment Control and Virginia Stormwater Management Program regulations by reference.
- (4) Revising existing and new source load reductions to be implanted during the permit term for those permittees discharging to the Chesapeake Bay watershed in accordance with the Chesapeake Bay TMDL and Watershed Implementation Plans.
- (5) Added a requirement that Local TMDL Action Plans be made available for public review.

## Issues

*Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The advantages to the public and the agency are that a VPDES general permit will continue to be available to small MS4s to enable them to discharge safely to surface waters without the increased cost and more complicated application process associated with issuing an individual permit. Additionally, advantages to the Commonwealth of Virginia is the implementation of additional nutrient and sediment reductions from municipal stormwater discharges to the Chesapeake Bay watershed and local receiving waters. Another advantage to the agency is that the clarifications to permit requirements and best management practices will assist with permit reporting, inspections and compliance reviews. There are no disadvantages.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no requirements that exceed applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

This general permit regulation is applicable statewide to any operator of a municipal separate stormwater sewer system. The proposed amendments to the regulation apply statewide, except for the Chesapeake Bay TMDL Special Condition. The general permit regulation implements the Commonwealth of Virginia’s Chesapeake Bay TMDL Phase I and II Watershed Implementation Plans (WIPs) dated November 29, 2010 and March 30, 2012. These WIPs establish reductions in the load of total nitrogen, total phosphorus, and total suspended solids for regulated MS4s that discharge to receiving waters located in the Chesapeake Bay Watershed.

The proposed amendments applicable throughout the Chesapeake Bay watershed are not expected to impose a disproportionate material water quality impact on any locality that would not be experienced by the other localities in the Chesapeake Bay watershed.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

There are two alternatives for compliance with federal and state requirements to permit municipal stormwater point source discharges to surface waters. One is to issue individual VPDES permits to each facility. The other is to reissue the general VPDES permit to cover this category of discharger. A general VPDES is the least burdensome and costly alternative to achieve the purpose of the regulation. The application and maintenance fee costs associated with an individual permit are significantly higher than those for coverage under the general permit.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response. If there was no NOIRA comment period, delete this section.*

| Commenter | Comment | Agency response |
|-----------|---------|-----------------|
|-----------|---------|-----------------|

|  |   |   |
|--|---|---|
| <p>Adrienne Kotula<br/>James River Association</p> | <p>JRA believes that measurable goals are necessary to ensure that urban areas discharging into impaired waters do not contribute to impairments and comply with any applicable TMDLs and the Bay TMDL in particular. Measureable goals are absolutely vital to providing permit enforceability and ensuring that the reductions required of any TMDLs will be met. It is of the utmost importance that the new permit protects water quality, rather than present new obstacles in achieving fishable and swimmable waterways.</p> <p>Requested to be on the Technical Advisory Committee (TAC).</p> | <p>DEQ agrees that the general permit should be reissued to establish clear and measurable requirements as it pertains to TMDLs and all permit requirements. The proposed permit contains a suite of specific BMPs for permittees to implement in order to protect water quality.</p> <p>Appointed to the TAC.</p>  |
| <p>Peggy Sanner<br/>Chesapeake Bay Foundation</p>  | <p>Include the additional 35% reductions (beyond 5% required in 2013 permit term); specify additional requirements to address gap between 2023 and 2025 TMDL achievement date including planning and benchmarks.</p> <p>GP should include any new requirements as a result of the Bay TMDL Midpoint Assessment, amended TMDL, and WIP.</p> <p>Comprehensive water quality monitoring to assess effectiveness of BMPs close to real time to allow for adaptive management.</p>   | <p>The proposed MS4 General Permit includes the second phase reduction requirements as described. However, due to multiple delays in permit reissuance, three full permit terms now extends beyond the Chesapeake Bay Program partnership's 2025 goal for implementation of all controls necessary to meet the TMDL. Under the Phase I and II WIPs, Virginia has recognized the right to adjust this plan and take different approaches to meet the 2025 goal. Virginia is committed to a phased approach that allows multiple permit terms for MS4 permittees to fully implement nutrient and sediment reductions necessary to meet the Chesapeake Bay TMDL wasteload allocations. Virginia will adjust its commitments, if necessary, as part of its Phase III WIP to ensure that practices are in place by 2025 that are necessary to meet water quality standards in the Chesapeake Bay and its tidal tributaries</p> <p>Information from the Chesapeake Bay TMDL mid-point assessment, TMDL, and WIP has not been finalized; therefore, new requirements are not available for inclusion in the proposed permit.</p> <p>DEQ agrees that real time monitoring data can provide valuable information under certain situations; however, due to the size and extent of the MS4 systems and the various factors that impact pollutant loads in stormwater,</p> |

|                                    |  |   |
|------------------------------------|--|---|
|                                    | <p>Address that VDOT will no longer be covered under the GP.</p> <p>Incorporate most current requirements for stormwater management and erosion and sediment control.</p> <p>Ensure BMPs adopted to achieve reductions are consistent with current CBP criteria and protocols and require appropriate inspection and maintenance protocols.</p> <p>Require implementation of local TMDLs to the maximum extent practicable and compliance plans specify end dates as appropriate</p> <p>Requested to be on the Technical Advisory Committee (TAC).</p> | <p>monitoring data may not provide conclusive evidence of BMP effectiveness. In keeping with the MS4 Remand Rule, DEQ has proposed in the permit a suite of BMPs and strategies for implementation by permittees that are known to achieve reductions based on the source of the pollutant of concern.</p> <p>DEQ issued an individual permit for the VDOT MS4 effective July 1, 2017. VDOT is no longer covered under the MS4 General Permit.</p> <p>DEQ agrees that the most up to date ESC and Stormwater Management Plan requirements should be included in the permit and is proposing to streamline these requirements through regulatory references in the proposed permit.</p> <p>DEQ is updating Chesapeake Bay TMDL Action Plan guidance to incorporate as appropriate recent Chesapeake Bay Program BMP criteria. The proposed permit retains the BMP inspection requirements from the 2013 permit.</p> <p>The proposed permit includes a suite of specific BMPs and strategies for permittees to implement in order to reduce loading of pollutants to receiving waters with approved TMDLs. To appropriately implement the requirement to reduce pollutants to the maximum extent practicable, the MS4 Program is based on an adaptive management and iterative process. Where appropriate for pollutants such as nutrients and sediment, DEQ has proposed a requirement for permittees to submit the anticipated date when wasteload allocations will be achieved.</p> <p>Appointed to the TAC.</p> |
| <p>Lisa Ochsenhirt<br/>AquaLaw</p> | <p>Bay and Local TMDLs: GP needs reflect a reasonable/achievable scope of work that recognizes the realities of managing a stormwater system and program at the local level.</p>   | <p>DEQ agrees that TMDL requirements must take into consideration scope of work as well as statutory and regulatory requirements and believes the proposed permit reflects this concern.</p>  |

|   |   |   |
|---|---|---|
|   | <p>Maximum Extent Practicable (MEP) Standard – GP should be based on the MEP compliance standard; allow permittees to implement adaptive, iterative, and financially feasible programs for improving water quality over time.</p> <p>Federalization of State and Local Programs – GP conditions that require permittees with administering a state only program should be structured to avoid “federalizing” the details of the related activities.</p> <p>Requested to be on the Technical Advisory Committee (TAC).</p> | <p>DEQ agrees that it is appropriate for the MS4 permit to continue to be based on a standard of MEP using and adaptive and iterative process as specified in state and federal regulations and believes the draft permit reflects application of MEP appropriately.</p> <p>Where appropriate the proposed permit incorporates the implementation of state and local programs in order to achieve MS4 requirements specified in federal regulations.</p> <p>Appointed to the TAC.</p> |
| Jess Wenger<br>University of Virginia                           | Requested to be on the Technical Advisory Committee (TAC).  | Appointed to the TAC.   |
| Norm Goulet<br>Northern Virginia Planning District Commission   | Requested to be on the Technical Advisory Committee (TAC).  | Appointed to the TAC.   |
| Jill Sunderland<br>Hampton Roads Planning District Commission   | Requested to be on the Technical Advisory Committee (TAC).  | Appointed to the TAC.   |
| Rebecca Napier,<br>WSSI (formerly with Timmons)                 | Requested to be on the Technical Advisory Committee (TAC).  | Appointed to the TAC.   |
| Fran Geissler<br>James City County                              | Requested to be on the Technical Advisory Committee (TAC).  | Appointed to the TAC.   |
| Virginia Snead<br>American Society of Civil Engineers -Virginia | Requested to be on the Technical Advisory Committee (TAC).  | Appointed to the TAC.   |
| Alex Forasté<br>Stantec   | Requested to be on the Technical Advisory Committee (TAC).  | Appointed to the TAC.   |
| Ashley Hall<br>Stantec  | Requested to be on the Technical Advisory Committee (TAC).  | Appointed to the TAC as an alternate to Alex Forasté.   |
| Joni Calmbacher<br>City of Alexandria                           | Requested to be on the Technical Advisory Committee (TAC).  | Appointed to the TAC.   |
| Erin Hawkins<br>City of Lynchburg                               | Requested to be on the Technical Advisory Committee (TAC).  | Appointed to the TAC.   |
| Dan Frisbee<br>City of Charlottesville                          | Requested to be on the Technical Advisory Committee (TAC).  | Appointed to the TAC.   |
| Erin Rountree<br>City of Suffolk                                | Requested to be on the Technical Advisory Committee (TAC).  | Appointed to the TAC.   |

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the impacts of the regulated community and the impacts of the regulation on farm or forest land preservation.*

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Jeff Selengut, P.O. Box 1105, Richmond, Virginia 23218, 804-698-4265, 804-698-4032 and [Jeffrey.Selengut@deq.virginia.gov](mailto:Jeffrey.Selengut@deq.virginia.gov). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

### 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 is not expected to have a direct impact on the institution of the family or family stability.

### Periodic review/small business impact review announcement

*If you wish to use this exempt proposed stage to announce a periodic review (§ 2.2-4017 & EO-17 (2014)) and a small business impact review (§ 2.2-4007.1) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete this section.*

In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

### Periodic review/small business impact review report of findings



There were no comments received following the publication of the Notice of Periodic Review in the Notice of Intent Comment Period. However, since a proposal is now available, DEQ is electing to announce again the periodic review/small business impact statement.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Global changes in this permit include

Small MS4 Remand Rule – As a result of the partial remand of the Phase II stormwater regulations by the U.S. Court of Appeals for the Ninth Circuit, the U.S. Environmental Protection Agency (EPA) promulgated revised regulations on January 9, 2017 governing how small municipal separate storm sewer systems (MS4s) obtain coverage under National Pollutant Discharge Elimination System (NPDES) general permits.

This change promotes greater public engagement through clear requirements on the opportunities for public participation in the permitting process. The final MS4 General Permit Remand Rule established two alternative approaches, traditional general permit approach and procedural approach, for issuing and administering coverage under Small MS4 General Permits. Both approaches ensure that the permitting authority establishes what is necessary for the MS4 to “reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,” referred to as the “MS4 permit standard,” and that the public participation requirements of the Clean Water Act (CWA) are met. (40 CFR 122). Conditions in the proposed permit revise, incorporate, and clarify requirement in accordance with the traditional general permit approach as allowed in the federal regulations for small MS4 general permits.

Consistency – Proposed revisions in the MS4 General Permit ensure consistency with other agency general permits and regulations.

General Reorganization – The proposed MS4 General Permit removes regulatory language that is deemed unnecessary or not practically enforceable, corrects typographic errors, re-numbers outlines where appropriate, and stream line conditions when possible. Certain conditions in the proposed permit may have been moved to more suitable locations.

| Current section number | Proposed new section number, if applicable | Current requirement         | Proposed change, intent, rationale, and likely impact of proposed requirements   |
|------------------------|--|-----------------------------|--|
| 1                      |  | MS4 Program Plan is defined | Removed definition of “MS4 Program Plan.” Details of the MS4 Program that define what needs to be included have been added to Section 40 Part I.C. |
|                        |  | “Operator” is defined       | Removed definition of “operator.” This term is defined in 9VAC 25-870-10 of the Virginia Stormwater Management Program regulation, and             |

|        |        |   |  |
|--------|--------|---|--|
|        |        |   | the VSMP definitions apply to this regulation  |
|        |        | New proposed definition.  | Added definition of "high priority facilities." This term was previously defined in the text of former Section 40 Section II.B.6.  |
|        |        | New proposed definition.  | Added definition of "MS4 Regulated Service Area." This term clarifies the MS4 permittee's responsibilities for reductions under the Chesapeake Bay TMDL Special Condition.   |
|        |        | New proposed definition.  | Added the definition of "pollutant of concern." This term was previously defined specifically in former Section I.C but applies more in other sections of the regulation. The definition was also revised to reflect applicability of the term more broadly to all TMDLs and not only the Chesapeake Bay TMDL. |
| 10.A   |        | Purpose and authorization of discharge.   | Clarify that non-stormwater and wastewater discharges are not authorized by this permit. No change in requirement to permittee.  |
| 10.B   |        | 2013 effective date with 5 year expiration date   | Update the effective and permit expiration date to 2018 and 2023.  |
| 10.C   |        | Delegation of Authority   | Incorporate formerly 9 VAC 25-890-50 Delegation of Authority. No change in requirement to permittee.   |
| 15     |        | Incorporation of the 2012 Code of Federal Regulation.   | Update the most recent Code of Federal Regulation publication date.  |
| New    | 20.C   | New proposed subsection.  | Include list of criteria that that would make permittee ineligible for coverage.   |
| New    | 20.D.3 | New proposed subsection.  | Added list of authorized non-stormwater discharges from 9 VAC 25-870-400 D.2.c(3) for clarification.   |
| 20.C.4 | 20.D.4 | Recognizes the discharge may be necessary to protect life and property.                           | Clarified who is eligible to determine discharges are necessary to protect life and property.  |
| 20.F   | 20.G   | Explanation of controlling permit when a small MS4 is covered under a separate stormwater permit. | Clarify that in cases where a portion of the MS4 is covered under the General VPDES Permit for Stormwater Discharges Associated with Industrial Activities, that the industrial stormwater permit controls.  |
|        | 20.H   |   | Clarify that those areas previously covered by an industrial stormwater General VPDES Permit are subject to the requirements of the Small MS4 General VPDES Permit, as applicable, if the Industrial Stormwater General VPDES Permit is terminated.  |
| NEW    | 20.J   | New proposed subsection.  | Added language that will allow the Department to administratively continue coverage under the Small MS4 General VPDES Permit, if necessary.  |
| 30.A   | 30.A   | Registration Statement due date 90 days prior to permit expiration                                | Updated due date to be a specific date set by DEQ based on expected regulation finalization.   |
| NEW    | 30.B.5 | New proposed subsection.  | Added requirement to include additional contact names so that the Department may maintain current contact information.   |
| NEW    | 30.B.6 | New proposed subsection.  | Added requirement for outfall information to be reported with registration statement. Permittee  |

|   |                    |  |  |
|---|--------------------|--|--|
|   |                    |  | has historically been required to collect and maintain this information in accordance with former Section II.B.3.  |
| 30.B.5  | PROPOSED TO DELETE | Former B.5 – Submit listing of TMDL WLAs allocated to the small MS4.   | Removed the requirement for applicant to report a list of TMDL WLAs allocated to the small MS4. This information is readily available to DEQ staff, and most MS4s request this information from DEQ.   |
| 30.B.7  | PROPOSED TO DELETE | Former B.7 – For existing permittees covered under the previous small MS4 general permit, submit a copy of the MS4 Program Plan. | Removed the requirement for the existing permittee to submit the current MS4 Program Plan (implemented under 2013 MS4 General VPDES Permit in accordance with the traditional general permit approach in EPA’s small MS4 Remand Rule.  |
| 30.B.8.   | PROPOSED TO DELETE | Former B.8 – For existing permittees covered under the previous small MS4 general permit, submit a copy of the MS4 Program Plan. | Removed the requirement for newly designated small MS4 to submit proposed BMPs in accordance with the traditional general permit approach in EPA’s small MS4 Remand Rule. Part I.C proposes newly designated small MS4 permittees will be required to submit a schedule of MS4 Program Plan development.   |
| NEW   | 30.B.11            | New proposed subsection based on 2013 permit requirement.  | Added requirement for applicants discharging the Chesapeake Bay watershed to submit a draft second phase Chesapeake Bay TMDL Action Plan. This was a requirement under the 2013 Chesapeake Bay Special Condition.  |
| 40  | 40                 | Permit effective and expiration dates.   | Updated permit effective and expiration dates to July 1, 2018 and June 30, 2023, respectively..  |
| 40 Table 1  | PROPOSED TO DELETE | Table 1: Schedule of MS4 Program Plan Updates Required in this Permit  | Delete Table 1. This table was included in the 2013 permit due to the large number of MS4 Program Plan updates that were required. The number of substantive MS4 Program Plan changes are limited. Additionally, DEQ staff have agreed to provide a table with the schedule of submittals as part of the permit coverage transmittal letter or in the fact sheet.  |
| 40-Section I.B  | 40 Part II.B       | Section I.B. Special Conditions for approved TMDLs other than the Chesapeake Bay TMDL  | Deleted and replaced by Part II.B  |
| 40-Section I.C  | 40 Part II.A       | Section I.C. Special Conditions for the Chesapeake Bay TMDL.   | Deleted and replaced by Part II.A.   |
| Requirements 40 – Section II.B.1-6, II.C, II.D., and II.F | 40-Part I.C.       | MS4 Program Plan Requirements  | Created a new special condition to identify the required components of an MS4 Program Plan in one location. Also included are instructions for newly designated MS4 permittees that will be required to establish an MS4 Program Plan from scratch, requirements for modifications to the Program Plan, and information on 3rd party MS4 Program Plan implementation. This is a combination of the following Sections II.C, D, and F from the 2013 as well as the incorporation of new conditions. |

|  |                      |   |   |
|--|----------------------|---|---|
| <p>40 Section II.E.3 and other sections throughout 2013 permit</p> | <p>40 Part I.D.</p>  | <p>Annual Report Requirements</p>                   | <p>Merged evaluation and annual reporting requirement sections.</p> <p>Revised the special condition that identifies the required components of an Annual Report and incorporates the TMDL annual reporting requirements.</p> <p>A condition has been added specifying that the Annual Report and MS4 Program are to be maintained as separate documents to address limit confusion and submittal of unnecessary documents each year.</p> <p>The sections also revised the Evaluation and Assessment components of the Annual Reporting requirements. In the previous 2013 MS4 General Permit, the permittee was required to evaluate the appropriateness of the BMPs that the permittee was implementing and determine self-compliance with the permit conditions. The 2013 permit allowed permittees to independently establish BMPs for inclusion in the MS4 Program Plan and submit those for review and approval by DEQ staff. In order to comply with EPA's Small MS4 Remand Rule, DEQ must now specify which BMPs are effective and generally appropriate for MS4s to implement within the text of the MS4 General Permit. As such, as long as the permittee is demonstrating compliance with the terms of the permit, then they are implementing BMPs previously determined to be appropriate and effective. However, DEQ recognizes that by providing a suite of BMPs in the MS4 General Permit, there are times in which a permittee may choose to implement a BMPs and after further consideration, the permittee determines that it is not appropriate for the permittee circumstances. As such DEQ is requiring an overall MS4 Program evaluation and assessment with each annual report and requiring permittees to look at each MCM rather than each BMP</p> |
| <p>40 Section II.B</p>   | <p>40-Part I.E</p>   | <p><b>Note defining "public."</b></p>               | <p>Deleted this note and including revised language in the fact sheet. Text as provided is guidance and informational which is not enforceable through the terms of the permit.</p>   |
| <p>40 Section II.B.1</p>   | <p>40-Part I.E.1</p> | <p><b>MCM 1 – Public Education and Outreach</b></p> | <p>Removed requirement estimate the population of the target audience after discussions with the TAC. Experience from TAC members indicated they often have no way to accurately estimate the population size and the values they develop are best guess estimates. Resources are better used implementing a robust public education program rather than trying to estimate population size.</p>  |

|  |  |  |   |
|--|--|--|---|
|  |  |  | <p>Added list of criteria the Public Education and Outreach program must meet to create clear and measurable requirements for Public Education and Outreach including clearly identifying the high priority issue, explaining the importance of the issues, and explain measures that public can take to minimize the impact of pollutants associated with the issue.</p> <p>Required that messaging include contact information associated with high priority issue in order to obtain additional information if desired.</p> <p>Added a list of strategies for the permittees to use in their messaging to create clear and measurable requirements for Public Education and Outreach.</p> <p>Added requirement that permittees use at least 2 different strategies from the list to support the MCM goal of reaching a diverse public audience.</p> <p>Removed the requirement to require public participation when developing the Public Education and Outreach. This was included previously since the permit contained less specific requirement to give the public the opportunity to comment on the program proposed by the permittee; however, since revisions to the condition are proposed to provide more clear and specific requirements in accordance with the traditional approach authorized for use EPA Small MS4 Remand Rule, the public has the ability to comment on the criteria of the program during the Small MS4 General VPDES Permit regulation development process.</p> <p>Removed the requirement for the permittee to conduct sufficient activities to reach 20% of the target audience annually. Upon review staff have concluded that the condition is not practically enforceable and estimates of the audiences reached by MS4 permittees are based on gross assumptions and provides little value in implementation of the MCM.</p> <p>Removed the requirement for the permittee to provide adjustments of the target audience and outreach efforts. As proposed permittees have the ability to adjust the program requirement as long as the adjustments meet the requirements of this permit; therefore, the previous condition is unnecessary.</p> <p>Removed the requirement for permittees to evaluate the Public Education and Outreach</p> |
|--|--|--|---|

|                          |                      |  |  |
|--------------------------|----------------------|--|--|
|                          |                      |  | <p>program prior to application for continued state permit coverage. This assessment is no longer necessary as the proposed permit contains the clear and specific requirements that must be met in accordance with the traditional permitting approach as authorized by EPA’s Small MS4 Remand Rule.</p> <p>Removed the requirement for permittees to evaluate the Public Education and Outreach program prior to application for continued state permit coverage. This assessment is no longer necessary as the proposed permit contains the clear and specific requirements that must be met in accordance with the traditional permitting approach as authorized by EPA’s Small MS4 Remand Rule.</p> <p>Revised requirements for inclusion in the MS4 Program that align with specific and measurable revisions to the Public Education and Outreach program in order demonstrate compliance with requirements.</p> <p>Revised annual reporting requirements for inclusion in the Annual Report that align with specific and measurable revisions to the Public Education and Outreach program in order to demonstrate compliance with requirements of the permit.</p> |
| <p>40-Section II.B.2</p> | <p>40-Part I.E.2</p> | <p><b>MCM 2 – Public Involvement/Participation</b></p> | <p>Removed condition that permittee comply with applicable federal, state, and local public notice requirements. Upon review staff have concluded that the condition is too vague to be practically enforceable. MS4 permittees are required to meet these requirements as appropriate outside of the requirements of the Small MS4 General VPDES Permit.</p> <p>Removed the requirement for permittee to update the MS4 Program a minimum of once per year. If the permittee is sufficiently demonstrating compliance with the requirement of the permittee there is not a need for the permittee to update the MS4 Program Plan annually.</p> <p>Revised requirements for permittee to post MS4 Program Plans and Annual Reports on the permittee’s webpage within 30 days of submittal to DEQ. Permittees are no longer required to submit MS4 Program Plans to DEQ.</p> <p>Added requirement for permittee to develop procedures for public reporting of illicit discharges, the public to comment on the MS4 Program,</p>   |

|  |  |  |  |
|--|--|--|--|
|  |  |  | <p>receiving and responding to public input and complaints, and maintaining documentation. This requirement will clarify procedures for the public and provide further transparency in implementation of the MS4 Program. These additions support the requirements of the traditional approach authorized by EPA's Small MS4 Remand Rule to provide for clear and specific requirements.</p> <p>Added requirement for permittees to post permit coverage letters and MS4 General VPDES Permits on their webpages to provide complete program documentation. These additions support the requirements of the traditional approach authorized by EPA's Small MS4 Remand Rule to provide for clear and specific requirements.</p> <p>Removed requirement for permittees to notify the public and receive comments on program plan prior to submitting program with registration statements for reapplication. This requirement is no longer necessary as the proposed permit contains the clear and specific requirements that must be met in accordance with the traditional permitting approach as authorized by EPA's Small MS4 Remand Rule. The MS4 Program Plan is now construed as the tool to implement the permit.</p> <p>Added requirement for permittees to create a mechanism for public reporting of illicit discharges and include procedures for reporting on their website. This requirement will make it easier for the public to report illicit discharges to the MS4 permittee. These additions support the requirements of the traditional approach authorized by EPA's Small MS4 Remand Rule to provide for clear and specific requirements.</p> <p>Added requirement for permittees to include procedures on their website documenting how the public can submit input on the permittee's MS4 Program Plan. This requirement will make it easier for the public to understand how to comment on the MS4 Program Plan if they desire to do so. These additions support the requirements of the traditional approach authorized by EPA's Small MS4 Remand Rule to provide for clear and specific requirements.</p> <p>Revised the requirement for the permittee to participate in four local environmental activities to provide categories of public involvement (with examples) in which the permittee will participate.</p> |
|--|--|--|--|

|                     |                 |  |  |
|---------------------|-----------------|--|--|
|                     |                 |  | <p>Permittees will also be required to choose from at least two different categories in order to support a diverse public involvement program. These revisions support the requirements of the traditional approach authorized by EPA's Small MS4 Remand Rule to provide for clear and specific requirements.</p> <p>Added a condition that allows permittees to coordinate with other MS4 permittees. This will allow permittees to combine and potentially use resources more efficiently if they choose to do so.</p> <p>Revised requirements for inclusion in the MS4 Program that align with specific and measurable revisions to the Public Involvement and Participation Program in order demonstrate compliance with requirements.</p> <p>Revised annual reporting requirements for inclusion in the Annual Report that align with specific and measurable revisions to the Public Involvement and Participation Program in order to demonstrate compliance with requirements of the permit.</p> |
| 40 – Section II.B.3 | 40 – Part I.E.3 | <b>MCM 3 –Illicit Discharge Detection and Elimination</b>  | <p>Added a requirement for an electronic map to be submitted 6 months after permit effective date in the form of a GIS shapefile or other electronic format as specified by DEQ. Updated MS4 outfall and service area information is necessary in order for DEQ staff to develop accurate TMDL wasteload allocation for local and the Chesapeake Bay TMDLs and is necessary for review during MS4 compliance audits.</p> <p>Revised outfall screening requirement such that permittees with more than 50 outfalls are required to screen 50 outfalls and only 50% of those screened can be from the previous year's screening inventory. This ensures permittee is looking at different outfalls each year but allows them to frequent annually some problem outfalls.</p> <p>Clarify how IDDE investigation procedures apply to one time discharges versus continuous discharges.</p>   |
| 40 – Section II.B.4 | 40 – Part I.E.4 | <b>MCM 4 – Construction Site Stormwater Runoff Control</b> | <p>Removed and replaced requirements for the permittee to development a Construction Site Stormwater Runoff Control program. The previous permit condition included requirements based on the requirements of the Virginia Erosion and Sediment Control Program in 9VAC25-840. As previously presented if changes were approved to the Virginia Erosion and Sediment</p>   |



|                            |                        |   |   |
|----------------------------|------------------------|---|---|
|                            |                        |   | <p>Control Program regulations, MS4 permittees would potentially be faced with conflicting regulatory requirements. Additionally, as presented the condition did not clarify the requirements for those permittees who are not authorized or who may not have elected to implement a Virginia Erosion and Sediment Control Program (state agencies, federal entities, colleges/universities, towns, etc.). Revisions to the MCM include:</p> <ul style="list-style-type: none"> <li>○ Added requirements for those permittees who implement a DEQ approved Virginia Erosion and Sediment Control Program and incorporate the Virginia Erosion and Sediment Control Program regulations by reference.</li> <li>○ Added clarification for towns that have no adopted a Virginia Erosion and Sediment Control Program.</li> <li>○ Added specific requirements for those permittees with DEQ approved annual standards and specifications for Erosion and Sediment Control approved in accordance with the Virginia Erosion and Sediment Control Program in 9VAC25-840.</li> </ul> <p>Added specific requirements for permittees that are not approved Virginia Erosion and Sediment Control authorities and which do not have DEQ approved annual standards and specifications for Erosion and Sediment Control approved in accordance with the Virginia Erosion and Sediment Control Program in 9VAC25-840.</p> <p>Revised requirements for inclusion in the MS4 Program that align with specific and measurable revisions to the Construction Site Stormwater Runoff Control program MCM in order demonstrate compliance with requirements.</p> <p>Revised annual reporting requirements for inclusion in the Annual Report that align with specific and measurable revisions to the Construction Site Stormwater Runoff Control program in order to demonstrate compliance with requirements of the permit.</p> |
| <p>40 - Section II.B.5</p> | <p>40 - Part I.E.5</p> | <p><b>MCM 5 – Post-construction Stormwater Management in New Development and Development on Prior Developed Lands</b></p> | <p>Removed and replaced requirements for the permittee to implement a post construction stormwater management program. The previous permit condition included requirements based on the Virginia Stormwater Management Program (VSMP) regulations in 9VAC25-870. As previously presented if changes were approved to VSMP regulations, MS4 permittees would potentially be faced with conflicting regulatory</p>  |

|  |  |  |   |
|--|--|--|---|
|  |  |  | <p>requirements. Additionally, the previous language did not clarify the requirements for those permittees who are not authorized or who may not have elected to implement a VSMP (state agencies, federal entities, colleges/universities, towns, etc.). Revisions to the MCM include:</p> <ul style="list-style-type: none"> <li>○ Added requirements for those permittees who implement a DEQ approved VSMP and incorporate the VSMP regulations by reference.</li> <li>○ Added clarification for towns that have not adopted a VSMP.</li> <li>○ Added specific requirements for those permittees with DEQ approved annual standards and specifications for Stormwater Management approved in accordance with VSMP regulations in 9VAC25-870.</li> </ul> <p>Added specific requirements for permittees that are not approved VSMP authorities and which do not have DEQ approved annual standards and specifications for Stormwater Management approved in accordance with the VSMP in 9VAC25-870.</p> <p>Clarified inspection, maintenance, and enforcement program requirements based on VSMP status described above.</p> <p>Updated the electronic database reporting requirements to correspond with DEQ's BMP Warehouse.</p> <p>Included a requirement for VSMP authorities to report through the CEDS Construction Stormwater database post development BMPs installed to meet water VSMP requirements.</p> <p>Included a requirement that permittees report all other BMPs through the DEQ BMP Warehouse or other approved database. This expands the reporting from only stormwater management facilities to all BMPs.</p> <p>Revised requirements for inclusion in the MS4 Program that align with specific and measurable revisions to the post development stormwater management MCM in order demonstrate compliance with requirements.</p> <p>Revised annual reporting requirements for inclusion in the Annual Report that align with specific and measurable revisions to the post development stormwater management MCM in order to demonstrate compliance with</p> |
|--|--|--|---|

|                            |                        |   |  |
|----------------------------|------------------------|---|--|
| <p>40 - Section II.B.6</p> | <p>40 - Part I.E.6</p> | <p><b>MCM 6 – Pollution Prevention/Good Housekeeping</b></p>              | <p>requirements of the permit.</p> <p>Added a requirement for permittees to annually review any high priority facilities previously determined not to have a high potential to discharge pollutants, and therefore no SWPPP was developed, and to determine whether or not anything has changed that would cause the facility to have a high potential to discharge. If it does, a SWPPP will need to be developed.</p> <p>Added a requirement that SWPPP be reviewed at any site having an unauthorized discharge or spill within 30 days of such event; and if necessary update the SWPPP.</p> <p>Added a statement that facilities no longer having a high potential to discharge pollutants may be removed from said list.</p> <p>Replaced requirement that permittees develop and implement turf and landscape management plans on all lands where nutrients are applied equal to or greater than an acre with a condition that requires permittees to maintain plans for those lands that qualify. This will capture any new lands equal or greater than an acre where nutrients are applied.</p> <p>Added condition that permittee contractors engaging in activities with a potential to discharge use appropriate control measures. This will help continue to minimize pollutant loadings.</p> <p>Added language to clarify that first responder training will satisfy training requirements to avoid duplicative training requirements or situations where the permittee's MS4 staff cannot dictate that type of training first responders receive.</p> |
| <p>40 - Section II.C</p>   | <p>40 - Part I.C</p>   | <p><b>Using existing programs to Demonstrate Compliance with MCMs</b></p> | <p>Moved to and revised in Part I.C. See explanation of changes above.</p>   |
| <p>40 - Section II.D</p>   | <p>40 - Part I.C</p>   | <p><b>Third Party Implementation of MCMs</b></p>                          | <p>Moved to and revised in Part I.C. See explanation of changes above.</p>   |
| <p>40 - Section II.E</p>   | <p>40 - Part I.D</p>   | <p><b>Evaluation and Assessment</b></p>                                   | <p>Moved to and revised in Part I.D. See explanation of changes above.</p>   |
| <p>40 - Section II.F</p>   | <p>40 - Part I.C</p>   | <p><b>Program Plan Modifications</b></p>                                  | <p>Replaced by Part I.C.4. Much of the language has been deleted because it is no longer relevant. EPA's MS4 Remand Rule requires that general permits contain clear, specific, and measurable permit conditions. Under the traditional permitting approach of the Remand Rule, under which DEQ is drafting this permit, the general permit conditions much contain specific BMP requirements that will be available for the public to review during the public comment portion of the</p>   |

|                         |                       |   |   |
|-------------------------|-----------------------|---|---|
|                         |                       |   | <p>regulatory development process. As such, as long as the permittee is complying with the BMPs and conditions of the general permit, there is no need for MS4 Program Plan modifications to be submitted to or reviewed by DEQ.</p>  |
| <p>40 - Section I.C</p> | <p>40 - Part II.A</p> | <p><b>Chesapeake Bay TMDL Special Condition</b> <i>The Chesapeake Bay TMDL Special Condition in the 2013 permit has been removed and replaced with changes as detailed.</i></p> | <p>Updated reduction requirements from 5% of the Level 2 Scoping Run Reductions to be achieved by June 30, 2018 to 35% of the Level 2 Scoping Run Reductions to be achieved by June 30, 2023 in accordance with the Chesapeake Bay TMDL and Watershed Implementation Plans I and II for total nitrogen, total phosphorus and total suspended solids.</p> <p>Incorporated reduction requirements for existing developed lands in the expanded urbanized areas based on the 2010 Census.</p> <p>Replaced tables 2 (a-d) and tables 3 (a-d) used by permittees for the calculation of pollutant loads and load reduction requirements, respectively, with comprehensive tables 1(a-d) total nitrogen, total phosphorus and total suspended solids.</p> <p>Added a column to the table for the calculation of the cumulative reductions.</p> <p>Added footnotes to tables 3 (a-d) to explain calculation requirements.</p> <p>Added footnote to tables 3 (a-d) to explain how to determine extent of existing developed area for which reductions are required.</p> <p>Included recognition of the Lynnhaven and Little Creek river basins as separate from the James River Basin in accordance with 2013 and 2015 legislation.</p> <p>Updated requirements to offset increased loads from new sources initiating construction between July 1, 2009 and June 30, 2014 from 5% of that increased loads to 40% of the increased loads from projects initiating projects between July 1, 2014 and June 30, 2019.</p> <p>Updated requirement that increased loads from projects grandfathered in accordance with the VSMP regulations be offset by the expiration date of the permit.</p> <p>Added condition recognizing that load reductions achieved during the 2013 permit term are applied to the cumulative load reductions required by June 30, 2023.</p> |

|                  |                |  |   |
|------------------|----------------|--|---|
|                  |                |  | <p>Added condition to clarify procedures for rounding calculations.</p> <p>Added references to list of the acceptable BMPs and trading program that permittees may use to achieve reduction requirements.</p> <p>Added condition that authorizes use of credits to meet reduction requirements in accordance with State Water Control Law.</p> <p>Revise requirement that permittees must submit a Chesapeake Bay TMDL Action Plan to DEQ for review and acceptance that demonstrates reduction requirements. This condition provides a specific list of items to be included in the Action Plan. Under the first phase of reductions DEQ reviewed and approved the action plans. However, in accordance with EPA's small MS4 Remand Rule, the requirements for reductions and type of BMPs available for use are included in the permit. DEQ will receive and review the Action Plans to ensure calculations are correctly performed and appropriate BMPs are selected for implementation.</p> <p>Propose removing requirement establishing that plans are enforceable 90 days after being received by DEQ unless specifically denied in writing. DEQ is committed to reviewing all plans, however, with more than 100 plans due at the same time and limited resource review within 90 days may not be feasible. It is not appropriate for an automatic approval of plans. Additionally, the condition regulates the actions of DEQ rather than the permittee which is not appropriate.</p> <p>Revised public participation on action plan to specify a minimum of 15 days. Permit was previously silent on number of days.</p> |
| 40 – Section I.B | 40 – Part II.B | <b>Special Condition for approved TMDLS other than the Chesapeake Bay TMDL</b> | <p>Revised in accordance with the EPA small MS4 Remand Rule to include required components of a Local TMDL Action Plan, specified specific BMPs and strategies to implement by permittees as applicable based on pollutant(s) of concern.</p> <p>Added a requirement that Local TMDL Action Plans be made available for public review for a period of no less than 15 days.</p>   |
| 40 – Section III | 40 – Part III  | <b>Conditions Applicable to all State Permits</b>                              | <p>Added note to clarify DMRs are not required to be submitted, but if the permittee chooses to perform monitoring it data should performed as specified.</p>   |

### 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 local governments, state agencies, and federal entities, and simplifies the application process. Without the general permit, municipalities would be required to obtain an individual permit which would increase the complexity of a permit application and permit costs.