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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	Amend the General Permit for Discharges of Stormwater from Construction Activities found in Part XIV of the Virginia Stormwater Management Permit Program Regulations and its associated definitions found in Part I of those Regulations.
Document preparation date	October 7, 2008

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, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

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 the General Permit for Discharges of Stormwater from Construction Activities (General Permit). The current General Permit is valid for five years, and is set to expire on June 30, 2009. This proposal is a revision of that current permit that is anticipated to be effective from July 1, 2009 through June 30, 2014.

This action is authorized under the federal Clean Water Act (33 USC § 1251 et seq.) and the Virginia Stormwater Management Act (§10.1-603.1 et seq.). The key proposed revisions to the permit include:

- 1) Updating and adding needed definitions such as “control measure”, “linear development project”, “qualified personnel”, “stormwater pollution prevention plan”, “Virginia Stormwater Management BMP Clearinghouse website”, and “minimize”; PART I [section 10] and PART XIV [section 1100].
- 2) Specifying that this general permit shall become effective on July 1, 2009 and expire on June 30, 2014; PART XIV [section 1120].
- 3) Adding a statement that discharges to waters that have been identified as impaired on the 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under the permit unless they are addressed consistent with the terms of the permit, and that all control measures be protective of impaired waters; PART XIV [sections 1130 and 1170].
- 4) Adding a requirement that stormwater discharges from construction activities not cause or contribute to an excursion (i.e., a violation) above any applicable water quality standard, and that all control measures be employed in a manner that is protective of water quality standards; PART XIV [section 1170].
- 5) Updates to the registration statement (i.e., application) for coverage under the general permit, including:
 - a. A requirement that a complete registration statement be submitted prior to “the issuance of coverage under the general permit that authorizes the commencement of land disturbing activities...”, and that the “operator of a construction activity is authorized to discharge...only upon issuance of coverage under the general permit...” Currently, land disturbance is permitted to begin upon submittal (usually, mailing) of the registration statement; this new language changes that practice to require that coverage under the permit actually be issued by the Department prior to the time that land disturbing activities begin; PART XIV [section 1150].
 - b. A requirement that current permit coverage holders reapply for coverage under this new general permit by July 1, 2009. As the current general permit will expire on June 30, 2009, there are only two options in order to ensure continued coverage for active projects—either the existing general permit must be administratively continued, or all permit coverage holders must receive coverage under this permit. As either process requires reapplication by current coverage holders, and as it is believed that changes to this draft proposed permit will not greatly impact active projects, it is proposed that all projects receive coverage under this draft proposed permit; PART XIV [section 1150].
 - c. A specification that only one construction activity operator may receive coverage under a single registration statement; PART XIV [section 1150].
 - d. A requirement that each registration statement note direct discharges to any receiving water identified as impaired on the 2006 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL wasteload allocation has been established for stormwater discharges from a construction activity; PART XIV [section 1150].

- 6) Updates to the notice of termination, which ends permit coverage and becomes effective at midnight on the date that it is submitted (previously, it had been effective seven days after submission); PART XIV [section 1160].
- 7) Updates to the requirements for and contents of a Stormwater Pollution Prevention Plan (SWPPP) for the construction site, including:
 - a. A requirement for the SWPPP to be made available to the public. Access to the SWPPP could be arranged at a time and location convenient to the operator (permittee), but no less than twice per month and during normal business hours; PART XIV [section 1170].
 - b. A direct requirement that all operators implement an Erosion and Sediment Control plan for the site in accordance with the Erosion and Sediment Control Law and Regulations. Previously, the SWPPP had been required to address Erosion and Sediment Control through specific language in the permit; however, as a practical matter, operators simply followed their approved E&S plans. This change aligns the permit language with that practice; PART XIV [section 1170].
 - c. Clarification that water quality and quantity requirements must be met by the operator. Under the current permit, there has been confusion at times as to whether or not water quality measures are required on every site statewide. The draft proposed language makes it clear that water quality is required on all sites; PART XIV [section 1170].
 - d. The addition of an option for inspections of the site to be conducted every seven days by the operator. The operator can still choose the current inspection schedule of every 14 days and within 48 hours following a runoff producing event if desired; PART XIV [section 1170].
 - e. A requirement that the operator report if there has been any correspondence with federal officials regarding endangered species on the site, and a description of any measures necessary to protect such species; PART XIV [section 1170].
 - f. Requirements that TMDL wasteload allocations made to construction activities be addressed through the implementation of control measures and strategies contained in the SWPPP; PART XIV [section 1170]
- 8) General updates to the basic Conditions Applicable to All VSMP Permits section that appears in every VSMP permit; PART XIV [section 1170].
- 9) The inclusion of new sections 4VAC50-60-1180, 1182, 1184, 1186, 1188, and 1190. These sections are direct copies of the currently-effective Part II (water quality and quantity) of the stormwater regulations. When the version of Part II that is currently undergoing development becomes effective, it will repeal the existing Part II. This would mean that all permittees at that time would then immediately become responsible for meeting the new Part II requirements, even though their plans were developed to meet the existing (currently effective) Part II requirements, and even though construction of the project under those plans may be well underway. In order to avoid that inequity, the permit specifically references the water quality and quantity requirements of these copied sections, which will prevent the changes to Part II from affecting persons holding

coverage under this general permit. A new general permit will then be developed to incorporate the changes to Part II on a going forward basis for new projects; PART XIV [sections 1180, 1182, 1184, 1186, 1188, and 1190].

- 10) Updates to forms associated with the General Permit, including the registration statement (DCR 199-146), notice of termination (DCR 199-147), transfer form (DCR 199-191), and permit fee form (DCR 199-145).

Family impact

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

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability. However, improvement of water quality does have positive public health and safety benefits that have an indirect impact on families.