

**Virginia Department of Conservation and Recreation and Virginia Soil and Water
Conservation Board
Public Hearing on Proposed General Permit for Discharges of Stormwater from Small
Municipal Separate Storm Sewer System
(4 VAC 50-60-10 and 4 VAC 60-60-1200 et seq.)**

**December 5, 2012
Roanoke City Council Chambers, Noel C. Taylor Municipal Building
Roanoke, Virginia**

Meeting Officer: Michelle Vucci
Policy and Planning Assistant Director
Department of Conservation and Recreation

Opening:

Ms. Vucci: I would like to call to order this public hearing on the Virginia Soil and Water Conservation Board's proposed regulations to reissue the General Permit for Stormwater Discharges from Small Municipal Separate Storm Water Sewer Systems (MS4s) to surface waters in the Commonwealth. I am Michelle Vucci, Policy and Planning Assistant Director for the Department of Conservation and Recreation. I will be serving as today's meeting officer.

I would like to thank the City of Roanoke for allowing us to use this facility.

With me today is Doug Fritz, Stormwater Permits Manager from DCR's Stormwater Management Division, who will serve as our technical presenter; and Michael Fletcher our Board and Constituent Services Liaison who will take minutes of this hearing's proceedings. This meeting will be recorded.

I would also like to recognize Herbert Dunford, Chairman of the Virginia Soil and Water Conservation Board who has joined us for this meeting.

I hope that all of you have registered on our attendance list. If not, please do so. Those wishing to speak should note that on the attendance list. Please also make sure that your contact information, including your name and address, is legible and complete as we will be utilizing it to keep you informed on the status of this regulatory action.

Purpose of the public hearing:

The purpose of this hearing is to receive input from interested citizens on the Board's proposed regulatory action during the 60-day public comment period, which opened on November 4, 2012 and closes on January 4, 2013. The Virginia Soil and Water Conservation Board (Board) is considering the reissuance of this General Permit. Regulations developed under the federal Clean Water Act (CWA) and the Virginia Stormwater Management Act require that state permits be effective for a fixed term not to exceed five years. The Board issued the existing General Permit effective July 9, 2008 and it will expire on July 8, 2013, thus necessitating the

promulgation of a new General Permit at this time. The effective date of the draft General Permit will be July 1, 2013. Under the proposed regulations, operators covered under the expiring General Permit that wish to continue to discharge under a General Permit must file a registration statement and have paid all applicable maintenance fees under the current General Permit for coverage under the new General Permit prior to April 2, 2013. Coverage under the expiring General Permit will end on midnight, June 30, 2013. Operators of small MS4s who are seeking new permit coverage under this General Permit during its term are required to register with the Department by filing a complete registration statement and paying the applicable permit fee.

In drafting the amendments to the proposed regulations, the Department, on behalf of the Board, used a participatory approach. Following the publication of the Notice of Intended Regulatory Action regarding these regulations and the public comment period on this Notice, the Department formed a Regulatory Advisory Panel to assist in the development of the proposed regulations. The 22-member panel was composed of those representing: 1) local governments; 2) conservation organizations; 3) state agencies; 4) federal agencies; 5) colleges and universities; 6) planning district commissions; and 7) consulting firms.

Between June 20, 2012 and September 6, 2012, the Panel held five meetings. Following the completion of the Panel's meetings, the Virginia Soil and Water Conservation Board proposed these regulations at its meeting held on September 28, 2012. Copies of the proposed regulations as published are located on the table near the attendance list.

I would also like to note that the proposed regulations are also undergoing review by the federal Environment Protection Agency during this public comment period. Based upon state requirements in the Administrative Process Act and the federal review process, DCR anticipates that these regulations, in their final form, will be reviewed by the Board in March of 2013 to become effective on July 1, 2013.

We do want to note that all public comments received at these hearings and during the comment period will be carefully considered by the Department and the Board in developing final regulations. The Board's recent regulatory actions demonstrate a history of being responsive.

This concludes my introductory remarks. At this time, I would like to ask Doug Fritz to provide a summary regarding the content of the regulations.

Mr. Fritz: Thank you, Ms. Vucci.

Although many of you here may be already familiar with this proposed regulatory action, for those who are not, we thought it would be useful to provide a brief background on this action and what the key portions of the proposed regulations are. This presentation is a summary and you should consult the hard copy of the regulations for specifics and I would also encourage you to review the fact sheet provided on the back table.

In summary, the proposed regulations accomplish the following:

- 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” and updating the definition for “Physically connected” and adding new definitions for “Municipality”, “Operator”, and “Public” in Part XV. This also includes global changes in terminology used throughout the permit such as “regulated small MS4s” becoming “small MS4s” for clarity.
- Updating language related to Total Maximum Daily Load (TMDL) that currently refers to “a State Water Control Board established and EPA approved” TMDL to “an approved” TMDL.
- 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.
- Inserting a table into the proposed 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.
- 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 and then estimating the total reduction required during this permit cycle. TMDL action plans that identify the best management practices and other steps to be implemented are required to be developed for all TMDLs.
- 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 modifications may be requested by the Department.
- Updating existing forms 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.
- Clarifying and expanding minimum criteria within the General Permit associated with the six minimum control measures in contained in Part XV of the proposed regulations. The changes proposed have 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:

For Minimum Control Measure 1, which is public education and outreach, the strategies for meeting this measure must now be designed with consideration of

three key goals: 1) increasing target audience knowledge about the steps that can be taken to reduce stormwater pollution; 2) increasing target audience knowledge of hazards associated with illegal discharges and improper disposal of waste; and 3) implementing a diverse program with strategies that are targeted towards audiences most likely to have significant stormwater impacts.

For Minimum Control Measure 2, which is public involvement, the strategies require the operator to provide: 1) public access to the MS4 Program Plan and annual reports on the operator's webpage; 2) public notice and public comment opportunities on the proposed MS4 Program Plan; and 3) a minimum of four local activities annually that the public may participate in aimed at reducing stormwater pollutant loads and improving water quality.

For Minimum Control Measure 3, which is illicit discharge detection and elimination, the strategies require the operator to: 1) maintain an accurate and complete storm sewer system map and information table; 2) effectively prohibit nonstormwater discharges into the storm sewer system; 3) develop and implement written procedures to detect, identify, and address nonstormwater discharges including developing field screening methodologies and prioritized schedules; and 4) conducting public reporting of illicit discharges into or from the MS4s.

For Minimum Control Measure 4, which is construction site stormwater runoff control, the strategies require an MS4 to: 1) require an MS4 to use its powers to address discharges entering the MS4 from specified land-disturbing activities and 2) require program compliance with the Erosion and Sediment Control Law and its attendant regulations.

For Minimum Control Measure 5, which is post-construction stormwater management in new development and development on prior developed lands, the strategies require an MS4 to: 1) use its powers to address post-construction stormwater runoff that enters the MS4 from specified land-disturbing activities; 2) require program compliance with the Virginia Stormwater Management Act and its attendant regulations, including implementation of water quality and quantity design criteria; and 3) address stormwater management facility tracking and reporting mechanisms.

For Minimum Control Measure 6, which is pollution prevention/ good housekeeping for municipal operations, the strategies require the operator to: 1) develop and implement written procedures designed to minimize or prevent pollutant discharge; 2) identify all municipal high-priority facilities; 3) 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; 4) identify all applicable lands where nutrients are applied to a contiguous area of more than one acre; and 5) within 60 months of state permit coverage, implement nutrient management plans on all lands where

nutrients are applied to a contiguous area of more than one acre; and 6) develop an annual written training plan and schedule of training events.

More information on these regulatory actions can be found on DCR's website or the Virginia Regulatory Townhall at the addresses appearing on our handout on the back table. Public comment information is also included in the handout provided.

Ms. Vucci: Thank you.

Before we begin receiving testimony on the proposed regulations, I would like to emphasize that this is an information-gathering meeting where DCR is receiving comment on the regulations on behalf of the Board. DCR will not be responding to any comments or questions received at this meeting but I want to emphasize that every comment received here today will be addressed as these regulations advance to their final stage.

Everyone wishing to speak will be heard. If necessary, we may need to ask speakers questions concerning their testimony or to request additional information concerning a subject believed to be important to the process in order to help clarify and properly capture your comments. Once the hearing is adjourned, DCR staff will be available to take any individual questions you may have.

Public Comment Portion

We will now begin the public comment portion of the hearing. When I call your name, please come to the front and use the podium. Please state your name and who you represent. If you have an extra copy of your comments, please provide it to us so that it may be utilized in developing the minutes of this hearing. The first person I will call is Dan Earley.

Dan Earley, Smart Water Solutions

I would like to thank you for this opportunity to speak to the audience. I really was not sure what I was going to expect to hear at this public hearing.

A couple of things that I want to, I want to give like two part comments.

First, I am here on behalf of Small Water Solutions. I have my partners with me; Scott Easter and Dr. John G. Ferrante. Smart Water Solutions is a company based here at 2203 Peters Creek Road in Roanoke, Virginia.

Our past background is consultants. We were practicing engineers that deal with stormwater regulations and stormwater management. We used to do stormwater quality issues, and have dealt continually over the past two decades with the evolution of these new regulations especially as related to stormwater quality and stormwater treatment TMDLs.

We saw the writing on the wall several years ago, maybe longer than that, that new and smarter technologies need to be developed to try to comply with new regulations as they come down especially from the state level and the federal level for a company that has used to the local level.

Our company specializes in developing these new types of technologies.

The biggest comment that I would like to make, and it might be more of a general question and this may be something that would be followed up on is the information that we at Small Water Solutions are most interested in. It's the application of new technologies as it relates to compliance with and enforcement of stormwater regulations and stormwater quality regulations, and stormwater treatment requirements.

Those are the things that we see as being very, very critical.

As a consulting engineer, time after time, I found it very difficult to apply technology. What we are most interested in is what questions and comments and what evolution of the regulation does the state see, do the localities see, even up to the federal level. What type of requirements will we see especially in select areas like the City of Roanoke and the greater Roanoke Valley, Southwest Virginia and that type of thing.

That is the interest that we have and I guess the general comment and observation **is** our part as consulting engineers.

I would be glad to entertain any questions and comments that anyone might have.

Thank you.

Christopher Blakeman, City of Roanoke

I am an employee of the City of Roanoke and I administer our MS4 program. However, I have also recently had some additional responsibility in terms of collaborating with MS4 colleagues from throughout our area. Many of them are represented in the audience today.

I don't pretend to speak for anyone other than the City of Roanoke, but would like it to be reflected that this is a consensus concern.

I have several comments. I was not quite sure what to expect. I did not prepare written comments but I will try to go through them in succession.

The first comment relates to Section 1 of the permit.

It really deals with the requirements to develop the TMDL action plans. One of the concerns that we had was that there are some requirements for assessing the TMDL action plans that we will be required to develop. It avails to us tools for both monitoring and modeling.

I was wondering if the agency was planning to offer guidance for modeling and tools. There is guidance for monitoring to reflect the applicable methodology for that. But there is no equivalent guidance for modeling.

Something else that is of particular concern and that is, in 2012, our locality was issued a TMDL for PCBs. The sampling and analysis that is required for evaluating TMDL compliance is quite complex and considerably expensive.

That is very cost prohibitive for us and the sampling is very complicated and time consuming. We're concerned about how we will comply with evaluating for PCBs.

Also it is not quite clear if the evaluation of our action plan is to extend to just the municipality owned or the locality owned parcels. It appears this is what is intended by the regulation but I believe it was line 1119 in the current draft that touches on this it but is not clear. So we would like some clarification of the assessment evaluations.

In Section 2 of the permit on Minimum Control Measure (MCM) 1, there is new requirement to provide education and outreach activities to at least 20% of our target audience. I'm assuming we are going to be responsible for determining the size of that targeted audience. I would like to see some additional guidance or change the language to something less definitive or to a significant portion or approximately or something.

On Minimum Control Measure 3, there are quite a few requirements under this MCM. I guess the first one deals generally with outfalls and since the crux of this Minimum Control Measure is designed to address our obligations to query and enforce and protect against discharges.

The requirements for mapping state that we are supposed to again go after the issue of the outfalls, but the definition excludes things such as open conveyances, pipes or tunnels connecting sections of the same surface water body.

The question we would have is whether the points of discharge that occur within those open conveyances or pipes or tunnel sections or in the same contiguous water body are considered outfalls as well? Or is it just the ones that are discharging right in to the open channel?

Additionally, there's a requirement under the mapping component of this MCM that says we're supposed to provide an estimate of the MS4 acreage served by each outfall. This is again a feasibility question for us and a concern.

The MCM would appear to require a separate delineation of the land mass that is drained by each outfall. And to definitively do that is essentially not feasible. We have multiple areas in our City that are drained without a storm sewer system and we have areas where the drainage is determined by things like construction features and other man-made infrastructure that would essentially require us to conduct site specific investigations on literally thousands of properties. Some clarification of what is required to meet the criteria would be appreciated.

Again, under MCM 3: The requirement for field screening includes a requirement to field screening monitoring. That's not defined from what I could tell in the draft permit. So, I'm curious about what is meant by field screening monitoring and how is that different from the current permit as we follow procedures outlined by the Center for Watershed Protection. If there is something different could you please clarify that?

On Minimum Control Measure 4, dealing with construction site runoff controls, the entirety of this Minimum Control Measure applies to land disturbances greater than or equal to 10,000 sq. ft. or less where the ordinance would require erosion and sediment control measures. So one of the concerns we have is for construction projects that would be below this threshold. If those parcels are discharging pollutants is our response to that to be covered under illicit discharge protection and enforcement? Are we to apply requirements that would otherwise fall under the VSMP program?

Then I guess depending on the answer to that question, do we then document our responses and the actions taken under the illicit discharge system.

This is just a minor comment, a small typo on line 1704. I believe the agency mean to use “require” rather than “required” in reference to the conditions there.

I believe that sums up my particular comments at this time based on the draft ordinance.

I will say that while as a locality we certainly appreciate the need to implement water controls and about this being an iterative process we certainly support that, we do find increasingly challenges for competing funding with other programs that are required.

Sensitivity to that issue by the Board and agency is appreciated.

Thank you.

Ms. Vucci:

That completes the list of those individuals who signed up to speak. Are there other individuals who would wish to comment or leave written remarks?

Closing:

Ms. Vucci: A handout is provided on the table outlining the public comment submittal procedures I am about to cover and the dates and locations of the remaining public meetings.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail to the Regulatory Coordinator at: Virginia Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219. Comments may also be emailed to the Regulatory Coordinator at: regcord@dcr.virginia.gov. Comments may also be faxed to the Regulatory Coordinator at: (804) 786-6141. All written comments must include the name and address of the commenter (e-mail addresses would also be appreciated). In order to be considered, comments must be received by January 4, 2013.

With that announcement, I would like to thank each of you for attending this meeting and providing us with your views and comments. This meeting is now officially closed. Staff will be available afterwards to take any individual questions you may have.

I hope that everyone has a safe trip home.

Members of the Public Present

Bob Atkinson, Roanoke County
Christopher Blakeman, City of Roanoke
Jeff Cochran, The Land Group
Megan Daily, Roanoke County
Herbert L. Dunford, Chair, Virginia Soil and Water Conservation Board
Scott Easter, Smart Water Solutions
Dan Earley, Smart Water Solutions
John G. Ferrante, Smart Water Solutions
Kip Foster, DEQ
Laruen Grimes, Virginia Tech
David Henderson, AECOM
Patrick Hogan, City of Roanoke
Kari Howard, Town of Blackburg
John Lee, Frederick County Public Schools
Anita McMillan, Town of Vinton
Tarek Moneir, Roanoke County
Roy Nester, Town of Christiansburg
Luke Pugh, City of Roanoke
Diane Robinson, Frederick County Public Schools
Phil Schirmer, City of Roanoke
Bill Shelton, OWPR, Inc.
Stephanie Smith, Virginia Tech
Wayne Strickland, Roanoke Valley – Allegheny Regional Commission
Jay Witt, City of Roanoke