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**Final Regulation
Agency Background Document**

Agency name	Virginia Soil and Water Conservation Board
Virginia Administrative Code (VAC) citation	4 VAC 50 - 60
Regulation title	Virginia Stormwater Management Program (VSMP) Permit Regulations
Action title	Amend, modify or delete provisions of the regulations to: (1) allow for changes in the statewide permit fee schedule supporting the Stormwater Management Program; and (2) allow for related changes as needed to improve the administration and implementation of the stormwater management fees.
Date this document prepared	December 10, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

This regulatory action establishes a statewide base fee schedule for stormwater management projects and establishes the fee assessment and the collection and distribution systems for those fees. Permit fees are established for: Municipal Separate Storm Sewer Systems (new coverage); Municipal Separate Storm Sewer Systems (major modifications); Construction activity general permit coverage; Construction activity individual permits, Construction activity modifications or transfers; and MS4 and Construction activity annual permit maintenance fees.

This action is closely tied to the proposed Parts I, II, and III action as the base fees generated are necessary to fund the local stormwater management programs established through that concurrent regulatory action. The fees have been established using estimates of the time

determined to be necessary for different sized projects, for a local stormwater management program to conduct plan review, inspections [including stormwater pollution prevention plan (SWPPP) review and re-inspections], enforcement, provide technical assistance, and issue permit coverage, and for the Department of Conservation and Recreation to provide oversight of the Commonwealth's stormwater management program.

The proposed permit base fee levels were arrived at through discussions of a subcommittee of the Technical Advisory Committee and discussions with the overall TAC and through corroboration of the costs of conducting the various components of program implementation with Department of Conservation and Recreation stormwater field staff and with a number of local government program personnel.

In the proposed regulations, the qualifying local program with approval of the Board was authorized to establish a lower construction fee provided that they can demonstrate their ability to fully and successfully implement a program. In the final regulations, additional authority is added to allow a qualifying local program to establish greater fees if they demonstrate to the Board that greater fees are necessary to properly administer a program. Additionally, in the final regulation the permit maintenance fee for MS4's with general permit coverage has been reduced from \$4,000 to \$3,000 dollars as well as the provision for an annual increase in fees based on the CPI-U has been removed from the final regulations.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

This action to amend and adopt final regulations 4 VAC 50 -60, Part XIII of the Virginia Stormwater Management Program (VSMP) Permit Regulations was approved by the Virginia Soil and Water Conservation Board on October 5, 2009. Following adoption, the Board also voted to suspend the final regulations and called for an additional 30-day public comment period on the final regulations. The additional public comment period was held between October 26, 2009 and November 25, 2009. The Board then rescinded the suspension and once again adopted the final regulations on December 9, 2009.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Virginia Stormwater Management Program was created by Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177). This action transferred the responsibility for the permitting programs for Municipal Separate Storm Sewers (MS4s) and construction activities from the State Water Control Board and the Department of Environmental Quality to the Virginia Soil and

Water Conservation Board and the Department of Conservation and Recreation. This federally-authorized program is administered in accordance with requirements set forth in the federal Clean Water Act (33 USC § 1251 et seq.) as well as the Virginia Stormwater Management Act (§10.1-603.1 et seq.).

Section 10.1-603.2:1 of the Code of Virginia speaks to the powers and duties of the Virginia Soil and Water Conservation Board. Among those powers and duties, the Board:

“...shall permit, regulate, and control stormwater runoff in the Commonwealth. In accordance with the VSMP [Virginia Stormwater Management Program], the Board may issue, deny, revoke, terminate, or amend stormwater permits; adopt regulations; approve and periodically review local stormwater management programs and management programs developed in conjunction with a municipal separate storm sewer permit; enforce the provisions of this article; and otherwise act to ensure the general health, safety and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater.”

Subdivision 2 of §10.1-603.2:1 of the Code of Virginia authorizes the Virginia Soil and Water Conservation Board to delegate to the Department or an approved locality the implementation of the Virginia Stormwater Management Program:

*§10.1-603.2:1 Powers and duties of the Virginia Soil and Water Conservation Board.
(2) Delegate to the Department or to an approved locality any of the powers and duties vested in it by this article except the adoption and promulgation of regulations.
Delegation shall not remove from the Board authority to enforce the provisions of this article.*

Section 10.1-603.3 of the Code of Virginia requires establishment of stormwater management programs by localities. The Board must amend, modify or delete provisions of the Virginia Stormwater Management Program (VSMP) Permit Regulations to allow localities to implement local stormwater management programs:

*§10.1-603.3. Establishment of stormwater management programs by localities.
A. Any locality located within Tidewater Virginia as defined by the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.), or any locality that is partially or wholly designated as required to obtain coverage under an MS4 permit under the provisions of the federal Clean Water Act, shall be required to adopt a local stormwater management program for land disturbing activities consistent with the provisions of this article according to a schedule set by the Board. Such schedule shall require adoption no sooner than 15 months and not more than 21 months following the effective date of the regulation that establishes local program criteria and delegation procedures, unless the Board deems that the Department’s review of the local program warrants an extension up to an additional 12 months, provided that the locality has made substantive progress. A locality may adopt a local stormwater management program at an earlier date with the consent of the Board.
B. Any locality not specified in subsection A may elect to adopt and administer a local stormwater management program for land disturbing activities pursuant to this article. Such localities shall inform the Board and the Department of their initial intention to seek delegation for the stormwater management program for land disturbing permits*

within six months following the effective date of the regulation that establishes local program criteria and delegation procedures. Thereafter, the Department shall provide an annual schedule by which localities can submit applications for delegation.

C. In the absence of the delegation of a stormwater management program to a locality, the Department will administer the responsibilities of this article within the given jurisdiction in accordance with an adoption and implementation schedule set by the Board.

Note: Additionally, enactment clause 2 of the Chapter 18 of the 2009 Virginia Acts of Assembly stipulates that *the regulation that establishes local program criteria and delegation procedures and the water quality and water quantity criteria, and that is referenced in subsections A and B of §10.1-603.3 of this act, shall not become effective prior to July 1, 2010.*

In order to properly pay for these local stormwater management programs and to fund the Department of Conservation and Recreation's necessary program oversight, the Stormwater Management Act, §10.1-603.4.5 of the Code of Virginia allows for the establishment of a statewide permit fee at a level sufficient to carry out the program. The current fees will be evaluated and necessary increases or decreases made to implement this section of the Code.

§10.1-603.4. subsection 5. Establish, with the concurrence of the Director, a statewide permit fee schedule for stormwater management related to land disturbing activities of one acre or greater. The fee schedule shall also include a provision for a reduced fee for land disturbing activities between 2,500 square feet and up to 1 acre in the Chesapeake Bay Preservation Act (§10.1-2100 et seq.) localities. The regulations shall be governed by the following:

a. The revenue generated from the statewide stormwater permit fee shall be collected and remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to §10.1-603.4:1. However, whenever the Board has delegated a stormwater management program to a locality or is required to do so under this article, no more than 30 percent of the total revenue generated by the statewide stormwater permit fees collected within the locality shall be remitted to the State Treasury for deposit in the Virginia Stormwater Management Fund.

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department; however, the fees shall be set at a level sufficient for the Department to carry out its responsibilities under this article;

Note: Chapter 102 of the 2005 Virginia Acts of Assembly (HB2365), changed the "may" provision (in the section presented above) to "shall" for the development of a fee for activities between 2,500 square feet and up to 1 acre in Chesapeake Bay Preservation Act localities.

Additionally, the Stormwater Management Act, §10.1-603.4.10 of the Code of Virginia allows for the establishment of MS4 fees.

§10.1-603.4. subsection 10. Establish, with the concurrence of the Director, a statewide permit fee schedule for stormwater management related to municipal separate storm sewer system permits.

Also, requirements set forth in the federal Clean Water Act (33 USC § 1251 et seq.), formally referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto, and its attendant regulations set forth in 40 CFR Parts 122, 123, 124 and 125 requires states to establish a permitting program for the management of stormwater for municipal separate storm sewer systems (MS4s) and construction activities disturbing greater than or equal to an acre.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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 stormwater management program, funded through the fees authorized pursuant to this regulatory action, is necessary to address water quality within the Commonwealth. Section 10.1-603.2:1 of the Code of Virginia specifies that “[i]n addition to other powers and duties conferred upon the Board, it shall permit, regulate, and control stormwater runoff in the Commonwealth. In accordance with the VSMP, the Board may issue, deny, revoke, terminate, or amend stormwater permits; adopt regulations; approve and periodically review local stormwater management programs and management programs developed in conjunction with a municipal separate storm sewer permit; enforce the provisions of this article; **and otherwise act to ensure the general health, safety and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater.**

Controlling stormwater runoff and its impacts is a serious issue facing the Commonwealth and its local governments. Citizens are complaining about flooding caused by increased amounts of stormwater runoff and the runoff is also reported as a contributor to excessive nutrient enrichment in numerous rivers, lakes, and ponds throughout the state, as well as a continued threat to estuarine waters and the Chesapeake Bay. Numerous studies have documented the cumulative effects of urbanization on stream and watershed ecology. Research has established that as impervious cover in a watershed increases, stream stability is reduced, habitat is lost, water quality becomes degraded, and biological diversity decreases largely due to stormwater runoff. We recognize that impervious areas decrease the natural stormwater purification functions of watersheds and increase the potential for water quality impacts in receiving waters. Additionally, runoff from managed turf is recognized as a significant source of pollutants.

The purpose of this action is to develop regulations that establish statewide stormwater permit fees at a level sufficient to carry out the stormwater management program per §10.1-603.4.5 of the Code of Virginia and to revise the related provisions in the regulations, as needed, to improve the administration and implementation of fees under the Virginia Stormwater Management Act (§10.1-603.2 et seq.).

The fees that are in effect under the current VSMP regulations were transferred over with the stormwater program from the Department of Environmental Quality in 2005 and are essentially only minimal processing fees. These fees are amended in this regulatory action, as they are insufficient for the operation of a local program and for necessary program oversight.

- Per the Code, the fees need to be set at level sufficient to cover expenses associated with all portions of the administration of the Commonwealth’s stormwater management permit program.
- The fees are estimated to generally cover the costs of the key elements of administering a stormwater program: plan review, permit review and issuance, inspections, enforcement, program administration and oversight, and travel. The permit fee also includes costs associated with Department oversight functions and database management.
- The construction fees are based on the area being disturbed. Administrative expenses routinely increase with the size of the project. When the higher fees are put on a per lot basis, they do not result in a large increase per lot. Such increases will most likely be passed on to the consumer as part of doing business.
- The annual maintenance fees have been established to allow local programs to recoup inspection and enforcement expenses for a project that has not been completed and terminated within the first year. Additionally, modification fees are added to allow a local program to recover expenses associated with significant plan modifications that require review.
- Localities may establish lower construction fees for their program if they can demonstrate their ability to fully and successfully implement a qualifying local program at a lower rate or from a different funding source. In the final regulations, additional authority is added to allow a qualifying local program to establish greater fees if they demonstrate to the Board that greater fees are necessary to properly administer a program.
- The municipal separate storm sewer system (MS4) fees have been set at a level sufficient to provide oversight to regulated entities MS4 programs and to allow for implementation plan review, report review, and enforcement.

The fees are necessary, as the sole funding source, to support work to minimize the cumulative impacts of stormwater on humans and the environment and to moderate the associated hydrologic impacts. If not properly managed, stormwater can have significant economic impacts and the stream restoration costs to fix the problems after the fact are very high. Without the fees generated through this regulatory action, local programs could not be properly administered.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.

This final regulatory action establishes a statewide fee schedule for stormwater management projects and establishes the fee assessment and the collection and distribution systems for those fees.

- Construction permit fees were established at a level to generally allow a local program to cover stormwater program costs associated with plan review, permit review and issuance, inspections, enforcement, program administration and oversight, and travel. Fees also include costs associated with Department oversight functions and database management.
- A qualifying local program with approval of the Board is authorized to establish a lower fee provided that they can demonstrate their ability to fully and successfully implement a program. This reduction cannot affect the Department's portion of the fee. In the final regulations, additional authority is added to allow a qualifying local program to establish greater fees if they demonstrate to the Board that greater fees are necessary to properly administer a program. The Department's share of the base fees does not increase.
- 50% of the construction fees are due upon application and the remaining 50% at issuance of coverage. In the final regulations authority is given to the locality to determine the percentages, provided that no more than 50% of the base fee is required upon application.
- The construction fees are split 72% to the local program and 28% to the Department. The 72% represents the full estimated costs (100%) associated with local program administration related to plan review, permit issuance, and project oversight and enforcement.
- The construction fees shall be periodically assessed and revised as necessary through regulatory actions.
- Permit fees are established for:
 - Municipal Separate Storm Sewer Systems new coverage (Individual and General Permit)
 - Municipal Separate Storm Sewer Systems major modifications (Individual)
 - Construction activity coverage (Individual and General Permit) (based on project acreage)
 - Construction activity modifications or transfers (Individual and General Permit) [For those permits that require significant additional administrative expenses such as additional plan reviews, etc.]
 - MS4 and Construction activity annual permit maintenance fees (Individual and General Permit) [For those projects that have not been completed and terminated within a year, allows for recovery in the out years of expenses associated with inspection, enforcement, etc.] In the final regulations, the permit maintenance fee for MS4's with general permit coverage has been reduced from \$4,000 to \$3,000 dollars.

- In the final regulations, the provision for an annual increase in fees based on the CPI-U was removed from the final regulations.
- In the final regulations, an updated Fee Form dated October 2009 was also incorporated by reference.

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 primary advantage of this regulatory change for the public is an enhanced statewide stormwater management program that will be properly funded and administered at the local level. This will result in improved compliance with the VSMP regulations and thus improved water quality. The regulated community will also benefit from properly funded and staffed local stormwater management programs, as local administration will improve efficiency and service over today's scenario of Erosion and Sediment Control being administered by the locality and Stormwater Management being administered by the Department. By developing the fee structure based upon the estimated costs of administering a local stormwater management program, there is not expected to be any disadvantage to localities or to the Department from the base fees associated with permits for construction activities. As some stormwater management programs may have higher or lower costs due to a variety of factors, qualifying local programs are authorized to lower or raise the fees upon demonstration to the Board of such a need.

The primary disadvantage of this regulation is increased permit fees for the regulated community. Today's fees for permits associated with construction activities are set at levels insufficient to support the vast majority of responsibilities associated with administering a stormwater management program. The base fees proposed by this regulatory action, while in many cases are higher than the current fees, will generally allow for the funding of permit oversight and service. In addition to the increased proposed initial issuance permit fees, annual maintenance fees have been created for the Construction General Permit (by acreage), and for the Construction Individual Permit.

The fees established by this regulatory action for municipal separate storm sewer systems (MS4s) are, like the construction activity permitting fees, based on the estimated costs of permit administration. For Large and Medium MS4s (Individual Permit), the estimation has resulted in a lower initial issuance permit fee than currently exists. For Small MS4 Individual Permit and for the Small MS4 General Permit, the regulations do include an increased fee. Additionally, MS4 annual maintenance fees have been increased for the MS4 Individual Permit (Large and Medium) and the MS4 Individual Permit (Small) and created for the MS4 General Permit.

Changes made since the proposed stage

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

Section number	Requirement at proposed stage	What has changed	Rationale for change
4VAC50-60-700	<p>In addition to existing language noting that sections 10.1-603.4 and 603.5 of the Code of Virginia authorize the establishment of a statewide fee schedule, additional explanatory language was proposed to be added to this section to describe the elements that were considered in developing the revised fees proposed for Part XIII. These elements include plan review, permit review and issuance, inspections, enforcement, program administration and oversight, and database management. Fees are also established for permit maintenance, modification, and transfer.</p> <p>Language was also proposed to be added to this section that would allow the Board to authorize a qualifying local program (i.e., a locality that is authorized to administer a stormwater management program within its jurisdiction) to charge fees lower than set out in this Part if it can be demonstrated that the qualifying local program can carry out its responsibilities under a lower fee level.</p> <p>Finally, language was proposed to be added explaining that the Department will periodically assess the revenue generated by the fees established to determine if adjustments (in addition to those authorized by proposed section 4VAC50-60-840) are necessary.</p>	<p>The proposed language of the section is retained, with three additions:</p> <ol style="list-style-type: none"> 1. Language is added indicating that administrative charges for state agencies is also within the authority of the Board. 2. An allowance for the establishment of higher fees by a qualifying local program should it be demonstrated to the Board that such greater fees are necessary to properly administer the qualifying local program. Any fee increases established by the qualifying local program beyond those base fees established in these regulations are not subject to the fee distribution formula set out in section 780 and go wholly to the qualifying local program.* 3. A specification that nothing in this part (Part XIII) shall prohibit a locality from establishing other local fees authorized by the Code of Virginia related to stormwater management within their jurisdictions. 	<p>Section 10.1-603.5 specifically authorizes “administrative charges” for state agencies. The addition to the language mirrors this terminology.</p> <p>Many comments were received from local governments indicating that their estimates indicated that the proposed fee schedule in Part XIII would not provide sufficient funding for their operation of a qualifying local program within their jurisdiction. Other localities noted a possibility that lower fees may be appropriate in their jurisdictions, and the proposed fees reflected the Department’s estimates of what would be necessary for it or a locality to carry out a local stormwater management program and these proposed fees are still believed to be appropriate in most cases. Therefore, it was determined to maintain the proposed fee schedule and the proposed allowance for the establishment of a lower fee, and to additionally allow for the establishment of a higher fee where demonstrated necessary to the Board.</p> <p>A number of comments requested clarification as to whether the fees</p>

		4. A reference to section 4VAC50-60-840, which was not adopted, was stricken.	established by these regulations pre-empted a locality’s authority to establish other fees authorized by the Code of Virginia that are related to stormwater management (but not the VSMP program). As these fees are intended only to address administration of responsibilities under the VSMP program, a clarification that these fees do not affect other authorized fees was deemed appropriate.
4VAC50-60-710	This section was proposed to be deleted in its entirety. The terms “permit applicant” and “permit application” are no longer proposed to be used in Part XIII, and any terms needing definitions are proposed to be defined in Part I of the VSMP regulations, which includes defined terms applicable to all parts of the regulations.	No change was made to the proposal. This section is deleted.	No change was made to the proposal. This section is deleted.
4VAC50-60-720	No substantive change was proposed to this section stating the legal authority for the establishment of fees. The words “pursuant to” were proposed to be deleted in order to improve sentence structure, and a Code of Virginia citation to §10.1-604.4 was proposed to be corrected to §10.1-603.4.	No change was made to the proposal; the section was adopted as proposed.	No change was made to the proposal; the section was adopted as proposed.
4VAC50-60-730	Additional explanatory language was proposed to be added to this section that explains the applicability of the fees established by Part XIII. This language would separate out persons seeking permit coverage (or modifications of existing permits) for municipal separate storm sewer systems (MS4s) and those seeking coverage for construction activities. An explanatory note was also proposed to be added relating that persons whose coverage under the General Permit for Discharges of Stormwater from Construction Activities has been revoked must reapply for an individual permit.	The proposed language of the section is retained, with one minor amendment to substitute the word “program” for the word “permit” in subsection C.	“VSMP” stands for “Virginia Stormwater Management Program”.
4VAC50-60-740	Additional language was proposed to be added to this section, which explains exemptions from the fees, explaining that the exemption for modification or amendment at the initiative of the permit issuing authority does not apply to situations where there are	No change was made to the proposal; the section was adopted as proposed.	No change was made to the proposal; the section was adopted as proposed.

	errors in the registration statement identified by the local stormwater management program or errors related to the acreage of a site (which could cause a different level of fee to be due). Likewise, permit modifications that are made at the request of the permittee and that could result in additional plan review by a local stormwater management program are not exempt.		
4VAC50-60-750	This section specifies due dates for the payment of fees. Clarifying language was proposed to be added to this section explaining that requests for a permit, permit modification, or general permit coverage shall not be processed until the required fees are paid. In a change from the current practice, maintenance fees for all permits to which they apply would now be due on the anniversary date of the permit, rather than on each October 1 (although MS4 operators who currently pay a fee that is due by October 1 would continue to pay their maintenance fee on this date until their current permit expires). Maintenance fees would continue to apply to a permit until a Notice of Termination is effective as to a permit or permit coverage.	No change was made to the proposal; the section was adopted as proposed.	No change was made to the proposal; the section was adopted as proposed.
4VAC50-60-760	This section specifies methods of payment for fees. To reflect the future scenario whereby construction activity operators will receive permit coverage from qualifying local programs, a new subdivision (A)(2) was proposed to be added allowing for required fees for coverage under the General Permit for Discharges of Stormwater from Construction Activities to be submitted to the qualifying local program. In addition to the information currently required to be submitted with a fee, it was proposed that other information required by the local stormwater management program also be required to be included in any submittal.	No change was made to the proposal; the section was adopted as proposed.	No change was made to the proposal; the section was adopted as proposed.
4VAC50-60-770	This section contains provisions related to incomplete and late payments. A statement was proposed to be added to this section explaining that the Department or the qualifying local program, as applicable, shall provide notification to the applicant of any late payment. As opposed to the current language stating	The proposed language of the section is retained, with one minor amendment clarifying that the interest rate for late payments is that set forth in section 58.1-15 of the Code of Virginia.	It was noted that the two interest rates set forth in the proposed section (§6621(a)(2) of the Internal Revenue Code and §58.1-15 of the Code of Virginia) differed. The intended rate is that found in §58.1-15 of the Code of Virginia.

	that a 10 percent late payment fee <u>may</u> be charged to any delinquent account, the proposed section specified that such a late payment fee <u>shall</u> be charged to any delinquent account. Finally, the proposed section stated that both the Department and the qualifying local program are entitled to all remedies available under the Code of Virginia in collecting any past due amount. The allowance for collection of attorney’s fees and administrative costs has been removed.		
4VAC50-60-780	This section governs deposit and use of fees that are collected. Additional language was proposed in this section requiring that all fees collected by a qualifying local program be subject to accounting review and be used solely to carry out the qualifying local program’s responsibilities under the Stormwater Management Act and regulations. Instead of the current statement regarding the percentage of funds that are to be remitted to the Treasurer of Virginia by a local program, the proposed language for this section required that 28% of the total revenue generated within a qualifying local program’s jurisdiction be submitted on a monthly basis to the State Treasurer, unless that amount is otherwise collected electronically. This 28% was developed based on data compiled regarding the actual costs of the Department’s responsibilities associated with oversight of and technical assistance to a qualifying local program. Finally, it was noted that if a qualifying local program reduces or waives any fee due, the qualifying local program shall still be responsible for submitting the 28% portion that would be due if such a reduction or waiver did not occur.	The proposed language of the section is retained, with one amendment stating that any fee increases established by a qualifying local program beyond the base fees established by Part XIII shall not be subject to the fee distribution formula of this section.	As qualifying local programs may be authorized to establish higher fees than those established in Part XIII, and as 28% of the base fee amount is still deemed sufficient to allow the Department to carry out its responsibilities associated with the qualifying local program, all amounts above the base fee are intended to go wholly to the qualifying local program.
4VAC50-60-790	While the intent of this section remained the same as under the current regulations, amendments were proposed to simplify the language utilized. The proposed language simply related that the fees for individual permits, general permit coverage, permit or registration statement modification, or permit transfers are considered separate actions and shall be assessed separate fees, as applicable.	No change was made to the proposal; the section was adopted as proposed.	No change was made to the proposal; the section was adopted as proposed.
4VAC50-	This section establishes the fee schedule for new	No change was made to the	No change was made to the proposal; the

60-800	VSMP permit and coverage issuance for municipal separate storm sewer systems (MS4s). Fees for MS4s were proposed to be amended. Large and Medium MS4s would pay a reduced fee, while fees for Small MS4s would increase. A statement is proposed to be included that all MS4s that apply for joint coverage must each pay the appropriate fee. These changes are based upon the actual workload incurred by the Department associated with these permits.	proposal; the section was adopted as proposed.	section was adopted as proposed.
4VAC50-60-810	Fees for major modifications for Large and Medium MS4 permits were proposed to be reduced by over 50 percent. Fees for major modifications to Small MS4 permits were proposed to be increased. These changes are based upon the actual workload incurred by the Department associated with such modifications.	No change was made to the proposal; the section was adopted as proposed.	No change was made to the proposal; the section was adopted as proposed.
4VAC50-60-820	This section establishes fees related to individual permits and coverage under the General Permit for Discharges of Stormwater from Construction Activities. The proposed section left the current permit fee structure in place until a qualifying local program is adopted in a jurisdiction or until the Department has developed an approved program that it will administer within the jurisdiction, except that a fee of \$200 was proposed for sites under 1 acre in size. The current fees would also remain in place for a state agency that is administering a program in accordance with approved annual standards and specifications. Upon adoption of a qualifying local program or a Department-administered program within a jurisdiction, a new set of fees would become applicable to regulated construction activities within that jurisdiction. These fees are based on the calculated workload associated with each type of permit, and 50% of the fee would be due at the time that a plan is submitted for review, with the other 50% being due prior to the issuance of coverage under the General Permit for Discharges of Stormwater from Construction Activities. The total fee can be determined by reviewing the chart contained in this section and ranges from \$290 for sites of a size between 2,500 square feet and ½ of an acre to \$9,600	The proposed language is retained, with the following amendments: 1. In instances where the proposed section made reference to state agency projects with approved annual standards and specifications, an addition was made to clarify that federal agencies may also have approved annual standards and specifications. 2. In the table, numbers “1” and “5” have been written out where they existed. 3. An amendment was made that allows for “no more than” 50% of the “base” fee to be due at the time that a stormwater management plan or an initial stormwater management plan is submitted for review. This differs from the proposal, which called for 50% of the fee (then the total fee), to be due at that time. The	The practice of federal agencies submitting annual standards and specifications is existing practice and is intended to be retained. Use of the amended fees established for state agencies with annual standards and specifications is appropriate for application to federal agencies as well. Numerous localities commented that their internal practices would be detrimentally affected by an outright requirement that fees be collected in two 50% installments. The revised language allows discretion for qualifying local programs in timing their fee collection timeframes, while still providing assurance to the regulated community that full fee payment will not be required upfront, where services to be rendered are far in the future (and, in some case, may not occur if a project does not proceed to construction). References to the “base” fee are added, as section 700 of the regulations now allows for qualifying local programs to establish higher fees with approval of the Board.

	for sites where land disturbance is equal to or greater than 100 acres. In addition, a fee of \$15,000 was proposed for any individual permit for construction activities. Such a permit would be specifically drawn to a particular site, as opposed to the General Permit, which contains terms applicable to all sites.	remaining “base fee balance” is due prior to the issuance of coverage under the General Permit for Discharges of Stormwater from Construction Activities.	
4VAC50-60-825	This proposed section established fees for modification and transfer of permits associated with construction activities. These fees would not become applicable until a qualifying local program or a Department-administered local program is in place within a jurisdiction, and further would not apply to a state agency which is administering a project in accordance with approved annual standards and specifications. Fees are calculated based upon the actual estimated workload associated with modification and transfer, and range from \$20 for permits applicable to sites of a size between 2,500 square feet and ½ acre to \$700 for sites where land disturbance is equal to or greater than 100 acres. Additionally, the fee for modification or transfer of an individual permit for discharges associated with construction activities is proposed to be set at \$5,000.	The proposed language is retained, with an amendment that provides that where a permit modification results in an increase in the acreage covered, the difference between the initial permit coverage fee that would have been due had the full acreage of the project been permitted at the outset and the permit fee that was in fact paid is due in addition to the permit modification fee. An amendment is also made to include “federal” agencies in instances where state agencies operating under annual standards and specifications are referenced.	It was observed that the proposed modification structure allowed for a portion of a land disturbing project to be covered, and then a modification to be sought at a lesser fee to expand the area covered under the permit coverage and thus avoid a full permit fee at the outset. The revision to the proposal prevents this from occurring and ensures that the local program receives full funding for services that it provides. The practice of federal agencies submitting annual standards and specifications is existing practice and is intended to be retained. Use of the amended fees established for state agencies with annual standards and specifications is appropriate for application to federal agencies as well.
4VAC50-60-830	This section addresses maintenance fees for permits and permit coverages. The proposed section increased maintenance fees for MS4 permits based upon estimates of the actual workload incurred in the administration of these permits during years subsequent to permit issuance. Additionally, maintenance fees were proposed to be established for permits applicable to construction activities, again based upon actual workload estimates. These fees would not become applicable until a qualifying local program or a Department-administered local program exists within a jurisdiction, and they likewise would not apply to a state agency that is administering a project in accordance with approved annual standards and specifications. As with other fees proposed in Part XIII, these fees were graduated based upon the size of the	The language of the proposed section is retained, with an amendment to the maintenance fee for small MS4 General Permit coverages (from \$4,000 to \$3,000). An amendment is also made to include “federal” agencies in instances where state agencies operating under annual standards and specifications are referenced.	Several comments were received from small MS4 General Permit coverage holders expressing the concern that the proposed maintenance fee applicable to them was excessive. While the proposed fee was based upon the actual projected needs of the Department related to those permit coverages, a 25% fee reduction was adopted in order to address this concern. The practice of federal agencies submitting annual standards and specifications is existing practice and is intended to be retained. Use of the amended fees established for state agencies with annual standards and specifications is appropriate

	involved project, and for sites covered under the Board's General Permit, range from \$50 for a site of 2,500 square feet to ½ acre to \$1,400 for sites where land disturbance exceeds 100 acres. A maintenance fee of \$3,000 was proposed for Individual Permits for Discharges from Construction Activities.		for application to federal agencies as well.
4VAC50-60-840	The proposed section would allow for minor adjustments (not to exceed 4%) to be made to all permit fees on an annual basis according to the consumer price index for all-urban consumers published by the United States Department of Labor. The revised fee schedule will be posted to the Department's website and distributed to each qualifying local program. This will allow fees to keep pace with increasing administration costs without the need for a separate regulatory action, although such an action would be necessary for any larger changes to the fee structure.	The proposed section was not adopted.	The proposed annual adjustment to the fees was not deemed appropriate and was not adopted.
FORMS	This action proposes a revised Permit Application Fee Form (DCR199-145) to reflect changes in the permit fee structure proposed by this regulatory action.	Amendments were made to the proposed form to reflect the final regulations that were adopted.	Final revisions to the amendments necessitated some amendments to the proposed form. Also, as some fees will not become applicable until the adoption of a local stormwater management program within a jurisdiction, and as a separate regulatory action will be conducted to adopt a general permit for use by these programs, and the fee form can be further amended through that action, these fees were not included in the final form in order to prevent confusion.

Public comment

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

Summary of Public Comment on the Proposed Part XIII regulatory action

During the 60-day public comment period that ran from June 22, 2009 to August 21, 2009, 3,421 comments were received on the two proposed stormwater regulatory actions (Parts I, II, III and Part XIII). The comments included those received during the five public hearings held around the state, those submitted on Virginia’s Regulatory Town Hall website, and those directly provided to the Department of Conservation and Recreation on behalf of the Board. A majority of the comments received were supportive of the proposed regulations; however, several key issues were raised that have been addressed in the final regulations.

Additionally, since the Board proposed the regulations in September of 2008, Department staff have attended well over 50 meetings with key stakeholder groups and individuals to gain additional insight into areas of concern and to discuss potential solutions. Interested citizens were also given the opportunity to provide comments to the Board regarding the draft final regulations at the Virginia Soil and Water Conservation Board’s September 17, 2009 (key issues) and October 5, 2009 meetings. This process has been extremely open and responsive as we have worked hard to balance the necessary water quality improvements with potential economic concerns.

Information regarding the public comments received during the comment period on the proposed regulations is as follows:

- Public hearings/informational meetings were held as follows:

June 30 th	Hungry Mother State Park	8 in attendance and 3 spoke
July 1 st	Augusta County Government Center	48 in attendance and 22 spoke
July 7 th	City of Manassas	59 in attendance and 28 spoke
July 9 th	City of Hampton	62 in attendance and 22 spoke
July 14 th	Virginia General Assembly Building	~165 in attendance and 60 spoke
		342 135

- During the comment period a total 3,421 public comments were received. These included:

- 2,032 from a door to door campaign
- 135 from the public hearings
- 443 from the Regulatory TownHall (Parts I, II, and III, and Part XIII)
- 171 individualized stakeholder letters
- 639 action alerts (3 groups – CBF, VCN, Realtors)
- 1 EPA

Comments received during the comment period on the proposed regulations from June 22, 2009 to August 21, 2009 are as follows:

Comment Table and Responses for Stormwater Management Regulations (Part XIII regulatory action)

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Stormwater Regulation Comments Part XIII

General

Commenter	Comment	Agency response
Kate Wofford (Shenandoah Valley Network); Wendy Hamilton (Preserve Frederick); Megan Gallagher	The proposed fee structure will ensure that localities are not burdened should they choose to implement a local program.	The regulations establish fees that are sufficient to enable the administration of a local stormwater management program. These fees are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit administration responsibilities. The 72% of the fee that is allocated to a qualifying local program represents 100% of the projected needs of the qualifying local program. In accordance with the revised regulations, localities may both establish a lesser fee or a higher fee with the approval of the Board if different fee levels are necessary.
Patrick Felling (The Potomac Conservancy); Vincent Poling (Shenandoah County)	Ensure that the all efforts are made to ensure localities that choose to administer their own program have sufficient funding.	In addition to the explanation of the fees made in response to the comment above, the regulations have been revised to allow localities to establish a higher fee level than that set in the regulations with the approval of the Board.
Ella Jordan (Albemarle County); Randy Bartlett (Virginia Municipal Stormwater Association); Sanford Wanner (James City County);	Ensure that fees adequately fund local governments' responsibility for establishing the local program and the costs associated with ongoing inspections and regulation of stormwater facilities.	In addition to the explanation of the fees made in response to the comment above, the regulations have been revised to allow localities to establish a higher fee level than that set in the regulations with the approval of the Board.
Katherine Nunez (Northampton County)	Fee schedule appears to be very high and provides no consideration for economic conditions from a rural locality to an urban locality; unclear what would be the fee requirements from a locality to DCR in terms of an oversight fee or what local fee needs to be established in order to run the program.	The regulations establish fees that are sufficient to enable the administration of a local stormwater management program. These fees are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit administration responsibilities. The 72% of the fee that is allocated to a qualifying local program represents 100% of the projected needs of the qualifying local program. In accordance with the revised regulations, localities may both establish a lesser fee or a higher fee with the approval of the Board if different fee levels are necessary.
James Shelton (Hands Across the Lake)	70% of the fees would help Chesterfield have funding for this program.	The regulations establish fees that are sufficient to enable the administration of a local stormwater management program. These fees are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit

		administration responsibilities. The 72% of the fee that is allocated to a qualifying local program represents 100% of the projected needs of the qualifying local program. In accordance with the revised regulations, localities may both establish a lesser fee or a higher fee with the approval of the Board if different fee levels are necessary.
William Johnston (City of Virginia Beach); Bruce Goodson (Hampton Roads Planning District Commission); Amar Dwarkanath (City of Chesapeake); Nikhil Deshpande (Rinker Design Associates, P.C.); Donald Rissmeyer (Virginia Section American Society of Civil Engineers Stormwater Technical Committee)	During economic downturn, state as well as local governments will be ill prepared to fund the administration of this program.	The regulations establish fees that are sufficient to enable the administration of a local stormwater management program. These fees are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit administration responsibilities. The 72% of the fee that is allocated to a qualifying local program represents 100% of the projected needs of the qualifying local program. In accordance with the revised regulations, localities may both establish a lesser fee or a higher fee with the approval of the Board if different fee levels are necessary.
Amar Dwarkanath (City of Chesapeake)	Permit fees should be set at a level which will cover administration of the permit program over the duration of the permit only.	The established fees only address the local program’s responsibilities associated with permit administration and do not include fees beyond the duration of the permit.
Millard Stith (Chesterfield County)	Detailed assessments on the long-term costs for operation and maintenance of structural stormwater treatment facilities need to be communicated to the localities so that they may plan for their needs in the future.	In addressing fees, the addition of fees associated with long-term maintenance was considered. This was also discussed with the TAC. The conclusion was reached that it would not be appropriate to include fees for long-term maintenance and inspections in the permit fees. Localities may use other mechanisms to fund long term inspection programs, and long term maintenance requirements are intended to be the responsibility of the facility owner.
Tom Carr (City of Roanoke); Donald Rissmeyer (Virginia Section American Society of Civil Engineers Stormwater Technical Committee)	System double charges some properties; same property is being permitted twice, once under the permit for the common plan of development and a second time under the development of the individual lot.	The manner in which a site is developed will influence the total amount of fees paid. Sites that are developed completely under an initial permit coverage will not need additional permit coverages. However, where a site is developed in several stages (for example, where the initial plan for the site only addresses the roadways and infrastructure but does not address the development of any lots), additional permit coverages (and thus fees) may be necessary in the future, as these are different projects.
Stephen Carter (Nelson County)	Proposed fee schedule is excessive for a rural county.	The regulations establish fees that are sufficient to enable the administration of a local stormwater management program. These fees

		are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit administration responsibilities. The 72% of the fee that is allocated to a qualifying local program represents 100% of the projected needs of the qualifying local program. In accordance with the revised regulations, localities may both establish a lesser fee or a higher fee with the approval of the Board if different fee levels are necessary.
Alan Wood (American Electric Power)	Initial, modification, and maintenance fee schedules seem excessive and it is unclear how these collected fees will be used other than to fund a local program.	The regulations establish fees that are sufficient to enable the administration of a local stormwater management program. These fees are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit administration responsibilities. In accordance with the revised regulations, localities may both establish a lesser fee or a higher fee with the approval of the Board if different fee levels are necessary.
Mark Trostle	Will the new fees be added onto the existing fees?	The new fees will replace the existing fees.
David Warriner	Proposed fee increase in fees is astronomical; suggest keeping existing fee but make them annual rather instead of for the life of the permit.	The regulations establish fees that are sufficient to enable the administration of a local stormwater management program. These fees are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit administration responsibilities. Implementation of a lesser fee such as that suggested by the comment would not provide sufficient funding for a local stormwater management program.
Matthew Snow	Associate the fee directly to the stormwater runoff rate so that efforts to remediate the core issues cause an equal reduction; please make fee inclining so that there is not a large processing fee and a tiny amount actually related to runoff.	The regulations establish fees that are sufficient to enable the administration of a local stormwater management program. These fees are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit administration responsibilities. The fees are scaled based on the acreage of the project.

Fees are Inadequate

Commenter	Comment	Agency response
Wilkie Chaffin (Virginia Association of Soil and Water Conservation Districts); Mike Flagg (Hanover County)	Acreage-based fee schedule may not reflect true costs of administration; acreage may be low but due to density and complexity of plans, the costs of plan review and inspections may be high.	The regulations establish fees that are sufficient to enable the administration of a local stormwater management program. These fees are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and

		<p>permit administration responsibilities. The 72% of the fee that is allocated to a qualifying local program represents 100% of the projected needs of the qualifying local program. In accordance with the revised regulations, localities may both establish a lesser fee or a higher fee with the approval of the Board if different fee levels are necessary.</p>
<p>Wilkie Chaffin (Virginia Association of Soil and Water Conservation Districts); Vincent Poling (Shenandoah County); Gena Hanks (Pulaski Board of Supervisors); R. Cellell Dalton (Wythe County); Marvin Moss (Fluvanna County); Mike Flagg (Hanover County); Dave Norris (City of Charlottesville)</p>	<p>Does not consider the program administrator's long-term costs of inspection responsibilities for permanent BMPs.</p>	<p>In addressing fees, the addition of fees associated with long-term maintenance was considered. This was also discussed with the TAC. The conclusion was reached that it would not be appropriate to include fees for long-term maintenance and inspections in the permit fees. Localities may use other mechanisms to fund long term inspection programs, and long term maintenance requirements are intended to be the responsibility of the facility owner. It is also notable that inspection responsibilities related to BMPs that are located on and treat the runoff from an individual residential lot have been relaxed in Part III of the regulations.</p>
<p>Selena Cuffee-Glenn (City of Suffolk); Marvin Moss (Fluvanna County); Judy Ownby (Cumberland County); John Miniclier (Charles City County); Tom Carr (City of Roanoke); David Moorman (Botetourt County)</p>	<p>Concern that fees will not adequately offset the cost of implementing and maintaining the new program requirements.</p>	<p>The regulations establish fees that are sufficient to enable the administration of a local stormwater management program. These fees are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit administration responsibilities. The 72% of the fee that is allocated to a qualifying local program represents 100% of the projected needs of the qualifying local program. In accordance with the revised regulations, localities may both establish a lesser fee or a higher fee with the approval of the Board if different fee levels are necessary.</p>
<p>Jimmie Jenkins (Fairfax County); Anthony Romanello (Stafford County)</p>	<p>At a minimum, statewide fees need to be higher to account for the added costs associated with the revised technical criteria.</p>	<p>The regulations establish fees that are sufficient to enable the administration of a local stormwater management program. These fees are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit administration responsibilities. The 72% of the fee that is allocated to a qualifying local program represents 100% of the projected needs of the qualifying local program. In accordance with the revised</p>

		regulations, localities may both establish a lesser fee or a higher fee with the approval of the Board if different fee levels are necessary.
Vincent Poling (Shenandoah County)	Small projects that require the minimum amount of resource expenditures, fees proposed will not cover the department's expense; large projects may cover initial costs but goes to a deficit if any additional resources are used.	The regulations establish fees that are sufficient to enable the administration of a local stormwater management program. These fees are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit administration responsibilities. The 72% of the fee that is allocated to a qualifying local program represents 100% of the projected needs of the qualifying local program. In accordance with the revised regulations, localities may both establish a lesser fee or a higher fee with the approval of the Board if different fee levels are necessary.
Daniel Campbell (Floyd County); Joe Wilder (Frederick County); Julie Jordan (Orange County); Gena Hanks (Pulaski Board of Supervisors); Archie Fox (Warren County); D. Dane Poe (Lee County); Kenneth Eades (Northumberland County); Michael Altizer (Roanoke County); Ronald Roark (Nottoway County)	Through the costs of developing a new stormwater program, as well as the required long-term maintenance and inspection of BMPs, the county will incur new costs, which will not be offset by the proposed permit fees.	The regulations establish fees that are sufficient to enable the administration of a local stormwater management program. These fees are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit administration responsibilities. The 72% of the fee that is allocated to a qualifying local program represents 100% of the projected needs of the qualifying local program. In accordance with the revised regulations, localities may both establish a lesser fee or a higher fee with the approval of the Board if different fee levels are necessary. It is also notable that inspection responsibilities related to BMPs that are located on and treat the runoff from an individual residential lot have been relaxed in Part III of the regulations.
S. Charles Krause (SPOTT-ON Consulting, LLC); Andy Fulgham (Atlantic Logowear); William Schooley (Clark Nexsen Architecture); Harrison Taylor (Thompson Education Direct); Cliff Bickford (BB&T); Fred Carerras; Betsy Blair (CJW Chippenham Hospital); Will Davis	Localities will need to fund long term program costs with general fund dollars or stormwater utilities. Sources of funding for long term administration of state administered areas is unknown.	In addressing fees, the addition of fees associated with long-term maintenance was considered. This was also discussed with the TAC. The conclusion was reached that it would not be appropriate to include fees for long-term maintenance and inspections in the permit fees. Localities may use other mechanisms to fund long term inspection programs, and long term maintenance requirements are intended to be the responsibility of the facility owner. It is also notable that inspection

<p>(Chesterfield County); Tracy Kemp Stallings (CJW Johnston Willis Hospital); Phil Hess; John Bennett (Timmons); Nancy Coggins (Priority Corporate Housing); Greg Lupsha (Keller Williams Realty); Malcolm Randolph, Jr. (CB Richard Ellis); Brenda Fisher (CB Richard Ellis); David Crawford (CB Richard Ellis); Robert Black (CB Richard Ellis); Frank Beale (PGC Properties, LLC); Frank Beale (Invincia Insurance Solutions); Debi Girvin (Chesterfield Business Council of the Greater Richmond Chamber of Commerce); Stuart Grattan (Grattan Associates); John Bennett (Timmons Group); Fred Norman (Chesterfield Business Council and the Greater Richmond Chamber of Commerce)</p>		<p>responsibilities related to BMPs that are located on and treat the runoff from an individual residential lot have been relaxed in Part III of the regulations.</p>
<p>Glenn Brooks</p>	<p>Fees should be charged for each review submission.</p>	<p>The fee schedule was developed with the concept that a plan would require a minimum of two reviews before being finally approved. No more than fifty percent of the required permit fee is to be collected at the time of initial submission in order to cover the costs of these reviews. The remainder of the fee, which would primarily be utilized to cover the costs of the local program's responsibilities after the time of permit coverage issuance, is then required to be paid prior to the issuance of permit coverage. In accordance with the revised regulations, localities may both establish a lesser fee or a higher fee with the approval of the Board if different fee levels are necessary.</p>

Oversight

Commenter	Comment	Agency response
Randy Bartlett (Virginia Municipal Stormwater Association)	A reasonable cap expressed in dollars per year (e.g., \$10,000 per year) should be established for DCR's oversight of each delegated locality.	The fees were established based on the responsibilities estimated to be associated with each individual permit coverage. As the number of permit coverages for a locality increases, so will the Department's responsibilities related to oversight and technical assistance within that locality. Therefore, it is not appropriate to set a cap on the amount of fees that will be established for program oversight by the Department within an individual locality.
Lalit Sharma (City of Alexandria)	Concern over remitting 28% since City would be administering all aspects of permit if designated a qualifying local program; smaller percentage, if any, would be more appropriate with a quarterly, semi-annual or annual timeframe for remittance instead of the proposed monthly basis.	The 28% to be remitted to the Department covers the costs of the Department's oversight and technical assistance related to the local program. This oversight and technical assistance must be carried out statewide. It is intended that the payment of fees will be handled through the Stormwater Management Enterprise website, which will automatically distribute the funds to the qualifying local program and Department, thus removing the need for a monthly submission.
David Nunnally (Caroline County)	What benefit or value does the local program and citizen receive for the 28% remittance to DCR? DCR should provide a periodic report to localities to show how those fees are being used and the water quality benefits derived from those expenditures. The report should include an 'Activity Report of DCR Staff Activities' for each locality, at least on a quarterly frequency.	The 28% to be remitted to the Department covers the costs of the Department's oversight and technical assistance related to the local program. The regulations also establish program review process to be utilized by the Department, which will be funded through the 28% of fees collected. It is notable that the 72% to be retained by the qualifying local program still represents 100% of what is estimated to be necessary to fully fund the qualifying local program's needs.
Anthony Romanello (Stafford County); Glenn Brooks	Feel that remitting 28% of the collected fees to DCR for oversight is excessive; all funds should be kept by the county for own stormwater needs; if DCR must collect funds, recommend their portion be much lower than 28%.	It is notable that the 72% to be retained by the qualifying local program still represents 100% of what is estimated to be necessary to fully fund the qualifying local program's needs. Moreover, the revised regulations allow for the establishment of higher fee levels with the approval of the Board.
Hans Klinger	Why will the state take a percentage of the permit fees in localities where the locality handles compliance with the regulations?	The 28% to be remitted to the Department covers the costs of the Department's oversight and technical assistance related to the local program. The regulations

		<p>also establish program review process to be utilized by the Department, which will be funded through the 28% of fees collected. It is notable that the 72% to be retained by the qualifying local program still represents 100% of what is estimated to be necessary to fully fund the qualifying local program's needs.</p>
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Start-up funding

Commenter	Comment	Agency response
<p>Dennis Atwood; Vincent Poling (Shenandoah County)</p>	<p>Maybe 3 months of funding could be provided to localities for start-up funding.</p>	<p>The regulations do not include monies for start up funding, as the permit fee schedule establishes fees associated with actual responsibilities for permit administration. The Department is considering the provision of a limited number of grant opportunities to assist with program start-up if funding is available.</p>
<p>Julie Jordan (Orange County); Gena Hanks (Pulaski Board of Supervisors); R. Cellell Dalton (Wythe County); Selena Cuffee-Glenn (City of Suffolk); Archie Fox (Warren County); John Miniclier (Charles City County); D. Dane Poe (Lee County); Kenneth Eades (Northumberland County); Michael Altizer (Roanoke County); Ronald Roark (Nottoway County)</p>	<p>Virginia should provide adequate funding assistance to all localities for the development of programs.</p>	<p>The regulations do not include monies for start up funding, as the permit fee schedule establishes fees associated with actual responsibilities for permit administration. The Department is considering the provision of a limited number of grant opportunities to assist with program start-up if funding is available.</p>
<p>Regina Williams (City of Norfolk)</p>	<p>Request an increased fee percentage during the initial period to recoup initial costs associated with programs brought on line prior to fee collection beginning.</p>	<p>The regulations do not include monies for start up funding, as the permit fee schedule establishes fees associated with actual responsibilities for permit administration. The Department is considering the provision of a limited number of grant opportunities to assist with program start-up if funding is available.</p>
<p>Joan Comanor (Lord Fairfax Soil and Water Conservation District)</p>	<p>Recommend that the state provide a source of start up funds for local programs.</p>	<p>The regulations do not include monies for start up funding, as the permit fee schedule establishes fees associated with actual responsibilities for permit administration. The Department is considering the</p>

		provision of a limited number of grant opportunities to assist with program start-up if funding is available.
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Local ability to charge fees

Commenter	Comment	Agency response
Bruce Goodson (Hampton Roads Planning District Commission); Joe Lerch (Virginia Municipal League)	Maintain current statewide fee schedule for VSMP permit and allow local programs to permit and adopt their own fee schedule for the review, inspection and maintenance of BMPs.	The regulations establish fees that are sufficient to enable the administration of a local stormwater management program. These fees are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit administration responsibilities. The 72% of the fee that is allocated to a qualifying local program represents 100% of the projected needs of the qualifying local program. In accordance with the revised regulations, localities may both establish a lesser fee or a higher fee with the approval of the Board if different fee levels are necessary.
Jimmie Jenkins (Fairfax County); Vincent Poling (Shenandoah County); Diane Hoffman (Northern Virginia Soil and Water Conservation District)	Change proposed fee structure to require a base permit fee that will be returned to the state to fund its portion of the program, and allow localities to be able to set fees in addition to the base fee based on the costs associated with their individual programs.	Revisions have been made to the regulations that allow for a locality to establish higher or lower fee levels with the approval of the Board. It is of note that the established fees are believed sufficient to enable the administration of a local stormwater management program and state oversight of the local program. These fees are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit administration responsibilities.
Normand Goulet (Northern Virginia Regional Commission); Coleman Speece (Virginia Association of Planning District Commissions); Lalit Sharma (City of Alexandria); Mike Flagg (Hanover County)	Fees should be developed by the locality and be based on the actual cost to administer the program; fees should be re-evaluated annually during the local budget process; will provide sufficient funding to manage a program that includes local term maintenance.	The Code of Virginia requires the Board to establish a statewide fee schedule and that the fees be sufficient to cover the costs of the administration of the VSMP program. The fees established by the regulations are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit administration responsibilities. The 72% of the fee that is allocated to a qualifying local program represents 100% of the projected needs of the qualifying local program. In accordance with the revised

		regulations, however, localities may both establish a lesser fee or a higher fee with the approval of the Board if different fee levels are necessary.
Jimmie Jenkins (Fairfax County); Mark Trostle	If no local variation in fees, regional variation would be next best solution.	The regulations have been revised to allow localities to establish a higher fee level than that set in the regulations with the approval of the Board. The regulations also include the ability for a lower fee level to be established with the approval of the Board. Thus, local adjustment of fees will be possible.
Randy Bartlett (Virginia Municipal Stormwater Association)	Revise 4VAC50-60-820, 825, and 830 to recognize the option of additional local fees at levels sufficient to implement the regulations beyond the proposed base statewide fees.	The regulations have been revised to allow localities to establish a higher fee level than that set in the regulations with the approval of the Board.
Randy Bartlett (Virginia Municipal Stormwater Association)	Add "nothing in this chapter shall be construed as limiting the authority of any locality to impose local stormwater-related fees" to 4VAC50-60-700.	Clarifying language has been added to section 700 that addresses the request of the comment.
Neville Simon (City of Richmond)	There is no provision to allow locality to increase fees.	The regulations have been revised to allow localities to establish a higher fee level than that set in the regulations with the approval of the Board.
Thanh Dang (City of Harrisonburg); Timothy Mitchell (City of Lynchburg); James Campbell (Virginia Association of Counties); Anthony Romanello (Stafford County); Stephen Carter (Nelson County)	Local fee authority should be preserved as a means of adequately funding the required local implementation activities.	The regulations have been revised to allow localities to establish a higher fee level than that set in the regulations with the approval of the Board. The regulations also include the ability for a lower fee level to be established with the approval of the Board. Thus, local adjustment of fees will be possible.
Regina Williams (City of Norfolk); Amar Dwarkanath (City of Chesapeake)	Allow the local government the ability to implement the program at their own schedule; establish fee structure so that payment and issuance of the permit is prior to land disturbing activity, not during site plan review.	Implementation of a qualifying local program must occur according to the schedule set forth in §10.1-603.3 of the Code of Virginia. The permit fees established by the regulations correspond to the projected actual costs of plan review and permit administration. No more than fifty percent of these fees are collected at the time of initial plan submission in order to cover the costs associated with plan review. The remaining funds, which are intended to primarily address responsibilities that begin when permit coverage is issued, is due prior to the time of permit coverage issuance.
James Campbell (Virginia Association of Counties)	Concerned variations in costs among different regions and localities across the state have not been adequately	The regulations have been revised to allow localities to establish a higher fee level than that set in the

	considered.	regulations with the approval of the Board. The regulations also include the ability for a lower fee level to be established with the approval of the Board. Thus, local adjustment of fees will be possible.
Glenn Brooks	No ability for a locality to recover costs from a program that goes beyond the state minimum.	The regulations have been revised to allow localities to establish a higher fee level than that set in the regulations with the approval of the Board. The regulations also include the ability for a lower fee level to be established with the approval of the Board. Thus, local adjustment of fees will be possible.

General Comments (continued)

Ray Burkholder (Balzer and Associates); Dale Mullen (Louisa County)	Concern over enforcement of fees at the local and state level; need more public education about fees	Regulated land disturbing activities must pay the required fee to obtain permit coverage. Permit coverage will not be issued without the payment of the required fee. The Department recognizes that outreach will be necessary to educate the public concerning the new regulations, and is prepared to conduct such outreach as may be shown necessary.
Vincent Poling (Shenandoah County)	What is a periodic assessment? No information provided for how fees will be adjusted and on what basis will an adjustment be considered?	The regulations set no specific timeframe for periodic adjustments; rather, adjustments will be made as shown necessary. The revised regulations do allow for higher or lower fee levels to be established by qualifying local programs with Board approval, allowing for local adjustment of the fees as well.
Bruce Goodson (Hampton Roads Planning District Commission); Normand Goulet (Northern Virginia Regional Commission); Lalit Sharma (City of Alexandria); James Campbell (Virginia Association of Counties); John Hudgins (York County); Anthony Romanello (Stafford County); Tom Carr (City of Roanoke); Kathryn Moore (City of Manassas Park)	Should consider more reasonable cost increase to small MS4s that will not be as burdensome as the proposed 3000% increase (permit application fee from \$600 to \$4,000 and annual fee of \$4,000: for a 5-year permit \$600 to \$20,000).	The fees established by the regulations are based upon review of the actual costs of program administration by the Department. The current fee levels do not fund full implementation of the MS4 program, and lower fee levels would not be sufficient to fund the Department's responsibilities associated with each small MS4 general permit coverage. Based on public comment, the fees associated with small MS4 general permit coverages have been adjusted.
Jimmie Jenkins (Fairfax County)	Phrase "sites or areas within common plans of development or sale..." is confusing and needs to be	The phrase "common plan of development or sale" is defined in section 10 of the regulations. "Areas within

	clarified; could be read that "within common plans of development" would be applied to sites as well as areas.	common plans of development or sale" includes all projects of the size indicated within the fee table that occur within an area that meet the definition of common plan of development or sale.
Marvin Moss (Fluvanna County); Judy Ownby (Cumberland County); Monte Lewis (E.D. Lewis & Associates)	Concern regarding the staffing necessary to administer the program; small rural counties do not anticipate sufficient activity to warrant full time staff members dedicated to stormwater permitting and inspection.	Localities may cooperatively work with other localities, soil and water conservation districts, or other entities to carry out their responsibilities where a regional approach may be advantageous. This authority is included in §10.1-603.3 of the Code of Virginia. It is also notable that the revised regulations allow for the establishment of higher or lower fees within a locality with the approval of the Board where it can be shown that an adjusted fee is necessary to allow a locality to carry out its responsibilities.
Marvin Moss (Fluvanna County); Judy Ownby (Cumberland County); Monte Lewis (E.D. Lewis & Associates)	If county selects DCR permitting, concern that DCR staffing will not be sufficient to enable it to conduct the required activities in a timely fashion.	Where the Department operates a local stormwater management program within a locality, the fees established are believed to be sufficient to allow the Department to effectively carry out its responsibilities. All localities that are not required to adopt a qualifying local program by §10.1-603.3 of the Code of Virginia have the option to adopt a qualifying local program if local administration is determined to be a preferable option.
David Nunnally (Caroline County)	The fee schedule appears to have 'gaps.' What is the fee for small construction activity, more than one acre?	The fee table has been reviewed and no gap found. Fees for sites over one acre vary depending on the total acreage of the project in accordance with the table; for example, the fee for a project disturbing one acre or more but less than five acres is \$2,700.
David Nunnally (Caroline County)	How is a 'site' different from 'areas within a common plan of development'?	For purposes of the fee table, a "site" is the area disturbed by a project where that project is not located within a common plan of development or sale. The term "common plan of development or sale" is defined in section 10 of the regulations.
David Nunnally (Caroline County)	Fees should also consider the duration and impact of the activity. The proposed fee schedule is not commensurate with impacts, services, etc, and creates a disincentive for cooperation with local programs.	Nothing within these regulations prevents a locality from establishing authorized fees that may be related to stormwater management but that are not related to VSMP permit administration, and clarifying language has been added to section 700 to this effect. The regulations establish fees that are sufficient to enable

		the administration of a local stormwater management program in accordance with the regulations. These fees are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit administration responsibilities. The 72% of the fee that is allocated to a qualifying local program represents 100% of the projected needs of the qualifying local program. In accordance with the revised regulations, localities may both establish a lesser fee or a higher fee with the approval of the Board if different fee levels are necessary.
Tom Carr (City of Roanoke)	Unclear how the fees can be used; section 700 and section 780 are contradictory in that the latter rules out the use of associated revenue for any use other than the implementation and operations of the local program directed at ensuring compliance with the technical criteria related to land disturbing activities; MS4 programs still unfunded; so long as localities agree to use revenues collected from their stormwater management programs, solely for the ongoing operation of those same programs, the state should not mandate how localities use those same revenues.	Section 780 specifies that all fees collected by a qualifying local program pursuant to this chapter shall be subject to accounting review and shall be used solely to carry out the qualifying local program's responsibilities pursuant to Part II and Part III A of this chapter. Thus, the fees collected related to permits for construction activities are intended to be utilized solely to fund the administration of a qualifying local program by the locality. Fees have not been established at levels to allow for their use in other aspects of stormwater management that may be carried out by a locality. However, nothing within these regulations prevents a locality from establishing authorized fees that may be related to stormwater management but that are not related to VSMP permit administration, and clarifying language has been added to section 700 to this effect.
Glenn Brooks	Not clear on whether the proposed fees are just for the stormwater management regulations or if they would incorporate E&S fees.	The fees established by the regulations solely address the VSMP (stormwater management) program. They do not include nor displace fees for other programs, such as Erosion and Sediment Control.
	Limits the locality's ability to implement tax and fee incentives to attract business and industry for reasons of economic development	Section 700 of the regulations allows for the establishment of a lower fee by a qualifying local program where it can be shown that the qualifying local program can satisfactorily carry out its responsibilities with the lower fee level. This does require Board approval. Thus a locality may establish lower fee levels.
Alan Wood (American Electric Power)	Unclear what the individual process is, which entity determines whether an individual permit is necessary and	Whether individual permits are required is explained by other provisions of the VSMP regulations not subject to

	what the conditions of an individual permit will be, etc.	revision as a part of this regulatory action. All individual permits will be issued by the Board, or by the Department on behalf of the Board.
David Warriner	Who makes the determination that a project is complete? Most projects reach 95% stabilization at occupancy, but the last 5% can be problematic.	The operator determines when a project is complete. This decision is subject to consideration by the local stormwater management program and is finalized with the acceptance of a Notice of Termination for the project.

4VAC50-60-740 Exemptions

Alan Wood (American Electric Power)	Section A.1. – define minor amendments and eliminate at the discretion of the local stormwater management program	Minor amendments require no fee to be paid and it is believed appropriate to allow latitude to local programs to determine what types of amendments will be considered “minor”.
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4VAC50-60-750 Due dates for Virginia Stormwater Management Program (VSMP) Permits

Alan Wood (American Electric Power)	4VAC50-60-1160.A., states that a notice of termination is effective at midnight on the date submitted; request clarification of this point so that maintenance fee charges do not apply up to authority inspection of the site.	Section 830 explicitly states that maintenance fees apply only until permit coverage is terminated.
Debra Brand (Jefferson Lab)	Clear that individual permit maintenance fee remains the same until a new permit is issued. Is this true for general permit? When do maintenance fees go into effect?	Maintenance fees remain the same for general permit coverage each year as specified in the maintenance fee schedule. Maintenance fees become applicable when coverage under the general permit starts to be issued for construction activities by the qualifying local program. The maintenance fee for coverage under the small MS4 general permit becomes effective immediately upon effectiveness of these regulations.

4VAC50-60-800 Fee schedules for VSMP Municipal Separate Storm Sewer System new permit issuance

Debra Brand (Jefferson Lab)	Don't understand the difference between an individual small or a general permit small MS4.	Individual permits are developed separately for each permittee on a case by case basis. General permits are developed through regulation and cover many permittees whose discharges are similar. Currently, all
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		small MS4s are covered under the general permit developed for small MS4 discharges. Individual permits for small MS4s remain possible, but to date, all small MS4s have been able to be sufficiently covered under the general permit.
Debra Brand (Jefferson Lab)	Why are fees less for the large and medium operators?	The fees established by the regulations are based upon review of the actual costs of program administration by the Department. The current fee levels do not fund full implementation of the MS4 program, and lower fee levels would not be sufficient to fund the Department's responsibilities. However, it is notable that contrary to the comment, most fees for large and medium operators have not decreased.
Debra Brand (Jefferson Lab)	What is the benefit for the large increase in small MS4 fees?	The fees established by the regulations are based upon review of the actual costs of program administration by the Department. The current fee levels do not fund full implementation of the MS4 program, and lower fee levels would not be sufficient to fund the Department's responsibilities associated with each small MS4 general permit coverage. Based on public comment, the fees associated with small MS4 general permit coverage have been evaluated and adjusted.
Roger Dietrich	Don't understand the permit fees for MS4s; graduated scale for general and small individual permits; why medium and large same cost; maybe go from \$16,000 to \$20-24,000	The fees established by the regulations are based upon review of the actual costs of program administration by the Department. The current fee levels do not fund full implementation of the MS4 program, and lower fee levels would not be sufficient to fund the Department's responsibilities associated with each MS4 permit coverage.

4VAC50-60-820 Fees for an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities

Christine Porter (Department of the Navy)	Allows for a reduced fee if DCR annually approves standards and specifications related to land disturbing activities; request this option be available to DOD facilities too.	Language has been added to section 820 that allows for the reduced fee to apply where a federal agency has approved standards and specifications.
John Hudgins (York County)	Significant additional cost for small construction activities of 2,500 square feet to 1 acre	The regulations establish fees that are sufficient to enable the administration of a local stormwater

		management program. These fees are based on survey data and cost estimates associated with the workload related to plan review, inspection, enforcement, and permit administration responsibilities. The fees are scaled such that smaller projects incur a lesser fee; however, the imposition of a fee for all regulated projects is necessary for the local program and the Department to be able to carry out their responsibilities.
John Hudgins (York County)	Fee for single lot within a development seems excessive since the development is usually still under permit when lots are constructed.	If a permit for a development includes the development of a lot, that lot does not require a separate permit coverage. Where, however, the permit for a greater development does not include the development of a lot (and thus, the plans for that development do not include stormwater management considerations for the lot, etc.), the development of the lot is a separate project and will require separate plan review, permit administration, inspection, and enforcement. Therefore, a separate permit coverage and fee is necessary.
John Hudgins (York County)	Requirement that 50% of the fees be paid during the plan review process is an accounting issue.	It is intended that the payment of fees will be handled through the Stormwater Management Enterprise website, which will automatically distribute the funds to the qualifying local program and Department, thus eliminating accounting concerns for qualifying local programs.
Alan Wood (American Electric Power)	Reasoning behind why a state agency administering a project in accordance with approved annual standards and specifications is exempted from permit fees is unclear; understanding that annual standards and specifications satisfy the requirements of 4VAC50-30 and not those set forth in 4VAC5-60-1170.	A state agency that conducts projects under its own approved annual standards and specifications conducts its own plan review and inspections. Thus, the local stormwater management program does not incur the costs of these items and it would be inappropriate to charge the state agency the full permit fee.

4VAC50-60-825 Fees for the modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities

John Hudgins (York County)	Unclear how and when modification fees would apply if a plan changes area of disturbance due to review comments prior to plan approval.	Modification fees only apply to projects which have obtained coverage under a VSMP permit (which can only be obtained after a stormwater management plan is approved). Therefore, amendments prior to plan approval are not subject to a modification fee. However,
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		<p>if the change in disturbed area changes the fee level that would be applicable to the project (i.e., a site that was initially thought to disturb 9 acres is revised to disturb 11 acres), the project will be subject to the fee level commensurate with its disturbed area (in the above example, the project would be subject to a \$4,500 fee instead of the initial \$3,400 fee).</p>
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4VAC50-60-830 Permit maintenance fees

David Warriner	<p>How will the permit holder be notified that annual fee is due – letter, email, both?</p>	<p>Permit holders will be notified that the annual fee is due. This may be accomplished by letter, email, or other means.</p>
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4VAC50-60-840 Annual increase in fees

John Hudgins (York County)	<p>Does not seem appropriate or fair to state that there will be no decrease in fees given the current economy.</p>	<p>Section 840 of the regulations has been deleted.</p>
David Warriner	<p>Do not like the annual increase on the fee that is linked to the cost index.</p>	<p>Section 840 of the regulations, which included the annual increase linked to the cost index, has been deleted.</p>

Summary of Public Comment on the Final Part XIII action

Following the Board’s adoption of final regulations related to Part XIII on October 5, 2009, the Board also immediately suspended the final regulations and called for an additional 30-day public comment period on the final Part XIII regulations as well as the final Parts I, II, and III regulations that were also adopted and suspended on that date. During this additional public comment period (held between October 26, 2009 and November 25, 2009), 207 comments were received on the combined regulatory actions. Most comments related to the Part I, II, and III regulations.

Comments received during the comment period on the final Part XIII regulations from October 26, 2009 to November 25, 2009 are as follows:

Comment Table and Responses for Stormwater Management Regulations (Part XIII Regulatory Action)

Joe Lerch (Virginia Municipal League); Randy Bartlett (Virginia Municipal Stormwater Association)	Support revision to allow local program to establish higher fees if approved by the Board	The provision allowing for a local program to establish higher fees has been retained.
Joe Lerch (Virginia Municipal League); Randy Bartlett (Virginia Municipal Stormwater Association); Dwight Farmer (Hampton Roads Planning District Commission)	Supports the \$1,000 reduction but fees for MS4 general permit should be further reduced given current economic climate	The reduction in the fees for the MS4 general permit has been retained. The remaining fee is necessary to fully support the Board’s responsibilities in administering these permits.
Donna Travis (J and D Builders); Michael Stonehill (Hour Homes, Inc.)	Against any increase in fees relating to development; impossible to continue to develop single family homes as a small developer; market not strong enough to handle cost increases	The fees contained in Part XIII are calculated to be those necessary to support program implementation, as directed by the Code of Virginia. Many single family residence construction projects are exempt from the requirements of these regulations, including fees. For those that are subject to the regulations and the fees, the fees are scaled based on acreage disturbed and in the case of many smaller sites do not represent a large increase from the fees charged today.

All changes made in this regulatory action

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

The following chart provides a summarization of the changes to the existing regulations:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC50-60-700		This section notes that the Stormwater Management Act authorizes the establishment of a statewide fee schedule for stormwater management, and that Part XIII of the VSMP regulations (4VAC50-60-700 through 4VAC50-60-840) establishes the fee assessment and collection systems.	<p>Additional explanatory language is added to this section to describe the elements that were considered in developing the revised fees and administrative charges for Part XIII. These elements include plan review, permit review and issuance, inspections, enforcement, program administration and oversight, and database management. Fees are also established for permit maintenance, modification, and transfer.</p> <p>Language is also added to this section that would allow the Board to authorize a qualifying local program (i.e., a locality that is authorized to administer a stormwater management program within its jurisdiction) to charge fees lower than set out in this Part if it can be demonstrated that the qualifying local program can carry out its responsibilities under a lower fee level. Similarly, a qualifying local program may establish greater fees with the approval of the Board where it can be demonstrated that such greater fees are necessary to properly administer the qualifying local program.</p> <p>The fees established by this Part are related to the VSMP program, and nothing in this Part prohibits a locality from establishing other local fees authorized by the Code of Virginia related to stormwater management within its jurisdiction.</p> <p>Finally, language is added explaining that the Department will periodically assess the revenue generated by the fees established to determine if adjustments are necessary.</p>
4VAC50-60-710		This existing section contains definitions for the terms "permit	This section is deleted in its entirety. The terms "permit applicant" and "permit application" are no longer used in Part XIII, and any terms needing definitions are

		applicant” and “permit application.”	defined in Part I of the VSMP regulations, which includes defined terms applicable to all parts of the regulations.
4VAC50-60-720		This section states the legal authority for the fees established in Part XIII.	No substantive change is made to this section. The words “pursuant to” are deleted in order to improve sentence structure, and a Code of Virginia citation to §10.1-604.4 is corrected to §10.1-603.4.
4VAC50-60-730		This section describes who the fees established in Part XIII apply to. Under the current language, it is generically related that the fees apply to all non-exempt applicants for a new permit, as well as all non-exempt requests for a modification to a permit.	Additional explanatory language is added to this section. This language separates out persons seeking permit coverage (or modifications of existing permits) for municipal separate storm sewer systems (MS4s) and those seeking coverage for construction activities. An explanatory note is also added relating that persons whose coverage under the General Permit for Discharges of Stormwater from Construction Activities has been revoked must reapply for an individual permit.
4VAC50-60-740		This section explains that permittees who request minor modifications to their permits (as defined in 4VAC50-60-10), as well as those who have their permits modified or amended at the initiative of the permit-issuing authority, are exempt from permit fees.	Additional language is added to this section explaining that the exemption for modification or amendment at the initiative of the permit issuing authority does not apply to situations where there are errors in the registration statement identified by the local stormwater management program or errors related to the acreage of a site (which could cause a different level of fee to be due). Likewise, permit modifications that are made at the request of the permittee and that could result in additional plan review by a local stormwater management program are not exempt.
4VAC50-60-750		This section states that all permit application fees are due on the day a permit application is submitted, and no application will be processed without payment of the required fee. Likewise, a fee for a major modification to a permit is due at the time that the application for the modification is submitted. Finally, permit maintenance fees are due by October 1 of each year.	Clarifying language is added to this section explaining that requests for a permit, permit modification, or general permit coverage shall not be processed until the required fees are paid. In a change from the current practice, maintenance fees for all permits to which they apply will now be due on the anniversary date of the permit, rather than on each October 1 (although MS4 operators who currently pay a fee that is due by October 1 will continue to pay their maintenance fee on this date until their current permit expires). Maintenance fees will continue to apply to a permit until a Notice of Termination is effective as to a permit or permit coverage.
4VAC50-60-760		As all permits and permit coverages are currently issued by the Department on behalf of the Board, this section explains that all fees shall be made payable to the Treasurer of Virginia and submitted to the Department. Subsection B of this section sets out information that must be included with	To reflect the future scenario whereby construction activity operators will receive permit coverage from qualifying local programs, a new subdivision (A)(2) is added allowing for required fees for coverage under the General Permit for Discharges of Stormwater from Construction Activities to be submitted to the qualifying local program. In addition to the information currently required to be submitted with a fee, it is established that other information required by the local stormwater management program also be required to be included in any submittal.

		every payment that is submitted.	
4VAC50-60-770		This section explains that all incomplete payments will be treated as nonpayments. Interest may be charged on any late payments, and a 10 percent late payment fee may be charged to any delinquent account. The permit issuing authority (under current circumstances, the Department on behalf of the Board) is entitled to all remedies available under the Code of Virginia in collecting any past due amount and may recover attorney's fees and other administrative costs.	A statement is added to this section explaining that the Department or the qualifying local program, as applicable, shall provide notification to the applicant of any late payment. As opposed to the current language stating that a 10 percent late payment fee <u>may</u> be charged to any delinquent account, the proposed section specifies that such a late payment fee <u>shall</u> be charged to any delinquent account. Finally, the section states that both the Department and the qualifying local program are entitled to all remedies available under the Code of Virginia in collecting any past due amount. The allowance for collection of attorney's fees and administrative costs has been removed.
4VAC50-60-780		This section states that all fees collected by the Department or the Board shall be deposited into the Virginia Stormwater Management Fund. Whenever the Board has delegated the administration of a local stormwater management program to a locality, no more than 30% of the total revenue generated within that locality shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund.	Additional language is included in this section requiring that all fees collected by a qualifying local program be subject to accounting review and be used solely to carry out the qualifying local program's responsibilities under the Stormwater Management Act and regulations. Instead of the current statement regarding the percentage of funds that are to be remitted to the Treasurer of Virginia by a local program, the new language for this section requires that 28% of the total revenue generated within a qualifying local program's jurisdiction be submitted on a monthly basis to the State Treasurer, unless that amount is otherwise collected electronically. This 28% was developed based on data compiled regarding the actual costs of the Department's responsibilities associated with oversight of and technical assistance to a qualifying local program. It is noted that if a qualifying local program reduces or waives any fee due, the qualifying local program shall still be responsible for submitting the 28% portion that would be due if such a reduction or waiver did not occur. Finally, it is noted that any fee established by the qualifying local program beyond the base fees established in this Part shall not be subject to the fee distribution formula (and thus go wholly to the qualifying local program).
4VAC50-60-790		This section explains that each permit application, application for reissuance of a permit, application for a major modification to a permit, or revocation and reissuance of a permit is treated as a separate action and will be assessed a separate fee.	While the intent of this section remains the same, amendments are made to simplify the language utilized. The new language simply relates that the fees for individual permits, general permit coverage, permit or registration statement modification, or permit transfers are considered separate actions and shall be assessed separate fees, as applicable.
4VAC50-60-		This section sets out fees for MS4	Fees for MS4 permit issuance are amended. Large and Medium MS4s will pay a

800		permit issuance. There is no statement as to whether MS4s applying for joint permits must each pay the full required fee.	reduced fee, while fees for Small MS4s will increase. A statement is included that all MS4s that apply for joint coverage must each pay the appropriate fee. These changes are based upon the actual workload incurred by the Department associated with these permits.
4VAC50-60-810		This section sets out fees for major modifications to MS4 permits.	Fees for major modifications for Large and Medium MS4 permits are reduced by over 50 percent. Fees for major modifications to Small MS4 permits are proposed to be increased. These changes are based upon the actual workload incurred by the Department associated with such modifications.
4VAC50-60-820		This section sets out fees for coverage under the Board's General Permit for Discharges of Stormwater from Construction Activities. Since the Board has received responsibility for the Virginia Stormwater Management Program (VSMP), all permitted construction activities have received coverage under this permit. Currently, sites of a size greater than 5 acres pay a fee of \$500, sites between 1 and 5 acres pay a fee of \$300, and there is no fee for sites of a size less than 1 acre.	The revised section leaves the current permit fee structure in place until a qualifying local program is adopted in a jurisdiction or until the Department has developed an approved program that it will administer within the jurisdiction, except that a fee of \$200 is adopted for sites under 1 acre in size. The current fees will also remain in place for a state or federal agency that is administering a program in accordance with approved annual standards and specifications. Upon adoption of a qualifying local program or a Department-administered program within a jurisdiction, a new set of fees will become applicable to regulated construction activities within that jurisdiction. These fees are based on the calculated workload associated with each type of permit, and no more than 50% of the base fee will be due at the time that a plan is submitted for review, with the remaining base fee balance being due prior to the issuance of coverage under the General Permit for Discharges of Stormwater from Construction Activities. The total fee can be determined by reviewing the chart contained in this section and ranges from \$290 for sites of a size between 2,500 square feet and ½ of an acre to \$9,600 for sites where land disturbance is equal to or greater than 100 acres. In addition, a fee of \$15,000 is established for any individual permit for construction activities. Such a permit would be specifically drawn to a particular site, as opposed to the General Permit, which contains terms applicable to all sites.
	4VAC50-60-825	The current regulations do not establish fees for the modification or transfer of permits associated with construction activities.	This section establishes fees for modification and transfer of permits associated with construction activities. These fees will not become applicable until a qualifying local program or a Department-administered local program is in place within a jurisdiction, and further will not apply to a state or federal agency which is administering a project in accordance with approved annual standards and specifications. Fees are calculated based upon the actual estimated workload associated with modification and transfer, and range from \$20 for permits applicable to sites of a size between 2,500 square feet and ½ acre to \$700 for sites where land disturbance is equal to or greater than 100 acres. Additionally, the fee for modification or transfer of an individual permit for discharges associated with construction activities is set at \$5,000. Finally, it is expressly noted that where a permit modification results in an increase in the acreage

			covered, the difference between the initial permit coverage fee that would have been due had the full acreage of the project been permitted at the outset and the permit fee that was in fact paid is due in addition to the permit modification fee.
4VAC50-60-830		The current regulations establish fees for permit maintenance. Initial permit fees alluded to above provide funding for permit administration for the first year for which a permit is held. Maintenance fees provide funding for administration during additional years in which permit coverage is still needed. Currently, fees are set for MS4 permits, but no maintenance fee is due for a permit for construction activities.	The revised section increases maintenance fees for MS4 permits based upon estimates of the actual workload incurred in the administration of these permits during years subsequent to permit issuance. Additionally, maintenance fees are established for permits applicable to construction activities, again based upon actual workload estimates. These fees will not become applicable until a qualifying local program or a Department-administered local program exists within a jurisdiction, and they likewise do not apply to a state or federal agency that is administering a project in accordance with approved annual standards and specifications. As with many other fees in Part XIII, these fees are graduated based upon the size of the involved project, and for sites covered under the Board's General Permit, range from \$50 for a site of 2,500 square feet to ½ acre to \$1,400 for sites where land disturbance exceeds 100 acres. A maintenance fee of \$3,000 is set for Individual Permits for Discharges from Construction Activities.
	FORMS	A number of forms are associated with the regulations for use by permit applicants and permittees.	This action proposes a revised Permit Application Fee Form (DCR199-145) to reflect changes in the permit fee structure proposed by this regulatory action. Also, as some fees will not become applicable until the adoption of a local stormwater management program within a jurisdiction, and as a separate regulatory action will be conducted to adopt a general permit for use by these programs, and the fee form can be further amended through that action, these fees were not included in the final form in order to prevent confusion.

Regulatory flexibility analysis

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 regulations establish fees, and do not establish compliance or reporting requirements or standards. It is recognized that many of the developers likely to be subject to the fees established for construction activities may be small businesses. However, any lowering of the fee levels would result in insufficient funding of the local stormwater management and MS4 programs. In general, the fees have not been a subject of concern to the development community as they recognize the cost of doing business for localities and the state.

Family impact

Please assess the impact of the proposed 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.

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 and control of water quantity does have public health and safety benefits that have an indirect impact on families.