



Notice of Intended Regulatory Action (NOIRA) 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	In accordance with the Administrative Process Act exemption requirements specified in §2.2-4006 A9, amend, modify or delete provisions of the regulations related: to the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (4 VAC 50-60-1200 et seq.) [Part XV], to the definitions in the Virginia Stormwater Management Regulations [Part I] necessary to maintain consistency in definitions as a result of changes to the General Permit, and to the associated form(s) [FORMS].
Date this document prepared	February 21, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this regulatory action is to consider amendments to the applicable portions of Virginia Soil and Water Conservation Board's Virginia Stormwater Management Program (VSMP) Permit Regulations in order develop a new General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (small MS4s). Regulations developed under the federal Clean Water Act (33 USC §1251 et seq.) and §10.1-603.1 et seq. of the Code of Virginia require that VSMP permits be effective for a fixed term not to exceed five years (§10.1-

603.2:2 (B)). The State Water Control Board (Department of Environmental Quality) issued the existing 5-year General Permit on December 9, 2002 thus necessitating the promulgation of a new General Permit by the December 9, 2007 expiration date. The changes authorized by the Virginia Soil and Water Conservation Board may include, but are not be limited to, incorporating water quality bench mark goals for impaired waters and TMDLs including monitoring requirements, water quality and quantity standards, local program technical criteria, consistency requirements with other regulations such as Erosion and Sediment Control, chemical application and handling requirements, General Permit coverage public noticing and hearing procedures, and minimum prescriptive measures regarding public notification and reporting.

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 number(s), 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 General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems is a permit issued through regulation by the Virginia Soil and Water Conservation Board pursuant to the federal Clean Water Act and the Virginia Stormwater Management Law.

Requirements set forth in the federal Clean Water Act (33 USC §1251 et seq.), formerly 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).

Section 402 of the Clean Water Act (33 USC §1251 et seq.) allows the federal Environmental Protection Agency (EPA) to authorize states to administer the NPDES permit program. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program. The Virginia Soil and Water Conservation Board was designated responsibility for this program by Chapter 372 of the 2004 Virginia Acts of Assembly (HB 1177) with transfer of program authority from State Water Control Board and DEQ to the Virginia Soil and Water Conservation Board and DCR approved by the EPA effective January 29, 2005.

The basis for this regulation under state law is the Virginia Stormwater Management Law, §10.1-603.1 et seq. of the Code of Virginia. Specifically, §10.1-603.2:1 requires the Virginia Soil and Water Conservation Board (Board) to permit, regulate, and control stormwater runoff in the Commonwealth. In carrying out its responsibilities, the Board may issue, deny, revoke, terminate, amend and enforce permits for the control of stormwater discharges from Municipal Separate Storm Sewer Systems (subsection 1); adopt regulations (subsection 2); approve and periodically review local stormwater management programs and management programs

developed in conjunction with a municipal separate storm sewer permit (subsection 3); 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. Additionally, §10.1-603.2:2 (A) states that it shall be unlawful to cause a stormwater discharge from an MS4 except in compliance with a permit.

On September 28, 2006, the Board authorized the filing of a NOIRA related to the General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems. This authorization directed authorized the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to prepare and submit a NOIRA to solicit recommendations and to consider changes the VSMP regulations related to the General Permit in accordance with the Administrative Process Act exemption requirements specified in §2.2-4006 A9, the Virginia Register Act and other applicable technical rule making protocols. The authorization extended to, but was not limited to, the drafting and filing of the NOIRA, the holding of public meetings, if deemed necessary, the development of the draft proposed regulation and other necessary documents and documentation, as well as, the coordination necessary to gain approvals from the Attorney General, the Virginia Registrar of Regulations and the U.S. Environmental Protection Agency.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The EPA Phase 2 stormwater regulations, published in the Federal Register on December 8, 1999, and incorporated into the VSMP Permit Regulation (4VAC 50-60-10 et seq.) effective January 29, 2005, require small MS4s in urbanized areas to apply for VSMP permit coverage. Small MS4's include, but are not limited to, systems owned or operated by localities and municipalities, federal facilities (such as military bases), state facilities (such as VDOT, prisons, large hospitals, etc.), and universities. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

This proposed regulatory action is needed to allow small MS4s to reapply for permit coverage by the regulatory deadline of September 9, 2007, which is 90 days prior to the expiration of the current General Permit unless permission for a later date has been granted by the Board (4VAC 50-60-1240, SECTION III (M)).

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

This is an amendment of an existing General Permit regulation (General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (4 VAC 50-60-1200 et seq.) [Part XV]). In addition to other amendments, this amendment process will consider amendments that will update and modify registration statement requirements, define the minimum standards for a regulated small MS4, clarify the documentation requirements for a stormwater management program, address impairments listed in the 2006 305(b)/303(d) Water Quality Assessment Integrated Report or TMDLs by requiring implementation of certain best management practices (BMPs) and by including certain impairment monitoring requirements, establish program evaluation requirements, establish reporting schedules, develop additional forms to provide for standardized reporting and modification requests, and adopt reporting requirements based on VAHU6 watershed codes.

The amendments may further establish standard language for control of stormwater discharges from small MS4's through the development, implementation and enforcement of a stormwater management program to reduce the impacts of the stormwater discharges on the receiving streams to the maximum extent practicable. The General Permit may require that the small MS4 implement best management practices (BMPs) to control stormwater discharges, and that the small MS4 develop and implement measurable goals for each of the following six minimum control measures:

- (1) Public education and outreach on stormwater impacts including, but not limited to, the establishment of minimum education and outreach criteria.
- (2) Public involvement/participation: topics to be considered include, but are not necessarily limited to, a requirement for additional public review and comment opportunities necessary to address federal court decisions and a provision of clarification between public involvement BMPs and public education BMPs.
- (3) Illicit discharge detection and elimination: topics to be considered include, but are not necessarily limited to, a requirement to submit a map of all known MS4 outfalls identified as a requirement of the permittee's existing permit by VAHU6 watershed and impairment, a requirement for the permittee to continue to update the MS4 outfall map, a requirement for the permittee to conduct visual outfall inspections, and a requirement that the permittee delineate the land use and drainage area upstream of individual outfalls.
- (4) Construction site stormwater runoff control: topics to be considered include, but are not necessarily limited to, a requirement for consistency with the Virginia Erosion and Sediment Control Regulations (4VAC50-50-10 et seq.) and a clarification of the relationship between the Virginia Erosion and Sediment Control Regulations and the MS4 General Permit for regulated state agency MS4s.
- (5) Post-construction stormwater management in new development and redevelopment: topics to be considered include, but are not necessarily limited to, a requirement for consistency with other parts of the Virginia Stormwater Management Program Permit Regulations (4VAC50-60-10 et

seq.), an expansion of best management practices (BMPs) tracking and reporting requirements, and a clarification of reporting requirements.

(6) Pollution prevention/good housekeeping for municipal operations: topics to be considered include, but are not necessarily limited to, a requirement for nutrient management plans on certain properties where nutrients are applied and a requirement for the development of site-specific pollution prevention plans for municipally-owned facilities with a potential for significant pollutant loading.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Federal and state requirements that permit stormwater discharges from small MS4s provide only one alternative for compliance with the regulations: DCR can issue individual VSMP permits to each small MS4. Due to the number of small MS4s that are required to be permitted, it is not practical to issue individual permits to each of these facilities; it is anticipated that, consistent with prior practice, individual permits will only be issued to those sites that do not qualify for coverage under the new General Permit. The substance, format, and procedures of these regulations will ultimately depend upon approval from the U.S. Environmental Protection Agency, which has national oversight of all Clean Water Act programs.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The Virginia Stormwater Management Program (VSMP) Permit Regulations (Chapter 60) can be found online at <http://leg1.state.va.us/000/reg/TOC04050.HTM>.

The Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Persons desiring to submit written comments pertaining to this notice may do so by mail, the internet, or facsimile. Comments pertaining to this notice should be sent to the Regulatory Coordinator at: Virginia Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219. Comments may also be emailed to the Regulatory Coordinator at: regcord@dcr.virginia.gov. Comments may also be faxed to the Regulatory Coordinator at: (804) 786-6141. All written comments must include the name and address of the commenter (email addresses would also be appreciated). In order to be considered, comments must be received by 5:00 p.m. on the date established as the close of the comment period.

The Department as authorized by the Board intends to utilize a modified public participatory approach in accordance with the Administrative Process Act exemption requirements specified in §2.2-4006 A9 to these regulatory amendments. Following publication of the proposed regulation in the Virginia Register of Regulations, the Department as authorized by the Board will hold a public hearing to provide opportunity for public comment. Notice of the hearing will be posted in the Calendar of Events section of the Virginia Register of Regulations and be posted on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov). Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Department will be utilizing a modified participatory approach in accordance with the Administrative Process Act exemption requirements specified in §2.2-4006 A9. The Department, as authorized by the Board, is forming a Technical Advisory Committee composed of relevant stakeholders to assist in the development of the proposed regulations. Persons interested in participating on the advisory committee should provide their name, address, telephone number, email address, and the name of the organization they represent to the Agency contact person for consideration by no later than 5:00 p.m. on the last day of the comment period.

Family impact

Assess the potential 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, improvement of water quality does have positive public health and safety benefits that have an indirect impact on families.