



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 A8, 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], and to other necessary related sections, including but not limited to, Part I definitions necessary to maintain consistency in definitions as a result of changes to the General Permit, 4 VAC 50-60-400 related to Small municipal separate sewer systems, and the VSMP General Permit Registration Statement form, or the creation of new forms, which are incorporated by reference [FORMS].
Date this document prepared	March 6, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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 to reauthorize and amend the 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 existing 5-year General Permit became effective on July 9, 2008; thus necessitating the regulatory promulgation of a new General Permit before the July 8, 2013 expiration date.

The changes authorized by the Virginia Soil and Water Conservation Board may include, but are not be limited to, incorporating water quality requirements for impaired waters and Total Maximum Daily Loads (TMDLs) including monitoring requirements, consistency requirements with other regulations such as Erosion and Sediment Control, chemical application and handling requirements, and minimum prescriptive measures regarding public notification and reporting. The permit will also consider implementation of new stormwater management technical criteria for post development (including compliance with water quality and quantity standards set out in Part II of these regulations and compliance with Part III local program technical criteria of these regulations) and permit requirements for compliance with the Chesapeake Bay TMDL.

Legal basis

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

The 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 Act.

The Virginia Soil and Water Conservation Board's state authority to promulgate regulations and to develop permits for the control of stormwater discharges from Municipal Separate Storm Sewer Systems is found in the Virginia Stormwater Management Act in § 10.1-603.2:1 as follows:

§ 10.1-603.2:1. Powers and duties of the Virginia Soil and Water Conservation Board.

In 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 [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.** The Board may:

1. **Issue**, deny, **amend**, revoke, terminate, and enforce **permits for the control of stormwater discharges from Municipal Separate Storm Sewer Systems** and land disturbing activities.

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.

6. **Adopt rules governing the procedure of the permit issuing authority with respect to: (i) hearings; (ii) the filing of reports; (iii) the issuance of permits and special orders; and (iv) all other matters relating to procedure; and to amend or cancel any rule adopted.** Public notice of every rule adopted under this section shall be by such means as the permit issuing authority may prescribe but must be consistent with the Administrative Process Act (§ 2.2-4000 et seq.).

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.

§ 10.1-603.2:2. Permits.

A. It shall be unlawful to cause a stormwater discharge from an MS4 or a land disturbing activity except in compliance with a permit issued by a permit issuing authority.

Requirements set forth in the federal Clean Water Act (33 USC §1251 et seq.) 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 National Pollutant Discharge Elimination System (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. The Virginia Soil and Water Conservation Board was designated responsibility for the Municipal Separate Storm Sewer System permitting program by Chapter 372 of the 2004 Virginia Acts of Assembly (HB 1177) with approved by the EPA effective January 29, 2005.

In accordance with these state authorities and under the auspices of federal designated authorities to the state, on May 24, 2011, the Board authorized the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to prepare and submit a NOIRA to consider changes and solicit recommendations; in accordance with the Administrative Process Act exemption requirements specified in §2.2-4006 A8 [see below], the Virginia Register Act and other applicable technical rule making protocols; related to the Part XV of the Board's Virginia Stormwater Management Program Permit Regulations [entitled General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems] and other necessary related sections, including but not limited to, Part I definitions, 4 VAC 50-60-400 related to Small

municipal separate sewer systems, and the VSMP General Permit Registration Statement form which is incorporated by reference. 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.

§ 2.2-4006. Exemptions from requirements of this article. [Chapter 40 - Administrative Process Act]

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, **(c) Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.) of Title 10.1,** and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission **(i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.**

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.

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 existing 5-year General Permit became effective on July 9, 2008; thus necessitating the regulatory promulgation of a new General Permit before the July 8, 2013 expiration date. This proposed regulatory action is needed to allow small MS4s to reapply for permit coverage by the regulatory deadline of April 10, 2013, which is 90 days prior to the expiration of the existing General Permit, unless permission for a later date is been granted by the Board (4VAC 50-60-1240, SECTION III (M)).

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. 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.

The proposed action is a reauthorization of, and an amendment to, 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 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 2010 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. The permit will also consider implementation of new stormwater management technical criteria for post development and permit requirements for compliance with the Chesapeake Bay TMDL. The regulations may address pollutant reduction requirements to meet the statutory requirement of Maximum Extent Practicable and additional reductions necessary to comply with water quality standards and TMDLs.

The General Permit may require that the small MS4 implement additional 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 HUC 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 whether the agency is seeking comments on the intended regulatory action, including 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.

Please also indicate, to the extent known, if standing or ad hoc advisory panels (also known as regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate whether 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 Agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this 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 Agency 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation. [It should be noted that permit coverage under this regulation is only required of and issued to government owned/ operated facilities although secondary fiscal impacts based on how an MS4 decides to implement its permit requirements may extend to businesses and families.]

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

The Department will be utilizing a modified participatory approach in accordance with the Administrative Process Act exemption requirements specified in §2.2-4006 A8. The Department, as authorized by the Board, is forming a Regulatory Advisory Committee composed of relevant stakeholders to make recommendations to the Director and the Board on potential regulatory changes. 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 midnight on the last day of the public comment period.

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. A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and other necessary locations. Both oral and written comments may be submitted at that time.

Promulgation of this permit regulation is also subject to additional federal NPDES public notification requirements relevant to the promulgation of general permits.

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. It also should be noted that permit coverage under this regulation is only required of and issued to government owned/ operated facilities although secondary fiscal impacts based on how an MS4 decides to implement its permit requirements may extend to businesses and families.