



Exempt Action Proposed Regulation Agency Background Document

Agency name	Virginia Soil and Water Conservation Board
Virginia Administrative Code (VAC) citation	4VAC50-60
Regulation title	Virginia Stormwater Management Program (VSMP) Permit Regulations
Action title	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 Permit for Discharges of Stormwater from Construction Activities (4VAC50-60-1100 et seq.) [Part XIV]
Document preparation date	March 20, 2013

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of The Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulatory action amends and reissues the General Permit for Discharges of Stormwater from Construction Activities (4VAC50-60-1100 et seq.) [Part XIV]. This action to update and reissue the General Permit is authorized under the federal Clean Water Act (33 USC §1251 et seq.) and the Stormwater Management Act (§10.1-603.2 et seq. of the Code of Virginia), which require that state permits be effective for a fixed term not to exceed five years. The existing five-year General Permit became effective on July 1, 2009; thus necessitating the promulgation of a new General Permit before the July 1, 2014 expiration date.

On February 26, 2013, the Virginia Soil and Water Conservation Board (Board) approved, authorized, and directed the filing of proposed regulations related to Part XIV (General Permit for Discharges of

Stormwater from Construction Activities) of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60) and other related sections as an exempt action. That authorization was related to those changes that are exempt from the Administrative Process Act pursuant to §2.2-4006 subsection A8 of the Code of Virginia. The Board's authorization extended to, but was not limited to, the posting of the approved action to the Virginia Regulatory Town Hall and the filing of the proposed regulations with the Virginia Registrar's Office and the U.S. Environmental Protection Agency, the holding of at least one public hearing, as well as the coordination necessary to gain approvals from the Office of the Attorney General, the Virginia Registrar of Regulations, and the U.S. Environmental Protection Agency.

The proposed general permit regulates stormwater discharges from construction activities. The term "construction activity" is defined in 4VAC50-60-10 as "...any clearing, grading or excavation associated with large construction activity or associated with small construction activity." This general permit authorizes discharges of stormwater from regulated construction activities to surface waters within the boundaries of the Commonwealth of Virginia and includes enhanced criteria for impaired and exceptional waters. The Board has determined that this category of discharges is appropriately controlled under a general permit, as the category of discharges to be included involves facilities with the same or similar types of operations that discharge the same or similar types of stormwater.

Regulation Summary

Global changes in this permit include:

- **Federal Effluent Limitation Guidelines (ELGs)** – In 2010, as a result of EPA rulemaking, new ELGs and new source performance standards to control the discharge of pollutants from construction sites became effective. This draft permit incorporates and clarifies these federal ELGs and source performance standards, which were previously established in Section II of the regulations.
- **References** – The proposed regulations ensure consistency with the other Agency regulations and with other permitting regulations of the Department of Environmental Quality by addressing discharges to surface waters rather than state waters. State waters will continue to be managed through state and local program implementation.
- **General Reorganization** – This draft removes regulatory sections that are no longer needed and reorganizes the current permit conditions for clarity and simplification.

The key elements of the amendments to each section of the proposed permit regulations include:

- **Section 1100: Definitions** – New definitions specific to this permit (Part XIV) relate to: a) "Immediately"; b) "Impaired Waters"; c) "Initiation of Stabilization Activities"; and d) "Measurable Storm Event." The draft removes the current definition of "Minimize" as the inclusion of this definition will be addressed in the final MS4 regulations that are scheduled to come before the Virginia Soil and Water Conservation Board for approval on March 27, 2013.
- **Section 1110: Purpose** – This section has been updated by removing unnecessary language stating that industrial permits are not covered in the regulation and by removing language related to the goal of this state permit.
- **Section 1120: Effective Date** - The draft regulation changes the general permit effective date from July 1, 2009 to July 1, 2014.
- **Section 1130: Authorization to Discharge** – Existing language has been clarified. Prior to commencing land disturbing activities, operators must continue to obtain approval of an erosion and sediment control plan and approval of a stormwater management plan. Approvals for emergency-related construction activities are addressed in the regulation.

This section also contains language related to discharges to impaired waters, which would include surface waters located within a TMDL watershed. An operator is eligible for coverage under the construction general permit provided that the operator has developed, implemented, and maintained a stormwater pollution prevention plan (SWPPP). This section also specifies the types of nonstormwater discharges that are authorized by the general permit.

Further, the draft permit adds language that the Board will notify any operator if a discharge is not eligible for general permit coverage if the discharge violates the antidegradation policy in Virginia Water Quality Standards and discharges are not consistent with the assumptions and requirements of a TMDL approved prior to July 1, 2014. Finally, language is added to this section to provide for the continuation of general permit coverage obtained in 2009.

- Section 1140: Delegation of Authorities – This section of the regulations has been renamed and language has been rewritten to address a Board-approved VSMP authority’s authorization to: a) accept registration statements; b) collect fees; c) review and approve plans; and d) undertake permit compliance and enforcement, where applicable.
- Section 1150: State Permit Application – Language has been added to this section to require operators to provide registration information in an electronic database. Operators with coverage under the 2009 permit are required to submit a registration statement 90 days prior to the effective date of the general permit. Finally, language is also added to specify that discharges from construction activities permitted under a 2009 permit are considered unauthorized discharges in cases where there has been no continuance of a 2009 permit.
- Section 1160: Termination of Permit Coverage – Operators would be required to provide information in an electronic database provided by the Department. Furthermore, the notice of termination must also contain information regarding onsite and offsite control measures used to meet post-development stormwater quality criteria, information regarding perpetual nutrient credits, and information regarding long-term maintenance of permanent stormwater management facilities.
- Section 1170: General Permit – This part of the regulations contains three sections. Section I addresses Discharge Authorization and Special Conditions. Section II addresses the Stormwater Pollution Prevention Plan (SWPPP) and Section III addresses Conditions Applicable to All State Permits.

Specifically, the proposed regulation addresses the following in Section I:

- *A. Coverage* – The proposed permit addresses discharges related to new construction activities, previously covered construction activities, and emergency-related construction activities. Operators seeking general permit coverage must also identify support activities (e.g. concrete or asphalt batch plants, equipment staging yards, material storage areas, borrow areas) in each registration statement and language is added to ensure that all applicable state, federal, and local approvals are obtained for support activities.
- *B. Limitations on Coverage* – Existing language has been rewritten for clarification. Language prohibiting the discharge of floating solids and visible foam has been relocated to this section for clarity. This section also addresses limitations on coverage for both impaired and exceptional waters.
 - With regard to impaired waters, the draft permit has been revised to be consistent with the EPA Construction General Permit and to address conditions where permit coverage applies to discharges located within a TMDL watershed. The conditions include: a) identification of the impaired water(s); b) development of a SWPPP that minimizes applicable observed sources identified in the 2012 Water Quality Assessment Integrated Report required by the

Clean Water Act, minimizes pollutants of concern identified in a TMDL approved prior to July 1, 2014, and is consistent with the assumptions and requirements of all associated TMDL wasteload allocations when applicable; and 3) use of a SWPPP inspection schedule. The schedule provides that inspections shall occur:

- At least once every four days; or
- At least once every seven days and not later than 48 hours following any measurable storm event. (In the event that the measurable storm event occurs where there are more than 48 hours between normal working days, then the inspection shall take place on the next working day.)

These requirements apply to construction activities that:

- Are outside of Tidewater, Virginia that discharge to a surface water in the Chesapeake Bay watershed and disturb greater than or equal to 20 acres;
- Are inside of Tidewater, Virginia that discharge to a surface water in the Chesapeake Bay watershed and disturb greater than or equal to 10 acres;
- Discharge to a surface water located within a TMDL watershed other than the Chesapeake Bay watershed and disturb greater than or equal to 5 acres; and
- Discharge directly to an impaired water.

For discharges to impaired waters, operators must also provide for permanent or temporary soil stabilization and apply nutrients in accordance with manufacturer recommendations.

- With regard to new discharges to exceptional waters, the exceptional water(s) must be identified in the registration statement and the same SWPPP inspection schedule for impaired waters applies here. Provisions are also made for permanent or temporary soil stabilization.
- *C. Commingled Discharges* – Existing language has been clarified and continues to state that discharges authorized under the general permit may be commingled.
- *D. Prohibition of Nonstormwater Discharges* – Language has been updated for clarification purposes and to meet federal standards..
- *E. Authorized Nonstormwater Discharges* – Language has been updated for clarification purposes and to meet federal standards.
- *F. Termination of State Permit Coverage* – No changes have been proposed to this section.
- *G. Water Quality Protection* – Language has been updated to specifically state that the Department may take enforcement action if an operator’s discharge is compromising a water quality standard.

The proposed regulation addresses the following issues in Section II:

- *A.1. Stormwater Pollution Prevention Plan (SWPPP)* – The proposed regulations allow operators with construction activities that are part of a common plan of development and disturb less than one acre to utilize a SWPPP template provided by the Department. In addition, these operators would not have to provide a separate stormwater management plan if one has been prepared and implemented for the planned development.
- *A.2. SWPPP Contents* - This section has been reorganized for clarity and to address federally-required ELGs. Specifically, the section has now been reorganized into the following subsections:
 - a. General Information – Operators must submit: a) descriptive information about the construction activity; b) site plan information; and c) locations of control measures, surface waters, concentrated stormwater discharges, rain gauge information, and support activities.

- b. Erosion and Sediment Control Plan – This control plan or an agreement in lieu of a plan must be included in the SWPPP. The control plans must include a statement describing the maintenance responsibilities for the controls used at the construction site. Plans must adequately: 1) control stormwater runoff and discharges; 2) minimize steep slope disturbances, exposed and compacted soil, and sediment discharges, and 3) provide for natural buffers and for stabilization.
 - c. Stormwater Management Plan – This plan must be provided in accordance with VSMP regulations. Operators that are not required to obtain a stormwater management plan approved by a VSMP authority or are not required to adopt Department-approved annual standards and specifications shall submit a plan to the Department for review and approval prior to land disturbance.
 - d. Pollution Prevention Plan – These plans must: 1) identify potential pollutant-general activities; 2) provide location information for pollutant-generating activities; 3) identify commingled stormwater discharges; 4) identify person(s) responsible for pollution prevention activities; and 5) describe procedures and practices to prevent leaks and pollutant discharges and to minimize pollutant discharge. This plan shall also include procedures for providing pollution prevention awareness.
 - e. Applicable State or Local Programs – The draft regulation provides that certain general permit requirements may be fulfilled by incorporating other plans developed under the federal Clean Water Act or best management practice (BMP) programs that meet or exceed the requirements of the SWPPP.
 - f. Requirements for Discharges to Impaired Waters, Surface Waters Located with a TMDL Watershed, and Exceptional Waters – The SWPPP is required to: 1) identify impaired water(s) and exceptional waters where applicable and 2) address both permanent or temporary soil stabilization, the applications of nutrients in accordance with manufacturer's recommendations, and the use of modified inspection schedules where applicable.
 - g. Qualified Personnel- Information regarding qualified personnel conducting inspections is required.
 - h. Delegation of Authority - Any individuals and positions with delegated authority must be included in the SWPPP.
 - i. SWPPP Signature – SWPPPs must be signed in accordance with conditions in Section III of this draft permit.
- *B. SWPPP Modification, Updates and Records* – Operators shall amend the SWPPP to reflect changes in design, construction, operation, or maintenance that have a significant effect on the discharge of pollutants and when there is a determination that existing control measures are ineffective. SWPPP revisions must now identify only contractor(s) implementing and maintaining control measures. Updates shall be made no later than seven days following any SWPPP modifications and must include information regarding dates that grading activities or stabilization occurred, information regarding replaced or modified controls, changes regarding a property's legal control, and measures taken to prevent the reoccurrence of any prohibited discharge.
 - *C. Public Notification* – Upon commencement of land disturbance, operators shall maintain and prominently post near the main entrance of the construction activity the Notice of Coverage letter until the termination of permit coverage.
 - *D. SWPPP Availability* – Operators must continue to have a copy of the SWPPP available for use by those having project implementation responsibilities under the SWPPP. Furthermore, operators must continue to make the SWPPP available upon request to the Department, the VSMP authority or other authorized inspection entity, the EPA, Virginia Erosion and Sediment Control Program (VESCP) authorities, local government officials, or the operator of an MS4 receiving discharges from the construction activity. Under this draft regulation, the operator would no longer be required to make the SWPPP available to the public for inspection.

- *E. SWPPP Implementation* – The operator continues to be responsible for implementing the SWPPP and all updates to it until the permit is terminated.
- *F. Inspections* – On-site and off-site inspections continue to be required and must be conducted by qualified personnel identified by the operator in the SWPPP. Inspections other than those related to impaired or exceptional waters will be conducted every seven days or at least once every 14 days and no later than 48 hours following any measurable storm event. Provisions continue to be made for areas temporarily stabilized or subject to winter conditions and for representative inspections. Requirements for inspections include:
 - Recording the date and time and the amount of cumulative rainfall since the last inspection;
 - Recording information on any discharges occurring at the time of inspection;
 - Recording land disturbing activities occurring outside of the approved erosion and sediment control plan;
 - Inspecting for the installation of certain measures in compliance with erosion and sediment control plans, maintenance needs, and effectiveness of sediment discharge minimization;
 - Inspecting areas that have reached final grade or will remain dormant for more than 14 days for both initiation and completion of stabilization activities;
 - Inspecting for any evidence that an erosion and sediment control plan has not been properly implemented or is not meeting plan requirements;
 - Inspecting pollutant generating activities identified in the pollution prevention plan for proper implementation, maintenance, and effectiveness;
 - Identifying any pollutant generating activities not included in the pollution prevention plan; and
 - Identifying and documenting any evidence of pollutant discharge prohibited under the conditions in this draft permit.

Inspection reports must also be prepared documenting: a) the date and time of the inspection; b) inspection findings; c) the location of prohibited discharges; d) control measures as well as evidence of noncompliance with erosion and sediment control plans; e) information on corrective actions; and f) signature information regarding qualified personnel or designees. Operators must continue to retain inspection reports for at least three years.

- *G. Corrective Actions* – Operators are required to implement corrective actions that have been identified in inspections as soon as possible but not later than seven days after discovery. Operators are also required to remove accumulated sediment deposits located outside of the construction activity as soon as practicable. Operators must also notify the Department and obtain appropriate authorizations, approvals, and permits prior to the removal of sediments.

The following regulatory sections are proposed to be repealed as the requirements in these sections were needed for the 2009 permit but are no longer needed for the 2014 permit:

- Section 1180 (Applicability)
- Section 1182 (General)
- Section 1184 (Water Quality)
- Section 1186 (Stream Channel Erosion)
- Section 1188 (Flooding)
- Section 1190 (Regional [Watershed Wide] Stormwater Management Plans)

Family impact

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

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability. However, the improvement of water quality through the regulation of stormwater discharges

from construction activities and best management practices to control pollution from construction activities does have positive public health and safety benefits that have an indirect impact on families.