

**Virginia Department of Conservation and Recreation
Public Hearing on Proposed Municipal Separate Storm Sewer System (MS4)
General Permit Regulations
(4 VAC 50-60-10 et seq.)**

December 6, 2007 in Richmond, Virginia

Meeting Officer: Christine Watlington
Policy and Budget Analyst
Department of Conservation and Recreation

Opening:

Ms. Watlington: Good afternoon, I would like to call this public hearing on the Virginia Soil and Water Conservation Board's proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations to order. I am Christine Watlington, Policy and Budget Analyst for the Department of Conservation and Recreation. I will be serving as the meeting officer this afternoon. I welcome you to this hearing.

I would like to thank the Department of Alcoholic Beverage Control for allowing us to use this facility.

Introduce DCR Staff assisting with the meeting.

With me this afternoon I have Doug Fritz, DCR's MS4 Program Manager, and Michael Fletcher, DCR's Board and Constituent Services Liaison. Michael will be audio taping our meeting and developing a set of minutes of the comments received. Also with me this afternoon is Ryan Brown, our Policy and Planning Assistant Director, who will serve as our technical presenter.

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

Purpose of the public hearing:

The purpose of this hearing is to receive input from interested citizens on the Board's proposed Municipal Separate Storm Sewer System (MS4) General Permit during the 60-day public comment period which closes on December 14th.

The Department used the participatory approach to develop the proposal. Following the publication of the Notice of Intended Regulatory Action regarding these regulations in March of this year and the public comment period on the NOIRA, the Department

formed a Technical Advisory Committee to assist in the development of the proposed regulations. The TAC included representatives from localities, consulting firms, environmental organizations, state agencies, colleges and universities, planning district commissions, and federal agencies, including the US EPA. The TAC met three times during the months of June, July, and August. Following the completion of the TAC's work, the Soil and Water Conservation Board proposed these regulations at its meeting held on September 20, 2007. Copies of the proposed regulations are located on the table near the attendance list.

This concludes my introductory remarks. I would like to introduce Ryan Brown, DCR's Policy and Planning Assistant Director, who will explain in more detail what the proposed regulations do.

Mr. Brown: Thank you Ms. Watlington.

This regulatory action amends the general permit for small Municipal Separate Storm Sewer Systems (MS4s). This action is necessary, as the existing general permit is good for 5 years and is set to expire on December 9, 2007. If operators submit a registration statement by December 7th, their permit will be administratively continued until July 1, 2008 when coverage under this permit would commence for another 5-year period. The amendments serve to further advance water quality protections to the maximum extent practicable, advance water quality improvements where a wasteload allocation from a TMDL has been assigned to a MS4, provide greater clarity to localities as how to administer and improve/advance their MS4 programs, and specify sampling protocols where applicable and necessary reporting requirements.

The key changes to this permit include:

First, updating and adding needed definitions such as "maximum extent practicable", "TMDL", "wasteload allocation" and "MS4 program plan";

Second, updating exemptions and special situations associated with the general permit coverage such as de minimus discharges, discharges resulting from spills beyond the operator's control, and portions of an MS4 covered under an industrial stormwater discharge VPDES permit;

Third, updating registration statement requirements, such as submittal deadlines and filing information, including specifying the elements of a MS4 Program Plan;

Fourth, specifying special procedures within the general permit that a small regulated MS4 shall employ if a wasteload allocation (WLA) as part of a TMDL has been assigned to the MS4 including:

- A. MS4 Program Plan updates within 18 months of permit coverage to include measurable goals, strategies and implementation schedules to address the WLA;

- B. Review of ordinances, policies, plans, procedures and contracts that are applicable to reducing the pollutant;
- C. Outfall reconnaissance procedures for outfalls discharging to the surface water to which the WLA has been assigned;
- D. For operator owned or operated property, pollutant identification and sampling procedures; and
- E. An estimated annual characterization of the volume of stormwater discharged and the quantity of the pollutant identified in the WLA discharged;

Fifth, specifying that a Municipal Separate Storm Sewer System Management Program shall reduce pollutants from the MS4 to the maximum extent practicable, improve impaired waters, protect water quality, and address WLAs; as well as, establish a schedule for MS4 Program Plan Review and submittal and the public notice procedures for the plan;

Sixth, clarifying and expanding minimum criteria within the general permit associated with the six standard control practices which are:

- Public education and outreach
- Requires the operator to increase individual and household knowledge of steps to reduce stormwater pollution; increase public employee, business and general public knowledge of the hazards associated with illegal discharges and improper disposal of waste; increase local involvement in water quality improvement initiatives; increase strategies to reach diverse, disadvantaged, and minority audiences as well as special concerns related to children, and target strategies towards local groups of commercial, industrial, and institutional entities likely to have stormwater impacts.
- Public involvement/ participation
- Requires the operator to promote the availability of the MS4 Program Plan, provide public access to the annual report, and to participate in local activities aimed at increasing public participation in the reduction of stormwater pollutant loads and in improving water quality.
- Illicit discharge detection and elimination
- Requires the operator to develop, implement and enforce an illicit discharge and elimination program, maintain a storm sewer system map, effectively prohibit nonstormwater discharges into the storm sewer system, develop procedures to detect and address nonstormwater discharges, and prevent to the maximum extent practicable the discharge of hazardous substances or oil in the stormwater discharges.
- Construction site stormwater runoff control
- Requires program consistency with the Erosion and Sediment Control Law and attendant regulations.
- Post-construction stormwater management in new development and redevelopment;

- Requires program consistency with the Virginia Stormwater Management Act and attendant regulations.
- Pollution prevention/ good housekeeping for municipal operations
- Requires municipal operations to reduce pollutant discharges, eliminate illicit discharges, dispose of waste materials properly, protect soluble or erodible materials from precipitation, apply fertilizers and pesticides appropriately, and for state agencies to develop and implement nutrient management plans.

Seventh, establishing a program self evaluation requirement once every 5 years in accordance with EPA guidance;

Eighth, clarifying minimum reporting requirements such as submittal of MS4 Program Plan updates, WLA pollutant reduction estimates, number of illicit discharges identified and how they were eliminated, information regarding new stormwater management facilities brought on line, and a list of agreements with third parties for the implementation of control measures, as well as establishing a time schedule for reporting (by October 1st of each year for the previous July 1 – June 30);

Ninth, refining the basic EPA boiler plate language that applies to all VSMP permits; and finally,

Tenth, updating the incorporated General Permit Registration Statement form to track the amended regulation.

This concludes the summary of key provisions contained in the proposed regulations.

Ms. Watlington: Thank you Mr. Brown.

Before we begin receiving testimony on the proposed regulations, I would like to stress that this is an information-gathering meeting. Everyone wishing to speak will be heard. If necessary, we may ask speakers questions concerning their testimony or to request additional information concerning a subject believed to be important to the process in order to help the clarify and properly capture your comments. Staff will be available after this hearing to take any individual questions you may have.

We will now begin the public comment portion of the hearing. When I call your name, please come to the front and use the podium. Please state your name and whom you represent. If you have an extra copy of your comments, we will be happy to accept it.

Ms. Watlington called on Mr. Mike Gerel of the Chesapeake Bay Foundation

Mike Gerel, Chesapeake Bay Foundation

Mr. Gerel: Thank you for the opportunity to speak to you today regarding the proposed small MS4 General Permit. My name is Mike Gerel. I'm a staff scientist with the Chesapeake Bay Foundation.

I served on the technical advisory committee that helped develop today's proposal, and I want to commend DCR staff for ensuring a collaborative committee that resulted in some notable improvements compared to the previous permit. However, the proposed permit does fall short in ensuring that discharges from the over 100 localities covered by the permit do not contribute to violation of state water quality standards.

Before I talk about some suggested modifications to the permit, I'd like to provide some context as to why this permit is so important.

- Developed lands are the source of up to 30% of the nutrient and sediment that pollute the Chesapeake Bay and produce the "dead zone," algal blooms, and fish kills that plague the region.
- Recent studies show that ongoing efforts to clean up the Bay may be losing ground, because too little is being done to address the stormwater pollution that runs off from the buildings, parking lots, and roads that make up urban and suburban landscapes.
- It is estimated that Virginia will add 100,000 residents per year, and to house this new population, will develop as much land in the next 40 years as in the past 400 years.
- This is a deadly recipe for Virginia's water quality - rapid development combined with inadequate control of the stormwater pollution it generates.
- The good news is that we know how to address stormwater pollution. Now that the Commonwealth has made substantial commitments to address pollution from wastewater treatment plants, a similar commitment is needed for stormwater pollution.
- Implementing the new small MS4 permit surely will not be cheap; but the cost of inaction is greater. Virginia's economy and its citizens rely on clean water. Here are some numbers to consider:
 - The entire Bay provides economic opportunities estimated to exceed \$33 billion annually.
 - A 2004 study indicate that recreational and commercial fishing in marine waters generated \$1.23 billion in sales and over 13,000 jobs in Virginia. Recreational fishing in marine waters alone generated \$842M in sales and over 9,000 jobs.

- A 2001 study showed that recreational fishing in freshwater streams in Virginia created nearly \$400M in sales and 6,800 jobs.

Our view is that the costs to address the growing population threat now, will pale in comparison to the costs to communities for lost fishing, tourism, and recreational opportunities down the line.

With this background in mind, our written comments will request three modifications to help ensure water quality protection is maximized:

1. First, we believe that any numeric pollution caps in a TMDL should be included within the text of the MS4 permit. Currently, action must be taken to comply with the cap, but the cap limits are not in the permit.
2. Next, MS4s in the Bay watershed should be required to meet specific performance benchmarks that achieve the pollution reductions called for the Chesapeake Bay Tributary Strategies and the Chesapeake 2000 Agreement. Benchmarks would include compliance by specific dates with the Virginia Erosion and Sediment Control Law and Chesapeake Bay Preservation Act, requirements to conduct pollution source reduction activities, and numeric goals for installation of stormwater treatment BMPs and buffers. Currently, no requirements specifically link to the MS4 permit to these documents.
3. And lastly, any MS4s across the Commonwealth that discharge to impaired waters should be required to specifically document through a DCR-developed method that they are not contributing to an impairment. Again, there is currently no requirement that MS4s demonstrate that they are not contributing to an existing problem.

We believe these requested changes:

- Will bring the permit into compliance with the Clean Water Act and state law,
- Are consistent with EPA's requirements for larger MS4s in DC and Virginia,
- Are more consistent with other states across the U.S.,
- Enhance the accountability of the permit, and
- Will finally provide MS4s with tools they need to proactively ensure their own compliance and the future productivity of their local waters.

This permit - as well as other stormwater-related actions planned by DCR over the next year - will determine to a large degree the future health and prosperity of our waters in the face of the rapidly urbanizing Bay region.

Thus, CBF believes now is the time to approve a small MS4 permit that maximizes protection for our waters from the impacts of the expansive population growth that is foreseen for Virginia in the coming years.

Thank you again for the opportunity to speak to you this afternoon.

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

Closing:

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

Persons desiring to submit written comments pertaining to this notice and this meeting may do by mail, by the internet, or by facsimile. Comments should be sent to the Regulatory Coordinator at: Virginia Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219. Comments also may be submitted electronically to the Regulatory TownHall. Or comments may be faxed to the Regulatory Coordinator at: (804) 786-6141. All written comments must include the name and address of the commenter. In order to be considered, comments must be received by 5:00 PM on December 14, 2007.

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

I hope that everyone has a safe trip home.

Members of the Public in Attendance

Sherry Harris Crewe, City of Richmond
Elizabeth Dietzman, Aqualaw
Mike Gerel, Chesapeake Bay Foundation
Stephen Hubble, Stafford County
Doug Moseley, GRY & Associates, Inc.
Tarron Richardson, City of Richmond
Bob Steidel, City of Richmond