

**Virginia Department of Conservation and Recreation and Virginia Soil and Water
Conservation Board
Public Hearing on Proposed General Permit for Discharges of Stormwater from Small
Municipal Separate Storm Sewer System
(4 VAC 50-60-10 and 4 VAC 60-60-1200 et seq.)**

**December 3, 2012
Richmond, Virginia
Virginia Department of Alcoholic Beverage Control**

Meeting Officer: Michelle Vucci
Policy and Planning Assistant Director
Department of Conservation and Recreation

Opening:

Ms. Vucci: I would like to call to order this public hearing on the Virginia Soil and Water Conservation Board's proposed regulations to reissue the General Permit for Stormwater Discharges from Small Municipal Separate Storm Water Sewer Systems (MS4s) to surface waters in the Commonwealth. I am Michelle Vucci, Policy and Planning Assistant Director for the Department of Conservation and Recreation. I will be serving as today's meeting officer.

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

With me today is John McCutcheon, Training and Certification Program Manager (Richmond) from DCR's Stormwater Management Division, who will serve as our technical presenter; and Michael Fletcher our Board and Constituent Services Liaison who will take minutes of this hearing's proceedings. This meeting will be recorded.

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 this regulatory action.

Purpose of the public hearing:

The purpose of this hearing is to receive input from interested citizens on the Board's proposed regulatory action during the 60-day public comment period, which opened on November 4, 2012 and closes on January 4, 2013. The Virginia Soil and Water Conservation Board (Board) is considering the reissuance of this General Permit. Regulations developed under the federal Clean Water Act (CWA) and the Virginia Stormwater Management Act require that state permits be effective for a fixed term not to exceed five years. The Board issued the existing General Permit effective July 9, 2008 and it will expire on July 8, 2013, thus necessitating the promulgation of a new General Permit at this time. The effective date of the draft General Permit will be July 1, 2013. Under the proposed regulations, operators covered under the expiring General Permit that wish to continue to discharge under a General Permit must file a registration statement and have paid all applicable maintenance fees under the current General

Permit for coverage under the new General Permit prior to April 2, 2013. Coverage under the expiring General Permit will end on midnight, June 30, 2013. Operators of small MS4s who are seeking new permit coverage under this General Permit during its term are required to register with the Department by filing a complete registration statement and paying the applicable permit fee.

In drafting the amendments to the proposed regulations, the Department, on behalf of the Board, used a participatory approach. Following the publication of the Notice of Intended Regulatory Action regarding these regulations and the public comment period on this Notice, the Department formed a Regulatory Advisory Panel to assist in the development of the proposed regulations. The 22-member panel was composed of those representing: 1) local governments; 2) conservation organizations; 3) state agencies; 4) federal agencies; 5) colleges and universities; 6) planning district commissions; and 7) consulting firms.

Between June 20, 2012 and September 6, 2012, the Panel held five meetings. Following the completion of the Panel's meetings, the Virginia Soil and Water Conservation Board proposed these regulations at its meeting held on September 28, 2012. Copies of the proposed regulations as published are located on the table near the attendance list.

I would also like to note that the proposed regulations are also undergoing review by the federal Environment Protection Agency during this public comment period. Based upon state requirements in the Administrative Process Act and the federal review process, DCR anticipates that these regulations, in their final form, will be reviewed by the Board in March of 2013 to become effective on July 1, 2013.

This concludes my introductory remarks. At this time, I would like to take a few minutes to provide a summary regarding the content of the regulations.

Although many of you here may be already familiar with this proposed regulatory action, for those who are not, we thought it would be useful to provide a brief background on this action and what the key portions of the proposed regulations are. This presentation is a summary and you should consult the hard copy of the regulations for specifics and I would also encourage you to review the fact sheet provided on the back table.

In summary, the proposed regulations accomplish the following:

- Updating definitions for “Best management practice”, “Hydrologic Unit Code”, “Illicit discharge”, and “Stormwater Pollution Prevention Plan” and adding a new definition for “Total maximum daily load Action Plan” and updating the definition for “Physically connected” and adding new definitions for “Municipality”, “Operator”, and “Public” in Part XV. This also includes global changes in terminology used throughout the permit such as “regulated small MS4s” becoming “small MS4s” for clarity.
- Updating language related to Total Maximum Daily Load (TMDL) that currently refers to “a State Water Control Board established and EPA approved” TMDL to “an approved” TMDL.

- Clarifying that the General Permit governs discharges to surface waters and not state waters as is the case for federal National Pollutant Discharge Elimination System (NPDES) permits for MS4's.
- Inserting a table into the proposed regulation that clarifies the timing for various required elements of Program Plan updates and helps to differentiate the staged timing for operators that previously held a General Permit from those operators that are applying for initial coverage.
- Rewriting the Special Conditions in Section I of the General Permit to stipulate detailed strategies and processes to address approved TMDLs other than the Chesapeake Bay TMDL and for the Chesapeake Bay TMDL to account for implementation of the required reductions. This revision also includes the addition of calculation sheets for estimating existing source loads for pollutants of concern in each of the major river basins in the Chesapeake Bay Watershed of Virginia and then estimating the total reduction required during this permit cycle. TMDL action plans that identify the best management practices and other steps to be implemented are required to be developed for all TMDLs.
- Providing additional clarity on what is not considered an MS4 Program modification that would require a permit modification as well as a discussion of how modifications may be requested by the Department.
- Updating existing forms as well as advancing a revised Department of Conservation and Recreation MS4 Operator Permit Fee Form that has been split from the Construction Operator fees that have been moved to a new form.
- Clarifying and expanding minimum criteria within the General Permit associated with the six minimum control measures in contained in Part XV of the proposed regulations. The changes proposed have resulted in complete rewrites of each of the minimum control measures that now contain much more specific, and where possible, quantitative strategies that must be addressed in the operator's MS4 Program Plan and progress to be reported in their annual reports:

For Minimum Control Measure 1, which is public education and outreach, the strategies for meeting this measure must now be designed with consideration of three key goals: 1) increasing target audience knowledge about the steps that can be taken to reduce stormwater pollution; 2) increasing target audience knowledge of hazards associated with illegal discharges and improper disposal of waste; and 3) implementing a diverse program with strategies that are targeted towards audiences most likely to have significant stormwater impacts.

For Minimum Control Measure 2, which is public involvement, the strategies require the operator to provide: 1) public access to the MS4 Program Plan and annual reports on the operator's webpage; 2) public notice and public comment opportunities on the proposed MS4 Program Plan; and 3) a minimum of four local activities annually that the public may participate in aimed at reducing stormwater pollutant loads and improving water quality.

For Minimum Control Measure 3, which is illicit discharge detection and elimination, the strategies require the operator to: 1) maintain an accurate and complete storm sewer system map and information table; 2) effectively prohibit nonstormwater discharges into the storm sewer system; 3) develop and implement written procedures to detect, identify, and address nonstormwater discharges including developing field screening methodologies and prioritized schedules; and 4) conducting public reporting of illicit discharges into or from the MS4s.

For Minimum Control Measure 4, which is construction site stormwater runoff control, the strategies require an MS4 to: 1) require an MS4 to use its powers to address discharges entering the MS4 from specified land-disturbing activities and 2) require program compliance with the Erosion and Sediment Control Law and its attendant regulations.

For Minimum Control Measure 5, which is post-construction stormwater management in new development and development on prior developed lands, the strategies require an MS4 to: 1) use its powers to address post-construction stormwater runoff that enters the MS4 from specified land-disturbing activities; 2) require program compliance with the Virginia Stormwater Management Act and its attendant regulations, including implementation of water quality and quantity design criteria; and 3) address stormwater management facility tracking and reporting mechanisms.

For Minimum Control Measure 6, which is pollution prevention/ good housekeeping for municipal operations, the strategies require the operator to: 1) develop and implement written procedures designed to minimize or prevent pollutant discharge; 2) identify all municipal high-priority facilities; 3) develop and implement specific stormwater pollution prevention plans for all high-priority facilities identified as having a high potential for the discharge of chemicals and other materials in stormwater; 4) identify all applicable lands where nutrients are applied to a contiguous area of more than one acre; and 5) within 60 months of state permit coverage, implement nutrient management plans on all lands where nutrients are applied to a contiguous area of more than one acre; and 6) develop an annual written training plan and schedule of training events.

More information on these regulatory actions can be found on DCR's website or the Virginia Regulatory Townhall at the addresses appearing on our handout on the back table. Public comment information is also included in the handout provided.

Public Comment

Before we begin receiving testimony on the proposed regulations, I would like to emphasize that this is an information-gathering meeting where DCR is receiving comment on the regulations on behalf of the Board. DCR will not be responding to any comments or questions received at this meeting but I want to emphasize that every comment received here today will be addressed as these regulations advance to their final stage.

Everyone wishing to speak will be heard. If necessary, we may need to 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 clarify and properly capture your comments. Once the hearing is adjourned, DCR staff will be available 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 who you represent. If you have an extra copy of your comments, please provide it to us so that it may be utilized in developing the minutes of this hearing. The first person I will call is Jenny Tribo.

Jenny Tribo, Hampton Roads Planning District Commission

My name is Jenny Tribo, I represent the Hampton Roads Planning District Commission.

Although the Hampton Roads Planning District Commission and the Hampton Road's localities appreciate DCR's willingness to address our concerns, during the Advisory Panel process and the publication of the permit we continue to have serious concerns with the baseline loading rate in section 1C in this permit.

The baseline loading rates are not accurate and the baseline pollutant loads will require the MS4 localities to achieve greater load reductions than necessary to meet the Bay TMDL target loads.

We have identified three compounding flaws in the approach used to derive the baseline loading rates.

First, the rates are based on state-derived estimates that do not accurately reflect locally documented BMP implementation levels.

During the Phase II WIP process DCR shared its BMP data with localities and asked them to check it with local BMP implementation data. The localities found significant discrepancies between local and state BMP data and reported this information to DCR in February of 2012. But DCR neither corrected its data nor reported to the localities its findings.

Second, the baseline loading rates reflect average loading rates for the entire basin. Average baseline loading rates do not account for greater BMP implementation by localities that are subject to the Chesapeake Bay Preservation Act.

As directed pursuant to the CBPA the 38 Virginia localities in the tidal portion of the Chesapeake Bay watershed including the 16 localities within the HRPDC have been requiring developers to offset nutrient loads since 1990 by installing stormwater BMPs.

The tidal localities receive only partial credit for the resulting lower loading rates because the baseline average BMP implementation estimate used by DCR to derive loading rates simply offsets the higher loading rates of those localities in the non tidal portion of the basin rather than giving full credit to those localities that actually achieve the reductions.

Finally, Section 1C fails to provide localities the opportunity to take credit for BMPs installed after June 30, 2008.

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We understand from remarks from DCR staff during the Soil and Water Conservation Board meeting on September 28, 2012 that the failure to provide localities the opportunity to take credit for BMPs installed after June 30, 2008 was an oversight that DCR intends to correct before the permit is finalized.

We're disappointed that the revision was not included in the version of the regulations provided for public comment and expect that it will be included in the final regulations.

Localities understand that significant efforts from all sectors are needed to meet the requirements of the Chesapeake Bay TMDL, but they also expect to be given credit for all stormwater BMPs that have been installed to improve water quality.

We request that Section 1C be edited to instruct localities to base their loads and pollution reduction using loading rates from the 2010 action model run. Localities should also submit data on BMPs installed and the resulting nutrient reductions since 2006 and prior to 2013 and receive credit for these reductions beyond the baseline load.

Thank you.

Adrienne Kotula, James River Association

Good afternoon. I'm Adrienne Kotula with the James River Association. I want to thank DCR for working with us throughout this entire regulatory process and additionally for the seat on the Regulatory Advisory Panel.

The James River Association supports the regulation. And, in particular we support the Chesapeake Bay special condition that provides a reasonable and appropriate path forward for permittees to meet the reductions required within the Bay TMDL.

We also support the schedule of MS4 program updates included in the permit as we believe this provides a workable framework for the permittee. Additionally we support the inclusion of extensive public outreach opportunities and the ability for public comment.

Nevertheless, there are three elements of the permit as it stands that give us some concern.

The largest of which is the delay in the 5% reduction on new urbanized areas. This not only brings compliance with the Bay TMDL into question but it additionally seems unnecessary given that these urbanized areas should be available by the effective date of the permit.

We also remain concerned that outfall mapping does not need to be completed until 48 months into the permit term. We believe that allowing operators four years after the issuance of the permit unfortunately means that operators may have little control over improperly managed stormwater and over the discharge.

Finally, we continue to be concerned that the lack of true public involvement is required by this permit.

Thank you.

Ms. Vucci: 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. Vucci: 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 meetings.

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 January 4, 2013.

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 Present

Connie Bennett, York County
Weedon Cloe, Chesterfield County
Chip England, Hanover County
Adrienne Kotula, James River Association
Cathy Malina, Southern Environmental Law Center
Doug Orcutt, CHA, Inc.
David Powers, Williamsburg Environmental Group
Jenny Tribo, Hampton Roads Planning District Commission