

**Virginia Soil and Water Conservation Board
Municipal Separate Storm Sewer System (MS4) Technical Advisory Committee (TAC)
Thursday, July 26th, 9:00 a.m. to 4:00 p.m.
Science Museum of Virginia
Richmond, Virginia**

MS4 Technical Advisory Committee Members Present

William Bullard, Department of Defense Regional Environmental Coordination
Shelley Clinger, Virginia Community College System
David Crawford, Cabell Brand Center
Thanh H. Dang, City of Harrisonburg
J. Michael Flagg, Hanover County
J. Douglas Fritz, Virginia Department of Conservation and Recreation
Jack E. Frye, Virginia Department of Conservation and Recreation
Mike Gerel, Chesapeake Bay Foundation
Diana Handy, City of Alexandria
Julia Hillegass, Hampton Roads Planning District Commission
Steve Hubble, Stafford County
David Kennedy, Christopher Newport University
Charles Martin, Virginia Department of Environmental Quality
Kristel F. Riddervold, City of Charlottesville
George Simpson, Roanoke County
Jeffrey A. Sitler, University of Virginia
Robert C. Steidel, City of Richmond
William H. Street, James River Association
James Talian, City of Lynchburg
Randy Williford, Loudoun County
Gary Woodson, City of Suffolk
Ricky C. Woody, II, Virginia Department of Transportation

MS4 Technical Advisory Committee Members Not Present

Paula Estornell, US EPA Region III
Wayne O. Nelson, Town of Christiansburg
Mark Smith, US. EPA Region III
Charles E. Van Allman, City of Salem

Facilitator

Dr. Frank Dukes, Institute for Environmental Negotiation, UVA
Nora Shepherd, Institute for Environmental Negotiation

DCR Staff Present

David C. Dowling, Policy, Planning and Budget Director
Ryan Brown, Policy and Planning Assistant Director
Michael R. Fletcher, Board and Constituent Services Liaison
Christine Watlington, Policy, Planning and Budget Analyst
Elizabeth Andrews, Office of the Attorney General

Others Present

The Honorable David Bulova, AMEC
Elizabeth Dietzman, Aqualaw
Shelly Frie, CH2M Hill
Normand Goulet, NVRC
Tarren Richardson, City of Richmond

Welcome and Introductions

Mr. Dowling welcomed attendees to the 2nd meeting of the MS4 Technical Advisory Committee (TAC). He reviewed the agenda for the day.

Review of Purpose and Goals

Mr. Dukes reviewed the purpose and goals of the TAC. He referred members to the summary of the June 19, 2007 meeting.

Dr. Dukes said that the following had been identified as the key elements for a successful regulation.

1. The regulation meets the federal requirements
2. Water quality is protected
3. Benchmarks are established
4. The approach is balanced
5. Encourages a partnership approach to improving water quality among the agency and MS4 jurisdictions and operators
6. Integrates programs efficiently
7. Consistent with (but not dictated by) Phase I requirements

Minutes from June 19th Meeting

Dr. Dukes said that any comments regarding the minutes from the June 19th meeting should be directed to Ms. Watlington.

Review of Draft Proposed Regulation Prepared by the Department of Conservation and Recreation

Mr. Dowling addressed the proposed draft Regulations. A copy of this draft is included as Attachment #1.

Mr. Dowling said that there are already Stormwater Management regulations in place. This action will look specifically at the MS4 general permit.

Mr. Dowling said that these sections are a subset of the larger Stormwater Management regulations. He noted that Part I is the definitions section.

Mr. Dowling noted that, for the purposes of the TAC discussion, the existing regulations were provided and that suggested language changes were printed in red.

A member noted that there were several definitions not used in the remainder of the document.

Mr. Dowling explained that the definitions were for the entire set of Stormwater Management regulations, not just the part under review by this TAC.

A member asked how much of the document was open for discussion and whether there were items that could not be changed.

Mr. Dowling said that suggested changes in the definitions would have to be on a case by case basis but that the general permit was open for amendment.

Mr. Dowling said that the overall regulatory action is based upon what was set out in the Notice of Intended Regulatory Action (NOIRA), and based on comments received from the NOIRA and the last meeting. The intent was to reflect that information in the proposed document.

Mr. Dowling said that DCR was looking to the TAC for input. The document brought forward is only a draft and is open for discussion.

A member asked about the timeframe for finalizing the regulations.

Mr. Dowling said that the regulatory review was a very open process. He said that the process for this section was quicker than some of the other regulatory actions. He said the intent was to take comments from this meeting and submit a revised draft for the next meeting of the TAC.

Dr. Dukes asked about the opportunity for the general public to comment.

Mr. Dowling said that once the work of the TAC is completed and the proposed regulation is approved by the Board, there will be a 60-day public comment period.

Mr. Dowling said there will be at least one public hearing and during the public comment period.

A member said that there were questions with regard to water collected from roofs and the issue of gray water.

Mr. Dowling said that he was not certain those were questions to be addressed in this venue. Those are being looked at in the other Stormwater Management regulations dealing with water quality and quantity issues.

Mr. Fritz said that the context of the review of this permit was to try to coordinate with other state actions. The intent is to make sure that the programs and regulations correspond appropriately. He said that this TAC would only amend the regulations that pertain to this permit.

A member said that he was trying to determine what should be brought forward to the committee, particularly if that issue might seem trivial.

Mr. Dowling said that in the other Stormwater TAC individuals have developed written comments regarding specific areas and then circulated those to the TAC. Those are then included in the next DRAFT. He said that members could bring forward those concerns at the meeting or in an e-mail follow up.

Mr. Dowling suggested that changes for grammar, style and clarity could be sent by e-mail to staff and the other TAC members.

A member asked if some of these issues were more appropriately addressed as guidance rather than regulation.

Mr. Dowling said that there was a fine line between the regulations and guidance. He noted that guidance is not enforceable.

Mr. Fritz noted that anything developed by the TAC and DCR is subject to review by the EPA.

A member asked if there was an expectation to bring the TAC back together after the public hearing phase.

Mr. Dowling said that normally the TAC function ends once the proposed regulations are drafted.

Mr. Dowling said that TAC members are kept up-to-date throughout the regulatory process so that the TAC may know when the Board is meeting and the regulations are brought forward.

A member asked about the EPA review and whether there was an issue with the previous regulation.

Dr. Dukes said it would be helpful to have a sense of the committee regarding the EPA comments and involvement.

Mr. Dowling said that there were two representatives from the EPA who are members of the TAC. They were unable to attend this meeting, but the hope is that they will be able to participate in the August 22nd meeting.

A member said that as the regulations were reviewed section by section, she hoped that DCR would also look to the TAC to address issues of feasibility and accountability.

A member said it would be helpful if EPA would present their view at the next meeting.

Mr. Dowling said that would be considered and discussed with EPA.

Dr. Dukes asked for other comments or questions.

A member noted that, as a general observation, these regulations were similar to the industrial stormwater discharge permit.

Dr. Dukes said that the intent was to review the draft page by page to allow for comments and suggestions.

Part I

4VAC50-60-10. Definitions

A member suggested that in the definition of “Maximum extent practicable”, that the last sentence in the paragraph that read “This continual assessment, revision, and improvement of the stormwater management program is expected to ultimately achieve compliance with water quality standards,” be stricken.

Another member said that the language was necessary to be consistent with the federal regulations.

A member noted that the regulations must ultimately comply with the water quality standard.

A member asked, if under the MEP definition the terms “cost effectiveness” and “cost would be prohibitive” were intended to have the same meaning.

Mr. Fritz said that staff would review that language.

A member asked about the phrase “rejecting applicable BMPs” and questioned why applicable BMPs would be rejected.

Mr. Fritz said that term came from the federal language but noted staff would review the entire definition.

A member referenced the term “National Pollutant Discharge Elimination System” (NPDES) and asked for clarification of “approved program.”

Mr. Brown said that referred to an approved state program. He noted that the meaning was not clear and that staff would review.

A member asked if the definition of “person” also referred to federal entities.

Mr. Brown said that would be clarified.

A member asked about the definition of constructed wetland . The member said he would like to see other services included such as water storage and habitat.

Mr. Fritz said that mitigated wetlands were different than constructed wetlands. He said this definition was applicable to Stormwater BMPs.

Mr. Dowling said that the other TAC had removed this definition as it was only referenced in the BMP table. The definition will be included in the handbook.

A member asked if it would be possible to flag definitions pertinent to this regulatory action so that the TAC did not debate issues being covered by the other TAC.

Mr. Dowling said that, for the purposes of this regulatory action, the definitions that staff believed to require amendments have been marked up.

A member asked about the term “indirect discharger”.

Mr. Fritz said that there cannot be an “indirect discharger” in a nonpoint source pollution situation.

A member asked why three years was chosen under “individual control strategy.”

Mr. Fritz said that language was carried over from previous definitions.

A member asked for clarification of the term “physically connected.” She asked if that meant that a stream that flows into an outfall and then back to the stream is physically connected.

Mr. Fritz said that term applied to a direct connection. He said that this might apply for VDOT, the military, or any non-traditional facility that discharges into a locality.

It was suggested that wording clarifying whether there is a tributary or receiving water be added.

It was noted that the standard for interconnectivity should be defined.

Mr. Fritz said that where the term physically interconnected comes into play is that it is not equitable for a locality to be responsible for complete discharge that is coming from another municipality or other venue.

A member asked about “small construction activity”.

Mr. Fritz noted that did not apply to this regulatory action.

A member asked if TMDLs were a part of this action.

Mr. Fritz said that TMDLs cover all discharges and will impact construction sites and agriculture differently. He said that TMDLs impact MS4s through the assignment of wasteload allocations.

A member noted that this regulation exempted routine maintenance and asked how that would be covered.

Mr. Fritz said that staff would need to look at that section.

At this time the committee took a break.

Following the break, Dr. Dukes said that the process would be to review the draft section by section.

Mr. Brown led the review of the draft regulations.

4VAC50-60-1210. Purpose; delegation of authority; effective date of the permit.

Mr. Fritz said that this section referenced to an entity attached to a regulated system that discharged into that system.

4VAC50-50-1220. Authorization to discharge.

Mr. Brown noted that this section provided for DEQ approval for discharges that are not significant sources of pollutants.

A member asked if there was a connection between Haz-Mat response and the operator’s response.

Mr. Fritz said there should not be a connection. He said the job of the MS4 operator was to minimize the effect.

A member asked what the reporting requirements were and how the discharges should be addressed, such as through the illicit discharge ordinance.

4VAC50-60-1230. Permit application (registration statement).

A member asked that, if deadlines are not met, has the operator missed the opportunity for coverage under the general permit. The member was told that missing the deadline may result in enforcement actions.

It was suggested that under the registration statement, the relevant websites be listed.

It was noted that might be more appropriate in the guidance document.

A member asked how this would relate to the Chesapeake Bay or to the ultimate receiving waters. Would MS4s that discharge into tributaries list the Bay?

Mr. Fritz said this might not cover everyone discharging into the Bay but noted that it would be useful for MS4 operators to understand that they were ultimately discharging into the Bay.

At this time the committee recessed for lunch.

Following lunch, Mr. Brown continued the review.

4VAC50-60-1240. General permit.

Under Item B.1, it was noted that the first sentence was not a complete thought.

A member said the second sentence of the same section was not needed. He said that it gave the impression that there was no need to take action.

A member asked within the general permit where the wasteload allocations would be.

Mr. Fritz said they would be in the approved TMDL.

A member asked where the enforceability was for wastewater allocations in the general permit.

Mr. Fritz said that was part of the Clean Water Act.

A member noted that in other states a discharge into impaired waters triggers the need for a special permit.

Mr. Fritz said that in the federal guidance the federal regulation does not encourage any additional requirements unless deemed absolutely necessary.

Mr. Fritz said that MEP was adequately addressing impaired waters until such time that wasteload allocations are established.

A member said that it was important to focus on the federal requirements regarding the permit.

A member referenced item (v) and asked how a TMDL can be developed without involving the stakeholder.

Mr. Fritz said that DEQ puts out an announcement and asks for participation, but does not often get it. The meeting still must be held.

A member said that if a letter is received someone would attend, but that notices in the newspaper are not always seen.

A member expressed concern over the volume of TMDL stakeholder meetings.

There was an extensive discussion on water quality monitoring, including the potential costs, staff time involved, and potential conflicts between different types of monitoring. Additional questions were raised about how to determine a representative number of outfalls, how to meet the testing requirements if labs equipped to run the tests were too far away, and whether there were any tests that may be easier for MS4s to implement.

At this time the committee took a break.

SECTION II

A member asked for a clarification regarding the narrative.

Mr. Fritz said that the standards applied to receiving waters were whether they were fishable and swimmable. He said the intent here is that the MS4 not contribute to the impairment of waters.

Mr. Fritz agreed to send a link to the water quality standards.

A member asked why the 180-day requirement.

Mr. Fritz said that was embodied in the federal regulations.

Mr. Brown said that DCR has guidance from EPA that must be addressed. The guidance indicates that this must occur to avoid violating the court order.

Mr. Fritz said there was considerable latitude in how to meet this condition.

Mr. Fritz said that guidance to MS4 operators on how to submit reapplications was mailed the preceding day.

A member asked for additional details with regard to section e.

Mr. Fritz said that the federal regulations were concerned with leaving large portions of communities out. In some places there was concern that a large percentage of the population would be left out of the public education program. Mr. Fritz mentioned that if a MS4 had a large

Hispanic population and all of the public education materials were only published in English, the MS4 may have trouble demonstrating effective compliance with this section of the permit.

In Section 2(b) it was suggested that the phrase “and Legal implications” be added.

A member asked if it was necessary to release an annual report for 30-days of public comment.

Mr. Fritz said staff would review that requirement. He said that the concern by EPA was that these documents are open for review.

A member asked why the documents would be available for comment, and not just review.

A member said that previously the TAC had said that the TMDL impairment control plan would be part of the report. He said that could cause a concern if there is no opportunity for public comment.

A member asked if staff foresaw a time in the future where DCR would also want us to map the storm drainage system in addition to the outfalls.

Mr. Fritz said that he did not envision that as a requirement.

A member asked if there was an implication that every single homeowner had to file and get a permit.

Mr. Brown said the requirement applied only to those sites required to obtain a stormwater permit.

One member voiced concerns with the requirements of c.3. The member was unsure what “track” means and how the total number of inspections and enforcement actions would be handled for “nontraditional” MS4s.

A member asked if item 6 was a repeat from an earlier section.

Mr. Fritz said that it was more appropriate here and should be stricken from the earlier section.

SECTION III

Mr. Dowling said that most of Section III was boilerplate language but that DCR would welcome comment.

Mr. Dowling encouraged members to send comments via email. He asked that the comments be as specific as possible and offer solutions or specific wording changes.

Mr. Dowling said that any information that could be received by August 1st would be appreciated.

Next Steps

Dr. Dukes noted that the next meeting would be on Wednesday, August 22nd at the Science Museum of Virginia.

The meeting was adjourned.

Attachment #1

Virginia Administrative Code

Database updated through 23:9 V.A.R. January 8, 2007

Part I

4VAC50-60-10. Definitions.

The following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise.

"Adequate channel" means a channel that will convey the designated frequency storm event without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

"Administrator" means the Administrator of the United States Environmental Protection Agency or an authorized representative.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC §1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval authority" means the Virginia Soil and Water Conservation Board or their designee.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123 (2000).

"Aquatic bench" means a 10- to 15-foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.

"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16%. Note that a locality may opt to calculate actual watershed-specific values for the average land cover condition based upon 4VAC50-60-110.

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practice (~~BMP~~)" or "BMP" means schedules of activities, prohibitions of practices, including both a structural or nonstructural practice, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities. BMPs also include treatment

requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Bioretention basin" means a water quality BMP engineered to filter the water quality volume through an engineered planting bed, consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed, and into the in-situ material.

"Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.

"Board" means the Virginia Soil and Water Conservation Board.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Channel" means a natural or manmade waterway.

"Constructed wetlands" means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.

"Construction activity" means any clearing, grading, or excavation associated with large construction activity or associated with small construction activity.

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Control measure" means any best management practice or other method used to prevent or reduce the discharge of pollutants to surface waters.

"Co-permittee operator" means a ~~permittee~~ operator to a VSMP permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"Clean Water Act" or "CWA" means 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.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations published in the Code of Federal Regulations (CFR) promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Department of Conservation and Recreation.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Discharge," when used without qualification, means the discharge of a pollutant.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report (DMR)" means the form supplied by the department, or an equivalent form developed by the ~~permittee~~ **operator** and approved by the board, for the reporting of self-monitoring results by ~~permittees~~ **operators**.

"Draft permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under §304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

"Existing permit" means for the purposes of this chapter a permit issued by the permit-issuing authority and currently held by a permit applicant.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VSMP point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VSMP program.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, causing or threatening damage.

"General permit" means a VSMP permit authorizing a category of discharges under the CWA and the Act within a geographical area.

"Grassed swale" means an earthen conveyance system which is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 (2000) pursuant to §311 of the CWA.

"Hydrologic Unit Code" or "HUC" means watershed units established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a VPDES or VSMP permit (other than the VSMP permit for discharges from the municipal separate storm sewer), discharges resulting from fire fighting activities, and discharges identified by and in compliance with 4VAC50-60-1220 C 2.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Individual control strategy" means a final VSMP permit with supporting documentation showing that effluent limits are consistent with an approved wasteload allocation or other documentation that shows that applicable water quality standards will be met not later than three years after the individual control strategy is established.

"Infiltration facility" means a stormwater management facility that temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.

"Inspection" means an on-site review of the project's compliance with the permit, the local stormwater management program, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the enforcement of the Act and this chapter.

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation associated with a construction activity regulated pursuant to the federal Clean Water Act, the Act, and this chapter.

"Large construction activity" means construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the latest decennial census by the Bureau of Census (40 CFR Part 122 Appendix F (2000));
2. Located in the counties listed in 40 CFR Part 122 Appendix H (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;
 - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
 - c. The quantity and nature of pollutants discharged to surface waters;
 - d. The nature of the receiving waters; and
 - e. Other relevant factors.
4. The board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; and (iii) highway construction projects.

"Local stormwater management program" or "local program" means a statement of the various methods employed by a locality to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, inspection, enforcement, and evaluation consistent with the Act and this chapter. The ordinance shall include provisions to require the control of after-development stormwater runoff rate of flow, the proper maintenance of stormwater management facilities, and minimum administrative procedures.

"Locality" means a county, city, or town.

"Major facility" means any VSMP facility or activity classified as such by the regional administrator in conjunction with the board.

"Major modification" means, for the purposes of this chapter, the modification or amendment of an existing permit before its expiration that is not a minor modification as defined in this regulation.

"Major municipal separate storm sewer outfall (or major outfall)" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Manmade" means constructed by man.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Maximum extent practicable" or "MEP" means a level of implementing stormwater practices and programs which achieve pollutant reductions and take into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, water quality and quantity, and geographic features. MEP is achieved, in part, by selecting and implementing effective structural and nonstructural BMPs and rejecting applicable BMPs only when the BMPs would not be technically feasible or the cost would be prohibitive and unreasonable. MEP is a dynamic performance standard, which evolves over time as urban runoff management knowledge increases. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions. A stormwater management program must continually be assessed and modified to incorporate improved programs, control measures, best management practices (BMPs), etc. This continual assessment, revision, and improvement of the stormwater management program is expected to ultimately achieve compliance with water quality standards.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the latest decennial census by the Bureau of Census (40 CFR Part 122 Appendix G (2000));
2. Located in the counties listed in 40 CFR Part 122 Appendix I (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;
 - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving waters; or
- e. Other relevant factors.

4. The board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2 and 3 of this definition.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing permit before its expiration as specified in 4VAC50-60-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under §208 of the CWA that discharges to surface waters;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act and regulations and the Virginia Stormwater Management Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under §208 of the CWA.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing

permits, and imposing and enforcing pretreatment requirements under §§307, 402, 318, and 405 of the CWA. The term includes an approved program.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which is not a new source; and
4. Which has never received a finally effective VPDES or VSMP permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New permit" means, for the purposes of this chapter, a permit issued by the permit-issuing authority to a permit applicant that does not currently hold and has never held a permit of that type, for that activity, at that location.

"New source," means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under §306 of the CWA that are applicable to such source; or
2. After proposal of standards of performance in accordance with §306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with §306 of the CWA within 120 days of their proposal.

"Nonpoint source pollution" means pollution such as sediment, nitrogen and phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

"Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater runoff.

"Operator" means the owner or operator of any facility or activity subject to regulation under the VSMP program. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions).

"Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels

or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of §[62.1-44.5](#) of the Code of Virginia, the Act and this chapter.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Permit" means an approval issued by the permit-issuing authority for the initiation of a land-disturbing activity or for stormwater discharges from an MS4. Permit does not include any permit that has not yet been the subject of final permit-issuing authority action, such as a draft permit or a proposed permit.

"Permit-issuing authority" means the board, the department, or a locality that is delegated authority authorized by the board to issue, deny, revoke, terminate, or amend stormwater permits under the provisions of the Act and this chapter.

"~~Permittee~~ **Operator**" means the person or locality to which the permit is issued, including any operator whose construction site is covered under a construction general permit.

"Person" means any individual, corporation, partnership, ~~firm~~, association, ~~joint venture~~, ~~public or private or municipal corporation, trust, estate, state, municipality~~, commission, ~~board~~, ~~public or private institution, utility, cooperative, county, city, town~~ or other political subdivision of the Commonwealth, any a state, governmental body, any interstate or governmental body or any other legal entity.

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC §2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or

2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Post-development" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

"Pre-development" refers to the conditions that exist at the time that plans for the land development of a tract of land are approved by the plan approval authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first item being approved or permitted shall establish pre-development conditions.

"Privately owned treatment works (PVOTW)" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Proposed permit" means a VSMP permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) that is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

"Publicly owned treatment works (POTW)" means a treatment works as defined by §212 of the CWA that is owned by a state or municipality (as defined by §502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in §502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Recommencing discharger" means a source that recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Regional (watershed-wide) stormwater management facility" or "regional facility" means a facility or series of facilities designed to control stormwater runoff from a specific watershed, although only portions of the watershed may experience land development.

"Regional (watershed-wide) stormwater management plan" or "regional plan" means a document containing material describing how runoff from open space, existing development and future planned development areas within a watershed will be controlled by coordinated design and implementation of regional stormwater management facilities.

"Revoked permit" means, for the purposes of this chapter, an existing permit that is terminated by the board before its expiration.

"Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in-situ soils.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act, the CWA and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Shallow marsh" means a zone within a stormwater extended detention basin that exists from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and, therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area, to maintain the desired water surface elevations to support emergent vegetation.

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under §101(14) of CERCLA (42 USC §9601(14)); any chemical the facility is required to report pursuant to §313 of Title III of SARA (42 USC §11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

"Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term county includes incorporated towns which are part of the county.

"Site" means the land or water area where any facility or activity is physically located or conducted, a parcel of land being developed, or a designated planning area in which the land development project is located.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the either the board or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under §208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"State" means the Commonwealth of Virginia.

"State/EPA agreement" means an agreement between the regional administrator and the state that coordinates EPA and state activities, responsibilities and programs including those under the CWA and the Act.

"State project" means any land development project that is undertaken by any state agency, board, commission, authority or any branch of state government, including state-supported institutions of higher learning.

"State Water Control Law" means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater detention basin" or "detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater discharge associated with construction activity" means a discharge of pollutants in stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced" means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.

"Stormwater management facility" means a device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a document containing material for describing how existing runoff characteristics will be maintained by a land-disturbing activity and methods for complying with the requirements of the local program or this chapter.

"Stormwater Management Program" means a program established by a locality that is consistent with the requirements of the Virginia Stormwater Management Act, this chapter and associated guidance documents.

"Stormwater Pollution Prevention Plan" (SWPPP) or "plan" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges from the construction site or its associated land-disturbing activities. In addition the document shall describe and ensure the implementation of best management practices, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an erosion and sediment

control plan, a post-construction stormwater management plan, a spill prevention control and countermeasure (SPCC) plan, and other practices that will be used to reduce pollutants in stormwater discharges from land-disturbing activities and to assure compliance with the terms and conditions of this chapter. All plans incorporated by reference into the SWPPP shall be enforceable under the permit issued.

"Stormwater retention basin" or "retention basin" means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet, even during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding, or stream channel erosion.

"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume of the permanent pool equal to three times the water quality volume.

"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume of the permanent pool equal to four times the water quality volume.

"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.

"Subdivision" means the same as defined in §15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. That are used or could be used for industrial purposes by industries in interstate commerce.
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2000).

"Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading and usually a safety factor. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Toxic pollutant" means any pollutant listed as toxic under §307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing §405(d) of the CWA.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the ~~permittee~~ operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under §301 or §316 of the CWA or under 40 CFR Part 125 (2000), or in the applicable effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on §301(c), §301(g), §301(h), §301(i), or §316(a) of the CWA.

"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff as overland sheet flow from upstream development. It shall adopt any natural vegetated form, from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through filtration, sediment deposition, infiltration and absorption, and is dedicated for that purpose.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.

"Virginia Stormwater Management Act" or "Act" means Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Virginia Stormwater Management Program (VSMP)" means the Virginia program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing requirements pursuant to the federal Clean Water Act, the Virginia Stormwater Management Act, this chapter, and associated guidance documents.

"Virginia Stormwater Management Program (VSMP) permit" means a document issued by the permit-issuing authority pursuant to the Virginia Stormwater Management Act and this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters. Under the approved state program, a VSMP permit is equivalent to a NPDES permit.

"VSMP application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the board for applying for a VSMP permit.

"Wasteload allocation" or "Wasteload" or "WLA" means the portion of a receiving water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Water quality standards" or "WQS" means narrative statements that describe water quality requirements in general terms, and of numeric limits for specific physical, chemical, biological or radiological characteristics of water. These narrative statements and numeric limits describe water quality necessary to meet and maintain reasonable and beneficial uses such as swimming and, other water based recreation, public water supply and the propagation and growth of aquatic life. The adoption of water quality standards under the State Water Control Law is one of the board's methods of accomplishing the law's purpose.

"Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the impervious surface of the land development project.

"Watershed" means a defined land area drained by a river or stream, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

4VAC50-60-1200. Definitions.

The words and terms used in this part shall have the meanings defined in the Act and this chapter unless the context clearly indicates otherwise, except that for the purposes of this part:

"Date brought on line" means the date when the operator determines that a new stormwater management facility is properly functioning to meet its designed pollutant load reduction.

~~"Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.~~

~~"Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwaters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.~~

"MS4 Program Plan" means the completed registration statement and all approved additions, changes and modifications detailing the comprehensive program implemented by the operator under this permit to reduce the pollutants in the stormwater discharged from its municipal separate storm sewer system (MS4) that has been submitted and accepted by the Director.

"Physically interconnected" means that one MS4 is connected to a second regulated MS4 in such a way that it allows for direct discharges into the second system.

4VAC50-60-1210. Purpose; delegation of authority; effective date of the permit.

A. This VSMP general permit regulation governs stormwater discharges from regulated small municipal separate storm sewer systems (regulated small MS4s) to surface waters of the Commonwealth of Virginia.

1. Unless the MS4 qualifies for a waiver under subdivision 3 of this subsection, owners are regulated if they operate a small MS4, including but not limited to systems operated by federal, state, tribal, and local governments, including the Virginia Department of Transportation; and:

a. The small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. If the small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated; or

b. The small MS4 is designated by the board, including where the designation is pursuant to 40 CFR Part 123.35 (b)(3) or (b)(4) (2001), or is based upon a petition under 4VAC50-60-380 D. Unless granted a waiver, the Board shall designate any small MS4 located outside of an urbanized area that contributes substantially to the pollutant loadings of a physically interconnected MS4 that is permitted.

2. An MS4 may be the subject of a petition pursuant to 4VAC50-60-380 D to the board to require a VSMP permit for their discharge of stormwater. If the board determines that an MS4 needs a permit and the owner applies for coverage under this general permit, the owner is required to comply with the requirements of 4VAC50-60-1210.

3. The board may waive the requirements otherwise applicable to a small MS4 if it meets the criteria of subdivision 4 or 5 of this subsection. If a waiver is received under this subsection, the owner may subsequently be required to seek coverage under a VSMP permit in accordance with 4VAC50-60-400 C 1 if circumstances change. (See also 40 CFR Part 123.35 (b) (2001))

4. The board may waive permit coverage if the MS4 serves a population of less than 1,000 within the urbanized area and meets the following criteria:

a. The system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the VSMP stormwater program; and

b. If pollutants are discharged that have been identified as a cause of impairment of any water body to which the MS4 discharges; and stormwater controls are not needed based on wasteload allocations that are part of a State Water Control Board established and EPA approved "total maximum daily load" (TMDL) that addresses the pollutants of concern.

5. The board may waive permit coverage if the MS4 serves a population under 10,000 and meets the following criteria:

- a. The ~~board~~ State Water Control Board has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from the MS4;
- b. For all such waters, the board has determined that stormwater controls are not needed based on wasteload allocations that are part of a State Water Control Board established and EPA approved TMDL that addresses the pollutants of concern or, if a TMDL has not been developed and approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;
- c. For the purpose of this subdivision, the pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4; and
- d. The board has determined that future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

B. This general permit will become effective on ~~December 9, 2002~~ [TBD], and will expire five years from the effective date.

4VAC50-60-1220. Authorization to discharge.

A. Any ~~owner~~ operator governed by this general permit is hereby authorized to discharge stormwater from the regulated small MS4 to surface waters of the Commonwealth of Virginia provided that the ~~owner~~ operator files and receives acceptance of the registration statement of 4VAC50-60-1230 by the director, files the permit ~~fee~~ fees required by Part XIII (4VAC50-60-700 et seq.) of this chapter, and provided that the ~~owner~~ operator shall not have been required to obtain an individual permit according to 4VAC50-60-410 B.

B. The ~~owner~~ operator shall not be authorized by this general permit to discharge to state waters specifically named in other State Water Control Board or board regulations or policies that prohibit such discharges.

C. Nonstormwater discharges or flows into the MS4 are authorized by this permit and do not need to be addressed in the ~~Stormwater Management~~ MS4 Program required under 4VAC50-60-1240, Section II B 3, if:

1. The nonstormwater discharges or flows are covered by a separate individual or general VPDES or VSMP permit for nonstormwater discharges; ~~or~~

2. The individual nonstormwater discharges or flows have been identified in writing by the Department of Environmental Quality as de minimus discharges that are not significant sources of pollutants to state waters and do not require a VPDES permit;

3. Nonstormwater discharges or flows in the following categories have not been identified by the permittee operator, State Water Control Board, or by the board as significant contributors of pollutants to the regulated small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and discharges or flows from fire fighting activities; or

4. The discharge of materials resulting from a spill is necessary to prevent loss of life, personal injury, or severe property damage. The operator shall take, or insure that the responsible party takes, all reasonable steps to minimize or prevent any adverse effect on human health or the environment. This permit does not transfer liability for a spill itself from the party(ies) responsible for the spill to the operator nor relieve the party(ies) responsible for a spill from the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302 (2001).

D. Discharges that are excluded from obtaining a VSMP permit pursuant to 4VAC50-60-300 are exempted from the regulatory requirements of this permit.

E. Pursuant to 40 CFR Part 122.34 (c) (2001), for those portions of an MS4 that are covered under a VPDES permit for industrial stormwater discharges, the operator shall register for this VSMP general permit in accordance with 4VAC 50-60-1230 but shall follow the pollutant control requirements of the VPDES permit. Upon termination of VPDES permit coverage, discharges from previously VPDES authorized outfalls shall meet the conditions of this permit provided it has been determined by the board that an individual MS4 permit is not required.

F. Stormwater discharges from specific MS4 outfalls that have been granted conditional exclusion for “no exposure” of industrial activities and materials to stormwater under the VPDES permitting program shall obtain coverage under this VSMP general permit. The Department of Environmental Quality is responsible for determining compliance with the conditional exclusion under the State Water Control Law and attendant regulations.

~~D.G.~~ Receipt of this VSMP general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

4VAC50-60-1230. Permit application (registration statement).

A. Deadline for submitting a registration statement

~~1. Owners of regulated small MS4's designated under 4VAC50-60-1210 A 1 a, that are applying for coverage under this VSMP general permit must submit a complete Registration Statement to the department by March 10, 2003, unless the MS4 serves a jurisdiction with a population under 10,000 and the board has established a schedule for phasing in permit coverage with a final deadline of March 8, 2007.~~

~~2~~ 1. Owners Operators of regulated small MS4's MS4s designated under 4VAC50-60-1210 A 1 b, that are applying for coverage under this VSMP general permit must submit a complete registration statement to the department within 180 days of notice of designation, unless the board grants a later date.

2. In order to continue uninterrupted coverage under the VSMP general permit, operators of regulated small MS4s shall submit a new registration statement at least 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

B. Registration statement.

The registration statement shall include the following information:

1. The name and location (county or city name) of the regulated small MS4 for which the registration statement is submitted;

2. The name, type (city, county, incorporated town, unincorporated town, college or university, local school board, military installation, transportation system, federal or state facility, or other), address, and telephone number of the ~~owner~~ operator of the regulated small MS4;

3 The name(s) of the Hydrologic Unit Code as identified in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset currently receiving discharges or that have potential to receive discharges from the regulated small MS4 ~~water(s)~~;

~~4. The best management practices (BMPs) that the owner or another entity proposes to implement for each of the stormwater minimum control measures at 4VAC50-60-1240, Section H-B;~~

4. The name(s) and impairments of any impaired receiving waters listed in the most recent Virginia 305(b)/303(d) Water Quality Assessment Integrated Report and any TMDL waste loads allocated to the regulated small MS4.

~~5. The measurable goals for each of the BMPs including, as appropriate, the years in which the required actions will be undertaken, including interim milestones and the frequency of the action; and~~

5. The name(s) of any regulated physically interconnected MS4s to which the regulated small MS4 discharges.

~~6. The person or persons responsible for implementing or coordinating the stormwater management program.~~

6. A list of best management practices that the operator proposes to implement for each of the stormwater minimum control measures and their associated measurable goals pursuant to 4VAC50-60-1240, Section II B; that includes the following information:

- a. The objective and expected results of BMP implementation in meeting the measurable goals of the stormwater minimum control measures;
- b. A narrative detailing how the BMP will be implemented in order to address the MS4 Program needs;
- c. The implementation schedule including any interim milestones for the utilization of the BMP;
- d. A list of the existing policies, ordinances, inspection forms, written procedures, and other documents necessary for BMP implementation;
- f. The individual, department, division, or unit responsible for implementing the BMP; and
- g. The method that will be utilized to determine the effectiveness of the BMP.

7. Copies of all signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures.

8. The name, address, telephone number and e-mail address of either the principal executive officer or ranking elected official as defined in 4VAC50-60-370.

9. The name, position title, address, telephone number and e-mail address of any duly authorized representative as defined in 4VAC50-60-370.

~~7~~ 10. The following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed by the principal executive officer or ranking elected official in accordance with 4VAC50-60-370.

D. An ~~owner~~ operator may file ~~his~~ its own registration statement, or the ~~owner~~ operator and other ~~municipalities or governmental entities~~ operators of regulated small MS4s may jointly submit a registration statement. If responsibilities for meeting the stormwater minimum control measures will be shared with other municipalities or governmental entities, the registration statement must describe which stormwater minimum control measures the ~~owner~~ operator will implement and identify the entities that will implement the other stormwater minimum control measures within the area served by the MS4.

E. Where to submit. The registration statement shall be submitted to ~~DCR's Urban Program's Section of the Division of Soil and Water Conservation.~~

Department of Conservation and Recreation
Division of Soil and Water Conservation
Stormwater Permitting
203 Governor Street, Suite 206
Richmond, VA 23219

4VAC50-60-1240. General permit.

Any owner whose registration statement is accepted by the director will receive coverage under the following permit and shall comply with the requirements therein and be subject to all applicable requirements of the Virginia Stormwater Management Act (Chapter 6, Article 1.1 (§10.1-603.1 et seq.) of Title 10.1 of the Code of Virginia) and the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60).

General Permit No.: ~~DCR02~~ VAR04

Effective Date: ~~December 9, 2002~~ [TBD]

Expiration Date: ~~December 9, 2007~~ [TBD]

GENERAL PERMIT FOR ~~STORMWATER~~ DISCHARGES OF STORMWATER FROM
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER
MANAGEMENT PROGRAM AND THE VIRGINIA STORMWATER MANAGEMENT ACT

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the Virginia Stormwater Management Act and regulations adopted pursuant thereto, this permit authorizes operators of small municipal separate storm sewer systems to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in State Water Control Board and Virginia Soil and Water Conservation Board regulations or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Section I—Discharge Authorization and Special Conditions, Section II—~~Stormwater Management Program~~ MS4 Program and Section III—Conditions Applicable To All VSMP Permits, as set forth herein.

SECTION I

DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

A. Coverage under this permit. During the period beginning with the date of coverage under this general permit and lasting until the permit's expiration date, the ~~permittee~~ operator is authorized

to discharge stormwater from the small municipal separate storm sewer system identified in the registration statement.

B. Special Conditions.

~~1. Total Maximum Daily Load (TMDL) allocations. If a TMDL is approved for any waterbody into which the small MS4 discharges, the board will review the TMDL to determine whether the TMDL includes requirements for control of stormwater discharges. If discharges from the MS4 are not meeting the TMDL allocations, the board will notify the permittee of that finding and may require that the Stormwater Management Program required in Section II be modified to implement the TMDL within a timeframe consistent with the TMDL. Any such new requirement will constitute a case decision by the board.~~

1. Total Maximum Daily Load (TMDL) allocations.

The approval by the State Water Control Board of a TMDL that includes a wasteload allocation to the regulated small MS4 requires controls for stormwater discharges. The wasteload allocation does not determine that the operator of a regulated small MS4 is not adequately protecting water quality, and satisfying the appropriate water quality requirements of the CWA. Rather, a wasteload allocation establishes a benchmarking effort(s) that the operator shall incorporate into the measurable goals of its MS4 Program Plan.

a. The operator shall update its MS4 Program Plan to include an Impairment Control Plan that includes measurable goals and strategies to assure MS4 Program consistency with TMDL wasteloads allocated to the regulated small MS4, pursuant to the following schedule:

(i) Within 18-months of permit coverage for wasteloads allocated to the regulated small MS4 by the State Water Control Board prior to permit coverage; or,

(ii) Within 18-months of approval by the State Water Control Board for wasteloads allocated to the regulated small MS4 after issuance of permit coverage.

b. The measurable goals and strategies included in an Impairment Control Plan to assure MS4 Program consistency are, at a minimum:

(i) The operator shall conduct an evaluation that includes a review of existing ordinances and legal authorities, policies, plans, procedures and contracts of the existing MS4 Program and MS4 Program Plan to determine how and if the MS4 Program addresses reduction of the pollutant of concern. The evaluation shall identify any weakness or limitations in the MS4 Program to reduce the pollutant of concern in a manner consistent with the TMDL.

(ii) The operator shall develop and implement procedures and strategies to address the MS4 Program weaknesses including a timetable to update the existing ordinances and legal authorities, policies, plans, procedures and contracts to assure consistency with the WLA. When possible, pollutant of concern source elimination shall be prioritized over pollutant of concern load reduction.

(iii) The operator shall develop and implement procedures and strategies to identify and track all BMPs, structural and nonstructural, including stormwater management facilities, that have been implemented in the applicable TMDL watershed since initial listing of the water as impaired on the 303(d) list.

(iv) The operator shall integrate an awareness campaign into its existing public education and outreach program that promotes methods to eliminate and reduce discharges of the TMDL pollutant of concern.

(v) The operator shall participate, at a minimum, as a stakeholder in the development of any Implementation Plans developed to address the TMDL.

(vi) The operator shall develop and implement outfall reconnaissance procedures to identify and eliminate the impact of the pollutant of concern from anthropogenic activities. The Department recommends that the operator review the publication entitled "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments", EPA cooperative agreement number X-82907801-0, for guidance in implementing its outfall reconnaissance procedures.

(a) At a minimum, the operator shall conduct reconnaissance on a number of outfalls that shall be established by applying a 95% confidence level and a 10% confidence interval to the total number of MS4 outfalls known to discharge to the surface waters identified in the TMDL.

(b) Where more than one wasteload is allocated to the operator for the same pollutant of concern, the reconnaissance efforts may be pooled provided the minimum number of outfalls includes all known outfalls contributing to a pollutant of concern WLA and a rotational schedule is established to conduct reconnaissance on outfalls for each WLA.

(vii) The operator shall develop and implement procedures for construction site plan review which incorporate consideration of potential water quality impacts from the pollutant of concern during development and post-development.

(viii) The operator shall integrate additional employee training into the existing training programs regarding the sources and methods to eliminate and minimize the discharge of the pollutant of concern.

(ix) The operator shall develop and implement a schedule to inspect all facilities including, but not limited to, buildings, parks, maintenance yards and storage facilities owned and/or operated by the MS4 operator for potential sources of the pollutant of concern within three years of completion of the impairment control plan.

(x) For facilities where the operator finds a high potential for the significant discharge of the pollutant of concern, the operator shall develop and implement a monitoring program based on the following:

(1) Grab samples shall be taken during the first two hours of a storm event. For all parameters taken as composite, data shall be reported for flow weighted composite samples of the entire event or, at a minimum, the first three hours of a storm event.

NOTE: Add monitoring schedule clause.

(2) Samples shall be collected resulting from storm events that are greater than 0.1 inches in magnitude and occurs at least 72-hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

(3) The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge. The required 72-hour storm event interval is also waived where the operator documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted.

(4) Analysis and collection of samples shall be done in accordance the methods specified at 40 CFR Part 136. Where an approved 40 CFR Part 136 method does not exist, the operator must use a method consistent with the TMDL.

(xi) For facilities where there is a found to be a significant discharge of the pollutant of concern, the operator shall develop and implement a schedule to eliminate or minimize the discharge of the pollutant of concern at any facility found to be discharging in a manner that is not consistent with the allocated wasteload.

(xii) The operator shall annually estimate the quantity of stormwater discharged, in gallons, and the quantity of pollutant of concern, in pounds, discharged by the regulated small MS4 for each WLA.

(xiii) The operator shall conduct an annual evaluation of the Impairment Control Plan and any new information regarding the TMDL in order to evaluate its ability to assure the consistency of its discharge with the wasteload allocation.

(xiv) As a result of the annual review, the operator shall make modifications to Impairment Control Plan and MS4 Program Plan as necessary to assure consistency with the WLA.

(xv) Along with reporting requirements in Section II. E., the operator shall include the following with each annual report:

- (1) Copies of any updates to the MS4 Program Plan completed during the reporting cycle
- (2) The estimate of the quantity of stormwater discharged, in gallons, and the quantity of pollutant of concern, in pounds discharged by the regulated small MS4 for each WLA.

(3) A copy of the annual evaluation of the Impairment Control Plan and any new information regarding the TMDL in order to evaluate its ability to assure the consistency of its discharge with the wasteload allocation.

~~2. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the stormwater discharge(s) from the small MS4 shall be prevented or minimized to the maximum extent practicable in accordance with the applicable Stormwater Management Program required in Section II. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (2002), 40 CFR Part 117 (2002) or 40 CFR Part 302 (2002) occurs during a 24-hour period, the permittee is required to notify the Department of Environmental Quality and the Department of Conservation and Recreation in accordance with the requirements of Section III G as soon as he has knowledge of the discharge. In addition, the Stormwater Management Program required under Section II of this permit must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the program must be modified where appropriate. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110 (2001), 40 CFR Part 117 (2001) and 40 CFR Part 302 (2001) or §62.1-44.34:19 of the Code of Virginia.~~

SECTION II

STORMWATER MANAGEMENT MS4 PROGRAM

A. The permittee operator of a regulated small MS4 must develop, implement, and enforce a stormwater management MS4 program designed to reduce the discharge of pollutants from the regulated small MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act and regulations and the Virginia Stormwater Management Act and attendant regulations. The stormwater management MS4 program must include the minimum control measures described in paragraph B of this section. For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the stormwater management MS4 program required pursuant to this Part section constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable-" and protects water quality in the absence of a TMDL waste load allocation. Upon issuance of a WLA the requirements of this section and those special conditions set out in Section I B apply. ~~The stormwater management program must be developed and implemented in accordance with the Act by July 1, 2006, or by a later date if specified by the board.~~

Within 180 days of the effective date of this general permit, the operator shall review its existing MS4 Program Plan and submit a schedule to develop and implement programs to meet the conditions established by this permit. For owners of regulated small MS4s that are applying for

initial coverage under this general permit, the schedule to develop and implement the MS4 Program Plan shall be submitted with the completed registration statement.

Prior to submittal of the MS4 Program plan and proposed schedule to the Department, each operator must provide public notification and provide for receipt of public comments. Public notice shall allow at least 30 days for public comment. Public notice shall be given by any method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation. Copies of all comments received shall be submitted with the proposed schedule to the Department.

B. Minimum control measures.

1. Public education and outreach on stormwater impacts. Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff. The permittee operator may review the EPA publication entitled “Getting in Step: A Guide for Conducting Watershed Outreach Campaigns”, publication number EPA 841-B-03-002, for guidance in developing a public education program.

The operator shall identify, schedule, implement, evaluate and modify, as necessary, Best Management Practices to meet the following public education and outreach measurable goals:

a. Increased individual and household knowledge about the steps that they can take to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;

b. Increased public employee, business, and general public knowledge of hazards associated with illegal discharges and improper disposal of waste;

c. Increased individual and group involvement in local water quality improvement initiatives including the promotion of local restoration and clean up projects, programs, groups, meetings and other opportunities for public involvement;

d. Employ sufficiently diverse strategies to target audiences specific to the area serviced by the regulated small MS4;

e. Tailor the outreach program to address viewpoints and concerns of target audiences, particularly minority and disadvantaged audiences as well as special concerns relating to children; and

f. Target strategies towards local groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts.

2. Public involvement/participation. At a minimum, comply with applicable state, tribal, and local public notice requirements when implementing the ~~stormwater management~~ MS4 program.

The operator shall identify, schedule, implement, evaluate and modify, as necessary, Best Management Practices to meet the following public involvement/participation measurable goals:

a. Comply with applicable state, tribal, and local public notice requirements when implementing the MS4 Program;

b. Promote the availability of the operator's MS4 Program Plan for public review and comment. Provide access to or copies of the MS4 Program Plan upon request of interested parties in compliance with all applicable freedom of information regulations;

c. Promote public review and comments on the annual report for a minimum of 30-days prior to submittal to the Department. Provide access to or copies of the annual report upon request of interested parties in compliance with all applicable freedom of information regulations;

d. Participate through promotion, sponsorship, or other involvement, local activities aimed at increasing public participation to reduce stormwater pollutant loads and improve receiving water quality; and

e. Participate, at least as a stakeholder, in development of any TMDL Implementation Plan for waters to which the regulated small MS4 has been assigned a WLA.

3. Illicit discharge detection and elimination. This program shall:

a. Develop, implement and enforce a program to detect and eliminate illicit discharges, as defined at 4VAC50-60-~~1200~~ 10, into the regulated small MS4. The Department recommends that the operator review the publication entitled "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments", EPA cooperative agreement number X-82907801-0, for guidance in implementing and evaluating its illicit discharge detection and elimination program;

b. ~~(1)~~ Develop, if not already completed, and maintain, an updated a storm sewer system map, showing the location of all major known outfalls of the regulated small MS4 including those physically interconnected to a regulated MS4, and the names and location of all surface waters that receive discharges from those outfalls the associated HUCs, and the names and locations of all impaired surface waters that receive discharges from those outfalls. The operator shall also estimate the acreage within the regulated small MS4 discharging to each HUC and impaired water;

~~(2)~~ c. To the extent allowable under state, tribal or local law or other regulatory mechanism, effectively prohibit, through ordinance, or other regulatory mechanism, nonstormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions.

The following categories of nonstormwater discharges or flows (i.e., illicit discharges) must be addressed only if they are identified by the operator, the State Water Control Board, or by the board as significant contributors of pollutants to the regulated small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, discharges or flows from fire fighting activities, and flows that have been identified in writing by the Department of Environmental Quality as de minimus discharges that are not significant sources of pollutants to state waters and not requiring a VPDES permit;

(3) ~~d.~~ d. Develop and implement a ~~plan~~ procedures to detect and address nonstormwater discharges, including illegal dumping, to the ~~system~~ regulated small MS4; ~~and~~

(4) ~~Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.~~

~~e. The following categories of nonstormwater discharges or flows (i.e., illicit discharges) must be addressed only if they are identified by the permittee or by the board as significant contributors of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water and discharges or flows from fire fighting activities.~~

d. Prevent or minimize to the maximum extent practicable, the discharge of hazardous substances or oil in the stormwater discharge(s) from the regulated small MS4. In addition, the MS4 Program must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the program must be modified where appropriate. This permit does not relieve the operator or the responsible part(ies) of any reporting requirements of 40 CFR Part 110 (2001), 40 CFR Part 117 (2001) and 40 CFR Part 302 (2001) or §62.1-44.34:19 of the Code of Virginia; and

e. Track the number of illicit discharges identified and the number eliminated and submit the information in accordance with Section II.E.2.

4. Construction site stormwater runoff control.

a. ~~Develop~~ The operator shall develop, implement, and enforce a ~~program~~ procedures to reduce pollutants in any stormwater runoff to the regulated small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay

Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. ~~If the board waives requirements for stormwater discharges associated with small construction activity in accordance with the definition in 4VAC50-60-10, the permittee is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.~~

~~b.~~ The program procedures must include the development and implementation of, at a minimum:

- (1) An ordinance or other ~~regulatory~~ mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance with the Erosion and Sediment Control Law and attendant regulations, and to the extent allowable under state, tribal, or local law. Such ordinances and other mechanisms shall be updated as necessary;
- (2) Requirements for construction site operators to implement ~~appropriate erosion and sediment control best management practices~~ an erosion and sediment control plan that is consistent with the Erosion and Sediment Control Law and attendant regulations and other applicable requirements of state, tribal, or local law;
- (3) Requirements for construction site operators to ~~control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality; or procedures to ensure that construction site operators have secured or will secure a~~ secure authorization to discharge stormwater from construction activities under a VSMP construction permit for construction activities that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the procedures if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more;
- (4) ~~Procedures for site plan review which incorporate consideration of potential water quality and quantity impacts and ensures compliance with the Chesapeake Bay Preservation Act as implemented in Tidewater Virginia localities;~~
- (5) Procedures for receipt and consideration of information submitted by the public, and
- (6) Procedures for site inspection and enforcement of control measures to reduce pollutants from stormwater discharges associated with construction activities.

b. The operator shall ensure that plan reviewers, inspectors, program administrators and construction site operators obtain the appropriate certifications as required under the Erosion and Sediment Control Law;

c. ~~Track~~ The operator shall track regulated land-disturbing activities and submit the following information in accordance with Section II.E.2. ~~for the reporting period with the annual report required in Section II E 2:~~

(1) Total number of regulated land-disturbing activities; ~~and~~

(2) Total disturbed acreage;

(3) Total number of inspections; and

(4) Total number of enforcement actions.

5. Post-construction stormwater management in new development and redevelopment.

a. ~~Develop~~ The operator shall develop, implement, and enforce a ~~program~~ procedures to address stormwater runoff to the regulated small MS4 from new development and redevelopment projects that disturb greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The ~~program~~ procedures must ensure that controls are in place that would prevent or minimize water quality and quantity impacts.

b. The operator shall:

(1) Develop and implement strategies, which include a combination of structural and/or nonstructural best management practices (BMPs) appropriate for ~~your~~ the local community;

(2) Use an ordinance or other ~~regulatory~~ mechanism to address post-construction runoff from new development and redevelopment projects to ensure compliance with the Virginia Stormwater Management Act and attendant regulations, and to the extent allowable under state, tribal or local law. Such ordinances and other mechanisms shall be updated as necessary; and

(3) Secure authorization to discharge stormwater from construction activities under a VSMP ~~construction-permit~~ for new development and redevelopment projects that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the procedures if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more;

~~(34)~~ Ensure adequate long-term operation and maintenance by the owner of BMPs ~~structural stormwater management facilities~~ through a recorded inspection schedule and maintenance agreement ~~or some other mechanism that achieves an equivalent objective.~~

(5) Conduct site inspection and enforcement measures consistent with the Virginia Stormwater Management Act and attendant regulations;

~~(4) If the MS4 discharges to the Chesapeake Bay watershed, track~~ Track all permanent BMP's stormwater management facilities that discharge to the regulated small MS4 installed by the MS4 (structural and nonstructural), and submit the following information with the annual report required in Section II E 2 in accordance with Section II E.2:

(a) Type of ~~BMP's~~ structural stormwater management facility installed, as defined in the Virginia Stormwater Management Handbook;

(b) Geographic location (~~Hydrologic Unit Code~~ HUC);

(c) ~~Waterbody~~ Where applicable, the impaired surface water that the ~~BMP's~~ stormwater management facility is discharging into;

(d) Number of acres treated ~~to the nearest one-tenth acre;~~

(e) ~~Whether the BMP's is inspected or maintained; and~~

(f) ~~How often the BMP's is maintained (quarterly, annually, etc.).~~

6. Pollution prevention/good housekeeping for municipal operations. Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials ~~that are~~ including those available from EPA, state, tribe, or other organizations, the program ~~must~~ shall include employee training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and ~~stormwater system~~ MS4 maintenance. The operator is encouraged to review EPA's National Menu of Stormwater Best Management Practices for ideas and strategies to incorporate into its program. The menu can be accessed at <http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm>.

a. The operator shall identify, implement, evaluate and modify, as necessary, Best Management Practices to meet the following pollution prevention/good housekeeping for municipal operations measurable goals:

(1) Operation and maintenance programs including activities, schedules, and inspection procedures shall include provisions and controls to reduce pollutant discharges into the MS4;

(2) Illicit discharges shall be eliminated from storage yards, fleet or maintenance shops, outdoor storage areas, rest areas, waste transfer stations, and other municipal facilities;

(3) Waste materials shall be disposed of properly;

(3) Materials that are soluble or erodible shall be protected from exposure to precipitation;

(4) Materials that have the potential to reach receiving waters shall be applied according to manufacturer's recommendations; and

(5) For State agencies with lands where nutrients are applied, nutrient management plans shall be developed and implemented.

C. ~~Qualifying state, tribal or local program.~~ If an existing ~~qualifying local~~ program requires the implementation of one or more of the minimum control measures of Section II B, the ~~permittee operator, with the approval of the board,~~ may follow that ~~qualifying program's~~ requirements rather than the requirements of Section II B. A ~~qualifying local~~ program is that may be considered includes but is not limited to a local, state or tribal ~~municipal stormwater management~~ program that imposes, at a minimum, the relevant requirements of Section II B.

The ~~permittee's operator's~~ stormwater management program MS4 Program Plan ~~must~~ shall identify and fully describe any ~~qualifying local~~ program that will be used to satisfy one or more of the minimum control measures of Section II B.

If the ~~qualifying local~~ program the ~~permittee operator~~ is using requires the approval of a third party, the program must be fully approved by the third party, or the ~~permittee operator~~ must be working towards getting full approval. Documentation of the ~~qualifying local~~ program's approval status, or the progress towards achieving full approval, must be included in the annual report required by Section II E 2.

D. ~~Sharing responsibility.~~ The permittee may rely on another entity to satisfy the VSMP permit obligations to implement a minimum control measure if: (i) the other entity, in fact, implements the control measure; (ii) the particular control measure, or component thereof, is at least as stringent as the corresponding VSMP permit requirement; and (iii) the other entity agrees to implement the control measure on behalf of the ~~permittee operator~~. The agreement between the parties must be documented in writing and retained by the ~~permittee operator~~ with the ~~Stormwater Management~~ MS4 Program Plan for the duration of this permit.

In the annual reports that must be submitted under Section II E 2, the ~~permittee operator~~ must specify that another entity is being relied on to satisfy some of the permit obligations.

If the ~~permittee operator~~ is relying on another governmental entity regulated under 4VAC50-60-380 to satisfy all of the permit obligations, including the obligation to file periodic reports required by Section II E 2, the ~~permittee operator~~ must note that fact in the registration statement, but is not required to file the periodic reports.

The ~~permittee operator~~ remains responsible for compliance with the permit obligations if the other entity fails to implement the control measure (or component thereof).

E. Evaluation and assessment.

1. Evaluation. The permittee operator must annually evaluate:

- (a) program compliance,
- (b) the appropriateness of the identified best management practices, and
- (c) progress towards achieving the identified measurable goals.

2. Annual reports. The permittee operator must submit an annual report for the reporting period of July 1 through June 30th to the director by ~~the annual anniversaries of the date of coverage under this permit~~ the following October 1. The reports ~~must~~ shall include:

a. The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures;

b. Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

c. A summary of the stormwater activities the permittee operator plans to undertake during the next reporting cycle;

d. A change in any identified best management practices or measurable goals for any of the minimum control measures;

e. Notice that the permittee operator is relying on another government entity to satisfy some of the permit obligations (if applicable), ~~and~~

f. The approval status of any ~~qualifying local~~ programs pursuant to Section II C (if appropriate), or the progress towards achieving full approval of these programs;

g. The number of illicit discharges identified and the number eliminated pursuant to Section I.B.3.e;

h. Regulated land disturbing activities data tracked under Section I.B.4.c; and

i. All known permanent stormwater management facility data tracked under Section I.B.5.b. (6) submitted in a database format to be prescribed by the Department. Upon filing of this list, subsequent reports shall only include those new stormwater management facilities that have been brought on line.

NOTE: items 1 and 2 below are under discussion:

(1) For SWM facilities brought on-line between January 1 and June 30, the operator shall submit the data annually by July 15.

(2) For SWM facilities brought on-line between July 1 and December 31, the operator shall submit the data annually by January 1.

F. Program Plan modifications. The ~~department~~ board may require modifications to the ~~Stormwater Management MS4 Program~~ Plan as needed to address adverse impacts on receiving water quality caused, or contributed to, by discharges from the regulated small MS4. Modifications ~~requested~~ required by the ~~department~~ board shall be made in writing and set forth the time schedule to develop and implement the modification. The ~~permittee~~ operator may propose alternative program modifications and time schedules to meet the objective of the ~~requested~~ required modification. The ~~department~~ board retains the authority to require any modifications it determines are necessary.

SECTION III

CONDITIONS APPLICABLE TO ALL VSMP PERMITS

~~NOTE: Monitoring is not required for this permit. If you choose to monitor your stormwater discharges or BMP's in support of your Stormwater Management Program, you must comply with the requirements of subsections A, B, and C, as appropriate.~~

A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 (2001) or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The ~~permittee~~ operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

B. Records.

1. ~~Records of monitoring information~~ Monitoring records/ reports shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) and time(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and

f. The results of such analyses.

2. The ~~permittee~~ operator shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the ~~permittee~~ operator, or as requested by the board.

C. Reporting monitoring results.

1. The ~~permittee~~ operator shall submit the results of the monitoring required by this permit ~~not later than the 10th day of the month after monitoring takes place,~~ with the annual report unless another reporting schedule is specified elsewhere in this permit. ~~Monitoring results shall be submitted to the department's Urban Program's Section of the Division of Soil and Water Conservation.~~

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.

3. If the ~~permittee~~ operator monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 (2001) or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The ~~permittee~~ operator shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the ~~permittee~~ operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the CWA and Virginia Stormwater Management Act. The ~~permittee~~ operator shall also furnish to the department upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board or State Water Control Board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any ~~permittee~~ operator of a regulated small MS4 who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (2002), 40 CFR Part 117 (2002) or 40 CFR Part 302 (2002) that occurs during a 24-hour period into or upon state waters in violation of Section III F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Section III F, shall notify the Department of Environmental Quality ~~and the Department of Conservation and Recreation~~ of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department of Environmental Quality and the Department of Conservation and Recreation, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the Department of Environmental Quality and the Department of Conservation and Recreation under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a facility and the discharge enters or could be expected to enter state waters, the ~~permittee~~ operator shall promptly notify, in no case later than 24 hours, the Department of Environmental Quality and the Department of Conservation and Recreation by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The ~~permittee~~ operator shall reduce the report to writing and shall submit it to the Department of Environmental Quality and the Department of Conservation and Recreation within five days of discovery of the discharge in accordance with Section III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the facilities; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The ~~permittee~~ operator shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the ~~permittee~~ operator becomes aware of the circumstances. The following shall be included as information, ~~that~~ which shall be reported within 24 hours under this paragraph:

- a. Any unanticipated bypass; and
 - b. Any upset which causes a discharge to surface waters.
2. A written report shall be submitted within five days and shall contain:
- a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
 - c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board or its designee may waive the written report on a case-by-case basis for reports of noncompliance under Section III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The ~~permittee~~ operator shall report all instances of noncompliance not reported under Sections III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Section III I 2.

NOTE: The immediate (within 24 hours) reports required in Sections III G, H and I may be made to ~~the department's Urban Program's Section of the Division of Soil and Water Conservation~~ appropriate Department of Environmental Quality's Regional Office Pollution Response Program as found at <http://www.deq.virginia.gov/prep/homepage.html#>. Reports may be made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the ~~permittee~~ operator becomes aware ~~that it failed~~ of a failure to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department or the Department of Environmental Quality, it shall promptly submit such facts or information.

J. Notice of planned changes.

1. The ~~permittee~~ operator shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The ~~permittee~~ operator plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under §306 of Clean Water Act that are applicable to such source; or

(2) After proposal of standards of performance in accordance with §306 of Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with §306 within 120 days of their proposal;

b. The operator plans alteration or addition ~~that ew~~ that ewould significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this permit; or

2. The ~~permittee~~ operator shall give advance notice to the department of any planned changes in the permitted facility or activity; ~~that~~ which may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a public agency includes:

(1) The chief executive officer of the agency, or

(2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Section III K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Section III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (municipality??). (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Section III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Section III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Sections III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee operator shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Virginia Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the Virginia Stormwater Management Act but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee operator shall comply with effluent standards or prohibitions established under §307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee operator wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee operator shall submit a new registration statement at least 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee operator from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by §510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Section III U), and "upset" (Section III V) nothing in this permit shall be construed to relieve the permittee operator from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee operator from any responsibilities, liabilities, or penalties to which the permittee operator is or may be subject under §§62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) ~~that~~ which are installed or used by the permittee operator to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which ~~that~~ are installed by the permittee operator only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee operator shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee operator may allow any bypass to occur ~~that~~ which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Sections III U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee operator knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee operator shall submit notice of an unanticipated bypass as required in Section III I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board or its designee may take enforcement action against a permittee operator for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment

downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass ~~that~~ which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee operator submitted notices as required under Section III U 2.

b. The board or its designee may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in Section III U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Section III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee operator who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee operator can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee operator submitted notice of the upset as required in Section III I; and

d. The permittee operator complied with any remedial measures required under Section III S.

3. In any enforcement proceeding the permittee operator seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee operator shall allow the director as the board's designee, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's operator's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the Virginia Stormwater Management Act, any substances or parameters at any location.

For purposes of this subsection, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the ~~permittee~~ operator for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Section III Y 2, a permit may be transferred by the ~~permittee~~ operator to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new ~~permittee~~ operator and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the Clean Water Act.

2. As an alternative to transfers under Section III Y 1, this permit may be automatically transferred to a new ~~permittee~~ operator if:

- a. The current ~~permittee~~ operator notifies the department at least two days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new ~~permittees~~ operators containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing ~~permittee~~ operator and the proposed new ~~permittee~~ operator of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Section III Y 2 b.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

FORMS

REVISED: 9/12/2007 10:28:19 AM

Application Form 1-General Information, Consolidated Permits Program, EPA Form 3510-1
(June 1980) (DCR 199-149).

Department of Conservation and Recreation Permit Application Fee Form, (DCR 199-145)
(09/04).

VSMP General Permit Registration Statement for Construction Activity Stormwater Discharges,
(DCR01), (DCR 199-146) (09/04).

VSMP General Permit Notice of Termination for Construction Activity Stormwater Discharges,
(DCR01), (DCR 199-147) (09/04).

VSMP General Permit Registration Statement for Stormwater Discharges From Small Municipal
Separate Storm Sewer Systems (DCR02), (DCR 199-148) (09/04)

Editor's Note

In 21:10 VA.R. 1231 January 24, 2005, the Virginia Soil and Water Conservation Board noticed the EPA approval of the enactment found in 21:3 VA.R. 317 October 18, 2004, via a letter dated December 30, 2004 from Donald S. Welsh, Regional Administrator, EPA Region 3 to The Honorable W. Tayloe Murphy, Jr., Secretary of Natural Resources. The effective date of the enactment, following this approval, is January 29, 2005.