

Presentation to the Virginia Soil and Water Conservation Board by Ryan J. Brown, Policy and Planning Assistant Director, Department of Conservation and Recreation.

September 25, 2008 Board Meeting at the Patrick Henry Building, Richmond, Virginia

General Permit for Discharges of Stormwater from Construction Activities

This regulatory action amends the General Permit for Discharges of Stormwater from Construction Activities (General Permit). The current General Permit is valid for five years, and is set to expire on June 30, 2009. This proposal is a revision of that current permit that is anticipated to be effective from July 1, 2009 through June 30, 2014. This will be the first such revision of this permit since the Board received responsibility for the VSMP program.

Purpose of the General Permit

What is the General Permit?

- The General Permit is a permit issued by the Board in the form of a regulation. It is a Clean Water Act (NPDES) permit.
- A permit can be thought of as a license. The General Permit is a “license” to discharge stormwater. The terms of the General Permit are what the regulated community (i.e., land developers) follow when developing their sites.
- As with all VSMP permits, it is developed based on the requirements of the underlying VSMP regulations (i.e., the provisions of the other “parts” of the regulations). Although it is a regulation, the role of the General Permit is to implement the existing VSMP regulations, not to develop new “rules”.
- While “individual” permits are drafted to apply to a single permittee, “general” permits are written to apply to a category of permittees who have similar circumstances.
- This general permit governs construction activities that are:
 - Greater than one acre in size (statewide)
 - 2,500 square feet or greater in size (in areas designated as subject to the Bay Act)
 - Any areas that are part of a common plan of development or sale that, in total, are one acre or greater in size.
- All regulated construction activities must have permit coverage.

Framework of Stormwater Regulations

Where does this action fit into the ongoing regulatory actions associated with stormwater management?

VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) PERMIT REGULATIONS [4 VAC 50-60-10 et seq.]

Part I: Definitions, Purpose, and Applicability

Part II: Stormwater Management Program Technical Criteria

Part III: Local Programs

Part IV: Technical Criteria and Permit Application Requirements for State Projects

Part V: Reporting

Part VI: VSMP General Program Requirements Related to MS4s and Land-Disturbing Activities

Part VII: VSMP Permit Applications

Part VIII: VSMP Permit Conditions

Part IX: Public Involvement

Part X: Transfer, Modification, Revocation and Reissuance, and Termination of VSMP Permits

Part XI: Enforcement of VSMP Permits

Part XII: Miscellaneous

Part XIII: Fees

Part XIV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities

Part XV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems – Effective July 9, 2008

FORMS

The Regulatory Process to Date

- Board Motion: March 20, 2008
- This is an “exempt” Administrative Process Act action pursuant to § 2.2-4006(A)(9):
 - Requires the publication of a NOIRA, organization of a TAC, ability for the public to submit oral and written comment, and at least one public meeting.
- Filed NOIRA: March 24, 2008
- The 30-day public comment period opened on April 14, 2008 and closed on May 14, 2008.
- We received 4 comments and 9 requests to be placed on the TAC.
- The TAC was composed of 19 members including consultants (7); local governments (2); environmental groups (3); state agencies (3); federal agencies (2); colleges and universities (1); and planning district commission (1).
- The TAC was facilitated by Dr. Frank Dukes from the Institute for Environmental Negotiation.
- Committee Meetings

- The 1st meeting of the TAC: July 22, 2008
 - The 2nd meeting of the TAC: August 19, 2008
 - The 3rd meeting of the TAC: September 9, 2008
- A statement of the Board’s authority for this regulation was received from the Office of the Attorney General on September 23, 2008.

Summary of Proposed Revisions

All VSMP permits, including this draft General Permit, are composed of terms developed pursuant to the greater body of stormwater regulations. As Part II of those regulations, which is directly implemented by the General Permit, is currently undergoing substantial revisions, it was not intended to make large changes to this version of the permit. Rather, the General Permit will be further revised following the completion of the Parts I/II/III/XIII regulatory process in the future. Additional future changes may be made in response to an ongoing EPA effort to revise terms and limitations that it utilizes in general permits that it issues in other states.

Still, important updates are proposed to be made to the General Permit in order to enhance program administration and promote clarity for the regulated community. The key proposed revisions to the permit include:

- 1) Updating and adding needed definitions such as “control measure”, “linear development project”, “qualified personnel”, “stormwater pollution prevention plan”, “Virginia Stormwater Management BMP Clearinghouse website”, and “minimize” (lines 17-781); PART I [section 10] and PART XIV [section 1100].
- 2) Specifying that this general permit shall become effective on July 1, 2009 and expire on June 30, 2014 (lines 801-02); PART XIV [section 1120].
- 3) Adding a statement that discharges to waters that have been identified as impaired on the 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under the permit unless they are addressed consistent with the terms of the permit, and that all control measures be protective of impaired waters (lines 847-50, 1151-54, and 1707-10); PART XIV [sections 1130 and 1170].
- 4) Adding a requirement that stormwater discharges from construction activities not cause or contribute to an excursion (i.e., a violation) above any applicable water quality standard, and that all control measures be employed in a manner that is protective of water quality standards (lines 1220-1247 and 1540-47); PART XIV [section 1170].
- 5) Updates to the registration statement (i.e., application) for coverage under the general permit, including:
 - a. A requirement that a complete registration statement be submitted prior to “the issuance of coverage under the general permit that authorizes the commencement of land disturbing activities...”, and that the “operator of a construction activity is authorized to discharge...only upon issuance of coverage under the general

- permit...” Currently, land disturbance is permitted to begin upon submittal (usually, mailing) of the registration statement; this new language changes that practice to require that coverage under the permit actually be issued by the Department prior to the time that land disturbing activities begin (lines 913-18 and 933-42); PART XIV [section 1150].
- b. A requirement that current permit coverage holders reapply for coverage under this new general permit by July 1, 2009. As the current general permit will expire on June 30, 2009, there are only two options in order to ensure continued coverage for active projects—either the existing general permit must be administratively continued, or all permit coverage holders must receive coverage under this permit. As either process requires reapplication by current coverage holders, and as it is believed that changes to this draft proposed permit will not detrimentally affect active projects, it is proposed that all projects receive coverage under this draft proposed permit (lines 928-29); PART XIV [section 1150].
 - c. A specification that only one construction activity operator may receive coverage under a single registration statement (lines 954-55); PART XIV [section 1150].
 - d. A requirement that each registration statement note direct discharges to any receiving water identified as impaired on the 2006 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL WLA has been established for stormwater discharges from a construction activity (lines 964-67); PART XIV [section 1150].
- 6) Updates to the notice of termination, which ends permit coverage and becomes effective at midnight on the date that it is submitted (previously, it had been effective seven days after submission) (lines 1012-66); PART XIV [section 1160].
 - 7) Updates to the requirements for and contents of a Stormwater Pollution Prevention Plan (SWPPP) for the construction site, including:
 - a. A requirement for the SWPPP to be made available to the public. Access to the SWPPP could be arranged at a time and location convenient to the operator (permittee), but no less than twice per month and during normal business hours (lines 1333-38); PART XIV [section 1170].
 - b. A direct requirement that all operators implement an Erosion and Sediment Control plan for the site in accordance with the Erosion and Sediment Control Law and Regulations. Previously, the SWPPP had been required to address Erosion and Sediment Control through specific language in the permit; however, as a practical matter, operators simply followed their approved E&S plans. This change aligns the permit language with that practice (lines 1416-90); PART XIV [section 1170].
 - c. Clarification that water quality and quantity requirements must be met by the operator. Under the current permit, there has been confusion at times as to whether or not water quality measures are required on every site statewide. The draft proposed language makes it clear that water quality is required on all sites (lines 1513-15); PART XIV [section 1170].

- d. The addition of an option for inspections of the site to be conducted every seven days by the operator. The operator can still choose the current inspection schedule of every 14 days and within 48 hours following a runoff producing event if desired (lines 1607-09); PART XIV [section 1170].
 - e. A requirement that the operator report if there has been any correspondence with federal officials regarding endangered species on the site, and a description of any measures necessary to protect such species (lines 1682-90); PART XIV [section 1170].
 - f. Requirements that TMDL wasteload allocations made to construction activities be addressed through the implementation of control measures and strategies contained in the SWPPP (lines 1691-1706); PART XIV [section 1170]
- 8) General updates to the basic Conditions Applicable to All VSMP Permits section that appears in every VSMP permit (lines 1712-2110); PART XIV [section 1170].
 - 9) The inclusion of new sections 4VAC50-60-1180, 1182, 1184, 1186, 1188, and 1190. These sections are direct copies of the currently-effective Part II (water quality and quantity) of the stormwater regulations. When the version of Part II that is currently undergoing development becomes effective, it will repeal the existing Part II. This would mean that all permittees at that time would then immediately become responsible for meeting the new Part II requirements, even though their plans were developed to meet the existing (currently effective) Part II requirements, and even though construction of the project under those plans may be well underway. In order to avoid that inequity, the permit specifically references the water quality and quantity requirements of these copied sections, which will prevent the changes to Part II from affecting persons holding coverage under this general permit. A new general permit will then be developed to incorporate the changes to Part II on a going forward basis for new projects (lines 2111-2278); PART XIV [sections 1180, 1182, 1184, 1186, 1188, and 1190].
 - 10) Updates to forms associated with the General Permit, including the registration statement (DCR 199-146), notice of termination (DCR 199-147), transfer form (form number pending), and permit fee form (DCR 199-145).

Next Steps

- Should the Board propose this regulation today, we plan file the proposed regulation on October 8 with the Registrar's Office; it should then be published on October 27 in the Virginia Register of Regulations.
- A 60-day public comment period will begin on October 27 and end on December 26. (EPA will also review during this time period)
(We also have newspaper publishing requirements during this time period)
- At least one public hearing will be held (expect to hold at least two).

- We would then hopefully bring the final regulation to the Board at the March meeting. We would expect to have the amended General Permit regulation in place sometime near the beginning of June 2009 with an effective date of July 1, 2009.

Draft Motion for the Board's consideration (see next page):

VIRGINIA SOIL AND WATER CONSERVATION BOARD

September 25, 2008 Meeting
at the Patrick Henry Building
Richmond, Virginia

Motion to approve, authorize and direct the filing of proposed regulations related to Part XIV of the Board’s Virginia Stormwater Management Program (VSMP) Permit Regulations and other related sections:

The Board approves these proposed regulations and incorporated forms and authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to submit the proposed amendments to Part XIV of the Board’s Virginia Stormwater Management Program Permit Regulations [entitled “**General Permit for Discharges of Stormwater from Construction Activities**”] and other approved sections, including but not limited to, Part I definitions, and associated forms incorporated by reference, and any other required documents to the Virginia Regulatory TownHall, the Virginia Registrar’s Office, and the U.S. Environmental Protection Agency.

In accordance with the Administrative Process Act exemption requirements specified in § 2.2-4006 A9, the Board further authorizes at least one public hearing to be held by the Department following publication of the proposed regulations in the Virginia Register of Regulations and that the Department make provisions to receive public comment concerning the proposed regulations. Upon closing of the public comment period, the Department is authorized to make revisions to the proposed regulations in response to comments received and to hold additional stakeholder meetings as it deems necessary.

In implementing this authorization, the Department shall follow and conduct actions in accordance with the Administrative Process Act exemption requirements specified in § 2.2-4006 A9, the Virginia Register Act, and other technical rulemaking protocols that may be applicable. The Department shall also implement all necessary public notification and review procedures specified by Federal Regulation regarding General Permit reissuance.

This authorization extends to, but is not limited to, the posting of the approved action to the Virginia Regulatory TownHall and the filing of the proposed regulations and incorporated forms with the Virginia Registrar’s Office and the U.S. Environmental Protection Agency, the holding of at least one public hearing, as well as the coordination necessary to gain approvals from the Office of the Attorney General, the Virginia Registrar of Regulations, and the U.S. Environmental Protection Agency.

The Board requests that the Director or the Regulatory Coordinator report to the Board on these actions at subsequent Board meetings.

Motion made by: _____

Motion seconded by: _____

Action: _____

Linda S. Campbell
Chair

Joseph H. Maroon
Secretary